James Leslie Reading, *Pro Se*
Clare Louise Reading, *Pro Se*
2425 East Fox Street
Mesa, Arizona 85213

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

CASE No: CV 11-00698-FJM

AFFIDAVIT OF CLARE L READING and JAMES LESLIE READING #17
REGARDING
RESPONSE VERIFIED UNDER OATH

I, Clare Reading, hereafter Affiant, and I, James Leslie Reading, hereinafter, Affiant, am a natural born citizen of the United States of America and of Arizona, am over the age of 18 and mentally competent. Affiant has personal knowledge of the statements being made hereafter in this document. I, Clare Reading, and I, James Leslie Reading, having been first duly sworn on my oath, state the following:

1. Affiants declare that we are the Defendants in the civil suit, CV-11-00698-FJM, brought against us by the Internal Revenue Service through the United States of America and the United States Department of Justice.

2. Affiants declare that we had the great fortune to have the *pro bono* representation of our dear friend, Tommy K. Cryer, Esq., who passed away on June 4, 2012.

3. Affiants declare that we were unable to find a replacement attorney and have had to remain *Pro se* through no fault of our own.

3. Affiants declare that due to printing errors, several pages that were filed on August 6, 2012 were out of place; one memorandum was omitted in error and signatures on Affidavits were incomplete, which we correct for the clarification of the Court now.

4. A corrected Table of Contents is attached herein for use in identifying pages inadvertently out of sequence for the clarification of the Court.

5. Affiants declare under penalty of perjury upon being duly sworn that this affidavit and the 708 pages in response to this civil suit, and Plaintiff's Motion for Summary Judgment containing 8 Memoranda, 17 Affidavits and 50 Exhibits are all true, correct and complete and not meant to mislead to the best of our personal knowledge and ability.

Affiants declare: I am not an expert in the law however, I do know right from wrong. If there is any human being damaged by any statements herein, if he will inform me by verifiable facts I will sincerely make every effort to make correction(s). I hereby and herein reserve the right to amend this document as necessary in order that the truth may be ascertained and proceedings justly determined. If the parties given notice by means of this document have information that would controvert and overcome this Affidavit, please advise me IN WRITTEN AFFIDAVIT FORM within thirty (30) days from receipt hereof providing me with your counter affidavit, proving with particularity by stating all requisite actual evidentiary fact and all requisite actual law, and not merely the ultimate facts or conclusions of law, under penalty of perjury, that this Affidavit is substantially and materially false sufficiently to materially change my status and factual declarations. Your silence stands as consent to, and tacit approval of, the factual declarations herein being established as fact as a matter of law.

Jurat

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, 28 USC § 1746(1).

Reserving ALL Natural God-given unalienable birthrights, waiving none,

/s/ Clare Louise Reading
Clare Louise Reading

/s/ James Leslie Reading
James Leslie Reading

Arizona State)
) ss
Maricopa County)

Clare Louise Reading and James Leslie Reading appeared before me, a Notary, subscribed and sworn under oath this 8th day of August, 2012.

Notary Public My Commission expires: 3/25/2016

seal

KEVIN S. KEPLINGER
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
March 25, 2016

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing, **AFFIDAVIT OF CLARE L READING and JAMES LESLIE READING #17 REGARDING RESPONSE VERIFIED UNDER OATH** with attachments, has been made this 9th day of August, 2012, by depositing a copy thereof in the United States Mail in a postage prepaid envelope addressed to:

CHARLES M. DUFFY
U.S. Department of Justice, Tax Div.
PO Box 683
Ben Franklin Station
Washington, DC 20044
(202) 307-6406

Terry I. Major, Trustee, in *Pro Per*
Fox Group Trust
PO Box 2023
Cottonwood, AZ 86326

Clare Louise Reading

Clare Louise Reading
2425 East Fox Street
Mesa, Arizona 85213

Documents filed 8/06/2012 and Items for Correction on August 8, 2012 Noted in red

CV-11-00698-FJM - United States of America vs. Reading, et al

On August 6, 2012, Defendants Readings filed their Response to Plaintiff's Motion for Summary Judgment. Due to technical problems at the printer's, defects were discovered that Defendants correct herein for the Court's clarification

Description of Errata, Defects and Clerical Errors for Correction in red

1	Defendants Readings' Response to Plaintiff's Motion for Summary Judgment
Attachment 1	Defendants Readings' Memorandum in Support of Defendants' Response to Plaintiff's Motion for Summary Judgment
Attachment 2	Defendants Readings' Response to Plaintiff's Statement of Facts
Attachment 3	Defendants Readings' Separate Statement of Facts in Support of Their Response to Plaintiff's Motion for Summary Judgment
2	Declaration of Clare L. Reading and James Leslie Reading

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Documents out of sequence or that require correction in red

L -1	Affidavit RE: The True Supervisor of Cynthia Bingham, IRS Form 8278, Signed: 7/30/09 - Out of sequence
J -1	RACS 006 Dated 04-23-2001 [and: B, C, A, instead of: A, B, C] Out of sequence
J	Page 6 for Exhibit J is out of sequence
I	Exhibit I Affidavit #1 Regarding the Real Issues in This Case Out of sequence
J	Exhibit J Affidavit #2 Regarding Assessments for 1040 Tax Years 1993, 1994, 1005, 2008 = Out of sequence

Exhibit #	Discription [Description]
A	Memorandum I-R # 1 What is income
B	Memorandum I-R # 2 Who Is Liable
C	Memorandum I-R # 3 Who Must File
D	Memorandum I-R # 4 What is and What is not taxable
E	Memorandum I-R # 5 Are Fundamental Rights taxable
F	Memorandum Regarding Assessments 26 USC Sec.6203
G	The Real Truth about The IRS's "Truth" About "Frivolous" Tax Arguments
H	The Memorandum by Tommy Cryer Omitted in error.
I	Defendant's Affidavit # 1 Regarding The Real Issues in Case Out of sequence - see above
J	Defendant's Affidavit # 2 Regarding Assessments 1993, 1994, 1995 James Page 6 is out of sequence - see above
J-1	RACS 006 Dated 04-23-2001 is out of sequence - see above

Documents filed 8/06/2012 and Items for Correction on _____ Noted in red

K	**Defendant's Affidavit # 3 Regarding Assessments 1994, 1995 Clare**
L	**Defendant's Affidavit # 4 Regarding Assessments of Civil Penalties All** copied / entered twice
L-1	Exhibit L-1 Affidavit Regarding Manager From Clare. PDF
L-2	Exhibit L-2 Civil Penalty Information From 4340 with DLN.xls
L-3	Exhibit L-3 IRM 20.1.1.2.3 (02-22-2008) - Managerial Approval for Penalty Assessments .doc
L-4	Exhibit L-4 IRM 3.5.61.24.1 (User Fee).pdf
M	**Defendant's Affidavit # 5 Regarding Plaintiff's NOD Mailing**
N	**Defendant's Affidavit # 6* Regarding Certification of Plaintiff Exhibits** * Numbered 5 in title
N-1	Exhibit M-1 IRM 11.3.6.1 (04-30-2009) Background (Certification).doc
N-2	Exhibit M-2 Delegation Order 198 (Rev. 5).doc
N-3	Exhibit M-3 Rule 44 Proof or Official Record.doc
N-4	Exhibit M-4 W&I Delegation Order WI-11-5.doc
O	Defendant's Affidavit # 7 Regarding NOD for 1993, 1994, 1995, and 2008 James
O-1	Delegation Order 4-8
P	Defendant's Affidavit # 8 Regarding NOD for 1994 and 1995 Clare
Q	Defendant's Affidavit # 9 Regarding No Assessment Civil Penalties James
Q-1	RACS 006 Dated 05/21/2007
Q-2	RACS 006 Dated 05-14-2007
Q-3	RACS 006 Dated 10-22-2007
Q-4	RACS 006 Dated 08-17-2009
R	Defendant's Affidavit # 10 Regarding No Assessment Civil Penalties Clare
R-1	RACS 006 Dated 04-09-2007
R-2	RACS 006 Dated 04-30-2007
R-3	RACS 006 Dated 10-22-2007
R-4	RACS 006 Dated 08-17-2009
S	Defendant's Affidavit # 11 Regarding Elizabeth Marriaga FINAL.doc
T	**Defendant's Affidavit # 12 Regarding FGT** Declaration Re: Deposition of Fox Group Trustee
U	US Supreme Court Cases Exhibit __ [U]
V	Defendant's Affidavit # 13 Regarding Misapplication of 6020(b)
V-1	Delegation Order 182 (Rev 1) DD-OKC-150 Rev 5.pdf
V-2	IRM 5292 6020(b) Authority of types of returns (2).pdf
V-3	IRS Training Manual Page 23-3 & 23-4 Note Constitutional Comment.pdf
V-4	IRS Training Manual Page 25-1 & 2.pdf
V-5	IRS Training Manual Page 25-10.pdf
V-6	IRS Training Manual Page 23-3 Constitutional Note.pdf
V-7	IRM 5.1.11.9 IRC 6020(b) SFR forms Authorized.pdf
V-8	IRM 5.1.11.6.8 (03-01-2007) IRC 6020(b) Authority.pdf
V-9	Disclosure Letter No Delegation Order Authorizes SFR.pdf
V-10	V-10 IRM 4.19.17.1.3.1 (11-10-206) SFR Procedure Requires Taxpayers Signature.doc
V-11	V-11 Exhibit GJ - Letter from National Archives.pdf

Documents filed 8/06/2012 and Items for Correction on _____ Noted in red

V-12	V-12 IRM 3.0.273.38.3 False or Fraudulent.doc
V-13	V-13 CFR Index AuthoritiesTitle26.pdf
W	IRM 4.2.2.4 Identification of Bad Payer Data
X	Defendant's Affidavit # 14 Regarding Section 61 ["#14" omitted]
X-1	26USC-sec61 Study IRC 1939 to 1986 [Notes]
X-2	26USC-sec61 Study IRC 1939 reg's
X-3	Classification Acts 1923 &1949
X-4	Supreme Court no weight to Treasury Regulations
Y	Supreme Court no weight to Treasury Regulations
Z	Explanation of Estimated Tax Penalty 2008 Out of sequence
	Bk 1 Tab 3, 4649, 886-A, Pers. Exemption Worksheet, Expl - Est Tax Pen., 28 USC § 1654
	The above 5 pages = out of sequence
AA	Defendant's Affidavit Regarding Erratic Liability Claims by the IRS [#15]
AA-1	IRS Minimum bid worksheet
AA-2	Graph of IRS claims of liability
AA-3	IRS Form 2436 Siezed [Seized] Property Sale Report
BB	Statutes at Large 1862 / Sess II Ch119, 475, Sec. 93 & 1919 Sess. III Ch. 18 Sec 228 Correct the Records
CC	Treasury Decision T22.8 Re Form 17
DD	Reliance on Governmental Representations - US SCt cases relied on
EE	Internal Revenue Districts memorandum
FF	1993 1040 with 1099s & AMCAP Fund & Fundamental Investors Report
GG	1994 1040 with 1099s
HH	1995 1040 with 1099
II	Adelmann 1993 & 1994 Transaction Reports from American Funds
JJ	Debra Vahe ICS log & Oath of Office
KK	Letters to IRS requesting law info & IRS non response
LL	Forms 4549 for Clare Reading re: '94 & '95 & James Reading re: '93, '94 & '95
MM	Blank Receipt for Certified Mail on alleged Notice of Deficiency CLR '94 & '95
NN	Miscalculations on line 6 CLR '94 & '95
OO	ADP IRS 6209 Manual referencing TC 494
PP	File examiner Rebecca Sexton workpapers 3-20-2000
QQ	FOIA RESPONSE no SFR for JLR for '94
RR	Letter from Pilot Controller
SS	IRS Disclosure Office admission there are no Notices & Demands for JLR
SS-1	IRS Disclosure Office admission there are no Notices & Demands for CLR
SS-2	I.R.M. 4.75.14-8 Instructions for Form 4549
	Affidavit regarding there are no Notice & Demand for payment or proof of mailing Affidavit # SS Regarding No Notice and Demand Sent or Received Out of Sequence – Should have been SS with Exhibits as SS-1 and SS-2
TT	I.R.M. 4.75.14-8 Instructions for Form 4549

ATTACHMENT # 1

DEFENDANTS READINGS' MEMORANDUM IN SUPPORT OF DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

No. **CV 11-00698-FJM**

(oral argument requested)

Defendants James Leslie Reading and Clare L. Reading (the "Reading Defendants"), appearing in propria persona, hereby provide this MEMORANDUM IN SUPPORT OF DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Overview

The basis for the denial of Plaintiff's motion for summary judgment is contained within the four corners of that motion. Plaintiff initially argued that the Readings Defendants are liable for assessments in the amounts exceeding $670,000.00 and for Frivolous Return Penalties in excess of $33,500.00. Faced with the undeniable facts that: 1) these amounts are incorrect due to variety of reasons, including creative accounting methods used by IRS employees, which created tax and penalties on money never received in the years in question; 2) the inability of IRS data entry personal to enter a loss or negative number from a Form 1099 into the IDRS computer system, thus claiming that the Readings Defendants experienced gains in stock sales rather than a loss for the years 1993 and 1994; 3) improperly trained IRS employees who have been trained to follow procedure, rather than the law; 4) there are failures by the IRS to comply with the statutory requirements necessary to obtain a proper and legal

deficiency, and the proper and legal assessment of a valid deficiency; 5) finally, these amounts are based on presumption by the IRS that what was paid to Readings Defendants was "income" under the law and must be declared in their entirety as "Gross Income" per 26 U.S.C. § 61.

Unfortunately for Plaintiff, the Readings Defendants can show there are undeniable issues of fact which contradict and supercede Plaintiff's arguments. It is well-established that "[o]n summary judgment the inferences to be drawn from the underlying facts contained in [the affidavits, attached exhibits, and depositions submitted] must be viewed in the **light most favorable** to the party opposing the motion." *See* United States v. Diebold, Inc., 369 U.S. 654, 655 (1962). It is also established that "tax laws are to be interpreted liberally in **favor of taxpayers** and that words defining things to be taxed may not be extended beyond their clear import. Doubts must be resolved **against the Government** and **in favor of taxpayers**."[1] Miller v. Standard Nut Margarine Co. of Fla., 284 U.S. 498, 508 (1932)(some emphasis added). For these reasons alone, Plaintiff's motion must be denied.

II. Legal Standard

"Credibility determinations, the weighing of the evidence and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether the judge is ruling on a motion for summary judgment or for a directed verdict. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S.Ct. 2505, 2513 (1986). Summary judgment is appropriate where there "is no genuine issue as to any material fact" and the moving party is "entitled to a judgment as a matter of law." Fed. Rule Civ. Proc. 56(c); *see* Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

[1] The term "Taxpayer" in this instance should be a substitute for "defendants" as "taxpayer" is a Government term and not a term used by the Readings Defendants to describe their relationship to the "taxpayers" in the case cited.

The court must draw all reasonable inferences in favor of the nonmoving party. Lytle v. Household Mfg., Inc., 494 U.S. 545, 554-555, 110 S.Ct. 1331 (1990).

III. Relevant Facts in Dispute

A. General facts in dispute in this case.

The amount claimed is in error for several years just because of math errors and illegal accounting methods. The Plaintiff has calculated the taxes and penalties against the Defendant for the year 1994 on gross receipts of $78,294.50 more that what was actually received, by the Defendants. The Plaintiff repeated this the following year and has calculated the taxes and penalties against the Defendant for the year 1995 on gross receipts of $58,824.00 more than what was received. The inaccuracy which has existed since 2001 has never been corrected by the IRS. (*See*: Defendants' Exhibits O; Exhibit P)

The amount claimed is also in error due to addition mistakes and errors by the IRS. Defendants have also fought with the IRS on a stock sale loss for the years 1993 and 1994, in which the IRS incorrectly reported as a gain of $85,889.00 for the year 1993 and again a gain of $11,948 for the year 1994. However, the facts are that the Defendants had a loss for both those years and no capital gain was earned. This fact was known and confirmed by Revenue Officer Debra Vahe and reported in the ICS History Log back in 2009. (*See*: Defendant's Exhibit JJ). Attempting to collect more than is owed legally is a crime under the law §7214(a)(2).

All of Plaintiff's presumptions rely on erroneous information and have no merit under the law. (DSSOF, ¶ 2) Prejudicial tactics used by Plaintiff's attorney is attempting to avoid the real issues of fact in this case by bringing up statements and claims made by the Defendants in previous legal actions which are not relevant to the issues in this case, which are to reduce "federal tax assessments" to judgment. (DSSOF, ¶ 10) (*See*: Defendants' Exhibit I) The U.S. Government's lien interests are merely presumptions; not supported by testimony or evidence. (DSSOF, ¶ 11)

It is well known and logical that before there can be "federal tax assessments" to reduce to judgment, the amount purportedly owed must be properly assessed, as mandated under the statutes and regulations. (DSSOF, ¶ 12). Statutory requirements must be fulfilled in order to have a proper assessment and any assessment made must be made by recording the liability of the taxpayer in the Office of the Secretary. (26 U.S.C. § 6203, 26 C.F.R. § 301.6203, DSSOF, ¶ 14) In this case, before there may be any valid assessments made against James and Clare Reading for the years: 1993, 1994, 1995, and 2008, it is required that Plaintiff comply with the statutory requirements of the following statutes: 26 U.S.C. § 6321 Lien for Taxes, 26 U.S.C. § 6303 Notice and Demand 26 U.S.C. § 6331 Levy and distraint. (DSSOF, ¶ 15)

In order for Plaintiff to prove it has valid assessments against Clare and James Reading and is entitled to have those assessments be reduced to judgment, Plaintiff has to prove the essential elements identified in 26 U.S.C. § 6212, 26 U.S.C. § 6211 and 26 U.S.C. § 6020(b). (DSSOF, ¶ 16) Even before there can be valid assessments, there must be a "tax deficiency" as defined by 26 U.S.C. § 6211. (DSSOF, ¶ 17)

The amounts reported as "income," on the 1099's and W2's are incorrect. (DSSOF, ¶ 18) This is not Defendants' opinion, but that of the U.S. Supreme Court. (*See*: Defendants' Exhibit U). Plaintiff has made these (and additional) unfounded presumptions in this case: (a) that Defendants earned "income" under the law; (b) that the Defendants are liable for taxes under the statutes; (c) that **Section 1 of Subtitle A** imposes a tax on both "taxable income" and "non taxable income"; (d) that **Section 1 of Subtitle A** imposes a liability; (e) that there is a statute that makes Defendants liable; and (f) that there is a statute which required Defendants to file a tax return if they had no "income." (DSSOF, ¶ 11)

Furthermore, there are several discrepancies in the documents provided by Plaintiff including but not limited to: (1) the calculations Plaintiff used to arrive at the alleged "federal tax assessment" contains many errors. (DSSOF, ¶ 20); (2) the IRS employee who performed the specific tasks did not have the proper and legal authority to do so (DSSOF, ¶ 21); and the IRS employee who created the documents alleging the purported tax deficiency, violated or failed to comply with Delegation Orders, Statutes,

Regulations, and their own Internal Revenue Manual provisions as mandated by law. (DSSOF, ¶ 23) Moreover, no evidence has been presented in this case that shows a complete and unbroken chain of Delegation Orders from the Secretary to the IRS employee who prepared the assessments or certified the documents contained in Plaintiff's Exhibits to the Motion for Summary judgment. (DSSOF, ¶ 22)

Plaintiff and its attorney know full-well that before there can be an assessment, there must be a valid "tax deficiency" as defined by 26 U.S.C. § 6211. (DSSOF, ¶ 24) and in order for there to be valid "tax liability" there must be a statute that imposes the tax **and** a statute that makes Defendants "liable" to pay the tax. (DSSOF, ¶ 25) The assessments in this case were not performed correctly, as mandated by statute and regulation. (DSSOF, ¶ 26) Plaintiff and its client have failed to provide the statute(s) where Congress has made Defendants liable for any tax and continues to operate as if one exists. (DSSOF, ¶ 27)

The "tax deficiencies" in this case that were calculated by IRS employees were not done properly or legally. (DSSOF, ¶ 28) Any Substitutes For Return (SFR's) created by IRS employees were created under color of law, and no Delegation Order specifically authorized a 1040 return to be created, and IRM provisions do not authorize a 1040 SFR to be created. (DSSOF, ¶ 29). In fact, there appears to be no returns created by the Plaintiff placed into evidence. Could this be because the IRS knows that the returns they created back in 2000 have been ruled as invalid returns by the Courts[2]? In addition, the Courts have ruled that an unsigned return does not meet the requirement of a 6020(b) return. The Plaintiff has presented a Notice of Deficiency with a Form 4549 often used as part of a SFR. These 4549's for the years 1993 – 1995 were not signed. In addition, the Plaintiff has not presented any testimony or evidence that would show a complete unbroken chain of Delegation Orders from the Secretary to the IRS employee who created the returns under 26 U.S.C. § 6020(b). (DSSOF, ¶ 30)

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[2] United States Tax Court also warned the IRS that this procedure using the Commissioner's Dummy Return was not in accordance with 26 U.S.C. §6020(b). The U.S. Tax Court first made this statement in the case, **Phillips v CIR**, 86 TC 433, (1986) and most recently in **Wheeler v CIR**, 127 TC 14 (2006), Docket Nos. 14430-03, 7206- 04. Filed May 22, 2006. There are numerous other Tax Court cases making reference to this same issue.

Defendants have evidence that shows that previous versions of Delegation Order 182 listed the returns authorized, but did not list a 1040 or Individual Income Tax Return to be created under the authority of 6020(b)[3] (DSSOF, ¶ 23) and Plaintiff cannot provide a Delegation Order which shows that they may create a 1040 tax return in this case. (DSSOF, ¶ 24)

Furthermore, the Secretary (or his delegate) created a tax return not authorized by IRM 5.1.11.9 (05-29-1999) or by IRM 5.1.11.6.8 (03-01-2009) in violation of these IRM provisions and under *color of law*. (DSSOF, ¶ 25) Therefore, the IRS did not comply with the statutes, regulations, or IRM provisions, as required, before it can collect a tax. (DSSOF, ¶ 26)

A. Assessments of the Readings from 1993-1995 and 2008.

An "assessment" must be completed before there is any tax owing, according to the courts[4]. An "assessment" is NOT one step, but it is a sequence of steps that must be completed, and therefore this is often misunderstood. There are specific steps or tasks that must be completed by the Secretary, before any tax is properly and legally owed. The memorandum will explain these steps and tasks (Exhibit F). Once these steps have been completed, the "tax liability" is considered assessed. An "assessment" is an administrative determination of a "tax liability". The statutory and regulatory requirements are codified in 26 U.S.C. § 6203 and 26 C.F.R. § 301.6203-1.

1. The Readings Were NOT Required to make and file Returns in years 1993-1995, and 2008 because what they earned was NOT "income" under the law. No testimony or evidence has been presented by the Plaintiff to show that this is not true.

2. The IRS cannot prove the Notices of Deficiency were properly served.

3. The Assessments against Mr. Reading were Illegal and Improper.

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[3] See Defendants' Exhibit V-1

[4] United States of America v. Dixon, 672 F. Supp. 503 USDC, Middle Dist. Ala., (1987). "The defendant correctly contends that the basis of tax liability is the assessment. For a **tax liability to be duly collected**, it **must be first properly assessed**. In order for a **tax deficiency to be assessed against a taxpayer, an assessment officer must sign and date a Form 23-C**." [Emphasis added]

4. The Assessments against Mrs. Reading were Illegal and Improper.

5. The IRS Made Improper and Baseless Adjustments in 2011.

B. The Improper Tax and Assessments at Issue in the Fourth and Fifth Claims of Plaintiff's Complaint.

1. The IRS Must Reverse the Frivolous Return Penalty Assessments Made Against James Reading as a Matter of Law.

2. The IRS Must Reverse the Frivolous Return Penalty Assessments Made Against Clare Reading as a Matter of Law.

The tax returns(s) submitted by Defendants do not meet the legal definition of a frivolous return as defined by Congress in 26 U.S.C. § 6702(a). (DSSOF, ¶ 35) The Secretary has failed to comply with the requirements outlined in 26 U.S.C. § 6703(a). (DSSOF, ¶ 37) The penalties in this case were not assessed properly, as mandated by 26 U.S.C § 6203, therefore, the penalties should not be included in the debt alleged to be owed by Defendants. (DSSOF, ¶ 38) Plaintiff has not met its burden of proof mandated by 26 U.S.C. § 6201(d) because Defendant(s) have disputed the claims by the third parties in labeling "receipts for labor" as "income" and the Secretary has not provided evidence or testimony to support the disputed claims. (DSSOF, ¶ 39)

The penalties assessed against James L. Reading for tax years 1997 thru 2008 excluding (2001/ 2007) and for Clare L. Reading for tax years 1997 thru 2008 excluding (2007), are defective, in that none of the Government's exhibits contain the necessary information to show that they were lawfully made against Defendants. IRC § 6751 states in relevant part:

§ 6751. Procedural requirements

(b) Approval of assessment

(1) In general

No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate

supervisor of the individual making such determination or such higher level official as the Secretary may designate.

Even after repeated requests, the Government has never provided evidence that an IRS "supervisor" approved the making of any penalty assessment. Moreover, the Government has never denied this. This lack of essential information resulted in a failure of the Government to meet its burden of proof. Therefore, any alleged liens arising from improper penalty assessments, rendered them void *ab initio*. Consequently, summary judgment should be denied by this Court, and the matter dismissed for the want of subject matter jurisdiction.

Defendant has discovered that all the Civil Penalties were not assessed as a tax, as mandated by § 6671(a), but were instead assessed as USER FEES. The evidence of this is found in the Document Locator Number found in the Forms 4340 submitted by the Plaintiff as DuffyExC-1 thru DuffyExC-10 for James L. Reading and DuffyExD-1 thru DuffyExD-11 for Clare L. Reading. (*See*: Exhibit Q and Exhibit R).

C. The IRS is NOT Entitled to Foreclosure of it's Illegal and Improper Tax Liens on the Readings'.

D. The IRS nor is any other Party Entitled to an Interest in the Readings' Property.

IV. Argument.

A. Summary Judgment is not appropriate under the law.

In order for the Plaintiff to win on summary judgment, it must show that there are no relevant or material facts in dispute. Plaintiff's motion alleges that it timely complied with notice and demand statues, that the information contained in its records are correct, that it has, of its own accord, properly assessed taxes and penalties, and accuse the Readings of not only being tax cheats, but also of filing fraudulent returns, and illegally transferring property. Unfortunately for Plaintiff, none of the evidence in this case

supports any of their allegations. Further, it is well established that courts are required to view the facts and draw reasonable inferences "in the light most favorable to the party opposing the [summary judgment] motion." *United States v. Diebold, Inc.*, 369 U.S. 654, 655, 82 S.Ct. 993, 8 L.Ed.2d 176 (1962) *(per curiam)*; *Saucier, supra,* at 201, 121 S.Ct. 2151. Summary judgment should not be granted unless it is clear that a trial is unnecessary, Anderson v. Liberty Lobby, Inc., *ante,* at 255. Any doubt about the existence of a genuine issue for trial should be resolved against the moving party, *Adickes* v. *S. H. Kress & Co.*, 398 U. S. 144, 158-159 (1970). In determining whether a moving party has met its summary judgment burden, the court is obliged to take account of the entire setting of the case and must consider all documents of record as well as any materials prepared. 10A Wright § 2721, p. 44; see, *e. g.*, Stepanischen v. Merchants Despatch Transportation Corp., 722 F. 2d 922, 930 (CA1 1983); Higgenbotham v. Ochsner Foundation Hospital, 607 F. 2d 653, 656 (CA5 1979). As explained by the Third Circuit Court of Appeals, in *In re Japanese Electronic Products Antitrust Litigation*, 723 F. 2d 238 (1983), rev'd on other grounds *sub nom. Matsushita Electric Industrial Co.* v. *Zenith Radio Corp.*, 475 U. S. 574 (1986), "[i]f . . . there is any evidence in the record from any source from which a reasonable inference in the [nonmoving party's] favor may be drawn, the moving party simply cannot obtain a summary judgment . . . ." 723 F. 2d, at 258.

With so many facts in dispute in the instant case and the plaintiff clearly not meeting its burden of persuasion, summary judgment is not appropriate.

B. The United States is NOT Entitled to Summary Judgment on the Assessment claims as they were improper and illegally done.

1. Chila has no application in this case.

In its motion, Plaintiff cites United States v. Chila, 871 F.2d 1015 (11th Cir. 1989) to show that their Forms 4340 are presumed to be correct. Chila was a § 7491 action to

reduce a § 6672 "responsible party" penalty to judgment. Because no lien recognition or enforcement was sought in Chila, § 6303 was not a factor. This case is an action filed under §7401 and §7403, which seeks to foreclose federal tax liens against property. Although Chila did not require a showing of a lien interest in real property, plaintiffs must be able to show a lien interest in this case and fails to do so.

2. The Notice of Deficiency requirements have not been met. The Notice and Demand requirements have not been met.

Before any lien interest can exist, let alone attach to property, timely compliance with the requirements under 26 U.S.C. §6212 are absolutely necessary.

In order for a Notice of Deficiency and Demand ("NOD") to be valid, it must be signed and sent by the Secretary (or his delegate). Knowing whether the person who issued and sent the NOD to the Readings had authority to do so, is pertinent to determine the validity of the NOD. The copies produced by Plaintiff as part of the Motion for Summary Judgment do not provide the information necessary to show that the person with the proper authority signed and sent the NODs in this case.

26 U.S.C. § 6303 requires that Notices and Demands (NADs) be sent to the taxpayer(s)' last known address within 60 days of the assessment by certified or registered mail. The Post Office issues its Form 3800 and the IRS maintains its internal record of registered and certified mailings on Form 3877. The exhibit Plaintiff used to support its motion [DuffyExH] had a blank copy of a certified mail slip haphazardly copied with a NOD document. None of the NODs Plaintiff used had the Certified Mail number typed on them to reflect the means of mailing and although a couple of them have a partial blank 3800 visible, neither the NOD nor the blank form provides any showing that either is related to the other, much less, that the NOD was sent by means required by 26 U.S.C. § 6212. In both of the Readings' declarations they declare they

did not receive any NOD. [See Exhibit O, ¶ 4; See Exhibit P, ¶ 2] For additional evidence and testimony regarding evidence to support Defendants' claim that the NODs were never mailed. [*See* Exhibit M Defendant's Affidavit # 5 Regarding Plaintiff's NOD Mailing.]

The best evidence would be for plaintiffs to have a valid copy of the NOD showing the date and the address to which it was sent, signed by a person authorized to sign and send the NOD, with proper certification that the document was indeed mailed via certified or registered mail by the United States Post Office. This would establish that the NOD was timely and that it complied with the requirements of § 6212. Plaintiff cannot provide such evidence. Instead, Plaintiff dances around the subject and finally produced a flawed altered computer log and attempted to have it Certified with a Form 2866. Defendants have rebutted this evidence and presents some valid credible evidence that the Notice of Mailing evidence is flawed. [Defendant's Exhibit M]

Thus, compliance with § 6212 was not met.

In *Huff v. United States of America*, 10 F.3d 1440 (9th Cir. 1993), the Court acknowledged:

> "*This court has held that claims regarding both the failure by the IRS properly to assess a tax and to provide a taxpayer with a copy of an assessment under § 6203, and the failure to send a notice of assessment and a demand for payment under § 6303(a) present procedural challenges to the validity of a lien and are therefore cognizable under [Title 28] § 2410. See Arford, 934 F.2d at 232; Elias, 908 F.2d at 527. Thus, the allegations of counts II and III will support an action under § 2410 unless the government can establish that there is no genuine issue of material fact as to whether the IRS complied with §§ 6203 & 6303(a).*"

3. Invalid assessments cannot be reduced to judgment .

[3]In *Bothke v. Fluor Engineers and Constructors, Inc.*, 713 F.2d 1405 (9th Cir., 1982). "For the condition precedent of liability to be met, **there must be a lawful assessment**,

either a voluntary one by the taxpayer, or **one procedurally proper by the IRS,** because this country's income tax system is based on voluntary self-assessment, rather than distraint."

4. The deficiency was fabricated.

For Plaintiffs to have a valid NOD, a deficiency under 26 U.S.C. § 6211 of a determined tax due and owing is necessary. (Exhibit V).

5. The substitute returns filed by Plaintiff were not in compliance.

The Plaintiff has not submitted any returns into the record and instead is attempting to rely on presumption and a flawed Notices of Deficiency alleged to have been mailed. The only returns in the records are the ones completed by the Defendants, which show a $0.00 self-assessment. [See VaheExA 1993; VaheExB 1994; VaheExC 1995; VaheExD 2008;] In *Bothke v. Fluor Engineers and Constructors, Inc.,* 713 F.2d 1405 (9th Cir., 1982). "For the condition precedent of liability to be met, **there must be a lawful assessment, either a voluntary one by the taxpayer,** or **one procedurally proper by the IRS,** because this country's income tax system is based on voluntary self-assessment, rather than distraint." (Bold emphasis added).

According to the Supreme Court, an assessment must have a foundation. The Secretary's assessment stated that it relied on purported information returns he presumes are correct. Defendants have already shown that third party information returns are in error and were fraudulently filed with the Secretary and that the Secretary relied on fraudulently acquired information. Furthermore, the Secretary had the burden to point to a specific statute that levies a specific tax on a specific activity that Defendants engaged in and from which income was earned. Yet, he failed to do so. Lacking any supporting documentation, information, statutes, or regulations, he created unsupported naked assessments, as the Supreme Court discussed in the *Janis Court*, "What we have is a

'naked' assessment without any foundation whatsoever…" *United States v. Janis*, 428 US 433 (1976) at 441.

Failure to Meet the Burden of Proof

When there is a naked assessment, the burden of proof lies with the Secretary, as the Supreme Court noted in the *Helvering Court* when it stated, "The determination of tax due then may be one 'without rational foundation and excessive,' and not properly subject to the usual rule with respect to the burden of proof in tax cases." *Helvering v. Taylor*, 293 U.S. 507, 514-515 (1935). The court further supported this decision.

> [T]he debate does not extend to the situation where the assessment is shown to be naked and without any foundation. The courts then appear to apply the rule of the *Taylor* case. See *United States v. Rexach*, 482 F. 2d 10, 16-17, n. 3 (CA1), cert. denied, 414 U. S. 1039 (1973); *Pizzarello v. United States*, 408 F. 2d 579 (CA2), cert. denied, 396 U. S. 986 (1969); *Suarez v. Commisioner*, 58 T. C. 792, 814-815 (1972). But *cf. Compton v. United States*, 334 F. 2d 212, 216 (CA4 1964). *United States v. Janis, supra.*

Disregarding this, the Secretary had continued to act against Defendants as if Defendants have the burden of proof.

Arbitrary and Erroneous Assessments

The Secretary is not at liberty to abuse his discretion and create assessments without a foundation. As the Supreme Court stated, "When the tax gatherer puts his finger on the citizen, he must also put his finger on the law permitting it." *Leavell v. Blades*, 237 Mo. 695, 700-701, 141 S. W. 893, 894 (1911)." *United Dominion Industries, Inc. v. United States*, 532 US 822, 839 (2001). The Secretary's assessments did not identify any facts or statutes for their foundation but rather relied on fraudulently filed third party information returns and fraudulently acquired information. Further, the

Secretary failed and refused to point to the specific law that levies a specific tax on a specific activity in Subtitle A of the Code that he believes Defendants engaged in that would have made that activity taxable for revenue purposes. This is clear proof that the assessments are both arbitrary and erroneous. The Supreme Court decided this issue in Janis when it stated that "[P]roof that an assessment is utterly without foundation is proof that it is arbitrary and erroneous." *United States v. Janis*, 428 US 433, 442 (1976).

In this case, no returns had been properly created or submitted to the court prior to 2006. No deficiency can exist by definition without a return filed by the taxpayer.

6. Plaintiff falsely applied the "Zero Basis" rule.

The IRS contends that the basis for labor and lifetime is "zero", but it also admits by omission from its list of frivolous arguments that it has no legal basis for that contention. The basis sections do not mention a basis for labor or time out of one's life and work spans nor do they provide for a blanket assignment of "zero" in any instance, even where the property was received as a gift or legacy, at no cost.

In making the calculations set out in the substitute returns filed under § 6020(b) and NODs upon which the assessments are based, Plaintiffs are unable to state the statutory basis for applying the "zero basis" rule under § 1001 et seq. to the alleged profit that was received by Mr. Reading in exchange for the labor Mr. Reading performed.

C. The United States is NOT Entitled to Summary Judgment on the Frivolous Return Penalties.

D. The United States is NOT Entitled to Summary Judgment on the Fifth, Sixth, and Seventh Claims.

1. The Transfer of the Residence was Proper under the Law

2. The Fox Group Trust is a proper Trust.

IV. Conclusion

For the foregoing reasons, the Readings Defendants respectfully request that Plaintiff's Motion for Summary Judgment be denied and that the issues and facts in this case be presented to a jury.

RESPECTFULLY SUBMITTED this 6th day of August, 2012.

IV. Conclusion

For the foregoing reasons, the Readings Defendants respectfully request that Plaintiff's Motion for Summary Judgment be denied and that the issues and facts in this case be presented to a jury.

RESPECTFULLY SUBMITTED this ____ day of August, 2012.

Jurat

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, 28 U.S.C. § 1746(1).

Reserving ALL Natural God-Given unalienable birthrights, waiving none,

/s/ James Leslie Reading
James Leslie Reading

/s/ Clare Louise Reading
Clare Louise Reading

Arizona State)
) ss
Maricopa County)

The above named persons appeared before ne, a Notary, subscribed, sworn under oath this 8th day of August, 2012.

Notary Public My Commission expires: 3/26/2016

seal

KEVIN S. KEPLINGER
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
March 26, 2016

ATTACHMENTS # 2
FILED WITH DEFENDANTS' RESPONSE TO PLAINTIFFS MOTION FOR SUMMARY JUDGMENT

2:11-cv-00698-FJM

DEFENDANTS' RESPONSE TO PLAINTIFF'S STATEMEMT OF FACTS

COME NOW the Defendants James Leslie Reading and Clare Louise Reading, citizens of the United States of America and citizens of Arizona, Pro Se, and file this DEFENDANTS' SEPARATE STATEMENT OF FACTS in response to the Plaintiff's Statement of Facts. Pursuant to LRCiv 56.1, the Defendants hereby submit their rebuttal to the UNITED STATES' STATEMENT OF FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT.

We, the undersigned Defendants reserve all our rights and waive none, particularly our right not to be compelled to perform on any contract or agreement we did not enter knowingly, intentionally, and voluntarily. We do not accept the liability of any compelled benefit of a *Pro Se* arrangement with this court.

1. In *United States v. Readings*, case number 06-1609 (D. Ariz.), James and Clare Reading ("the Readings") alleged that the United States was "at best" a "*nul tiel* corporation or legal fiction." *See* Exhibit A attached to the First Declaration of Charles Duffy ("First Duffy Dec.") filed on April 10, 2012 ("First Duffy Dec."), at 18:7-10.

NO OBJECTION - True, but irrelevant to the real issues of fact in this case which are:

- Did the Defendants meet the prerequisite "income threshold" to be liable for a federal tax?
- Were the determined "tax deficiencies" created by the IRS proper and legal?
- Was this "tax liability" or "tax deficiency" properly and legally "assessed"?

- Is the amount claimed true, accurate and correct?
- Is there a "valid" federal tax assessment to be reduced to judgment?

These are the true issues that relate to this case. The Defendants' past actions are not on trial here. [*See*: Defendants' Exhibit I, Affidavit of Clare Louise Reading and James Leslie Reading Regarding The Real Issues in This Case]

2. In *Readings v. United States*, case number 06-0059 (D. Ariz.), the Readings alleged that they did not "reside within a judicial district of an internal revenue district where returns are required to be filed." *See* First Duffy Dec. Ex. B, at 7.

NO OBJECTION - True, but irrelevant to the true issues that relate to this case. The Defendants' past actions are not on trial here.

In addition, if this honorable Court is interested in the proper legal meaning of "Internal Revenue District" it is directed to Defendants' Exhibit EE to see the following:

26 U.S.C. § 7621, Section 1(g)
Executive Order No. 10289
Treasury Order 150-01
Code of Federal Regulations, 2005, Title19, Volume 1, section 101-3
[*See* Exhibit EE].

3. In *Readings v. United States, et al.*, Case Number 06-1873 (D.D.C. 2006), the Readings unsuccessfully sued various IRS employees in their individual capacities simply for carrying out their official duties regarding the seizure and sale of their vehicle to satisfy a portion of their federal tax obligations. *See* First Duffy Dec. Ex's E and F.

NO OBJECTION - True, but irrelevant. The Defendants' past actions are not on trial here.

[*See*: Defendants' Exhibit I, Affidavit of Clare Louise Reading and James Leslie Reading Regarding The Real Issues in This Case]

4. James Reading - who has earned large amounts of income in some of the years at issue herein - testified at his deposition that the last time that he voluntarily paid taxes to the IRS was in 1989. *See* excerpts from James Reading's Deposition ("J. Reading Dep.) attached to the Second Declaration of Charles Duffy filed herewith as Exhibit H ("Second Duffy Dec."), at 21:13-16 and 33:4-6.

DEFENDANTS DECLARE - This is compound statement and has two parts;
Part 1 states; "who has earned large amounts of income in some of the years at issue herein"
Part 2 states; "testified at his deposition that the last time that he voluntarily paid taxes to the IRS was in 1989".

DEFENDANTS DISPUTE PART # 1– Because it presumes facts not in evidence. No testimony has been presented that James Reading "earned large amounts of 'income' in some of the years at issue herein." James Reading stated under penalty of perjury that the returns he filed are true and complete to the best of his knowledge and belief. Defendants are not cognizant of testimony or evidence to the contrary.

Plaintiff presumes that income is everything that comes in or that what you receive in exchange for your labor is income, contrary to U.S. Supreme Court decisions. [*See*: Defendants' Exhibit A, the Memorandum #1 "What is Income?"]

NO ONBECTION to PART # 2 - True, but incomplete and as such is misleading. Plaintiff appears to be attempting to imply that Defendant is making a claim that income tax is voluntary. A reading of the question and answers tells a different story.

The statement made on page 21:13-16

13] Q. Other than the seizures, when is the last
14] time you voluntarily **made a payment** to the Internal
15] Revenue Service?
16] A. I'm guessing probably 1989.

The statement made on page 33:4-6

4] Q. And the last time I think you said you paid
5] federal taxes voluntarily was 1989?
6] A. Correct.

The question was a trick question to the Defendant. Plaintiff's Attorney misstated what was say by Defendant on page 21, in an innocent way asking the Defendant to confirm what the Attorney thinks was said.

5. Mr. Reading stopped voluntarily paying taxes to the IRS based on his "studies" of "income tax cases [and] Supreme Court cases" relating to taxes. *See* J. Reading dep., at 21:17-22:8.

OBJECTION – This statement of fact presumes facts and statements not in evidence. Plaintiff is taking statement out of context in an attempt to make an argument that Defendant said that income tax is voluntary. A reading of the questions and answers tells a different story.

The statement made on page 21:17-24

17] Q. So about 22 years ago or so, 23 years ago?
18] Is there something that happened at that point where you
19] stopped **voluntarily paying money** to the IRS?
20] A. Certainly a change of thinking.
21] Q. What triggered that change of thinking?
22] A. Becoming aware of the -- through studies of
23] the income tax cases, Supreme Court cases, and related
24] to those in relation to taxes.
25] Q. Who helped you do that study? Was there a

The statements made on page 22

1] teacher? Was it self-teaching?
2] A. Well, self -- self-taught. Self-teaching.
3] Q. Was there one thing that you saw where you
4] decided, "Hey, I'm not going to pay the IRS voluntarily
5] any longer?" Was there some one thing or something
6] somebody told you?
7] A. No, I wouldn't say just one thing. It was
8] an accumulation.

DEFENDANTS DECLARE – They followed what the law said and it states in §6012(a)(1)(A) "Every individual having for the taxable year gross income which equals or exceeds the exemption amount…" Defendant's "Gross Income" (using the proper and legal definition of "income" to determine the amount of "Gross Income") did not exceed the exemption amount. Therefore no return was required by law to be filed.

DEFENDANTS DECLARE – Plaintiff presumes facts not in evidence. No testimony or evidence has been presented that would show that all of the amount paid to Defendant is exchange for his labor is "income" or that it is to be included in total as part of "Gross Income" The statute § 61 clearly "says all income derived from.." Such presumptions by the Plaintiff are in direct conflict with several US Supreme Court Rulings.

DEFENDANTS RELY ON - *Doyle v. Mitchell Bros.*, 247 U.S. 179 (1918), in which the Supreme Court held that money received in exchange for property is not income and that only the gain realized from the sale or exchange is income. The Supreme Court stated that what "comes in" is not "income", but rather "gross proceeds", and that before any income can be said to have been received one must first determine whether the transaction produced a gain. The Court explained that before any gain can be identified we must first withdraw from gross proceeds a sufficient amount to restore the capital that was given in order to receive those proceeds. Once the recipient has made himself whole again if there are funds remaining, there is a gain. If the gross proceeds are not sufficient to make the recipient whole, to put him back where he was before the transaction, then there is a loss.

In addition, the Internal Revenue Manual states that the IRS must also follow the decisions of the U.S. Supreme Court:

> 4.10.7.2.9.8 (05-14-1999)
> Importance of Court Decisions
>
> . . .
>
> 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. (underline and bold emphasis added)

[*See*: Defendants' Exhibit A, IR Memorandum: What is Income?]

6. Clare Reading stated under oath that the compensation earned by her husband is not subject to federal tax. *See* excerpts from Clare Reading's Deposition ("C. Reading Dep.") attached as Second Duffy Dec. Ex. I, at 29:20-30:10.

NO OBJECTION - True, but incomplete and as such Plaintiff's Statement of Fact #6 is misleading. Plaintiff is misleading the court by taking text out of contest. A review of questions and answers shows that Defendant Clare Reading was stating that the whole amount of what was paid to her husband in this case is not "income" and taxable in it's entirety. The "income" derived from the compensation received by James Leslie Reading in exchange for his labor did not exceed the threshold that required a return to be filed and therefore had no federal tax liability, which is why he is not subject to it.

DEFENDANTS RELY ON –

US Supreme Court, never overturned and still controlling:

> "...the definition of 'income' approved by this court is: The gain derived from capital, from labor, or from both combined, provided it be understood to include profits gained through sale or conversion of capital assets." *Eisner v. Macomber*, 252 US 189 (1920)

Defendants have never found, nor been presented with any evidence, that they had ever received "income", as defined by the U.S. Supreme Court. [*See*: Defendants' Exhibit A, IR Memorandum **#1**]

7. The Readings sent a letter to the IRS that set forth that the Internal Revenue Code (Title 26, U.S.C.) was never voted into "positive law" by Congress, and 26 U.S.C. § 6331 (the levy provision in the Internal Revenue Code) "has no lawful force or effect" on them. *See* Second Duffy Dec. Ex. G, at 8 (partial copy of the letter).

NO OBJECTION – However, this Statement of Fact # 7 is immaterial to this case. The Defendants' past actions are not on trial here. The main issues in this instant matter are found in Defendants' Affidavit of Clare Louise Reading and James Leslie Reading Regarding The Real Issues in This Case. [See Defendants' Exhibit I]

As far as 26 USC § 6331 is concerned, Defendants have not been presented with any evidence or testimony or Congressional intent that that statute applies to them, and believe none exists. The IRS has answered Defendants' repeated questions with stony silence.

8. The Readings filed their 1993 federal income tax return on or after December 24, 2008, which is when they signed it. *See* Exhibit A attached to the Declaration of Debbie Vahe ('the Vahe Dec.") filed herewith, at 2.

NO OBJECTION – However, this was done out of fear of being charged with failure to file, even though their "income" as defined by the US Supreme Court did not cause their "Gross Income" to exceed the limit established that would require them to file.

DEFENDANTS DECLARE - This is the only signed tax return for the year 1993 in the record. It was signed under penalty of perjury and has not been rebutted by anyone with firsthand knowledge that it is incorrect. A review of the exhibits submitted by the Plaintiff shows no proper or legal return created by the Secretary for this year. In fact, there are no SFR's created for the years 1993, 1994, or 1995 for James L. Reading nor are there any SFR's created for the years 1994, or 1995 for Clare L. Reading.

9. The Readings did not timely file a federal income tax return for 1993. *Id.*; *see also* C. Reading Dep., at 41:6-12.

OBJECTION - This statement presumes facts not in evidence. No testimony or evidence has been presented to show that a return was required to be filed. Therefore, if no return

was required it could not be late or not timely filed.

It is a well established fact that the IRS states in letters and publications that the statutory requirements to file a tax return found are in 26 U.S.C. "§ 6001, § 6011 and § 6012 and their regulations". The Plaintiff should know that each of these statutes is a "conditional statute", and that the conditions must be met before the statute may be applied as applicable to Defendants. No testimony or evidence has been presented to show that the Readings met any of the conditions required by these statutes for a return to be required.

DEFENDANTS STATE - that they have never received notice from the Secretary, as mandated in 26 U.S.C. § 6001, that they were required to file a tax return. The Plaintiff's client, the IRS, has attempted to act on behalf of the Secretary, but has refused to provide a copy or even state the Delegation Order that authorizes them to act in the capacity for the Secretary; therefore, Defendants believe that none exists.

DEFENDANTS STATE - that the IRS has refused to explain or show the statute that makes Defendants "liable" for the tax they claim is owed. A tax liability must be in the statute. The condition of 26 U.S.C. § 6011 has not been met; therefore, this statute does not apply or require a return to be filed by Defendants.

DEFENDANTS STATE - that their "gross income" did not equal or exceed the exemption amount as mandated by § 6012 before they would be required to file a return under this statute.

It is obvious to the Defendants that the IRS fails to follow the statutes, regulations and IRM provisions and it has been impossible to hold them accountable. The Plaintiff has presumed that a return was required to be filed, and therefore, since it was not required and filed later it was deemed to be "late". There is no evidence or testimony that supports the presumption that a return was required and was, therefore, "late".

10. Mr. Reading worked as an insurance adjuster for various Pilot Catastrophe Insurance related companies during 1993. *See* J. Reading dep., at 22:14-23:4.

NO OBJECTION

11. On their 1993 income tax return, the Readings declared under oath that they had zero wages and salary and zero taxable income. *See* Vahe Dec. Ex. A, at 1(line 7) and 2 (line 37).

NO OBJECTION - True, but misleading. The people Defendant worked for paid him "non-employee compensation", not "wages" or "salary". Defendant did not have "wages", as defined by 26 U.S.C. 3401(a). Defendant is also not an "employee" as defined 26 U.S.C. 3401(c). There is no testimony or evidence to show that "wages" and "salary" are "income" as implied, relying upon the definition of "income" as defined by the U.S. Supreme Court. Defendants have stated under penalty of perjury that the return is true and complete to the best of our knowledge and belief and has never been rebutted under penalty of perjury.

12. Along with their 1993 return, the Readings submitted "corrected" 1099-MISC forms that one or both of them prepared which set forth that James Reading received zero compensation from Pilot Temporary Services, Inc., Pilot & Associates, Inc. and Pilot Catastrophe Services, Inc. during 1993. *See* Vahe Dec. Ex. A; C. Reading dep., at 36:19-38:4.

NO OBJECTION – True, but incomplete. Defendants corrected the Box 7 on the 1099-MISC because the IRS automatically presumes without evidence that "Non-employee compensation" ***is*** not only "income", but "taxable income". The correction was made to the 1099-MISC to stop the conversion of what was paid to Defendant from "compensation" to "taxable income" by the IRS. Plaintiff's presumption implies that the Readings do not have the legal right to correct the incorrect information reported to the government or it agencies. As stated in *Heritage Pullman Bank & Trust Co, v, Carr*, Carr failed to present any evidence to contest or rebut, so he lost. Defendants have asserted their rebuttal and contested the Plaintiff's evidence for over 20 years, and rebut now, with no evidence or testimony from Plaintiff supported in law. [*See* Defendants' Exhibit BB]

13. In 1993, James Reading actually received $14,935.24 in compensation from Pilot Catastrophe Services, $25,628.00 in compensation from Pilot and Associates and $36,796 in compensation from Pilot Temporary Services, Inc. *See* Second Duffy Dec. Ex. F (three Form 1099's produced by Pilot Companies for 1993) and J. Reading Dep., at 22:25-23:16 (Second Duffy Dec. Ex. H).

NO OBJECTION

14. The Readings filed their 1994 federal income tax return on or after December 24, 2008, which is when they signed it. [*See* VaheExB]

NO OBJECTION – True, but incomplete. This was done out of fear of being charged with failure to file, even though their "income" as defined by the US Supreme Court did not cause their "Gross Income" to exceed the limit established that would require them to file.

DEFENDANTS DECLARE - This is the only signed tax return for the year 1994 in the record. It was signed under penalty of perjury and has not been rebutted by anyone with firsthand knowledge it is incorrect. A review of the exhibits submitted by the Plaintiff shows no proper or legal return created by the Secretary for this year. In fact there are no SFR's created for the years 1993, 1994, or 1995 for James L. Reading nor are there any SFR's created for the years 1994, or 1995 for Clare L. Reading.

15. The Readings did not timely file a federal income tax return for 1994. *Id.*; C. Reading Dep., at 41:6-12 (Second Duffy Dec. Ex. I).

DEFENDANTS DISPUTE - This statement presumes fact not in evidence. No testimony or evidence has been presented to show that a return was required to be filed. Therefore, if no return was required it could not be late or not timely filed. See other explanations in Statement # 9 above.

16. Mr. Reading also worked for various Pilot Insurance companies during 1994. *See* J. Reading dep., at 23:17-23 (Second Duffy Dec. Ex. H).

NO OBJECTION

17. On their 1994 income tax return, the Readings declared under oath that they had zero wages and salary and zero taxable income. *See* Vahe Dec. Ex. B, at 1(line 7) and 2 (line 37).

NO OBJECTION - True, but misleading. The people Defendant worked for paid him "non-employee compensation", not "wages" or "salary". Defendant did not have "wages", as defined by 26 U.S.C. 3401(a). Defendant is also not an "employee" as defined 26 U.S.C. 3401(c). There is no testimony or evidence to show that "wages" and "salary" are "income" as implied, relying upon the definition of "income" as defined by the U.S. Supreme Court. Defendants have stated under penalty of perjury that the return is true and complete to the best of our knowledge and belief and has never been rebutted under penalty of perjury.

18. Along with their 1994 return, the Readings submitted "corrected" 1099-MISC forms that one or both of them prepared which set forth that James Reading received zero compensation from Pilot Catastrophe Services, Inc. and Pilot & Associates, Inc. during 1994. *See* Vahe Dec. Ex. B; C. Reading dep., at 39:21-25.

NO OBJECTION – True. Defendants corrected the Box 7 on the 1099-MISC because the IRS automatically presumes without evidence that "Non-employee compensation" ***is*** not only "income", but "taxable income". The correction was made to the 1099-MISC to stop the conversion of what was paid to Defendant from "compensation" to "taxable income" by the IRS. Plaintiff's presumption implies that the Readings do not have the legal right to correct the incorrect information reported to the government or it agencies. As stated in *Heritage Pullman Bank & Trust Co, v, Carr*, Carr failed to present any evidence to contest or rebut, so he lost. Defendants have asserted their rebuttal and contested the Plaintiff's evidence for over 20 years, and rebut now, with no evidence or testimony from Plaintiff supported in law. [*See* Defendants' Exhibit BB]

19. In 1994, James Reading actually received over $112,000 in compensation from Pilot Catastrophe Services, and $44,574.00 in compensation from Pilot and Associates. *See* Second Duffy Dec. Ex. F (two Form1099's produced by Pilot Companies for 1994) and J. Reading Dep., at 23:17- 23.

NO OBJECTION

20. The Readings filed their 1995 federal income tax return on or after December 24, 2008, which is when they signed it. [*See* VaheExC].

NO OBJECTION – True, but incomplete. This was done out of fear of being charged with failure to file, even though their "income" as defined by the US Supreme Court did not cause their "Gross Income" to exceed the limit established that would require them to file.

DEFENDANTS DECLARE - This is the only signed tax return for the year 1995 in the record. It was signed under penalty of perjury and has not been rebutted by anyone with firsthand knowledge it is incorrect. A review of the exhibits submitted by the Plaintiff shows no proper or legal return created by the Secretary for this year. In fact there are no SFR's created for the years 1993, 1994, or 1995 for James L. Reading nor are there any SFR's created for the years 1994, or 1995 for Clare L. Reading.

DEFENDANTS STATE - that Defendants do not believe that they had any duty to file an income tax return and have never been presented with any Statute At Large or any other evidence or testimony to prove otherwise, but did file out of fear of retaliation after experiencing the heavy hand of government with no Statute At Large to back them up.

21. The Readings did not timely file a federal income tax return for 1995. *Id.*; *see also* C. Reading dep., at 41:6-12.

OBJECTION - This statement presumes fact not in evidence. No testimony or evidence has been presented to show that a return was required to be filed. Therefore if no return was required it could not be late or not timely filed. See other explanations in Statement # 9 above.

DEFENDANTS STATE - that Defendants do not believe that they had any duty to file an income tax return and have never been presented with any Statute At Large or any other evidence or testimony to prove otherwise, but did file out of fear of retaliation after experiencing the heavy hand of government with no Statute At Large to back them up.

22. Mr. Reading also worked for various Pilot companies during 1995. *See* J. Reading dep., at 23:24-25.

NO OBJECTION

23. On their 1995 income tax return, the Readings declared under oath that they had zero wages and salary and zero taxable income. *See* Vahe Dec. Ex. C, at 1(line 7) and 2 (line 37).

NO OBJECTION - True, but misleading. The people Defendant worked for paid him "non-employee compensation", not "wages" or "salary". Defendant did not have "wages", as defined by 26 U.S.C. 3401(a). Defendant is also not an "employee" as defined 26 U.S.C. 3401(c). There is no testimony or evidence to show that "wages" and "salary" are "income" as implied, relying upon the definition of "income" as defined by the U.S. Supreme Court. Defendants have stated under penalty of perjury that the return is true and complete to the best of our knowledge and belief and has never been rebutted under penalty of perjury.

24. Along with their 1995 return, the Readings submitted a "corrected" 1099-MISC form which set forth that James Reading received zero compensation from Pilot Catastrophe Services, Inc. *See* Vahe Dec. Ex. B

NO OBJECTION – True, but incomplete. Defendants corrected the Box 7 on the 1099-MISC because the IRS automatically presumes without evidence that "Non-employee compensation" ***is*** not only "income", but "taxable income". The correction was made to the 1099-MISC to stop the conversion of what was paid to Defendant from "compensation" to "taxable income" by the IRS. Plaintiff's presumption implies that the Readings do not have the legal right to correct the incorrect information reported to the government or it agencies. As stated in *Heritage Pullman Bank & Trust Co, v, Carr*, Carr failed to present any evidence to contest or rebut, so he lost. Defendants have asserted their rebuttal and contested the Plaintiff's evidence for over 20 years, and rebut now, with no evidence or testimony from Plaintiff supported in law. [*See* Defendants' Exhibit BB]

25. In 1995, James Reading actually received over $117,000 in compensation from Pilot Catastrophe Services. *See* Second Duffy Dec. Ex. F (Form 1099 produced by Pilot Companies for 1995) and J. Reading Dep., at 23:24-24:12.

NO OBJECTION

26. Mr. Reading worked for Colonial Claims Corporation in 2008. *See* C. Reading Dep.., at 77:18-78:14; J. Reading dep., at 20:2-8.

NO OBJECTION

27. On the 2008 income tax return, the Readings declared under oath that they had zero wages and salary and zero taxable income. *See* Vahe Dec. Ex. D, at 1(lines 1 and 6).

NO OBJECTION - True, but misleading. The people Defendant worked for paid him "non-employee compensation", not "wages" or "salary". Defendant did not have "wages", as defined by 26 U.S.C. 3401(a). Defendant is also not an "employee" as defined 26 U.S.C. 3401(c). There is no testimony or evidence to show that "wages" and "salary" are "income" as implied, relying upon the definition of "income" as defined by the U.S. Supreme Court. Defendants have stated under penalty of perjury that the return is true and complete to the best of our knowledge and belief and has never been rebutted under penalty of perjury.

28. Along with their 2008 return, the Readings submitted a "corrected" 1099-MISC form which set forth that James Reading received zero compensation from Colonial Claims. *See* Vahe Dec. Ex. D.

NO OBJECTION – True, but incomplete.. Defendants corrected the Box 7 on the 1099-MISC because the IRS automatically presumes without evidence that "Non-employee compensation" ***is*** not only "income", but "taxable income". The correction was made to the 1099-MISC to stop the conversion of what was paid to Defendant from "compensation" to "taxable income" by the IRS. Plaintiff's presumption implies that the Readings do not have the legal right to correct the incorrect information reported to the government or it agencies. As stated in *Heritage Pullman Bank & Trust Co, v, Carr*, Carr failed to present any evidence to contest or rebut, so he lost. Defendants have asserted their rebuttal and contested the Plaintiff's evidence for over 20 years, and rebut now, with no evidence or testimony from Plaintiff supported in law. [*See* Defendants' Exhibit BB]

29. In 2008, James Reading actually received $23,858 in compensation from Colonial Claims. *See* Second Duffy Dec. Ex E; J. Reading dep., at 20:9-11.

NO OBJECTION

30. On November 15, 2000, the IRS mailed by certified mail a Notice of Deficiency to James Reading for his 1993, 1994 and 1995 income tax years. *See* Vahe Dec. Ex. E and Vahe Dec., at ¶ 7.

DEFENDANTS HAVE NO SUFFICIENT KNOWLEDGE – if this was mailed.

DEFENDANTS DECLARE – That they never received a copy of this Notice of Deficiency.

DEFENDANTS STATE - In addition, the evidence provided by the Plaintiff appears not to be credible, for various reasons explained in Affidavit Regarding Certification of Certified Mail Receipts of NOD Notice of Mailing.

DEFENDANTS STATE – that the Defendants' IMF records for the years 1993, 1994 or 1995 have no TC 494 in them. This Transaction Code 494 is to reflect that a Notice of Deficiency was issued. [*See*: Defendants' Exhibit OO]

31. In the Notice, the IRS proposed income tax and penalty deficiencies. *See* Vahe Dec. Ex. E, at 1

DEFENDANTS HAVE NO SUFFICIENT KNOWLEDGE

32. In calculating the deficiencies referenced in the Notice, the IRS added-in the compensation that James Reading received from the Pilot Insurance companies in those years. *See* the Form 4549) (Bates Prod0003) in Vahe Ex. E that relates to the Notice.

DEFENDANTS DECLARE - This is compound statement and has two parts;
PART # 1 states: "In calculating the deficiencies referenced in the Notice, the IRS added-in the compensation that James Reading . . . "

NO OBJECTION to **PART # 1 -** because this is what the IRS did. However, in doing so they are knowingly ignoring U.S. Supreme Court rulings on what is "income". They wish to presume that all of the compensation paid to James Reading was "income" and, therefore, taxable. This fact has been addressed several times by the U.S. Supreme Court including *Doyle v. Mitchell Bros*[1] and again in *So. Pacific R.R. Co. v. Lowe*[2]. [*See* Defendants' Exhibit BB]

Part 2 states: ". . . received from the Pilot Insurance companies in those years"

OBJECTION to **PART #2** – The Pilot companies are not insurance companies. The Pilot companies were service companies that calculated damage assessment for property claims filed against insurance companies.

33. Specifically, the IRS added in $25,628.00, $14,935.00 and $36,796.00 for the 1993 year, $44,574.00 and $112,015.00 for the 1994 year and $117,648.00 for the 1995 tax year. *Id.*, at 1 (lines 1A, 1B and 1I).

NO OBJECTION –that this is exactly what the IRS did, and this is the problem. The IRS has trained their people to believe that "income" is "everything that comes in". The legal definition of "income" is not in the IRC. Therefore, they presume that all of the

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[1] *Doyle v. Mitchell Bros.*, 247 U.S. 179 (1918), in which the Supreme Court held that money received in exchange for property is not income and that only the gain realized from the sale or exchange is income. The Supreme Court stated that what "comes in" is not "income", but rather "gross proceeds", and that before any income can be said to have been received one must first determine whether the transaction produced a gain. The Court explained that before any gain can be identified we must first withdraw from gross proceeds a sufficient amount to restore the capital that was given in order to receive those proceeds. Once the recipient has made himself whole again if there are funds remaining, there is a gain. If the gross proceeds are not sufficient to make the recipient whole, to put him back where he was before the transaction, then there is a loss.

[2] *So. Pacific R.R. 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 (*Doyle v. Mitchell Brothers Co.*, ante, 179, and *Hays v. Gauley Mountain Coal Co., ante*, 189) the broad contention submitted in behalf of the Government that all receipts — everything that comes in — are income within the proper definition of the term "gross income," and that the entire proceeds of a conversion of capital assets, in whatever form and under whatever circumstances accomplished, should be treated as gross income."

compensation is "income" and, therefore, is "Gross Income". However, there is no basis in law for that claim. It is in contradiction with U.S. Supreme Court rulings on the definition of "income".

DEFENDANTS STATE - "Gross income" is defined by **Section 61**, as meaning "all income, from whatever source **derived**", and the section goes on to list those sources from which income may (or may not) be derived. It does not, however, tell us how income is derived from those sources. Nor does it define "income" because a definition that includes the defined word, "gross *income* means all *income*", does not define the word.

"Taxable income" is also defined in **Section 63** as, essentially, gross income minus deductions, but, again, defining income as income is no help. **Section 64** defines "ordinary income" as "***gain***" from the sale or exchange of property:

> "For purposes of this subtitle, the term "ordinary income" includes any ***gain*** from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b) [*sale of property used in trade or business or involuntary conversion due to fire, shipwreck, theft or other casualty*]. Any ***gain*** from the sale or exchange of property which is treated or considered, under other provisions of this subtitle, as "ordinary income" shall be treated as ***gain*** from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b)." (emphasis and [*bracketed material*] added)

So, the closest thing we have to a statutory definition, at least one that does more than say that "income" is "income", is **Section 64**, which defines ordinary income as ***gain*** derived from the sale or exchange of property. But neither **Section 61**, which tells us that income may be derived from the sources listed, nor **Section 64**, which tells us that "income" is gain, tells us how gain is derived from those sources.

Looking further to the Code for guidance we find Subchapter O, "Gain or Loss From Disposition of Property" and its Part 1, "Determination of Amount and Recognition of Gain or Loss" where **Section 1001** tells us that:

"The gain from the sale or other disposition of property shall be the ***excess of the amount realized therefrom over the adjusted basis*** provided in section 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized." (emphasis added)

Now we know that according to the Code income is "gain" and that we determine gain by comparing the amount received to something called "basis". If the amount received exceeds the "basis", then the excess is income. **Section 1001** refers us, however, to **Section 1011** for determining basis. In looking at **Section 1011 and the sections that follow** we find the rules for determining basis. ***In each case the basis is either the cost of the property sold or exchanged or its value.***

> [*See*: Defendants' Exhibits A, B, C, D, E, H and X; The Memoranda: What Is Income, What Is and What Is Not Taxable, Who Is Liable, Who Must File and Are Fundamental Rights Taxable, and Affidavit of Clare Louise Reading and James Leslie **#12** Regarding the Misinterpretation of 26 U.S.C. § 61].

34. Those amounts tie to the amounts that are set forth on the Form 1099's that were issued by the Pilot Insurance to report James Reading's compensation earned in those years. *See* Second Duffy Dec. Ex. F.

NO OBJECTION – That is correct; they are tied to the amounts reported. However, there is no evidence or admissible testimony in the record that these amounts received or receipts are reportable or taxable as "income." Defendants know that the amounts are not taxable as "income" because:

1. The income tax is an indirect tax in the form of an excise.[3, 4, 5, 6, 7]

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[3] "The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax: it is the basis for determining the amount of tax." House Congressional Record, March 27, 1943, page 2580

[4] "Moreover, in addition, the conclusion reached in the Pollock Case did not in any degree involve holding that income taxes generically and necessarily came within the class [240 U.S. 1, 17] of direct taxes on property, but, on the contrary, recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such unless and until it was concluded that to enforce it would amount to accomplishing the result which the

2. An indirect excise is a tax levied on certain activities or privileges.[8, 9, 10]

35. On November 15, 2000, the IRS also mailed by certified mail a Notice of Deficiency to Clare Reading for her 1994 and 1995 income tax years. *See* Vahe Dec. Ex. F and Vahe Dec., at ¶ 8.

DEFENDANTS HAVE NO SUFFICIENT KNOWLEDGE –

36. In the Notice, the IRS proposed income tax and penalty deficiencies. *See* Vahe Dec. Ex. F, at 1.

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requirement as to apportionment of direct taxation was adopted to prevent, in which case the duty would arise to disregard form and consider substance alone, and hence subject the tax to the regulation as to apportionment which otherwise as an excise would not apply to it. Nothing could serve to make this clearer than to recall that in the Pollock Case, in so far as the law taxed incomes from other classes of property than real estate and invested personal property, that is, income from 'professions, trades, employments, or vocations' (158 U.S. 637), its validity was recognized; indeed, it was expressly declared that no dispute was made upon that subject, and attention was called to the fact that taxes on such income had been sustained as excise taxes in the past. Id. p. 635." *Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1, 16-17 (1916)

5 "It is unnecessary to enter upon an extended consideration of the technical meaning of the term "excise." It has been the subject-matter of considerable discussion — the terms duties, imposts and excises are generally treated as embracing the indirect forms of taxation contemplated by the Constitution." *Flint v. Stone Tracy Co.*, 220 US 107, 151 (1911)

6 "Excise Taxes 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., page 680.)" *Flint v. Stone Tracy Co.*, 220 U.S. 107, 151 (1911)

7 "We must therefore enter upon the inquiry as to implied limitations upon the exercise of the Federal authority to tax because of the sovereignty of the States over matters within their exclusive jurisdiction, having in view the nature and extent of the power specifically conferred upon Congress by the Constitution of the United States. We must remember, too, that the revenues of the United States must be obtained in the same territory, from the same people, and excise taxes must be collected from the same activities, as are also reached by the States in order to support their local government." *Flint v. Stone Tracy Co.*, 220 U.S. 107, 154 (1911)

8 "A tax laid upon the happening of an event, as distinguished from its tangible fruits, is an indirect tax which Congress, in respect of some events not necessary now to be described more definitely, undoubtedly may impose." *Tyler v. U.S.*, 281 U.S. 497, 502 (1930)

9 "It is contended, however, that the fact that the license tax can suppress or control this activity is unimportant if it does not do so. But that is to disregard the nature of this tax. It is a license tax — a flat tax imposed on the exercise of a privilege granted by the Bill of Rights. A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution." *Murdock v. Pennsylvania*, 319 U.S. 105, 113 (1943)

10 "The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; but the individual's right to live and own property are natural rights for the enjoyment of which an excise cannot be imposed: 26 R.C.L., Taxation, § 209, p. 236; Cooley, Taxation, (4th Ed.), § 1676; *Opinion of the Justices*, 195 Mass. 607 (84 N.E. 499)." *Redfield v. Fisher*, 135 Or. 180, 197-198 (1931)

NO OBJECTION - That the Notice of Deficiency was and is just a proposed change in what they believed was owned. It is not a tax return under the law. Therefore, there can be no "tax deficiency" by definition without a tax return. Since there is no "tax deficiency" there can be no assessment made.

DEFENDANTS DECLARE – that Plaintiff has carefully avoided calling the proposed income taxes and penalty deficiencies "tax deficiencies". This is because "tax deficiency" has a statutory definition, *See*: 26 USC 6211(a). Without a tax deficiency, there cannot be a proper and legal tax assessment made.

> In the United States of America v. Dixon**, 672 F.Supp. 503 USDC, Middle Dist. Ala., (1987)**. "The defendant correctly contends that the basis of tax liability is the assessment. For a **tax liability to be duly collected**, it **must be first properly assessed**. In order for **a tax deficiency to be assessed against a taxpayer, an assessment officer must sign and date a Form 23-C**." [Emphasis added]

[See: Defendants' Exhibits H - The Memoranda; A - What Is Income; D - What Is and What Is Not Taxable; B - Who Is Liable; C- Who Must File; E- Are Fundamental Rights Taxable].

37. In calculating the deficiencies referenced in the Notice, the IRS added-in part of the compensation that James Reading received from the Pilot related companies. *See* the Form 4549 in Vahe Ex. E (Bates Prod0039).

NO OBJECTION – This is true, but incomplete and inaccurate. This is exactly what the IRS did, but Defendants are unable to locate a statute that authorized this action. The IRS took 50% of what was received by Defendant James L. Reading, not reducing his amount by 50%, and "declared" it was earnings of Defendant Clare L. Reading who did not work those years. The motive is not clear, but it appears to be nothing but a harassment tactic used by the IRS.

DEFENDANTS STATE – In the creation of the Forms 4549 (proposed adjustment) for Clare Reading they created a "phony debt" for Clare when the Plaintiff added-in part of the Compensation for labor that James received and they did not subtract the same amount from what they allege was paid to James. In effect the IRS with this slick accounting move, created money out of air and then are taxing the Readings on money not receive. This total amount paid to James L. Reading for the year 1994 which was $156,589.00 and they claimed that Clare l. Reading received 50% if this or $78,294.50 for the same year 1994, in effect, multiplying the money received for compensation by 50% and now are claiming that the Reading owe tax and penalties on $234,883.50 received for the year 1994.
They then repeated this illegal transaction again for the year 1995. This total amount paid to James L. Reading for the year 1995 which was $117,648.00 and they claimed that Clare L. Reading received 50% if this or $58,824.00 for the same year, 1995. In effect multiplying the money received for compensation by 50% and now are claiming that the Readings owe tax and penalties on $176.472.00 received for the year 1995.

DEFENDANTS STATE – That this is not the only attempt of double dipping that has taken place. The IRS also claimed a Capital Gain of $11,948 for the year 1994 on James L. Reading on Form 4549, and then also claimed a Capital Gain of $11,948 for the year 1994 for Clare L. Reading.

DEFENDANTS DECLARE – Such action is clearly a crime outlined by 26 U.S.C. 7214(a)(2) Knowingly demanding sums greater than allowed by statute.

DEFENDANTS DEMAND – That this be investigated and charges brought against all the people involved not only in the creation of this phony alleged debt, but the people in this case who have a legal responsibility to verify the accuracy of the amount claimed that is owed before bringing suit.

DEFENDANTS DECLARE – That Defendants have discovered several other violations of procedure showing that the Form 4549 is being used outside the way it was designed to be used. Defendants have not received evidence or testimony to the contrary and believe none

exists. [*See*: Defendants' Exhibit L, ¶13 and Defendants' Exhibits O, O-1 and P and I.R.M. 4.75.14 -8].

38. On February 16, 2010, the IRS mailed by certified mail a Notice of Deficiency to James Reading for his 2008 income tax year. *See* Vahe Dec. Ex. G and Vahe Dec., at ¶ 9.

DEFENDANTS ADMIT

39. In the Notice, the IRS proposed income tax and penalty deficiencies. *See* Vahe Dec. Ex. G, at 1.

DEFENDANTS ADMIT

40. In calculating the deficiencies referenced in the Notice, the IRS added the $23,858.00 in compensation that James Reading received from Colonial Claims. *See* the Form 4549 in Vahe Ex. G (Bates Prod00097) that relates to the Notice (at line 1b).

DEFENDANTS ADMIT – that this is exactly what the IRS did, and this is the problem. The IRS has trained their people to believe that "income" is "everything that comes in". The legal definition of "income" is not in the IRC. Therefore they presume that all of the compensation is "income" and there for is "Gross Income". However, there is no basis in law for that claim. It is in contradiction with US Supreme Court Ruling on the definition of "income". See Defendants Response for Statement # 33 above.

[*See*: Defendants' Exhibit H, IR Memoranda: Exhibit A, What Is Income, Exhibit D, What Is and What Is Not Taxable, Exhibit B, Who Is Liable, Exhibit C, Who Must File and Exhibit E, Are Fundamental Rights Taxable and Exhibit X, Affidavit of Clare Louise Reading and James Leslie **#12** Regarding the Misinterpretation of 26 U.S.C. § 61].

AFFIANTS DECLARE - that the IRS misused Form 4549. The instructions direct that at "Filing Status" "Corporation, Trust, or Association" is to be entered. Instead, IRS entered

"Married / Separate" not in accordance with the instructions. [*See*: Defendant's Exhibit TT I.R.M. 4.75.14 -8]

41. The $23,858.00 ties to the amount that is set forth on the Form 1099 that was issued by Colonial Claims to report James Reading's compensation earned in that year. *See* Second Duffy Dec. Ex. E.

NO OBJECTION – That is correct; they are tied to the amounts reported, but incomplete. There is no evidence or admissible testimony in the record that these amounts received are reportable and taxable as "income." Defendants know that the amounts are not taxable as "income". See response to Statement # 34

[See: *See*: Defendants' Exhibit H, IR Memoranda: Exhibit A, What Is Income, Exhibit D, What Is and What Is Not Taxable, Exhibit B, Who Is Liable, Exhibit C, Who Must File and Exhibit E, Are Fundamental Rights Taxable].

42. The IRS made assessments based on the proposed deficiencies against James Reading, as follows (*See* the certified Certificates of Assessments, Payments and Other Specified Matters, copies of which are attached to Second Duffy Declaration as Exhibits A-1 through A-4): Tax Period Ending Tax Type Assessment Date Assessed Amount

12/31/1993 Income

Assessment Date	**Assessment Amount**	**Assessment Type**
4/23/2001		
10/20/2003		
10/27/2003	$ 2,149.74	(ETP)
	11,618.00	(LFP)
	54,595.00	(T)
	52,245.37	(I)
	1,291.00	(LFP)

	20,455.15	(I)
	106.97	(I)
	12,909.00	(FPP)
12/31/1994 Income		
4/23/2001		
10/20/2003		
10/27/2003	$ 3,271.72	(ETP)
	14,186.02	(LFP)
	63,049.00	(T)
	52,467.51	(I)
	1,576.23	(LFP)
	22,982.40	(I)
	120.89	(I)
	15,762.24	(FPP)
12/31/1995 Income		
4/23/2001		
10/20/2003		
10/27/2003	$ 2,274.00	(ETP)
	9,436.05	(LFP)
	41,938.00	(T)
	27,329.46	(I)
	1,048.45	(LFP)
	13,900.38	(I)
	73.61	(I)
	10,484.50	(FPP)
12/31/2008 Income		
6/28/2010	$ 162.32	(ETP)
	1,136.48	(LFP)
	5,051.00	(T)

304.94 (I)

378.82 (FPP)

T=Tax

LFP=Late Filing Penalty

FPP=Failure to Pay Tax Penalty

ETP=Estimated Tax Penalty

I=Interest

DEFENDANTS DISPUTE – that these amounts are correct.

1) The amounts are based on the false presumption that what was paid as compensation was to be included as gross income in its entirety.

2) The Capital Gains reported in 1993 and 1994 are incorrect and the IRS is well aware of this and has been for years.

3) The assessments regarding 1993, 1994 and 1995 were not made on a tax deficiency because the IRS failed to create returns creating a tax deficiency, as mandated by statute, 26 U.S.C. 6211.

4) Without the properly created tax deficiency, no assessment may be made, as claimed above; therefore, the assessments are invalid and void..

5) The amounts alleged to have been assessed above are not properly recorded in the Summary Record of Assessments on the dates indicated, which is mandated by statute and regulation 26 USC 6203 and 26 CFR 301.6203-1. [*See*: Defendants' Exhibits J, J-1 and K].

43. The current aggregate balances due for each year, as of May 1, 2012, are as follows:

1993 $118,162.63

1994 262,505.58

1995 167,776.69

2008 8,426.73

Total $556,871.63

See Vahe Dec., at ¶ 15 and Vahe Dec. Ex's J-1 to J-4.

DEFENDANTS DISPUTE – that the amounts above are accurate.

DEFENDANTS DISPUTE – that any of the amounts for any of the years are correct. See explanation in 42 above.

44. The IRS made assessments based on the proposed deficiencies against Clare Reading, as follows (*See* the certified Certificates of Assessments, Payments and Other Specified Matters, copies of which are attached to the Second Duffy Declaration as Exhibits B-1 and B-2):

Tax Period Ending	Tax Type	Assessment Date	Assessed Amount
12/31/1994	Income	4/23/2001	$ 5,810.75 (FPP)
		9/5/2005	1,206.09 (ETP)
			5,229.67 (LFP)
			23,243.00 (T)
			19,342.15 (I)
			14,939.55 (I)
Tax Period Ending	Tax Type	Assessment Date	Assessed Amount
12/31/1995	Income	04/23/2001	
9/5/2005			$ 3,122.25 (FPP)
			677.18 (ETP)
			2,810.02 (LFP)
			12,489.00 (T)
			8,138.62 (I)
			7,421.07 (I)

T=Tax
LFP=Late Filing Penalty
FPP=Failure to Pay Tax Penalty
ETP=Estimated Tax Penalty
I=Interest

DEFENDANTS DISPUTE – that these amounts are correct.

1) The amounts are based on the false presumption that Clare Reading received compensation that was to be included as gross income in its entirety.
2) The IRS created compensation for Clare Reading based on 50% of the amount James received, without deducting the same 50% from the compensation James received. Thus, the IRS created amounts they allege are owed by Clare Reading out of thin air.
3) The Capital Gains reported in 1994 are incorrect and the IRS is well aware of this and has been for years. In addition, the IRS charged the same Capital Gain of $11,948 for Clare Reading as they did for James Reading, which is known as "double dipping".
4) The assessments regarding 1994 and 1995 were not made on a tax deficiency because the IRS failed to create a returns creating a tax deficiency, as mandated by statute, 26 U.S.C. 6211.
5) Without the properly created tax deficiency, no assessment may be made, as claimed above, therefore, the assessments are invalid and void..
6) The amounts alleged to have been assessed above are not properly recorded in the Summary Record of Assessments on the dates indicated, which is mandated by statute and regulation 26 USC 6203 and 26 CFR 301.6203-1.

[*See*: Defendants' Exhibit K]

45. The current aggregate balances due for each year, as of May 1, 2012, are as follows:

1994 $ 66,746.54

1995 49,886.42

Total $116,632.96

See Vahe Dec., at ¶ 16 and Vahe Dec. Ex's K-1 to K-2.

DEFENDANTS DISPUTE – that the amounts above are accurate.

DEFENDANTS DISPUTE – that any of the amounts for any of the years are correct. See explanation in 44 above.

46. Based on information presented by the Readings regarding certain stock transactions in 2003 and 2004, the IRS - in 2011 - decreased the amount of tax owed for certain tax years as follows:

Decrease to taxes owed by James Reading for 1993: $32,866.00

Decrease to taxes owed by James Reading for 1994: 3,092.00

Decrease to taxes owed by Clare Reading for 1994: 2,916.00

See the Declaration of IRS Revenue Agent Elizabeth Marriaga filed herewith, at ¶¶3-6; *see also* the Form 4340's attached to the Second Duffy Dec., as A-1 (at 6), A-2 (at 6) and B-1 (at 5).

DEFENDANTS DISPUTE – that this Statement of Fact # 46 is true. Plaintiff presumes facts not in evidence. The Stock transactions took place in 1993 and 1994. Defendants declare it is false because it is misleading. These figures represent only a small portion of the deliberate miscalculation by IRS File Examiner, Rebecca Sexton, as seen in the File Examiner's Workpapers, carried on by Elizabeth Marriaga, when she did not reduce the tax on the Defendants' failed stock investment by 100%, since there can be no tax owing on a total net loss. This violates 26 U.S.C. § 7214(a)(2) Knowingly demanding sums greater than allowed by statute. [See Defendants' Exhibit LL]

DEFENDANTS DECLARE – that in retaliation for not filing returns, the IRS turned a **total net *loss*** into Capital Gains from Stock Sales totaling over $109,785, ***including*** a bogus $11,948 Gain for 1994 for *BOTH* Clare Reading and James Reading.

Defendants believe that the presumed facts not in evidence by the IRS File Examiners are unsupported by evidence or testimony and that none exists.

[*See*: Defendants'Exhibits LL, and DefEx T, Affidavit #11 Re: the Declaration of Elizabeth Marriaga, Ex. JC/CG '93-'94, P. 2 & 3]

DEFENDANTS DECLARE – that they contacted the office of the Financial Planner who conducted the stock trades. A Recap was sent to Defendants with a cover letter dated June 17, 2008, offering to answer any questions. Defendants sent these 18 pages to Debra Vahe in June of 2008 and received no response. The Financial Planner received no questions. [*See*: Defendants'Exhibit II].

DEFENDANTS DECLARE - that the Recap [Def Exhibit II] was entered on Defendants' 1993 and 1994 Forms 1040, as Schedule B and D, but Debra Vahe omitted them, as well as the cover page for the 1993 filing, from her Declaration Exhibits.

[*See*: Defendants' Exhibits FF, GG, and HH]

DEFENDANTS DECLARE – that after well over 2 years of requesting an Audit Reconsideration, Defendants discovered that IRS Employee, Debra Vahe, knew that a total net loss had been suffered by Defendants on at least December 16, 2009, but she chose to remain silent. She chose to ignore her duty to disclose in the preparation and filing of this instant suit. She chose to ignore her duty to disclose and remained silent during Discovery. She chose to ignore her duty to disclose and remained silent when she attended the depositions of the Defendants. She deliberately did not submit the 1993 and 1994 1040 filings of Defendants containing a cover Page and schedules B & D detailing the stock investment total net loss for 1993 and 1994.

Debra Vahe wrote in the ICS History Log @ Page 22 on 12/16/2009:

> "I reviewed the RAR for the years of 199312 and 199412 for Mr. TP. The work papers were not included so I could not see how the capital gains amount was determined by the SNOD and F4549A which details the income and adjustments were. From the stock summary received from TPs for the year of 1993. I came up with total stock sales of $84,170.17. the RA came up with total stock sales of $85,889.Taking the gains and losses per stock into consideration. TPs overall loss was $2,171 instead of a gain of $85k shown by the RA."

Debra Vahe continues deliberately withholding critical evidence from this honorable Court, remaining silent to this day, even though this is the same "overall loss of $2,171" Defendants have been demanding be noticed since approximately the year 2000!

Debra Vahe's deliberate silence constitutes the crime in 26 U.S.C. § 7214(a)(2) Knowingly demanding sums greater than allowed by statute and violates her sworn duty in her Oath of Office to protect our rights to "… support and defend the Constitution …".

[See: Defendants' Exhibit JJ, ICS History Log excerpt and Debra Vahe Oath of Office]

47. The IRS made frivolous return penalty assessments under 26 U.S.C. § 6702 against James L. Reading, as follows (*see* the certified Certificates of Assessments, Payments and Other Specified Matters, copies of which are attached to the Second Duffy Declaration as Exhibits C-1 to C-10):

Tax Period Ending	Assessment Date	Assessed Amount
12/31/1997	5/21/2007	$ 500.00
12/31/1998	5/21/2007	500.00
12/31/1999	5/21/2007	500.00
12/31/2000	5/14/2007	500.00
12/31/2002	5/14/2007	500.00
12/31/2003	5/14/2007	500.00
12/31/2004	5/14/2007	500.00
12/31/2005	5/14/2007	500.00
12/31/2006	10/22/2007	5,000.00
12/31/2008	8/17/2009	5,000.00

DEFENDANTS DISPUTE – that Plaintiff has shown the frivolous argument invoked on our tax returns that they use for the basis of the Civil Penalties. Plaintiff states that the returns are the bases for the Civil Penalties, but refuse to identify what entry on the returns is "frivolous".

DEFENDANTS DISPUTE – Plaintiff presumes facts not in evidence. Defendants deny any assumption, presumption or implication that the IRS followed the proper procedure for the assessment of penalties. No evidence or testimony has been supplied by the Plaintiff to verify that Plaintiff acted in accordance with statute and Defendants believe none exists.

[*See*: Defendants' Exhibit Q, Affidavit #9 of James L. Reading Re: CivPen Assessments for 1040 Tax Year 97 – 08]

DEFENDANTS DISPUTE – that according to the Document Locator Number for all of the above penalties issued against Defendants, the Civil Penalties were not assessed as a tax, as mandated by 26 U.S.C. § 6671(a), but instead, were assessed as a User Fee according to IRM Exhibit 3.17.46-8.

DEFENDANTS DECLARE - that no testimony or evidence has been presented in this case that any penalty presented herein had received the immediate supervisor's written approval before assessment, as mandated in 26 U.S.C. § 6751(b).

DEFENDANTS DECLARE - that several Internal Revenue Manual Provisions require that this approval be on specific documents known as, "**Penalty Approval Form**", IRM 4.10.12.2.2 (11-09-2007) Control of Inventory Items; IRM 4.10.12.6 (11-27-2009) Examination Case Processing Requires "**Penalty Approval Form.**"
IRM 4.10.12.2.2 (11-09-2007) Part 6 Control of Inventory states: "**Penalty Approval** Form" IRM.

DEFENDANTS DECLARE - that the IRS has the burden of proof per 26 U.S.C. § 6703 to show that the returns filed are in fact frivolous per 26 U.S.C. § 6702(a) but has failed to provide any testimony or evidence that the return filed meets the legal requirement set forth in 26 U.S.C. § 6702(a) to be classified as a "frivolous return".

48. The basis for the frivolous return penalty assessments are the tax returns that James Reading filed for those periods, copies of which are attached to Vahe Declaration as Exhibits D and I-1 to I-9. *See* the Vahe Dec., at ¶¶ 6, 12 and 13.

DEFENDANTS DENY - any assumption, presumption or implication that the IRS followed the proper procedure for the assessment of penalties. Plaintiff presumes facts not in evidence. Defendants have been presented with no evidence or testimony to the contrary and believe none exists.
[See: Defendants' Exhibit Q, Affidavit #9 of James L. Reading Re: CivPen Assessments for 1040 Tax Year 97 – 08]

49. The returns, copies of which are attached to the Vahe Declaration as Exhibits D and I-1 to I-9 are true and correct copies of tax returns that James Reading filed for his 1997-2000, 2002-2006 and 2008 Income Tax Years. *See* the Vahe Dec., at ¶¶ 6, 12 and 14; J. Reading dep., at 16:7-16 and 35:25-39:13.

DEFENDANTS ADMIT. Defendants stand by their declarations made under penalty of perjury.

50. The aggregate amounts of the balances due for each period, as of May 1, 2012, are as follows:

1997 $ 633.42
1998 633.42
1999 633.42
2000 634.40
2002 634.40
2003 634.40
2004 634.40
2005 634.40
2006 6,124.02
2008 5,542.90
Total $ 16,739.18

See Vahe Dec., at ¶¶ 19 and 20 and Vahe Dec. Ex's M-1 to M-7.

DEFENDANTS DISPUTE – That this Statement of Fact # 48 is true. Defendants declare it is false because it is misleading. Plaintiff presumes facts not in evidence. Defendants have been presented with no evidence or testimony to the contrary and believe none exists.

[See: Defendants' Exhibit Q, Affidavit #9 of James L. Reading Re: CivPen Assessments for 1040 Tax Year 97 – 08]

51. The IRS made frivolous return penalty assessments under 26 U.S.C. § 6702 against James L. Reading, as follows (*see* the certified Certificates of Assessments, Payments and Other Specified Matters, copies of which are attached to the Second Duffy Declaration as Exhibits D-1to D-11):

Tax Period Ending	Assessment Date	Assessed Amount
12/31/1997	04/09/2007	$ 500.00
12/31/1998	04/09/2007	500.00
12/31/1999	04/09/2007	500.00
12/31/2000	04/09/2007	500.00
12/31/2001	04/09/2007	500.00
12/31/2002	04/09/2007	500.00
12/31/2003	04/30/2007	500.00
12/31/2004	04/30/2007	500.00
12/31/2005	04/09/2007	500.00
12/31/2006	10/22/2007	5,000.00
12/31/2008	08/17/2009	5,000.00

DEFENDANTS DISPUTE – That this Statement of Fact # 51 is true. Defendants declare it is false because it is misleading. Plaintiff presumes facts not in evidence and Defendants believe none exist.

[*See*: Affidavit of James L. Reading #6 Re: CivPen Assessments for 1040 Tax Year 97 – 08]

52. The basis for the frivolous return penalty assessments are the tax returns that Clare Reading filed for those periods, copies of which are attached to Vahe Declaration as Exhibits D and H-1 to H-10. *See* the Vahe Dec., at ¶¶ 6, 10 and 11.

OBJECTION – That this Statement of Fact # 52 is true. Defendants declare it is false because it is misleading. Plaintiff presumes facts not in evidence. Defendants have been presented with no evidence or testimony to the contrary and believe none exists.

[See: Defendants' Exhibit R, Affidavit of Clare L. Reading #7 Re: CivPen Assessments for 1040 Tax Year 97 – 08 and Exhibit F]

53. The returns, copies of which are attached to the Vahe Declaration as Exhibits D and H-1 to H-10 are true and correct copies of tax returns that Clare Reading filed for her 1997-2006 and 2008 Income Tax Years. *See* the Vahe Dec., at ¶¶ 6, 10 and 14; C. Reading dep., at 13:6-14:6 and 73:19-77:21.

NO OBJECTION. Defendants stand by their declarations made under penalty of perjury.

54. The aggregate amounts of the balances due for each period, as of May 1, 2012, are as follows:

Year	Amount
1997	$ 677.28
1998	639.28
1999	633.42
2000	634.40
2002	634.40
2003	634.40
2004	634.40
2005	639.28
2006	6,124.02
2008	5,542.90
Total	$ 16,793.78

See Vahe Dec., at ¶¶ 21 and 22 and Vahe Dec. Ex's N-1 to N-7.

DEFENDANTS DISPUTE – That this Statement of Fact # 54 is true. Plaintiff presumes facts not in evidence. Plaintiff has provided no evidence or testimony that supports their claim in law and believe none exists.

DEFENDANTS DECLARE – That Fact # 54 is false because it is misleading.

DEFENDANTS DENY - that any valid claim of assessments for penalty(ies) exists. [See: defendants' Exhibit R, Affidavit of Clare L. Reading Re: CivPen Assessments for 1040 Tax Year 97 – 08]

55. The Readings purchased the residence in 1979 as joint tenants with right of survivorship. *See* Second Duffy Dec. Ex. J (copy of the Joint Tenancy Deed signed by the Readings); C. Reading dep., at 41:25-42:6.

NO OBJECTION – but irrelevant to the issues which are in dispute.

56. The purchase price was approximately $68,000. *See* the C. Reading dep., at 42:23-13.

NO OBJECTION – but irrelevant to the issues to be decided in Plaintiff's Motion for summary Judgment.

57. On June 10, 2005, the Readings allegedly transferred the residence by Quit Claim Deed, to the Fox Group Trust. *See* Second Duffy Dec. Ex. K (copy of the Quit Claim Deed signed by the Readings).

NO OBJECTION

58. At the time of the June, 2005 transfer, Clare Reading knew that there were federal tax liens filed against her and or her husband. *See* C. Reading dep., at 46:15-18.

DEFENDANTS DISPUTE – that this Statement of Fact # 58 is true. Defendant declares it is false because it is misleading.

DEFENDANTS DECLARE – that the Notices of Federal Tax Lien filed in the Public Record in the Maricopa County Recorder's Office are presumptions not based on fact and without evidence or testimony to support their validity under the law.

59. The Fox Group Trust did not pay monetary consideration in return for the alleged transfer of the residence. *See* Clare Reading dep., at 52:13-25.

NO OBJECTION and DEFENDANT DECLARES that the property is to be a gift for their heir. It was transferred to the Fox Group Trust to hold and control in case either James Leslie Reading or Clare Louise Reading met their demise. It was meant to eliminate any expense for their heir. The property was not "sold" to the Fox Group Trust.

OBJECTION – Plaintiff presumes facts not in evidence and has presented no evidence or testimony that monetary consideration is a requirement in a private contract agreement, and believes none exists.

60. The supposed consideration given by the Fox Group Trust is the Readings' right to live on the property, which is a right that they already had before the alleged transfer. *See* the deposition of Terry Major ("Major dep."), the current trustee of the Fox Group Trust, at 78:3-79:4 (excerpts attached as Second Duffy Dec. Ex. P).

NO OBJECTION and DEFENDANT DECLARES that it is less costly for the Readings to act as live-in caretakers of the property than for the Fox Group Trust to hire outside people for maintenance. [*See* Defendants' Exhibit T, Affidavit re: Fox Group Trust]

61. At the time that the residence was allegedly transferred to the Fox Group Trust, the residence was worth approximately $110,000. *See* J. Reading dep., at 30:21-31:5.

NO OBJECTION, but although true, it is irrelevant.

62. Since the alleged transfer to the Fox Group Trust, the Readings have continued to live in the residence. *See* J. Reading dep., at 6:9-10 and 32:10-13 and C. Reading dep., at 12:17-20.

NO OBJECTION and DEFENDANTS DECLARE that although true, it is irrelevant.

63. Also, the Readings are still personally obligated on the note that is secured by a mortgage on the residence. *See* Second Duffy Dec. Ex L (copy of the Note); C. Reading dep., at 43:19-44:9.

NO OBJECTION and DEFENDANTS DECLARE that they meet all of their lawful obligations.

64. The Readings have not paid rent to live in the residence since the alleged transfer to the Fox Group Trust. *See* J. Reading dep., at 32:10-16 and C. Reading dep., at 102:21:25.

NO OBJECTION and DEFENDANTS DECLARE that they also do not charge Fox Group Trust for the maintenance they perform for the property.

65. The current holder of the Mortgage on the residence is MidFirst Bank ("MidFirst"). *See* Court Docket numbers 33, 34 and 35.

NO OBJECTION – the mortgage is paid to Midland Mortgage Company, a subsidiary of MidFirst Bank.

66. The funds used by the Readings to personally pay the mortgage payments to MidFirst also are derived from compensation earned by James Reading. *See* C. Reading dep., at 66:1-67:8; J. Reading dep., at 8:17-20.

NO OBJECTION and DEFENDANTS DECLARE - that the "Compensation for Labor" James Leslie Reading receives in the Private Sector is perfectly lawful to use as mortgage payments.

NO OBJECTION and DEFENDANTS DECLARE that "income" could also be derived from the "Compensation for Labor" James Leslie Reading receives in the Private Sector, as Amendment XVI describes.

67. The Readings also personally pay the utilities on the residence out of compensation earned by Mr. Reading. *See* C. Reading dep., at 67:12-16.

NO OBJECTION and DEFENDANTS DECLARE - that this statement is irrelevant. If both Clare Louise Reading and James Leslie Reading were to die today, the Fox Group Trust is in position to hire new maintenance help while assisting their heir in any decisions to be made.

68. The Readings also personally pay the County real estate taxes owed on the residence. *See* C. Reading dep., at 42:16-18.

NO OBJECTION and DEFENDANTS DECLARE - that the payments and maintenance they contribute covers costs the Fox Group Trust would have for the same.

69. The Readings are "Administrative Trustee[s]" of the Fox Group Trust. *See* Second Duffy Dec. Ex. M, at 8; C. Reading dep., at 56:11-21, 61:19-20 and 72:20-73:3.

NO OBJECTION and DEFENDANTS DECLARE - that they could just have easily accepted the title of "Property Maintenance Crew".

70. After the supposed transfer of the residence to the Fox Group Trust in 2005, the Readings acted on behalf of the Fox Group Trust regarding the residence. *See* Second Duffy Dec. Ex. N; Major dep., at 80:1-9.

OBJECTION to Part 1: "After the supposed transfer. . ." as the property was accepted as transferred by the Maricopa County Assessor and the Maricopa county Recorder.

NO OBJECTION and DEFENDANTS DECLARE - that they had been properly directed to do so, as Administrative Trustees, based by Trustee, Charles Baird, based on his direction per *Summa Corp. v. California Ex Rel Lands Comm'n,* 466 U.S. 198 (1984).

[*See* Defendants Exhibit T, Affidavit re: Fox Group Trust]

71. The specific action taken by the Readings was outside of the scope of their permitted duties under the Fox Group Trust creation document and was consistent with an action that could only be taken by a true owner of the residence. *See* Major dep., at 82:7-83:7.

OBJECTION and DEFENDANTS DECLARE – that they have acted under the direction of the Trustees. [*See* Defendants Exhibit T, Affidavit re: Fox Group Trust]

72. The document that created the Fox Group Trust was not filed publicly. *See* Second Duffy Dec. Ex M, at 1 and Major dep. (Second Duffy Dec. Ex. P), at 80:10-19.

DEFENDANTS ADMIT and DECLARE - that they are not aware of any law requiring Private Sector contracts be publicly recorded and believe that none exists.

73. The current trustee of the Fox Group Trust is Terry Major. *See* Major dep., at 6:14-17.

NO OBJECTION

74. Previously, Mr. Major filed a petition with the United States Tax Court in which he argued that amounts received in exchange for computer work that he performed was not "taxable income compensation." *See Major v. Commissioner*, 2005 WL 1405978 *2 (U.S. Tax Court 2005).

NO OBJECTION and DEFENDANTS DECLARE - that they are not aware of any law stating otherwise and believe none exists.

75. The Tax Court described arguments raised by Mr. Major as "tax protester arguments."

DEFENDANTS HAVE NO SUFFICIENT KNOWLEDGE. Irrelevant.

76. Mr. Major followed the teachings of Jimmy Chisum and videotaped Mr. Chisum's seminars. *See* Terry Major dep., at 7:6-8:7 and 20:2-8.

DEFENDANTS HAVE NO SUFFICIENT KNOWLEDGE. Irrelevant.

77. The Tax Court described Mr. Chisum as a "a known promoter of tax avoidance schemes." *Lundgren v. Commissioner*, 2006 WL 2436894, n.3 (Tax Ct. 2006).

DEFENDANTS HAVE NO SUFFICIENT KNOWLEDGE. Irrelevant.

78. Mr. Chisum was also convicted of federal tax evasion. *United States v. Chisum*, 502 F.3d 1237 (10th Cir. 2007).

DEFENDANTS HAVE NO SUFFICIENT KNOWLEDGE. Irrelevant.

79. Mr. Major is still in touch with Mr. Chisum. *See* Major Dep., at 7:22-24.

DEFENDANTS HAVE NO SUFFICIENT KNOWLEDGE. Irrelevant.

80. Based on a Stipulation between the United States and Financial Legal Services (Docket number 25), the Court ruled that Financial Legal Services has no interest in the residence (Docket number 26).

NO OBJECTION

81. The Court Clerk previously entered the default of Chase for failure to answer or otherwise plead. (Docket number 29).

DEFENDANTS HAVE NO SUFFICIENT KNOWLEDGE.

82. The United States, the State of Arizona, the Readings and the Fox Group Trust have all stipulated that MidFirst has first priority in the residence. (Docket numbers 33, 34 and 35).

NO OBJECTION

83. The amount of MidFirst's priority interest is $13,964.12 (principal and accrued interest as of March 1, 2012), plus $400 (attorney's fees). (Docket number 35).

NO OBJECTION

84. The United States has also stipulated that the State of Arizona has priority over the IRS's federal tax liens at issue herein and that the State's interest is $15,211.40 as of February 23, 2012, plus interest accruing thereafter under law. (Docket number 36).

DEFENDANTS DISPUTE – that this Statement of Fact # 84 is true. Defendants declare it is false because it is misleading. The Judgment was based on the false information shared by the IRS with the Arizona Department of Revenue. We believe this judgment is void.

85. The IRS filed various Notices of Federal Tax Lien ("NFTL") with the County Recorder regarding assessments made against one or both of the Readings. *See* the complaint, at ¶¶ 56-66.

OBJECTION – that this Statement of Fact # 85 is true. Defendants declare it is false because it is misleading. Plaintiff assumes facts not in evidence and has presented no evidence or testimony that any Notices of Federal Tax Lien filed with the County Recorder have any lawful basis.

86. However, on July 21, 2011, which is after the complaint was filed, the IRS mistakenly released NFTL's that relate to the income tax and related assessments made against James Reading for his 1993, 1994 and 1995 income tax years and the income tax and related assessments made against Clare Reading for her 1994 and 1995 tax years. *See* the Vahe Dec., at ¶ 23.

DEFENDANTS DISPUTE – that this Statement of Fact # 86 is true. Defendants declare it is false because it is misleading. The liens were released due to a requirement of law in which they expired after 10 years, as stated in 26 USC § 6502 - Collection after assessment.

87. The IRS did not release other NFTL's relating to the other assessments at issue in this case. *Id.,* at ¶¶ 24-25 and Vahe Dec. Ex's O-1, O-2, O-3, O-5, O-7, O-8 and O-9 (copies of the NFTL's that were not released).

NO OBJECTION

88. On May 4, 2012, the IRS revoked the releases of the NFTL's that were filed on July 21, 2011. *See* the Vahe dec., at ¶ 26.

DEFENDANTS DISPUTE - True, but incomplete and as such is misleading. Defendants dispute the authority of the IRS to file Notices of Federal Tax Lien in the County Public record without a statute or a Court Order in support.

DEFENDANTS DECLARE - that Plaintiff assumes facts not in evidence and has presented no evidence or testimony to support that any Notices of Federal Tax Lien filed with the County Recorder are supported in law and Defendants believe that none exists.

89. David Pastorkey was one of the original trustees for the Fox Group Trust. *See* Duffy Dec. Ex. M, at 8 and 9.

NO OBJECTION

90. Mr. Pastorkey is a "dear friend" of one or both of the Readings. C. Reading dep., at 57:8-12.

NO OBJECTION and DEFENDANTS DECLARE - that the attorneys and the bankers ruined the value of Defendants' inheritance and refused to follow the clear language in the family trust. Defendants purposely sought out people they knew could be trusted, logically, to be "Trustees". [*See* Defendants' Exhibit T, Affidavit re: Fox Group Trust]

91. Terry Major is also a friend of the Readings. Major dep., at 12:5-7.

NO OBJECTION and DEFENDANTS DECLARE - that – that the attorneys and the bankers ruined the value of Defendants' inheritance and refused to follow the clear language in the family trust.

Defendants purposely sought out people they knew could be trusted, logically, to be "Trustees". [*See* Defendants' Exhibit T, Affidavit re: Fox Group Trust]

92. The Fox Group Trust was created by Aage Nost, who the Readings met through a friend. C. Reading dep., at 47:14-49:5.

NO OBJECTION and DEFENDANTS DECLARE - that – that the attorneys and the bankers ruined the value of Defendants' inheritance and refused to follow the clear language in the family trust.

Defendants purposely sought out people they knew could be trusted, logically, help. [*See* Defendants' Exhibit T, Affidavit re: Fox Group Trust]

93. Mr. Nost, who is not an attorney, had a radio show in Tucson on which he talked about health and nutrition. C. Reading dep., at 47:19-48:4.

NO OBJECTION

Respectfully submitted,

Jurat

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, 28 USC § 1746(1).

Reserving ALL Natural God-Given unalienable birthrights, waiving none,

/s/ _____

James Leslie Reading

/s/ Clare Louise Reading

Clare Louise Reading

Arizona State)
) ss
Maricopa County)

The above named persons, appeared before me, a Notary, subscribed, sworn under oath

this 6th day of ~~July~~ August, 2012.

_____ My Commission expires:

_____

Notary Public

seal

Jurat

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, 28 USC § 1746(1).

Reserving ALL Natural God-Given unalienable birthrights, waiving none,

/s/ James Leslie Reading

James Leslie Reading

/s/ Clare Louise Reading

Clare Louise Reading

Arizona State)
) ss
Maricopa County)

The above named persons, appeared before me, a Notary, subscribed, sworn under oath

this 6th day of August, 2012.

Notary Public

My Commission expires:
3/25/2016

seal

KEVIN S. KEPLINGER
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
March 25, 2016

ATTACHMENT # 3

DEFENDANTS SEPARATE STATEMENT OF FACTS (DSSOF)
IN SUPPORT OF THEIR RESPONSE TO
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
(oral argument requested)

No. **CV 11-00698-FJM**

Defendants James Leslie Reading and Clare L. Reading (the "Reading Defendants"), appearing in propria persona, hereby file their separate statement of facts in support of their response in opposition to Plaintiff United States of America's Motion for Summary Judgment.

A. General facts in dispute in this case.

1. The basic accuracy of the Plaintiff's records presented to the Court are in dispute in this case. Errors found in the calculations on the DuffyExG and DuffyExH Notice of Deficiency shows errors in excess of $100,000. (See Exhibit O Affidavit # 7; & Exhibit P Affidavits # 8)
2. The Forms 4340 for all Civil Penalties DuffyExC-1 thru DuffyExC-10 and DuffyExD-1 thru DuffyExD-11 show entries no authorities by the computer system and are in direct violation with instruction and allowed entries outlined in the 6209 IRS Processing Codes and Information. This raised serious question on how Civil Penalties were entered into the computer database, which states that these entries are not authorized. (See Exhibit L Affidavit # 4 Regarding Assessments of Civil Penalties)

3. The Certification of documents are in dispute if they can be trusted. (See Exhibit N Affidavit # 6 Regarding Certification of Plaintiff Exhibits)
4. That the mailing of the mandatory Notice of Deficiency (NOD) is in question for the years 1993, 1994, 1995 for both Defendants. (See Exhibit M Affidavit # 5 regarding Plaintiff's NOD Mailing)
5. The mailing of the Notice and Demand (NAD) are also at question here for all tax years. Defendants deny getting these Notices. Defendants asked for proof of mailing for these Notice and Demand, and Plaintiff has failed to provide then with any documents to support that these Notices were mailed, as mandated by statute. Defendants FOIA response showed no notice were mailed (See Exhibit SS FOIA Response)
6. There appears to be no returns created by the Secretary under 6020(b) or the SFR program. Without a return there can be no deficiency.
7. No returns have been submitted to the Court that would comply with a 6020(b) return or even the requirements for a SFR outlined in IRM 4.19.17.1.3.1) (11-10-2006) Substitute For Return Procedures for all years 1993, 1994, 1995, and 2008.
8. All civil penalties are in dispute. There are several reasons, including but not limited to the fact that; 1) Defendants returns do not meet the statutory requirement of a frivolous return as definition by Congress in 6702(a). 2) The Plaintiff has refused to prove or provide any testimony or evidence to prove the returns meet the required conditions set forth in the statute. 3) The penalties were not assessed as a tax as mandated by § 6671(a). (See Exhibit L Affidavit # 4 Regarding Assessments of Civil Penalties)
9. That the amounts claimed to be assessed, and reported in the Forms 4340 for all tax years were in fact NOT assessed as mandated by statute and regulation. (See Exhibit Q Affidavit # 9 and Exhibit R Affidavit # 10)
10. Plaintiff's attorney is attempting to avoid the real issues of fact in this case by bringing up statements and claims made by the Defendants in previous legal actions which are not relevant to the issues in this case, which are to reduce "federal tax assessments" to judgment. (*See* Exhibit I, Affidavit of Real Issues in this Case, ¶ 4)

11. The U.S. Government's lien interests are merely presumed in this case and no testimony or evidence has been presented by the Plaintiff to support this presumption. **(*See* Affidavit of Real Issues in this Case, ¶ 5)**

12. Before there can be "federal tax assessments" to reduce to judgment they must be properly assessed, as mandated by statute and regulations. (*See* Affidavit of Real Issues in this Case, ¶ 6)

13. Defendant's tax returns for the year 1993, 1994, and 1995 are the ONLY completed and signed (per § 6065) tax returns in the record. Plaintiff has not submitted any of a proper return created by the Secretary under the authority of § 6020(b). (*See* Affidavit of Real Issues in this Case, ¶ 8, ¶ 9.)

14. There are statutory requirements that must be fulfilled in order to have a proper assessment. Assessments shall be made by recording the liability of the taxpayer in the office of the Secretary. This requirement and details are codified in, 26 U.S.C. § 6203, and in 26 C.F.R. § 301.6203. (*See* Affidavit of Real Issues in this Case, ¶ 11, Defendant's Exhibits F)

15. Before there may be any valid assessments for the years in dispute, Plaintiff must have complied with the statutory requirements of the following statutes: 26 U.S.C. § 6321 **Lien for Taxes,** 26 U.S.C. § 6303 **Notice and Demand** 26 U.S.C. § 6331 **Levy and distraint**. Defendant has asked for proof of mailing and Plaintiff has provided none. No testimony or evidence has been provided, by the Plaintiff to show they were mailed. Defendant deny they received them and (*See* Affidavit of Real Issues in this Case, ¶ 12)

16. In order for the Plaintiff to prove that it has made valid assessments and are entitled for the assessments to be reduced to judgment, Plaintiff has to prove the essential elements identified in 26 U.S.C. § 6212 **Notice of deficiency**; 26 U.S.C. § 6211 **Definition of a deficiency** and 26 U.S.C. § 6020(b) **Returns prepared for or executed by Secretary**. (See Exhibit I Affidavit of Real Issues in this Case, ¶ 13; See Exhibit V Affidavit # 13)

17. Before there can be an assessment, there must be a valid "tax deficiency" as defined by 26 U.S.C. § 6211. (See Exhibit I Affidavit # 1 Real Issues in this Case, ¶ 14) Affiants declare that without a return filed no legal deficiency can be calculated.

18. The amounts reported on the Information Returns (1099's/W2's) as "income," defined by the U.S. Supreme Court, are incorrect. (See Exhibit I Affidavit of Real Issues in this Case, ¶ 11; See Exhibit U US Supreme Court Cases; See Exhibit Memorandum # 1 What is income.)

19. Plaintiff has made other presumptions in this case to which no testimony or evidence has been presented by Plaintiff, some of which include but are not limited to:

a. What Defendants earned in exchange for their labor "income" under the law. (See Exhibit Memorandum # 1 What is income; See Exhibit U US Supreme Court cases.)

b. That the legal definition of "income" as everything that comes in. (See Exhibit U US Supreme Court Cases; See Exhibit G The Real Truth about The IRS's "Truth" About "Frivolous" Tax Arguments.)

c. That **Section 1 of Subtitle A** impose a tax on both "taxable income" and "non taxable income".

d. That **Section 1 of Subtitle A** imposes a liability. (See Exhibit H The Memorandum by Tommy Cryer;

e. That there a statute that makes Defendants liable.

f. That there a statute that required Defendants to file a tax return if they have no "income".

20. The math and calculations Plaintiff used to arrive at the alleged "federal tax assessment" purportedly owed by Defendants contains many errors. (See Exhibit I Affidavit of Real Issues in this Case, ¶ 18, See Exhibit O & Exhibit P)

21. The IRS employee who performed the tasks outlined by statute does not have the proper and legal authority (delegated from the Secretary) to operate on behalf of the Secretary. (See Exhibit I Affidavit of Real Issues in this Case, ¶ 19)

22. No testimony or evidence has been presented in this case that shows a complete and unbroken chain of Delegation Orders from the Secretary to the IRS employee who prepared the assessments or certified the documents contained in Plaintiff's Exhibits to the Motion for Summary judgment. (See Exhibit I Affidavit of Real Issues in this Case, ¶ 20)

23. The IRS employee who created the alleged tax deficiency, liability, and violated or failed to comply with Delegation Orders, Statutes, Regulations, and their own Internal Revenue Manual Provisions as mandated by law. (See Exhibit I Affidavit of Real Issues in this Case, ¶ 21; See Exhibit L Affidavit # 4 ; See Exhibit V Defendant's Affidavit # 13)

24. Before there can be an assessment, there must be a valid "tax deficiency" as defined by 26 U.S.C. § 6211. (See Exhibit I Affidavit of Real Issues in this Case, ¶ 14)

25. In order for there to be valid "tax liability" there must be a statute that imposes the tax and a statute that makes Defendants "liable" to pay the tax. (See Exhibit I Affidavit of Real Issues in this Case, ¶ 22)

26. The assessments in this case were not created correctly as mandated by statute and regulation. (See Defendant's Exhibit F Memorandum; See Exhibit J Defendant's Affidavit # 2; See Exhibit K Defendant's Affidavit # 3 ; See Exhibit L Defendant's Affidavit # 3)

27. Plaintiff failed to provide the statutes where Congress has made Defendants liable for any tax and continues to operate as if one exists. (See Exhibit I Affidavit of Real Issues in this Case, ¶ 24)

28. The "tax deficiencies" in this case that were calculated by IRS employees were not done properly or legally. (See Exhibit I Affidavit of Real Issues in this Case, ¶ 25)
29. Plaintiff has not claimed a Substitutes For Return (SFR's) was created by IRS, however evidence exists that IRS employees attempted to create SFR under color of law, and no Delegation Order or IRM provision authorized a 1040 SFR to be created. (See Defendant's Exhibit V Affidavit # 13; See Exhibit I Affidavit of Real Issues in this Case, ¶ 26).
30. Plaintiff has not presented any testimony or evidence that would show a complete unbroken chain of Delegation Orders from the Secretary to the IRS employee who created the returns under 26 U.S.C. § 6020(b), and believe none exists. (See Exhibit I Affidavit of Real Issues in this Case, ¶ 27)
31. Prima facie evidence exists to show that Delegation Order 182 does not allow a 1040 or Individual Income Tax Return to be created under the authority of 6020(b). (See Defendant's Exhibit V Affidavit # 13, See Exhibit I Affidavit of Real Issues in this Case, ¶ 28)
32. Plaintiff cannot provide a Delegation Order, which shows that they may create a 1040 tax return. (See Exhibit I Affidavit of Real Issues in this Case, ¶ 29)
33. The Secretary or his delegate created a tax return not authorized by IRM 5.1.11.9 (05-29-1999) or by IRM 5.1.11.6.8 (03-01-2009) in violation of these IRM provisions and under *color of law*. (See Exhibit I Affidavit of Real Issues in this Case, ¶ 30; See Exhibit V Affidavit # 13)
34. The IRS did not comply with the statutes, regulations, or IRM provisions in this case as required before Plaintiff is entitled to a collection of alleged tax. (See Exhibit I Affidavit of Real Issues in this Case, ¶ 31)
35. The tax returns(s) submitted by Defendants do not meet the legal definition of a frivolous return as defined by Congress in 26 U.S.C. § 6702(a). (See Exhibit I

Affidavit of Real Issues in this Case, ¶ 32; See Exhibit Q Defendant's # 9; See Exhibit R Defendant's Affidavit # 10)

36. Affiants declare that Congress has mandated what a "frivolous return" is under the statute. A return must meet the requirements set forth in the statute to properly and legally to be classified as a frivolous return.

37. The Secretary has failed to comply with the requirements outlined in 26 U.S.C. § 6703(a). (See Exhibit I Affidavit of Real Issues in this Case, ¶ 33)

38. The penalties in this case were not assessed properly, as mandated by 26 U.S.C § 6203, therefore, the penalties should not be included in the debt alleged to be owed by Defendants. (See Exhibit I Affidavit of Real Issues in this Case, ¶ 34)

39. Plaintiff has not met its burden of proof mandated by 26 U.S.C. § 6201(d) because Defendant(s) have disputed the claims by the third parties in labeling "receipts for labor" as "income" and the Secretary has not provided evidence or testimony to support the disputed claims. (See Exhibit I Affidavit of Real Issues in this Case, ¶ 35)

31. Plaintiff has provided VaheExL-1 and VaheExL-2 of the Declaration of Debra Vahe (MSJ DOC 62-2) as evidence that the Notice of Deficiencies were mailed as mandated by statute. (See Exhibit M Affidavit # 5 ¶ 1.)

32. As part of VaheExL-1 is a Certification of Official Record attached to a Substitute for Form 3877 which shows a Mail Certification Number of Z096928394 for James L. Reading, 2425 East Fox Mesa AZ 85213-5320, for tax years 9312 (1993); 9412 (1994); 9512 (1995); 9612 (1996). (See Exhibit M Affidavit # 5 ¶ 2.)

33. Another part of VaheExL-1 is a Certification of Official Record attached to a Substitute for Form 3877 which shows a Mail Certification Number of Z096928396 for Clare L. Reading, 2425 East Fox Mesa, AZ 85213-5320, for the tax years 9412 (1994); 9512 (1995). (See Exhibit M Affidavit # 5 ¶ 3.)

34. Plaintiff has VaheExE Notice of Deficiency and Related Document (1993-1995) in Declaration of Debra Vahe as the document that was mailed with Mail Certification Number of Z096928394. ((See Exhibit M Affidavit # 5 ¶ 4.)

35. There is no indication, markings or writings that would positively identify that the Notice of Deficiency was mailed with the Certified Mail Number of Z096928394, as claimed in Exhibit L-1. (See Exhibit M Affidavit # 5 ¶ 5.)

36. The Notice of Deficiency only covers years 9312 (1993); 9412 (1994); 9512 (1995), and does not include 9612 (1996), as claimed on the DuffyExL-1 for the Certified Mail Number of Z096928394. (See Exhibit M Affidavit # 5 ¶ 6.)

37. Plaintiff provides no testimony or evidence which would prove that this Notice of Deficiency presented in Exhibit E, (which only covers years 1993, 1994, and 1995) is the Notice of Deficiency claimed to have been mailed to Defendant James L. Reading using Certified Mail Number of Z096928394, (which is for the years 1993, 1994, 1995, and 1996). ((See Exhibit M Affidavit # 5 ¶ 7.)

38. Plaintiff has since affixed the Certified Mail Number to the letters in an attempt to prove a connection between letters and the Certified Mail Forms; yet there remains serious questions about whether or not this letter was, in fact, mailed as claimed and if was mailed with this Certified Mail number, as claimed. (See Exhibit M Affidavit # 5, ¶ 8.)

39. Plaintiff has provided DuffyExL-1 & DuffyExL-2 with Certification Forms 2866 attached to the substitute for Form 3877, as evidence that the Notice of Deficiencies were mailed to Defendants. (See Exhibit M Affidavit # 5, ¶ 9.)

40. The Certification Form 2866 has two printed names on it and then it is signed by a third person, "Dorsey", for Paula M. Curren, Disclosure Manager, Office 7. (See Exhibit M Affidavit # 5, ¶ 10.)

41. Plaintiffs have not provided testimony or evidence, which would prove that this third person has the legal authority to sign for Paula M. Curren, Disclosure Manager, Office 7. Such person would have to have a Delegation Order to sign Certifications of documents. (See Exhibit M Affidavit # 5, ¶ 11.)

42. "Disclosure Office 7" is located in Greensboro NC, which serves the states: Florida, Kentucky, North Carolina, Virginia. (See Exhibit M Affidavit # 5, ¶ 12.)

43. Paula Curren is listed as public liaison on the IRS.gov website for Florida, Kentucky, North Carolina, Virginia. (See Exhibit M Affidavit # 5, ¶ 13.)

44. All indications on the Certification Documents show that the Defendants' records were maintained in Ogden Utah and the Notice of Deficiencies were mailed from Phoenix Arizona. (See Exhibit M Affidavit # 5, ¶ 14.)

45. Certification Form 2866, which was attached to the substitute for Form 3877 was signed by Disclosure Department, that does not have custody of the records, as mandated by Delegation Order 198. (See Exhibit M Affidavit # 5, ¶ 15.)

46. Certification Form 2866 that was attached to the substitute for Form 3877 was signed by Disclosure Departments, which do not have custody of the records, as mandated by Rule 44. (See Exhibit M Affidavit # 5 ¶ 16.)

47. There is no testimony or evidence that the person who signed the 3877 forms have legal authority to sign for Paula M. Curren. (See Exhibit M Affidavit # 5, ¶ 17.)

48. Since the records were allegedly in the custody Wage & Investment ("W&I), the certification must come from W&I, since they have custody of the records. (See Exhibit M Affidavit # 5¶ 18.)

49. Delegation Order W&I W 11-05 only authorizes a few people to provide Certificate of Official Records Form 2866, and the people listed on the Exhibits L-1 & L-2 are not authorized by this Delegation Order. (See Exhibit M Affidavit # 5, ¶ 19.)

50. Delegation Order W&I W 11-05 gets its authority from Delegation Order 198. (See Exhibit M Affidavit # 5¶ 20.)

51. Delegation Order 198 does not authorize anyone from Disclosure to complete Certifications. (See Exhibit M Affidavit # 5 ¶ 21.)

52. These documents purporting to make lawful certifications do not meet the legal requirements set forth in Rule 902 as Self-Authenticating, since they were not properly certified. (See Exhibit M Affidavit # 5, ¶ 22.)

53. Plaintiff provided a Substitution Form 3877, rather than the real Form 3877 Record of Certified and Registered Mailings. (See Exhibit M Affidavit # 5, ¶ 23.)

54. Plaintiff failed to provide Postal Service Form 3849 Receipt for Delivery because it is believed no such receipt exists. (See Exhibit M Affidavit # 5, ¶ 24.)

55. Plaintiff has failed to provide the information requested in Defendants' Interrogatories and Request For Documents which stated, "Please identify all evidence, whether documentary or testimonial (**identifying fully the person able to provide such testimonial evidence**), proving or disproving or tending to prove or disprove that the NOD was mailed by certified or registered mail to the last known address(es) of the person(s) named." (See Exhibit M Affidavit # 5, ¶ 25.)

56. The persons who presented the Certification of Official Record Form 2866 do not have any firsthand knowledge regarding the mailing of this document. (See Exhibit M Affidavit # 5, ¶ 26.)

57. "Dorsey" received these documents from some unidentified person from a different office and then attempted to attest to the document as part of the ordinary course of business to record mailing of Notices of Deficiencies. (See Exhibit M Affidavit # 5, ¶ 27.)

58. Debra Vahe signed a Declaration that Exhibits L-1 and L-2 are "copies"; albeit fabricated documents, without testimony or evidence to the contrary, "certified" by IRS employees without the proper authority to do so and, therefore, have no validity whatsoever in this case. (See Exhibit M Affidavit # 5, ¶ 28.)

RESPECTFULLY SUBMITTED this 10th day of August, 2012.

Document: ATTACHMENT #3 : DEFENDANTS SEPARATE STATEMENT OF FACTS (DSSOF) IN SUPPORT OF THEIR RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Jurat

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, *28 USC § 1746(1)*.

Reserving ALL Natural God-Given unalienable birthrights, waiving none,

/s/ James Leslie Reading

James Leslie Reading

/s/ Clare Louise Reading

Clare Louise Reading

Arizona State)
) ss
Maricopa County)

The above named persons, appeared before me, a Notary, subscribed, sworn under oath

this 8th day of August, 2012.

Notary Public

My Commission expires:
3/25/2016

seal

KEVIN S. KEPLINGER
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
March 25, 2016

James Leslie Reading, *Pro Se*
Clare Louise Reading, *Pro Se*
2425 East Fox Street
Mesa, Arizona 85213

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

UNITED STATES OF AMERICA *Plaintiff,*	)	
v.	)	2:11-cv-00698-FJM
JAMES LESLIE READING, CLARE L. READING, FOX GROUP TRUST, MIDFIRST BANK, CHASE, FINANCIAL LEGAL SERVICES, STATE OF ARIZONA *Defendants*	)	**DECLARATION OF CLARE L. READING and JAMES LESLIE READING**

DECLARATION OF CLARE L. READING and JAMES LESLIE READING

I, Clare Louise Reading, and I, James Leslie Reading, declare as follows:

1. We are Defendants in the above named case, and we are Pro Se and, therefore, stand for our interest in this case.

2.. The documents attached hereto as Exhibits A through E are Memoranda from *Innocence Revealed* cd rom and are true and correct partial copies of documents also found at http://www.innocencerevealed.com, published by truthattack.org.

3. Exhibit F is Memorandum Regarding Assessments 26 USC Se. 6230, written by Michael A. Bigley that was the inspiration for the creation of our Affidavits regarding Assessments.

4. Exhibit G is "The Real Truth About the IRS's 'Truth' About Frivolous Tax Arguments" published by http://www.TruthAttack.org and found at the url: http://www.truthattack.org/jml/images/stories/PDF/thetruthaboutthetruthabout.pdf .

5. Exhibit H is The Memorandum by Tommy Cryer, which was downloaded and copied from http://www.TruthAttack.org and found and the url: http://www.truthattack.org/jml/images/stories/PDF/cryer_MEMORANDUM.pdf

6. Exhibits I, J, K, L, L-1, M, N, O, P, Q, R, S, T, V, X, Z, AA-2, EE and AA are true and correct copies Affidavits created by Defendants.
7. Exhibits V-10, V-2, V-7, V-8, L-4, L-3, M-1, M-2, M-3, M-4, O-1 and W are true and correct copies of pages from the Internal Revenue Manual which is public information available on the internet and the local library.
8. Exhibits V-3, V-4, V-5, V-6, OO are true and correct copies from Revenue Officers Training Manual which is public information obtained from the internet .
9. Exhibits J-1, L-2, V-11, V-9, R-1, R-2, R-3, R-4, Q-1, Q-2, JJ, LL, MM, NN, PP, and QQ are true and correct copies of F.O.I.A responses received by the defendants from the IRS Disclosure Office.
10. Exhibits V-1, BB, CC, true and correct copies of information which is public information available from internet SEND.
11. Exhibits Y, U, CC are true and correct copies of Supreme Court cases available as public information and accessed via the various internet websites.
12. Exhibits AA-1, AA-3 are true and correct copies of documents delivered to defendants by IRS personnel.
13. Exhibits FF, GG, HH, and KK are true and correct copies of forms and letters defendants prepared.
14. Exhibit II is the true and correct copy of the stock brokers transaction report prepared by the broker, Mr. Adelmann.

/////

/////

IV. Conclusion

For the foregoing reasons, the Reading Defendants respectfully request that Plaintiff's Motion for Summary Judgment be denied and that the issues and facts in this case be presented to a jury.

Respectfully submitted this _____ day of August, 2012

The documents attached hereto as The Real Truth About The IRS'S "Truth" About "Frivolous" Tax Arguments, An Objective, Authoritative Analysis of the IRS's Official, Anonymous List and Rebuttal of "Frivolous" Tax Issues are true and correct copies of documents that were downloaded from http://www.truthattack.org/jml/index.php/get-involved/what-can-you-do/46-what-can-do-you-do/applying-pressure/142-rebut-irss-calling-the-truth-frivolous

I am not an expert in the law however I do know right from wrong. If there is any human being damaged by any statements herein, if he will inform me by facts I will sincerely make every effort to amend my ways. I hereby and herein reserve the right to amend and make amendment to this document as necessary in order that the truth may be ascertained and proceedings justly determined. If the parties given notice by means of this document have information that would controvert and overcome this Affidavit, please advise me IN WRITTEN AFFIDAVIT FORM within thirty (30) days from receipt hereof providing me with your counter affidavit, proving with particularity by stating all requisite actual evidentiary fact and all requisite actual law, and not merely the ultimate facts or conclusions of law, under penalty of perjury, that this Affidavit Statement is substantially and materially false sufficiently to change materially my status and factual declarations. Your silence stands as consent to, and tacit approval of, the factual declarations herein being established as fact as a matter of law.

Jurat

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, 28 USC § 1746(1).

Reserving ALL Natural God-Given Unalienable Birthrights, Waiving None, Ever,

/s/ Clare L. Reading

Clare L. Reading

Arizona State)
) ss
Maricopa County)

The above named person, appeared before me, a Notary, subscribed, sworn under oath

this _____day of April 2012.

_____ My Commission expires: _____

Notary Public

SEAL

Respectfully submitted this 6th day of August, 2012

James Leslie Reading

Clare Louise Reading

Clare Louise Reading

MA

Terry I. Major, Trustee

Document: DECLARATION of CLARE L. READING and James Leslie Reading

Jurat

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, *28 USC § 1746(1).*

Reserving ALL Natural God-Given unalienable birthrights, waiving none,

/s/ James Leslie Reading
James Leslie Reading

/s/ Clare Louise Reading
Clare Louise Reading

Arizona State)
) ss
Maricopa County)

The above named persons, appeared before me, a Notary, subscribed, sworn under oath

this 8th day of August, 2012.

Notary Public

My Commission expires:
3/25/2016

seal

KEVIN S. KEPLINGER
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
March 25, 2016

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing DEFENDANT'S REQUEST FOR EXTENSION OF TIME TO RESPONSE TO COMPLAINT, with attachments, has been made this 7th day of ~~December 2010~~ August 2012, by depositing a copy thereof in the United States Mail in a postage prepaid envelope addressed to:

DENNIS K. BURKE
United States Attorney
District of Arizona
40 North Central Avenue Ste 1200
Phoenix, Arizona 85004-4408
(602) 514-7500

CHARLES M. DUFFY
U.S. Department of Justice, Tax Div.
PO Box 683
Ben Franklin Station
Washington, DC 20044

Clare Louise Reading

Clare Louise Reading and
James Leslie Reading
c/o 2425 East Fox Street
Mesa, Arizona

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EXHIBIT A

MEMORAMDUM

WHAT IS "INCOME"

Taken from Innocents Revealed CD-ROM
Produced by Truth Attack
www.truthattack.org

Why do those in the THM believe that "income" cannot be derived from personal earnings?

Once those in the Tax Honesty Movement have determined that there is no law imposing liability for the income tax on the typical working American, then it would seem that any further inquiry would be purely academic, and it would be. But the question that looms large is "Why?" And that question leads them to explore more deeply into the Code and its history.

Why hasn't Congress simply enacted a section declaring that everyone is liable for the income tax? After all, doesn't the Sixteenth Amendment give Congress the power to tax any and all incomes whatsoever? If they have that power, then why don't they use it? So although exploration into other areas and issues may appear to be academic, these are nonetheless questions so compelling that further investigation is irresistible.

Beginning at the beginning, according to **Section 1** the income tax is imposed on "taxable income". Obviously, then, it is not imposed on "income" that is not "taxable", nor would it be imposed on any taxable activity that did not produce "income", so the meanings of those two words are of paramount importance.

After examining the law, consisting of the Code and Supreme Court authorities, the THM has concluded that not only is the typical working American not liable for the tax, his wages and salaries received in exchange for his labor are not "income" neither within the meaning of the Constitution and the 16th Amendment, nor, therefore, within the meaning of the IRC. What has led the THM to this conclusion? Is it a baseless or "frivolous" argument?

"Income" is everything that "comes in" . . . isn't it?

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Initially, anyone pursuing a legal meaning of the term "income" is shocked to find that the IRC does not contain a definition of the term. "Gross income" is defined by **Section 61**, as meaning "all income, from whatever source derived", and the section goes on to list those sources from which income may (or may not) be derived. It does not, however, tell us how income is derived from those sources. Nor does it define "income" because a definition that includes the defined word, "gross *income* means all *income*", does not define the word.

"Taxable income" is also defined in **Section 63** as, essentially, gross income minus deductions, but, again, defining income as income is no help.

Section 64 defines "ordinary income" as "***gain***" from the sale or exchange of property:

"For purposes of this subtitle, the term "ordinary income" includes any ***gain*** from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b) [*sale of property used in trade or business or involuntary conversion due to fire, shipwreck, theft or other casualty*]. Any ***gain*** from the sale or exchange of property which is treated or considered, under other provisions of this subtitle, as "ordinary income" shall be treated as ***gain*** from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b)." (emphasis and [*bracketed material*] added)

So, the closest thing we have to a statutory definition, at least one that does more than say that "income" is "income", is **Section 64**, which defines ordinary income as ***gain*** derived from the sale or exchange of property. But neither **Section 61**, which tells us that income may be derived from the sources listed, nor **Section 64**, which tells us that "income" is gain, tells us how gain is derived from those sources.

Looking further to the Code for guidance we find Subchapter O, "Gain or Loss From Disposition of Property" and its Part 1, "Determination of Amount and Recognition of Gain or Loss" where **Section 1001** tells us that:

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"The gain from the sale or other disposition of property shall be the ***excess of the amount realized therefrom over the adjusted basis*** provided in section 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized." (emphasis added)

Now we know that according to the Code income is "gain" and that we determine gain by comparing the amount received to something called "basis". If the amount received exceeds the "basis", then the excess is income. **Section 1001** refers us, however, to **Section 1011** for determining basis. In looking at **Section 1011 and the sections that follow** we find the rules for determining basis. ***In each case the basis is either the cost of the property sold or exchanged or its value.***

The remaining uncertainty to the typical working American, however, is in the fact that he does not make his living by buying or inheriting and selling goods or real estate, etc. He sells his time and labor, at the expense of both time out of his unknown but finite life and work spans and his physical energy, skills and knowledge of his craft. ***The IRS says that the basis for labor is "zero", but none of the sections on basis allow for a "zero" basis, every instance calling for the use of either cost or value as the basis***. Surely the IRS does not truly believe that one's labor is without either cost or value.

One of the THM's principal objections to the IRS's application of the federal income tax to personal earnings is the THM's contention that ***there is no legal basis for the IRS's "zero basis" rule***, by which the IRS treats wages and salaries paid in exchange for one's labor as 100% profit, received for nothing. ***An examination of the IRS's official list of frivolous arguments, however, reveals that the IRS does not consider that argument frivolous***. The IRS's omission of the "zero basis for zero basis" objection from its official list of frivolous arguments, its "The Truth About Frivolous Tax Arguments" publication, in effect concedes that there is no legal basis for that rule. Is it possible that once again the Secretary is attempting "***to change the language of the revenue statutes because he thinks Congress may have overlooked***

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WHAT IS "INCOME"

something."? ***Water Quality Ass'n v. United States***, 795 F.2d 1303 (7th Cir. 1986) See also, ***U. S. v. Calamaro***, 354 U.S. 351 (1957).

With all these unexplained aspects of income and how it relates to the typical working American, particularly how one derives gain from the sale of his labor, we have to look beyond the Code. We have to look elsewhere, so where else do we look? According to the IRS, inferior court cases, those from Tax Court, District Courts and Appeals Courts are not binding other than between the parties and, even then, only as to the tax years ruled upon. Supreme Court cases, however, are treated by the IRS as the law of the land and are regarded as "equivalent to the Code."

Looking to the Supreme Court we find a fairly short, but continuously refining, line of cases that provides us with the principles that we need in order to determine whether gain (income) can be derived from monies received in exchange for one's labor. The first of those cases is ***Stratton's Independence v. Howbert***, 231 U.S. 399 (1913). In that case the Supreme Court held that ***"'income' may be defined as the gains derived from capital, from labor, or from both combined."*** *Id*, at 415.

This very basic definition of income is consistent with Section 64, that income is "gains derived". The Court's including gains derived "from labor", however gives some indication that there is at least somewhere a way to learn how those gains are "derived from" labor, the stock in trade of the typical working American.

The next Supreme Court case dealing with the meaning of income was ***Doyle v. Mitchell Bros.***, 247 U.S. 179 (1918), in which the Supreme Court held that money received in exchange for property is not income and that only the gain realized from the sale or exchange is income. The Supreme Court stated that ***what "comes in" is not "income", but rather "gross proceeds", and that before any income can be said to have been received one must first determine whether the transaction produced a gain***. The Court explained that before any gain can be identified we must first withdraw from gross proceeds a sufficient amount to ***restore the capital*** that was given

in order to receive those proceeds. Once the recipient has made himself whole again if there are funds remaining, there is a gain. If the gross proceeds are not sufficient to make the recipient whole, to put him back where he was before the transaction, then there is a loss.

From these authorities the THM concludes that:

No, Virginia, what "comes in" is not "income". What "comes in" is called gross receipts and only the profit or gain, if any, is gross "income".

The question that the THM takes from this important Supreme Court case is how does the typical working American restore his capital when that capital is his labor and when that capital is also a day, week or month out of his finite, albeit unknown, lifetime? If the gross proceeds from the sale of that labor and time are unable to put him back even, then how can any gain be realized? What basis is to be deducted according to **Sections 1011, et seq.**? If one cannot determine how much, if any, of his gross proceeds is gain, then how can he determine whether he has received any "income"?

The IRS contends that the basis for labor and lifetime is "zero", but it also admits by omission from its list of frivolous arguments that it has no legal basis for that contention. The basis sections do not mention a basis for labor or time out of one's life and work spans nor do they provide for a blanket assignment of "zero" in any instance, even where the property was received as a gift or legacy, at no cost.

At this point we have determined a number of things about the term "income":

1. The term "income" is not defined in the IRC;

2. **Section 64** defines "ordinary income" as "gain" derived from the sale of property;

3. **Section 1001** informs us that gain derived from the sale or other disposition of property is the amount by which the amount realized from the sale exceeds the "basis" for the property sold;

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4. **Sections 1011, et seq**. tell us that the basis is either the cost of the property or, where cost is not involved as in a gift, legacy or inheritance, its value;

5. In ***Stratton's Independence v. Howbert***, the Supreme Court defined "income" as "gains derived from capital, from labor, or from both combined";

6. In ***Doyle v. Mitchell Bros.***, the Supreme Court made two things clear,

a. What "comes in" is not "income", but rather gross proceeds; and

b. In order to determine whether a conversion of property or capital produced a gain one must first restore the capital from the gross proceeds, anything remaining thereafter being "gain", or "income".

From this summary it would appear, then, that the Code provisions are in total agreement and harmony with the Supreme Court's definition of income as profit or gain, including the deduction of basis, or restoration of capital, in order to determine what part, if any, of a transaction is profit or gain—income.

For one engaging in manufacturing or resale of goods or any purchase and resale of property, real or personal, this information would probably be sufficient to permit him to determine whether he had realized profit or gain, i.e., "income", from those transactions. But those in the THM are concerned with the typical working American. How does he determine whether any of the monies he has received in exchange for his labor and time out of his life and work spans are profit or gain?

What part of his gross proceeds would it take to "restore his capital"? Half? All?

Labor is at the ***expense*** of time out of and eventual depletion of one's life and work spans, at the ***expense*** of one's personal exertion, whether physical or intellectual, all ***expended*** for the benefit of the recipient, ***but those expenditures, that investment of his human capital, are not readily***

expressed in terms of money. So if the cost of the exchange cannot be expressed in dollars and cents, what then is the basis value? If a cost basis cannot be determined, all that remains is a value based basis. What is the value if not the amount a willing purchaser/employer is willing to pay and a willing seller/employee is willing to accept? If that is the case the wage or salary itself would be the value, basis and amount received, neither remuneration nor basis exceeding the other.

Even if one assumes for the sake of argument that there is a gain in the transaction, that an employee is paid in excess of his expenditure of labor and time out of his life or their value, what if the amount of that gain cannot be determined with any semblance of certainty? Then what?

Well, along comes the case of ***Eisner v. Macomber***, 252 U.S. 189 (1920). One of the first things this case does is to clear up the mystery regarding why the IRC does not contain a definition of "income". The Court held that where the question of the definition of "income" is concerned "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." The Court reasoned that ***since "income" is a Constitutional term, and by redefining the terms of the Constitution Congress could change the Constitution, Congress cannot define "income"***.

But, more importantly, the Supreme Court in ***Eisner v. Macomber*** cleared up the effect of not being able to clearly and with certainty identify and carve out that portion of gross proceeds that may be gain, profit—"income ". It starts with the general definition set out in ***Stratton's*** and ***Doyle***, but then clears up our remaining question:

"After examining dictionaries in common use (Bouv. L.D.; Standard Dict.; Webster's Internat. Dict.; Century Dict.), we find little to add to the succinct definition adopted in two cases arising under the Corporation Tax Act of 1909 (*Stratton's Independence* v. *Howbert*, 231 U.S. 399, 415; *Doyle* v. *Mitchell Bros. Co.*, 247 U.S. 179, 185) — ""Income may be defined as the gain derived from capital, from labor, or from both combined," provided it be understood to include profit

gained through a sale or conversion of capital assets, to which it was applied in the *Doyle Case* (pp. 183, 185).

"Brief as it is, it indicates the characteristic and distinguishing attribute of income essential for a correct solution of the present controversy. The Government, although basing its argument upon the definition as quoted, placed chief emphasis upon the word "gain," which was extended to include a variety of meanings; while the significance of the next three words was either overlooked or misconceived. "Derived — from —capital;" — "the gain — derived — from — capital," etc. Here we have the essential matter: not a gain accruing to capital, not a growth or increment of value in the investment; but again, a profit, something of exchangeable value proceeding from the property, severed from the capital however invested or employed, and coming in, being "derived," that is, received or drawn by the recipient (the taxpayer) for his separate use, benefit and disposal; — *that* is income derived from property. Nothing else answers the description." [1] (emphasis the Court's)

Stratton's told us that income is gain, and ***Doyle*** told us that gain is the excess over what is required to return the recipient to his prior state, restoring his capital investment. Now, however, we realize from ***Eisner v. Macomber***'s holding that having a gain alone is not income unless and until that gain can be "derived from" the transaction. Not gain alone, as in the case of appreciation in value or reproduction in kind, such as an increasing herd of cattle, but gain "derived—from—capital". In order to be derived it must be separate—severed—from the capital, that portion of receipts needed to restore the capital investment. The THM sees this case as saying that unless and until a sum can be separated from the capital it cannot be considered as "income". ***Until the two can be distinguished, one amount identified as the basis or capital and the remainder the gain, and severed from each other there can be no income.***

What basis can be assigned to one's labor, skills, knowledge and talents? It is impossible to express the cost, expenditure, on the part of the working American in pecuniary terms and there is no way to value that labor other than what a willing employer is willing to pay for it. But even where one is paid an amount in excess of that expenditure of time, energy and skills, and in

excess of their value, if the amount of that excess cannot be ***identified as gain*** and ***severed*** from the whole of the gross receipts, earnings, available for ***separate*** use, benefit and disposal, then it cannot be said to have been ***"derived from"*** those earnings.

Any new revelations from the Supreme Court since 1920's ***Eisner v. Macomber***? The only other significant discussion of "income" from the Supreme Court since *Eisner* is ***Commissioner v. Glenshaw Glass Co***., 348 U.S. 426 (1955). That case did not involve labor, but rather punitive damages that Glenshaw had received as the result of settling an action for fraud and antitrust violations. The issue was not whether the compensatory damages paid were income, which Glenshaw had apparently conceded, but whether the exemplary damages paid in excess of losses incurred were "income".

The ***Glenshaw*** court applied the same test as in ***Eisner***, but used different terms. In ***Eisner*** the term was "gain", but the ***Glenshaw*** Court preferred "accessions to wealth" and in ***Eisner*** the term was "derived from" and "available for separate use" while in ***Glenshaw*** it became "realized and available for separate use". Can one have a gain without experiencing an accession to wealth—an accession to wealth without any gain? If the Eisner Court's terms had been employed, would the Court have determined that the exemplary damages Glenshaw received in excess of damages incurred were ***identifiable gains derived from***, received and available for separate use?

Given the arguments advanced by Glenshaw Glass, it appears that the ***Glenshaw*** Court's difficulty was due primarily to the absence of what it recognized as "capital" and the absence of a transfer of property, *per se*. But Glenshaw Glass was receiving something in consideration of capital, the losses it had suffered, and there was an exchange of property, the relinquishment of its claim as a result of the settlement. But in either event and regardless of why the ***Glenshaw*** Court chose to use different terms, the result would be the same.

We know the IRS has no basis for its "zero basis" rule relative to personal earnings, but now we know why. ***If any basis were permitted at all it would be impossible to determine, whether by cost or value, making it impossible to identify that which is in excess of basis—profit, gain . . .***

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income. If it is impossible to determine and separate the capital from the profit, then it is equally impossible for any income, whether there is an overpayment or not, to be "derived from" gross proceeds received in exchange for labor or, for that matter, any "accession to wealth" to be "realized and available for separate use and enjoyment".

So, if the THM concludes that income cannot be derived from wages, salaries or other payments received in exchange for the working American's labor, can we say that it is without a basis (no pun intended) in law? That it is a "frivolous argument"?

Casting a critical eye to the THM's observations and conclusions, there is but one missing link in the chain of logic or, perhaps better stated, one unanswered question raised by its reasoning. All of the authorities, beginning with **Section 64** defining ordinary income as gain derived from the sale of ***property*** and on to **Sections 1001, et seq**. setting out the rules for determining what, if any, gain, or income, and amount in excess of the ***property's*** basis, and what basis should be applied to the ***property*** sold or otherwise disposed of, are pertaining to ***property***. *Stratton's* (mining products, ore), *Doyle* (lumber) and *Eisner* (stock dividend) are all dealing with a conversion of ***property***. So the remaining question: ***Are personal earnings, monies received in exchange for one's labor, received for "property"? Is our labor our property, and, if not, what is it?***

We all know that property can be real or personal, corporeal or incorporeal, but labor is definitely not a commodity or artifact, something manufactured, and it is not realty, so what is it? A chattel? An incorporeal chattel? ***Is one's labor property?*** Again, the Supreme Court has addressed this issue. In ***Butcher's Union v. Crescent City Co.***, 111 U.S. 746 (1884), dealt with the right to labor at one's chosen occupation or trade, but that case is more often remembered and cited for Justice Field's further explanation of that right and its underlying asset, our labor. Justice Field, concurring and joined by three other justices:

"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***

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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*** . . . Adam Smith's Wealth of Nations, Bk. I. Chap. 10." [2] (emphasis added)

So, one's labor is not only his property, it is his "most sacred and inviolable" property. Thus, is it frivolous for the THM to conclude that those Code sections pertaining to the sale of property apply? ***The IRS seems to agree, since it applies a basis, albeit "zero", to labor, something it would not do if labor is not property.***

Applying the Code's provisions to the sale of their labor, then, we have the following progression:

1.**Section 61** indicates that ***gross income means all income, including income derived from "compensation for services"*** (which may or may not be the same as "compensation for labor"), but how do we "derive" income from compensation for services, or, for that matter, compensation for labor?

2. ***Butcher's Union*** and progeny and the IRS, by assigning a basis to labor, make it clear that one's labor is his property, so how does one "derive" income from the sale of property?

3. **Section 64** informs us that the ***income from the sale of property (which would include the sale of one's labor) is only the gain derived from the sale or transfer***, so we know that the income derived is not the total price, gross receipts, but only the gain.

4. ***Stratton's Independence*** and ***Doyle v. Mitchell Bros.*** agree, saying that income is the gain derived from the conversion of capital, labor or both, and that gross proceeds must first be applied to restore what was given for them in order to determine whether there is any gain, so how do we determine what part of gross proceeds received for one's labor is gain?

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5. **Section 1001** tells us that the gain is that part of the price that is in "***excess of the amount realized therefrom over the adjusted basis***", and directs us to Section 1011, so what is the "basis" for our labor?

6. The IRS contends that the basis for one's labor is "zero", but not only does it admit by omission of that THM objection from its official list of frivolous arguments and by its silence that it has no legal authority for that contention, ***the failure to deduct a basis for the transfer of property in order to determine—derive— gain, or income, is in direct conflict with Sections 61, 64 and 1001 of the IRC***, so, again, what is the basis for one's labor (really . . . not based on an imaginary, concocted "zero basis" rule)?

7. **Sections 1011, et seq.** provide that the basis for the sale of property is either the cost of the property or, in cases such as a gift or legacy where there is no cost, the value of the property, so what is the cost of one's labor?

8. One's labor is conferred for the benefit of another at the ***expense*** of personal physical or mental exertion and at the ***expense*** of time out of one's life span and work life span, ***expenditures*** that cannot be restored for any amount of the gross proceeds. Likewise, the working American's ***investment*** of personal exertion and ***expending***/depleting life time, what can be considered his "human capital", do not readily lend themselves to expression in pecuniary terms. So if the basis is the cost it would be impossible to determine what part of the remuneration received for one's labor is basis and what part is in excess of the basis. If not its cost representing one's human capital investment, then, what would the basis be?

9. If the cost cannot be determined, we are left only with "value" as a basis, so how does one determine the value of his labor? Is it an average of amounts paid and received by willing buyers/willing sellers on the open market for a particular skill or trade? Or is value too personal for such a process, since one laborer, electrician, butcher, baker or candlestick maker may possess more expertise or skill than the next, may perform more efficiently or more productively than the next? It would, then, seem impossible to establish a basis according to value.

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10. The Supreme Court advises us in ***Eisner v. Macomber*** that unless a specific amount of any transfer or transaction can be designated as profit or income and severed from the capital (basis) for separate use and enjoyment, then no income has been derived from the transaction, and

11. In ***Commissioner v. Glenshaw Glass*** the same principle applies, albeit in terms of "accessions to wealth" instead of "gain" and "realized and available for separate use" instead of "derived from and available for separate use", and while personal earnings may add to one column of one's "balance sheet", the loss of his property, labor, being the expenditure of personal exertion and depletion of his remaining time to work and to live, his human capital investment, have diminished his total patrimony, so it would be impossible to say what part of those earnings represent an "accession to wealth" and designate that amount as realized and available for separate use".

12. It is, therefore, impossible to assign a specific amount as the basis, whether by virtue of cost or value (and that would include the impossibility of arbitrarily assigning the specific number "zero", to one's labor, his "most sacred and inviolable" property) and, likewise, it is therefore impossible to determine what, if any, of the remuneration received for one's property in the form of labor exceeds an indeterminable basis.

13. Thus, according to Sections 61, 64, 1001 and 1011, et seq., and according to the Supreme Court, it is equally impossible for income to be ***derived from*** compensation for one's own labor.

Is this reasoning unreasonable? Is this reasoning and its conclusion frivolous? Or is it based upon a rational and objective reading of the letter of the law and the pronouncements of its application by the highest court of the land? Whether one agrees or not, it cannot be seriously contended that the conclusions of the THM relative to the derivation of income from personal earnings are without foundation in law.

The IRS's Response

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The IRS's response, that one's labor has a basis of zero, i.e., that his labor is without any expenditure on his part and without any value to either the seller/laborer or the purchaser/employer, has been incorporated into the general discussion of the THM's findings and conclusions above, but in order to be as thorough in attention to both sides of this argument, we must also mention the IRS's other claims made in its "The Truth About Frivolous Tax Arguments" publication wherein it contends that any claim that wages or other personal earnings are not 100% profit is a frivolous argument.

In that publication the IRS contends:

"For federal income tax purposes, "gross income" means all income from whatever source derived and includes compensation for services. I.R.C. § 61."

The IRS's description of **Section 61** is false and deceptive, making the IRS's position in this regard not only frivolous, but fraudulent.

Straining to bend the law beyond its breaking point in order to arrive at the conclusion that the Code makes wages and salaries, etc., "income", the IRS has had to distort and misstate the substance of **Section 61** by the substitution of "and includes" for the true language of the section, "including". While this may appear to be a minor change, its effect is to totally misstate the substance of the section.

The IRS's misrepresentation of **Section 61** states that "gross income" a) means all income from whatever source derived, **AND** b) **includes** compensation for services. But here is what **Section 61** actually says:

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

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

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Section 61 does not say that gross income includes compensation for services. On the contrary, it says only that gross income means income (which does not define "income") derived from whatever SOURCE. The section goes on to identify those ***SOURCES*** as "***including***", ***NOT "and includes"***, compensation for services. Thus compensation for services is not gross income, but merely one of the sources from which income may (or may not) be derived.

Section 61 does not define "income" nor does it tell us how income is derived from the various sources listed, but to demonstrate the true meaning it is helpful to restate the section using terms that are known to everyone:

Fruit juice means all juice from whatever fruit derived, including oranges, apples, peaches, pears, etc.

Does that statement mean that the term "fruit juice" includes oranges and apples? Or does it say that oranges and apples are fruits from which fruit juice may be derived? Of course, it means the latter.

In order to have **Section 61** say what the IRS wants it to say, it has substituted "and includes" for "including", completely altering the meaning of the language, lying about what the section actually says. What that false statement does is to convert our fruit juice definition to "Fruit juice means all juices from whatever fruit derived 'and includes' oranges and apples."

Is an orange or an apple fruit juice? Well, neither is compensation for services 100% profit or gain, i.e., "income". Gross income is only the income (profit or gain) that can be **derived from** compensation for services, just as fruit juice is only the juice that can be **derived from** oranges and apples.

We all know how to squeeze juice from an orange, but how do we squeeze profit or gain from a financial exchange? In other words, how does one "derive income" from any transaction? **Sections 1001**, et seq. set out the rules for determining what part, if any, of an exchange of property for money is "profit" or "gain"—income. In every instance the law provides that before

any profit can be "derived" from a transaction the "basis" must be deducted from the price paid. Basis in every instance described in those sections of the code is either the cost or the value of the property.

As demonstrated above, one's labor is not rendered for another without cost nor is it without value. Laboring for a living is always at the expense of time out of one's life span and working life span, eventually depleting that time entirely. It is at the expense of one's exertion, energy, knowledge, skill and talents, all *expended* for the benefit of another. Nor can one's labor be without value, since if that were the case who would pay for it? As a practical matter, one's labor must be worth more than he receives for it because if it were not the employer could not resell that labor for a profit.

The IRS knows that one's labor is not only his property, but his most "sacred and inviolable property". ***Butcher's Union v. Crescent City Co.***, *supra*. Yet it contends without any lawful basis whatsoever that money received in exchange for that property is 100% profit. ***None of the basis sections provides for a "zero basis" for any transaction, nor do any of those sections authorize assigning any single, arbitrary number, whether zero or otherwise, to every transfer of any particular kind of property***.

So where does the IRS get the notion that moneys received in exchange for labor have a "zero basis"—having neither cost nor value? It has dreamed it up, fabricated the "zero basis" rule for wages and salaries received for one's property, his most "sacred and inviolable" of property, at that. Its omission of the THM's "zero basis for zero basis" objection from its official list of frivolous arguments admits that it has no legal authority for assigning "zero" as a basis for labor or for any other property for that matter.

Since it is impossible to assign a specific value for our labor, it is also impossible to determine what part, if any, is profit and the Supreme Court has made it very clear to the IRS that where a profit cannot be clearly and distinctly identified and separated from the capital (basis for the property conveyed) no income can be derived from that transaction. ***Eisner v. Macomber***,

supra. And that is why the THM has concluded, and the IRS is unable to refute, that ***the only way one can derive (identify and separate) profit or gain—"income"—from labor is by selling the labor of another. That is the only way the THM can find to generate a known, identifiable, severable—DERIVED—profit from labor.***

So not only has the IRS had to lie about what **Section 61** says, it has also had to lie about what **Sections 1011, et seq.**, say and ignore the holdings of the Supreme court regarding how to determine how much, if any, of funds received in exchange for our labor is profit or gain—"Income".

The IRS goes on to contend that:

"All compensation for ***personal*** services, no matter what the form of payment, must be included in gross income. ***This includes salary or wages paid in cash, as well as the value of property and other economic benefits received because of services performed, or to be performed in the future***." (emphasis added)

Again, this statement, made in absolute and unqualified terms, misstates the law. To say that all compensation for services must be included in gross income is, again, to say that oranges and apples are all juice. Note, however, to the IRS's credit this time they have not purported that its statement is supported by any law. Is such a declaration, without any legal authorities cited in support of it, a cogent, authoritative legal argument? Or is it a baseless, frivolous claim?

Even the IRS, itself, does not believe that statement because it does not view gross receipts for compensation for services rendered by another as "gross income". ***Those buying and selling labor at a profit do not include the entire amount received as compensation for services as "gross income", nor does the IRS expect them to do so.*** Employers include only their profit in "gross income", so why is the IRS pretending otherwise in attempting to respond to the THM's claim that income cannot be derived from personal earnings?

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Reviewing **Section 61**, above, it is interesting to note that ***wages and salaries are not listed among the examples of "compensation for services" provided in Section 61***. And when did "compensation for services" become "***compensation for personal services***"? Where do we find services "***to be performed in the future***" in **Section 61**? Why does the IRS constantly rephrase and misrepresent the law when it states its positions? Could it be that the law as it is actually written does not support its arguments? Is the THM's interpreting the IRS's pattern of misrepresentation and exaggeration of Code provisions as an admission of lack of lawful authority an unreasonable assessment on the part of those in the THM?

"Fees, commissions, fringe benefits and similar items" are not the same as "wages and salaries", but if "compensation for services" was intended to mean "wages and salaries", wouldn't one reasonably expect that those would top the list? Why are "wages and salaries" not included in that listing? Why doesn't **Section 61** list "compensation for labor"? Why do the Code and the Secretary's regulations consistently refer to money received for labor as "remuneration" rather than "compensation"? Good questions, all, and for which the IRS has no answers.

The IRS also, however, relies heavily on several Supreme Court cases, contending that they support its position that wages and other personal earnings are 100% profit, i.e., "income". To begin with, it states in its "The Truth About Frivolous Tax Arguments", that:

"The Sixteenth Amendment provides that Congress shall have the power to lay and collect taxes on income, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration. U.S. Const. amend. XVI. Furthermore, the U.S. Supreme Court upheld the constitutionality of the income tax laws enacted subsequent to ratification of the Sixteenth Amendment in ***Brushaber v. Union Pacific R.R.***, 240 U.S. 1 (1916)."

The Supreme Court in the ***Brushaber*** case did find that the income tax is Constitutional, but not because the 16th Amendment authorized Congress to impose such a tax. *Brushaber* held that the income tax was Constitutional because it is an ***indirect*** tax, a tax imposed on taxable privileged

activities and measured by the amount of profit (income) derived from engaging in a taxable activity (See ***Stanton v. Baltic Mining***, 240 U.S. 103 (1916)) and, therefore, was not subject to the requirement of apportionment among the States (Art. I, Section 9, Cl. 4).

In fact, ***Brushaber*** held that ***the 16th Amendment did not grant Congress any additional taxing authority***, its only effect being to preclude the Supreme Court from considering the source of income in deciding whether the tax is direct, requiring apportionment, or indirect, not requiring apportionment. The Court warned Congress, though, that if the income tax were to be applied in such a way as to make it a direct tax (mandatory or imposed on person or property), it would strike it down for failure to comply with the rule of apportionment applicable to direct taxes per Constitution Article I, Section 9, Cl. 4.

But in this instance ***Brushaber*** is not cited in support of the holding in that case, but rather as supporting the IRS's claim that wages and personal earnings are 100% income and subject to the income tax although *Brushaber* did not deal with the IRS's application of the income tax to wages and personal earnings, nor has the Supreme Court done so to date.

Thus, the IRS is misrepresenting the holding in ***Brushaber***. Why? Could it be that because based upon ***Brushaber*** and ***Stanton***, *supra*, if the application of the income tax to the capital portion of one's remuneration for labor were to come up for Supreme Court consideration, *Brushaber*, *Stanton* and many other cases would necessitate its finding that the income tax, applied to wages, with which there is no privileged activity involved, would be a direct tax on property, and, hence, subject to the requirement of apportionment, and would, as it promised in *Brushaber* and as it did in ***Eisner v. Macomber***, *supra,* and ***Towne v. Eisner***, 245 U.S. 418 (1918), declare such an application to be unconstitutional?

The IRS goes on to list two other Supreme Court cases which it says support its contention that wages and personal earnings are 100% profit and subject to the income tax in their entirety:

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"Commissioner v. Kowalski, 434 U.S. 77 (1977) – the Supreme Court found that payments are considered income where the payments are undeniably accessions to wealth, clearly realized, and over which a taxpayer has complete dominion.

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

These cases, ***Kowalski*** and ***Glenshaw Glass***, are both cited as relevant to the IRS's position that receipts in compensation for one's own labor are 100% profit—100% "gross income". The amazing thing about the IRS's citation of these cases is that ***neither case had anything to do with wages or salaries or any other kind of compensation for labor!***

Still another misrepresentation!

Kowalski had absolutely nothing to do with remuneration for labor (nor with compensation for services). The controversy in *Kowalski* was whether a meal allowance for police officers, which was paid without regard to whether the officer was on or off duty, whether the officer purchased or ate a meal, or whether the officer was on vacation or sick leave, was gain . . . income. The meal allowance was paid ***above and beyond*** what the officers were paid for their time and effort . . . ***a gain that is distinct and apart from the exchange of money for labor***. The citation of this case is totally erroneous, so much so that it can be said to be an active misrepresentation of the case.

Glenshaw Glass* is even more remote from the issue of whether wages or salaries are 100% profit.** This case dealt with a ***company that had received compensatory and punitive damages in its settlement of a lawsuit against another company. The court held that the punitive damages were above and beyond the company's losses (damages) and were GAIN . . . income. ***Glenshaw***

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Glass had absolutely nothing to do with whether wages are 100% profit or gain . . . income, yet we find it here misrepresented as such by the IRS. The IRS also conveniently fails to point out that the "statute's words" were not those of Section 61, but rather Section 22(a) of the 1939 Code, which dealt with "net income", not "taxable income", a distinction we will defer exploring for another time.

When we, the authors of this discussion, in explaining the THM's reasoning, referred to ***Glenshaw Glass*** as a case dealing with the definition and determination of income we pointed out that it did not deal with wages or personal earnings. Why, then, does the IRS omit that point in its presentation? Why cannot the IRS afford the "luxury" of being equally objective and forthcoming?

The IRS is also fond of citing inferior court "holdings" as authority for its claim that "wages 'are too' income", but there are two serious problems with the IRS misplaced reliance on those inferior court "holdings". First, as the IRS admits, lower court cases are not binding on anyone other than the parties and, even then, only for the tax years adjudicated, and although we know that lower courts can and often do ignore Supreme Court holdings, we also know that their doing so cannot overturn the Supreme Court.

But a much more serious problem with the IRS's reliance on those inferior court holdings arises when we examine the holdings a little more closely. ***None of those cases cited by the IRS as "holding" that "wages 'are too' income" had that issue before them!!*** While the court may have made some kind of declaration to that effect all such declarations have been pure dictum, neither the holding by the court because the issue was not before it nor was the issue of whether wages could produce income, much less are income, a conclusion necessary in deciding the issues that were before those inferior courts. For examples see **Synopsis of "Are Too" Cases**.

If the IRS's position is true and correct and is supported by law then why does it find it necessary to lie, both about what Section 61 provides and what the basis sections, **Sections 1001**, et seq. provide, about the holding in *Brushaber*, and, now, about what these two cases hold and about

the actual holdings in numerous inferior court decisions? Is the THM being unreasonable—frivolous—in concluding that such misrepresentations and exaggerations are indicative that the IRS's position enjoys no truthful legal support?

What Is Income? Conclusion

The law, **Section 61**, does not support the IRS's argument that "gross income includes compensation for services" making that contention by the IRS frivolous, without a basis in law. In order to arrive at its frivolous conclusion the IRS has had to lie about the language of **Section 61**, changing it to something entirely different from what it actually states. Lying about **Section 61**, however, was not enough to arrive at the IRS's desired conclusion that one's labor is without either cost or value, that everyone's labor is worth an identical amount, $0.00, making everyone's wages or salaries 100% profit, so it also has had to lie about the basis sections, Sections 1001, et seq.

Compounding the IRS's misrepresentation of the Code is its misrepresentation of the holdings in ***Brushaber***, ***Kowalski*** and ***Glenshaw Glass***. The IRS's repeated misrepresentations of both the actual language of statutes and the holdings of court cases constitute not only a frivolous position advanced by the IRS, they rise to the level of fraud.

Accordingly, it can hardly be seriously suggested that the IRS has given the THM any cause to question its conclusions based upon the actual (not modified) statutes and the actual (not misrepresented) holdings of the Supreme Court. We, the authors of this discussion, have no hesitation in suggesting, however, that the beliefs of the THM, whether correct or incorrect, whether others may or may not reach the same conclusions from the statutory and jurisprudential authorities, are founded in sound reasoning and are supported by a reasonable interpretation of the law.

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[1] None of the authors of this discussion can recall any other case in which the Supreme Court seems to be actually shouting at Congress, repeating itself and using dashes to "speak" slowly as though to a foreigner having difficulty understanding English.

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[2] This famous declaration by Justice Fields has been recounted by the courts repeatedly and recently. See for example, *Doe v. Roe*, 958 F.2d 763 (7th Cir. 1992); *Hume v. Moore-McCormack Lines*, 121 F.2d 336 (2nd Cir. 1941); *Holden v. Hardy*, 169 U.S. 366 (1898). Note also that the *Butcher's Union* case was the seminal case from which the *Yick Wo* progeny of scores of cases recognizing the right to labor for a living as a fundamental, Constitutionally protected right, pursuant to the right to pursue happiness. *Butcher's Union* has been cited as authoritative over 200 times and as recently as July, 2010, and *Yick Wo* over 2,000 times!

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Taken from Innocents Revealed CD-ROM
Produced by Truth Attack
www.truthattack.org

Why do those in the Tax Honesty Movement (THM) believe the law does not make them liable for the federal income tax and that, not being liable, the law does not require them to file income tax returns?

The THM's search for a law that makes the typical working American liable for the income tax

Their Quest for the Law and Their Gleanings:

First and foremost among the beliefs of the Tax Honesty Movement is that the law does not make the typical working American liable for the federal income tax. For many years, now, Tax Honesty proponents have pressed the IRS to admit that there is no law that makes the average working American liable for the income tax. For as many years, the IRS has refused to respond, simply calling the question a "frivolous tax protester argument".

The THM contends that there is no statute imposing liability on American citizens working here at home. So is there? Or isn't there? This would appear to be the simplest of claims to either bear out or disprove, so why hasn't this claim been eradicated? Or is there a basis for this THM contention? If there is a basis, then it isn't "frivolous", is it? A reason to believe makes a belief reasonable, doesn't it?

For decades the IRS has refused to respond to the question, stating it is not required to say what statute imposes liability and that it is not required to answer such questions. When servants sit mute and sullen when answers are demanded by their masters can you fault their masters for doubting them and conducting an inventory of the family silverware?

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The IRS is also silent with regard to the absence of a specific liability provision in its list of "frivolous" arguments. The IRS web page on "frivolous" arguments does not list the absence of a liability provision as frivolous. So is it frivolous? Or is there a legal basis for it?

One senator responded to a constituent's inquiry that there is no such law, but went on to say that liability is implied. But as attorneys and tax professionals, not senators, we know that tax laws are strictly construed and that there is no such thing as an implied tax or an implied tax liability. The letter of the law alone rules, regardless of legislative intent, and if there is any ambiguity, that ambiguity must be resolved against the government and in favor of the citizen. See ***Gould v. Gould*** 263 U.S. 179, 187-8 (1923), and ***U.S. v. Merriam***, 263 U.S. 179, 187-8 (1923). This rule of strict construction applies to issues of not only what is taxed and how the amount of the tax is calculated, but to who is liable for its payment, as well. ***U. S v. Calamaro***, 354 U.S. 351 (1957).

Large rewards have been offered to anyone who can produce any statute imposing liability for the income tax on the average American working citizen. One of those, **a reward of $100,000**, is still offered and outstanding. No one—not one single person—has stepped forward to claim any of those rewards. Why not?

A search of the Internal Revenue Code reveals many references to liability and every single tax in the code has a **specific section**, usually titled "Liability for Tax" or "Persons Liable", that clearly and plainly identifies all those who are liable for the tax. Well . . . almost every single tax. The one and only exception? The income tax, Subtitle A.

Is it necessary to have a liability provision? Well . . . yes. Important enough that every other tax has a specific statute that clearly and plainly identifies everyone liable for its payment. A tax that fails to make anyone liable for its payment will not generate very much revenue. The Supreme Court has held numerous times (See ***Gould***, ***Merriam***, ***Calamaro***, supra) that unless one is clearly and plainly made liable by the letter of the law he is free of the tax even if it was the intent of the legislature to tax him.

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The Internal Revenue Code makes liability pivotal in many respects. For example, **Section 6001** provides that

"Every person LIABLE for any tax imposed by this title [and that would include the income tax, wouldn't it?] or for the collection thereof shall keep such records, render such statements, make such returns and comply with such rules and regulations as the Secretary may from time to time prescribe."

So if the law says you are LIABLE you must keep records, but if it does not you are not required to maintain any records. If the law says you are LIABLE you must make returns, but what if the law does not say you are liable? No return is required. If the law says you are LIABLE the regulations apply to you, but if not? No. And that would include the regulations on form and manner of filing returns.

That is a pretty big difference if one person is required to file an income tax return but his neighbor is not, don't you think? Congress has imposed all these duties, ***but only on those the law says are LIABLE for a tax***, so it would be important for Congress to say who those LIABLE persons are, wouldn't it?

Since knowing whether one is liable determines whether he is required to file a tax return, what does the IRS say about who must file an income tax return? In its 1040 Instruction Book the IRS's **Privacy Act Notice** states

"Our legal right to ask for information is Internal Revenue Code sections 6001, 6011, and 6012(a), and their regulations. They say that ***you must file a return or statement with us for any tax you are LIABLE for***."

What else hinges on there being a liability provision? **Section 6321** says that

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"If any person LIABLE to pay any tax neglects or refuses to pay the same after demand, the amount . . . shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person."

No liability imposed on one? No lien. Pretty important, isn't it?

How about **Section 6331**?

"If any person LIABLE to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax . . . by levy upon all property and rights to property."

If one is not liable then his property is not subject to seizure for the tax.

So knowing who the law says is LIABLE is very important, isn't it? One would think that is why every tax . . . well . . . almost every tax, has a specific liability provision to say who is liable so he will know whether he is required to keep records, render statements, make returns, comply with regulations, whether a lien can be imposed on his property and whether it can be seized for payment of the tax.

Let's look at one example to demonstrate how the law tells us who is liable for a tax. **Section 5001** imposes a tax on distilled spirits.

"There is hereby imposed on all distilled spirits produced in or imported into the United States a tax at the rate of $13.50 on each proof gallon and a proportionate tax at the like rate on all fractional parts of a proof gallon."

Notice that this tax is on **ALL** distilled spirits produced in or imported into the United States.

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Do you have any distilled spirits? The tax is imposed on ALL distilled spirits, domestic and imported. ALL would certainly include those in your liquor cabinet. So where are your distilled spirits records? Why haven't you been filing a distilled spirits tax return?

Well, before you reach for your nitro pills or your distilled spirits, let's look at **Section 5005**. First, notice the title, "Persons Liable for Tax", and then the statute itself, "The ***distiller*** or ***importer*** of distilled spirits ***shall be liable*** for the taxes imposed thereon by section 5001(a)(1)." Are you a distiller or importer? No? Then perhaps that is why even though you have distilled spirits and the tax is imposed on ALL distilled spirits, you are not required to keep records or to file a distilled spirits tax return. The law clearly imposes a tax on something you have, but it does not make you liable for that tax.

Is this an exceptional or unusual provision? No. Every tax in the Internal Revenue Code, with the sole exception of the income tax, has a **specific statute** stating exactly who is liable for that tax. Tax on wagers? Section 4071(a) imposes the tax and subsection (c), entitled "Persons Liable for Tax", tells us exactly who is liable for its payment, "Each person who is engaged in the business of accepting wagers". Ever gone to a casino or a race track? Now you know why you are not required to keep wagering records or file a wagering tax return or pay a tax on your wagers. Wagering Occupational Tax? See Section 4411.

Tax on petroleum? Section 4611. How about this one? Excise tax on Failure to Satisfy Continuation Coverage Requirements of Group Health Plans. Is not doing something a taxable activity? When something does not happen is that a taxable event? Who knows? But when it isn't done or doesn't happen Section 4980B, subsection (e), "Liability for Tax", tells us who is liable. Do you smoke, chew or dip? Section 5703 makes the manufacturer or importer, not you, liable for the excise tax on tobacco products.

So who does the law say is liable for the income tax? Who is liable and, therefore, must keep records, render statements, make returns and comply with regulations? Who can have liens for income tax placed against their property or their property seized for payment of the income tax?

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The income tax is imposed by **Section 1**. First, let's note the title of the sub-chapter, "Determination of Tax Liability", so wouldn't you expect that some section in this sub-chapter would tell us who is liable for the income tax? Then note the Part, "Tax on Individuals", which also would suggest that the tax is going to be imposed on ***someONE***, not just ***someTHING***. Titles and headings are not law, but that would lead one to believe we are at least in the right part of Subtitle A, the income tax law, to expect to see exactly who the law says is liable for that tax.

Now let's take a look at the letter of the law. **Section 1** "Tax imposed" a heading. Subsection (a) "Married individuals filing jointly and surviving spouses", more heading, and, finally, the statute:

"There is hereby imposed on the ***taxable income of*** [not ON] (1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and (2) every surviving spouse (as defined in section 2(a)), a tax determined in accordance with the following table: . . ."

and then it goes on to set out the rates of taxation.

Section 1(b), same thing, except that the tax is imposed on the ***taxable income OF*** heads of households and a different set of rates is provided. Subsection (c) is on the ***taxable income OF*** unmarried individuals, (d) the ***taxable income OF*** married individuals filing separately, and, finally, (e) the ***taxable income OF*** estates and trusts. In all those subsections the tax is not imposed on individuals, as the heading suggests, but is on taxable income. So what is taxed? Taxable income, that is, income within the meaning of the Constitution and the 16th Amendment that is derived from engaging in an activity that is within the taxing authority of the federal government, is the subject of the tax.

Now, do you have income? Does having income make you liable according to Section 1? Did having distilled spirits make you liable for the tax on ALL distilled spirits? No. It takes a statute to do that—a statute like Section 5005. The problem is that if you were to read all fifty-nine

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sections of Sub-chapter 1, "Determination of Tax Liability", you will find no statute that says who is liable for the income tax.

It—is—not—there, at least not in Subchapter 1, "Determination of Liability". There is a liability provision much later in Subtitle A of the Code, but as we will discover it has no application to the typical working Americans who make up the THM.

What about the rest of Subtitle A? After all, Subchapter 1, "Determination of Tax Liability", is comprised of only 59 sections. That is less than 4% of the 1,564 sections that make up the income tax law. A search of Subtitle A does produce a number of sections that contain the word, "liable", but only one of those actually says who is liable. **(Conduct your own searches of the Code)**

For example, Section 701 designates partners as liable for the taxes on income of a partnership, but only in their "individual capacity". The problem, however, is that a search, even of the entire IRC, fails to reveal any section that makes anyone liable for the income tax in his "individual capacity". Another example is Section 704, making certain partnerships liable for excess recapture of credits. Anything including the typical working American, yet?

Foreign corporations are specifically designated as the party liable for payment of the "Branch profits tax" imposed by Section 884 (which, incidentally, does impose the tax ***ON*** "any foreign corporation").

The only party, however, that is clearly and plainly identified in the income tax law as liable for the payment of any income tax is provided in **Section 1461**:

"***Sec. 1461. Liability for withheld tax***

"***Every person required to deduct and withhold any tax under this chapter is hereby made liable*** for such tax and is hereby indemnified against the claims and demands of any person for

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the amount of any payments made in accordance with the provisions of this chapter." (emphasis added)

Finally, a section that actually clearly and plainly makes someone liable for the tax. But what chapter is Section 1461 referring to when it says "under this chapter"? "This chapter" is ***"Chapter 3 - Withholding Tax on Nonresident Aliens and Foreign Corporations"!!*** Thus the liable party in this instance is anyone withholding tax on nonresident aliens and foreign corporations. (It is noteworthy in this regard that while most people are under the impression that a withholding agent is anyone who withholds income taxes, a look at the IRC's definition of a withholding agent tells us that "The term 'withholding agent' means any person required to deduct and withhold any tax under the provisions of section 1441, 1442, 1443, or 1461", Chapter 3, Withholding Tax on Nonresident Aliens and Foreign Corporations.)

There are no other provisions in Subtitle A (the income tax law) that clearly identify anyone as being liable for the tax imposed by § 1 other than those required to withhold taxes on foreign corporations and nonresident aliens. So, are those in the THM being "frivolous" when they conclude that there is no law making the typical working American liable for the income tax? Are they "defying" or "protesting" a tax or are they relying on the letter of the law?

The big question that has to be at the fore of anyone's mind at this point is "Why isn't there any law making the typical working American liable for the income tax? Didn't the Sixteenth Amendment authorize Congress to impose an income tax on any and all incomes? So, why doesn't Congress simply enact a section saying everyone is liable for the income tax?"

A good question and one worthy of exploration, but perhaps a better question is "Does it matter why?"

Unless the letter of the law makes one liable, then he is free of the tax. Look at what the Supreme Court said in ***U. S. v. Merriam***, *supra*:

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"On behalf of the Government it is urged that taxation is a practical matter and concerns itself with the substance of the thing upon which the tax is imposed rather than with legal forms or expressions. ***But in statutes levying taxes the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the Government and in favor of the taxpayer.***" (emphasis added)

The *Merriam* court goes on to quote Lord Cairns in *Partington* v. *Attorney-General,* saying,

"If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. ***On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.***"
(emphasis added)

In ***U. S. v. Calamaro***, 354 U.S. 351 (1957), the Supreme Court made it clear that the rule of strict construction applies specifically to the question of who is and who is not liable for the payment of a tax, without regard to implication, inference or even legislative intent. Thus, to suggest that in the absence of a clear and plain statutory imposition of liability one is not liable would seem supported by Supreme Court authorities.

If those in the THM can find no statute making them liable for the income tax, then is there a basis for their belief that they are not liable? If they can be liable only by the letter of the law and the letter of the law does not clearly and plainly impose liability on them, can they be said to be "frivolous" in their challenging the IRS's attempts to exact payment of the tax from them?

The IRS's Response

This discussion would be less than thorough and less than impartial if the IRS's position on this issue were omitted, so what does the IRS claim?

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For decades, the IRS made no claim whatsoever in response to the demands by the THM that it either produce a statute clearly and plainly imposing liability on them for the income tax or that it cease and desist in its attempts to collect from them. The position of the IRS was to simply call the challenge "frivolous" and to single the "tax protesters" out for retribution, through either administrative bullying or criminal prosecution.

Although the IRS is the one claiming to be entitled to payment, and, thus, the burden of proof would seem to lie with it to establish a legal right to such, that strategy was effective for many years, primarily because the challenges were all privately made by citizens responding to IRS demands, so they seldom came to the public's attention.

The publicity generated by the stand-off in the Ed and Elaine Brown case in New Hampshire, however, with the "Show Me The Law" signs shown on national television along with interviews in which Ed Brown stated that if the government would show him the law making him liable for the federal income tax he would submit, called the public's attention to the THM's demand that the IRS "show them the law" and put the IRS under some degree of pressure to respond.

In response to that pressure the IRS has broken its thirty year sulk and is now responding indirectly through its surrogate web sites such as “quatloos” and its “third party” advocates, such as Evans and Siegel, and a claimed "rebuttal" in its "Truth About Frivolous Tax Arguments" publication. Those sources have suddenly surfaced with two provisions they claim impose liability on all working Americans (although none have demonstrated enough confidence in their "statutes" to claim the rewards being offered).

First, the IRS has countered by referring to its own regulations, citing **26 CFR 1.1-1(b)**, which provides:

“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.”

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But how does that argument mesh with what we already know about the Code? We already know, for example, that according to Section 6001 unless the law makes one **LIABLE**, Treasury regulations, like **1.1-1(b)**, do not apply to him. So under the terms of Section 6001, unless there is a law making us liable, then a regulation that would not apply to us certainly could not do so.

Treasury regulations all fall into one of two categories, legislative and interpretive. Legislative regulations implement a statutory obligation, defining for the "taxpayer" how, when and where to comply with a duty imposed by the statute. ***Legislative regulations are very limited in number and are based upon a specific authorization.***

All other regulations, however, are called "interpretive" and represent only the Secretary's spin on what a statute means. ***Interpretive regulations do not have the force of law and impose no duties.*** ***Chrysler Corp. v. Brown***, 441 U.S. 281 (1979)

Treasury regulation § 1.1-1 is an interpretive regulation and has no binding effect on anyone. It does not have the force of law and when the IRS contends that its interpretations are "law", binding one to liability for a tax, it is being less than honest.

Neither legislative nor interpretive regulations, however, can exceed the scope or portent of the statute it either implements or interprets, and that includes defining those who are liable for a tax. ***U. S. v. Calamaro***, 354 U.S. 351 (1957). See also, ***Water Quality Ass'n v. United States***, 795 F.2d 1303 (7th Cir. 1986), where, citing and quoting ***Calamaro***, the court added:

"It is a basic principle of statutory construction that courts have no right first to determine the legislative intent of a statute and then, under the guise of its interpretation, proceed to either add words to or eliminate other words from the statute's language. *DeSoto Securities Co. v. Commissioner,* 235 F.2d 409, 411 (7th Cir. 1956); see also *2A Sutherland Statutory Construction* § 47.38 (4th ed. 1984). ***Similarly, the Secretary has no power to change the language of the revenue statutes because he thinks Congress may have overlooked something***." (emphasis added)

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1.1-1(b) is, according to the second number, 1, interpretive of Section 1 of the Internal Revenue Code (IRC) and purports to identify those liable for the income tax. There are problems, however, with the Secretary's non-binding "spin" on Section 1. ***First, while 1.1-1(b) purports to identify those liable according to Section 1, Section 1 does not state that anyone is liable for the income tax.*** How can an interpretation include something that is not there? Clearly, this interpretation exceeds the scope and portent of Section 1. See ***Calamaro*** and ***Water Quality Assn.*** Is it possible that the Secretary is attempting "***to change the language of the revenue statutes because he thinks Congress may have overlooked something.***"? *Water Quality Ass'n, supra.*

Second, however, is the curious reference to "**all** citizens of the United States." That would seem to include everyone born in the good ole US of A, wouldn't it? "All" is pretty "all"-inclusive, isn't it? Remember Section 5001's imposition of a tax on **all** distilled spirits? But if we look at the very next subsection, **1.1-1(c)**, we find out that "all" does not include "all", but only "all" those citizens described in subsection (c). Who is that? Is it you?

"(c) *Who is a citizen.* "Every person born or naturalized in the United States ***and subject to its jurisdiction*** is a citizen."

Most people believe that the federal jurisdiction extends to anyone and anything in the country, but that is far from correct. The extent of the federal jurisdiction is set out clearly in the Constitution and the limits of that jurisdiction were very well defined in a **1957 DOJ Report to Congress on the Jurisdiction of the United States government**.

But for the purposes of this exploration into the IRS's reliance upon **26 CFR § 1.1-1(b)** (conveniently overlooking the next subsection that discloses that "all" means only those "subject to its jurisdiction") there are two basic types of federal "jurisdiction", first, exclusive legislative jurisdiction and, second, subject matter jurisdiction.

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Exclusive legislative jurisdiction is geographically defined and extends to the District of Columbia and lands acquired by the federal government, with the State's consent, for naval yards, magazines, arsenals and other "needful buildings" over which the State has ceded jurisdiction, called federal "enclaves" (see Article I, Sec. 8, cl. 17) and the territories or possessions (see Article IV, Sec. 3, cl. 2). So if you live in Washington, DC, or on a federally owned "needful" facility over which the State has ceded jurisdiction to the federal government or in one of the territories, that would make you "subject to its jurisdiction", making you one of "all" the citizens described in the Secretary's spin on Section 1.

The federal government also has jurisdiction, the authority to govern, over certain activities within the States and those are enumerated in the Constitution in Article I, Section 8. Those include the power to regulate foreign commerce, trade with the tribes, trade with the territories, interstate commerce, the operation of a postal system, including post roads, and other limited powers such as bankruptcy, patents, copyrights, national defense and the coining of money. All other powers other than those enumerated in Article 1, Section 8, or in the enabling clauses of Amendments 13, 14, 15, 19 and 23, are reserved to the States and to the people (see Amendment X), i.e., ***excluded*** from federal jurisdiction.

Other than those few powers we are governed ONLY by the state governments and ourselves. In fact, the Supreme Court has held that inside the states, except for in those limited instances listed in the Constitution, it is "***as though the Union were not***", i.e., did not exist. ***Farrington v. Tennessee***, 95 U.S. 679 (1877)

Again, if one is engaging in any of those activities over which the federal government has jurisdiction, then he would be "subject to its jurisdiction", making him one of the "all" citizens described in the Secretary's gratuitous spin on Section 1. If not, however, while he may be a "citizen" for many other purposes, for the purposes of the income tax he is not.

Most Americans would be very surprised to learn that while we live and work in the united States (note the lower case for "united", as used in the title of the Declaration of Independence)

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we are not all "subject to" the jurisdiction of the (capital "U") United States government. Only you know where you reside and whether that is in DC, a federal enclave or territory and only you know whether you are engaging in any activity over which the Constitution grants the federal government regulatory authority. Are you? Who, then, is among the "all" citizens within the meaning of that term for the purpose of **26 CFR § 1.1-1**, the income tax? Not many of us, and, certainly, not the typical working American. And that is according to the Secretary's official interpretation of that section. ***So, if the IRS's boss, the Secretary of the Treasury, says one is not liable unless he is "subject to [the United States'] jurisdiction", but the IRS says that he is, whom does one believe?***

So, in summarizing, the IRS's position in relying on its own interpretive regulation is patently flawed from every angle:

1. **Section 6001** makes it clear that regulations like Section **1.1-1(b)** do not apply to anyone that is not liable for a tax imposed by Title 26, the IRC. To say that a regulation makes one liable, therefore Section 6001 makes the regulation applicable to one, thus making him liable is circuitous nonsense.

2. Interpretive regulations like Section **1.1-1(b)** are not binding and have no force and effect of law, so how can a nonbinding interpretive declaration legally bind one to liability for a tax? Quite simply, it cannot.

3. Neither interpretive nor legislative regulations can go beyond the scope and import of their underlying statute(s), but interpreting a section (Section 1) as making "all citizens" liable for the income tax when that section makes no one liable exceeds that restriction, making it null and void. ***Calamaro***, ***Water Quality Ass'n***., *supra.*

4. Finally, the "all"-inclusive scope of **1.1-1(b)**, "ALL citizens . . . " is illusory, since even having already exceeded the bounds of statutory scope and already exceeding the bounds of non-binding effect, **1.1-1(c)** makes it clear that "all" really means "all" of a small portion of the population,

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those citizens "subject to" the very narrow and limited jurisdiction of the United States government.

Given the IRS's erroneous reliance on its own regulation, calling its own interpretation of the law to be law, is it surprising that the THM's belief that they are not liable for the income tax is unshaken by this claim?

Second, in its "Truth About Frivolous Tax Arguments" the IRS contends:

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

"Furthermore, the obligation to pay tax is described in **Section 6151**, which requires taxpayers to submit payment with their tax returns."

We've already read **Section 1** and we already know that section makes no one liable, so this claim, certainly, requires no further discussion. In fact, in a recent case a motion to dismiss was filed claiming that there is no liability provision applicable to the defendant and, therefore, a tax due and owing, an essential element of the crime charged, is an impossibility. The government's response did not even mention Section 1, much less contend that it imposed any liability on anyone. For the IRS to rely on a statute that clearly and plainly makes no one liable is not only disingenuous, it is an insult to the public's intelligence.

The IRS then contends, though, that **Section 6151** renders everyone liable for the income tax, but is that correct? Who does Section 6151 apply to? Is it you? Is it the typical working American? Let's look at that section and see:

Section 6151. **Time and place for paying tax shown on returns**

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"General rule — Except as otherwise provided in this subchapter, when a return of tax is required under this title or regulations, ***the person required to make such return*** shall, without assessment or notice and demand from the Secretary, pay such tax to the internal revenue officer with whom the return is filed, and shall pay such tax ***at the time and place fixed for filing the return*** (determined without regard to any extension of time for filing the return)." (emphasis added)

Obviously, **Section 6151** pertains only to one ***"required to make such return"***. From our discussion of Section 6001 and the IRS's own position disclosed in its Privacy Act Notice, above, we know that ***the only persons required to file a return are those LIABLE for the tax***. How could **Section 6151**, then, apply to anyone who the law had not already identified as **LIABLE** for the income tax, thus requiring him to file an income tax return? It cannot and it does not.

The circuitous "logic" employed in the IRS's reliance on **26 CFR § 1.1-1(b)** is again being used to attempt to strain foreign substance from a section that does not make anyone liable.

Additionally, **Section 6151**, like **Section 6001**, applies to all Title 26 taxes for which a return is required, not merely the income tax. So why do all the other taxes have clear and specific liability provisions?

The THM believes that since there is no law making the typical working American **LIABLE** for the income tax the Code does not make them ones ***"required to make such return"***, so **Section 6151**, applicable only to those ***"required to make such return"***, cannot and does not apply to the typical working American, a fact admitted by the IRS's omission of the absence of a liability provision among its list of "frivolous arguments".

The THM is not, then, deterred with this response. They consider this statement by the IRS and its surrogates to be erroneous in that not only does **Section 6151** apply only to those whom the law, the IRC, clearly and plainly identifies as liable for the income tax, it is being cited as making someone liable when its only effect is to designate when and where one who ***is*** liable

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and, therefore, ***required to file a return***, must pay the tax. When and where? At the time and place fixed for filing the return.

Who Is Liable? Conclusion

Consequently, the THM finds no satisfaction of its quest for a liability provision in either the regulation, **Section 1.1-1**, or the statute, **Section 6151**, proffered by the IRS as such. The THM's immediate and confident response to the IRS's position is that it is false, misleading and clearly "frivolous", without basis or foundation in law.

An actual reading of **Section 1.1-1** ("all" of it, including Subsection (c)) reveals that it bears no weight of law and has no statutory foundation and even the most liberal reading of **Section 6151** readily reveals that it does not impose liability on anyone and merely applies to those upon whom liability is already imposed, those "required to make such return", and does no more than its title indicates, stating **when and where** the liable person is required to pay the tax for which he is **LIABLE**.

So, again, is it any surprise that the THM's belief that the typical working American is not liable for the income tax is, if anything at all, reinforced by the IRS's reliance on an inapplicable, non-binding, unfounded regulation and a torturously misinterpreted statute? If that is the best the IRS can come up with, wouldn't the THM be justified in considering the IRS's position an admission that there is no law making them liable?

Whether one agrees or disagrees and whether the THM is or is not correct, the statutory and jurisprudential authorities provide support for and justify the THM's belief that the typical working American is not liable for the income tax, liability for which is imposed only on withholding agents for non-resident aliens and foreign corporations.

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MEMORANDUM

WHO MUST FILE?

Taken from Innocents Revealed CD-ROM
Produced by Truth Attack
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Why does the THM believe that the law imposes no duty to file an income tax return on the typical working American?

The THM's Analysis

As we have seen from our discussion of the THM's quest for any statute imposing liability for the income tax on the typical working American, liability is the determining factor in identifying those required to file income tax returns.

Section 6001 clearly distinguishes between those liable and everyone else. Those ***liable*** are required to keep records. Those ***liable*** are required to render statements. ***Those liable are required to make returns***. And Treasury regulations, including those providing form, means and manner of filing returns, apply only to those who are ***liable*** for a tax. Everyone else, which the THM believes includes the typical working American, ***is not required to keep records, render statements, make returns or comply with regulations***, which would include those regarding form and manner of filing returns.

The IRS's **Privacy Act Notice** frankly and clearly discloses that the IRS's right to information called for in the Form 1040 is found in IRC **Sections 6001**, **6011** and **6012** and their regulations and states that ***"They say you must file a return or statement with us for any tax you are liable for."*** (emphasis ours, dangling preposition the IRS's)

The THM also knows from our discussion above that liability must be plainly and clearly laid by the strictly construed letter of the law (***Gould*** and ***Merriam***) and that liability cannot be imposed

by regulations, which cannot exceed the scope and import of the underlying statute (***Calamaro*** and ***Water Quality Assn***.).

After searching the entire IRC for a statutory imposition of liability for the income tax, the only section that was found is **Section 1461**, which we have also seen imposes liability for the tax only on those required to withhold taxes from payments to nonresident aliens and foreign corporations. Thus the THM reasonably concludes and believes that the only persons the letter of the law has identified as liable for the income tax are withholding agents for nonresident aliens and foreign corporations, and that, consequently, those withholding agents are the only person's required to file an income tax return.

Thus, the THM also has concluded that the typical working American does not fall into that set of persons upon whom the law imposes a duty to file an income tax return. This is not a tortured and forced interpretation, is it? Is this an irrational or "frivolous" analysis? Could a reasonable man, reading the law in a reasonable way, arrive at a similar conclusion?

The IRS's Response

Again, to be thorough and to be even-handed, we have to include in this compilation the IRS's side of the issue. Also, again, however, that response is telling. The IRS contends in its "The Truth About Frivolous Tax Arguments" publication that:

"The requirement to file an income tax return is not voluntary and is clearly set forth in sections 6011(a), 6012(a), et seq., and 6072(a)."

and

" Any taxpayer who has received more than a statutorily determined amount of gross income is obligated to file a return."

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What is missing in this response? We've already seen what the IRS has said about the requirement to file a return in the instructions for the 1040 and its **Privacy Act Notice**. Is the IRS changing its story?

Is this a misrepresentation by omission? ***The very code section setting forth the requirement to file a tax return is missing from this statement purportedly about the requirement to file a return.*** Let's compare this response with the IRS's original (and still currently published) position in its instructions for the Form 1040 (**Privacy Act Notice**, page 97 of the 2009 1040 instructions) clearly stating something different:

"Our legal right to ask for information is Internal Revenue Code Sections 6001, 6011, and 6012(a), and their regulations. They say that ***you must file a return or statement with us for any tax you are liable for.***"

Why is **Section 6001** mysteriously omitted in the IRS's "Truth About Frivolous Tax Arguments" when that is the first section cited in its own instructions regarding the requirement to file a Form 1040? What is it about that section that the IRS wants to conceal, or at least ignore?

And the discrepancy continues, progressing from what could be deception by omission to a possible active misrepresentation of the law. The IRS has changed "6001, 6011 and 6012(a)" to "6011(a), 6012(a) and 6072(a)", but it has also changed "you must file a return or statement with us for any tax you ***are liable for***" to "any taxpayer who has ***received more than a statutorily determined amount of gross income*** is obligated to file a return". But these two changes in the IRS's story are not the only conflicts between what the IRS says in the Form 1040 instruction book and what it is saying in this publication purporting to be the "truth".

There is also a more subtle, but equally significant, change which actually can explain, if not reconcile, the two conflicting versions of the IRS's position. ***In the Privacy Act Notice in the Form 1040 instructions the statement is about "YOU", the person reading the instructions.*** "You" may be a "taxpayer" or "you" may not be a "taxpayer".

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WHO MUST FILE?

But in its "Truth About Frivolous Tax Arguments" publication ***it is not "you"—which would include both those who are and are not taxpayers—but only the "taxpayer" whose obligation to file is addressed.*** A taxpayer, one who is required to pay the tax, would be one liable for the tax, so that statement would only apply to one ***LIABLE***, wouldn't it? The term "taxpayer" is defined as one who is "subject to" a tax (26 USC 7701(a)(14), i.e., a "person liable" for a tax or for the collection thereof (**Section 6001**). So why is that so important? By using "taxpayer" instead of "you", the statement presumes liability, allowing them to move to the second prerequisite for a filing requirement, income equal to or in excess of the standard exemption, **Section 6012**.

If the IRS's rebuttal had been directed to "you" instead of the liable "taxpayer", it would have had to leave **6001** in the statement and it would have said your requirement to file a return hinged on whether or not you are liable, not whether or not you had "received more than a statutorily determined amount of gross income". **Section 6012**, excluding those liable with gross income less than the standard exemption, is the ***second*** prerequisite for a requirement to file and would only come into play for those who are liable and, therefore, required by **Section 6001** to file a return.

Let's examine the conspicuously omitted section of the code, **Section 6001**, and see if we can find out why the IRS chose to omit that section by confining its statement to "taxpayers", who are by definition liable for the tax:

"Every person ***liable*** for any tax imposed by this title or for the collection thereof ***shall keep such records, render such statements, make such returns and comply with such rules and regulations as the Secretary may from time to time prescribe***."

Both the Privacy Act Notice in the instruction book for the Form 1040 and the mysteriously omitted code section, **Section 6001**, say that only those ***LIABLE*** for a tax are required to file a return.

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What about the other sections that are disclosed? What do they really say? **Section 6011(a)** begins with "When required by regulations . . . ", but who is "required by regulations" to do anything? Section 6001, above, makes it plain as day that ***only those LIABLE for a tax are obligated to "comply with . . . regulations"***.

But Section 6011(a) goes on from there to mention a familiar word:

a) General rule — When required by regulations prescribed by the Secretary any person made **liable** for any tax imposed by this title [*which would include the income tax*], or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations. (emphasis added)

So who is required to comply with regulations, including those indicating that a Form 1040 should be completed and filed? Only those persons **LIABLE** for the income tax.

What about the last section cited in the Privacy Act Notice? **Section 6012(a)** is often referred to by the IRS as the sole basis for being required to file a Form 1040, although we now know that the requirement is actually based on Sections **6001**, 6011 **AND** (not **OR**) 6012(a). **Section 6012(a)** actually adds a second precondition for a requirement to file, ***narrowing, not broadening***, that group:

"(a) General rule — Returns with respect to income taxes under subtitle A shall be made by the following:

"(1) (A) ***Every individual having for the taxable year gross income which equals or exceeds the exemption amount*** . . ." (emphasis added)

Notably absent from that section is any requirement to keep records, so how can anyone who kept no records complete a return? Nor does this section make anyone subject to regulations, including those regulations that specify the form, manner and place for filing returns.

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Section 6012(a) ***does not add any "filers" to those LIABLE for a tax, but rather actually excludes those who are liable but have gross income less than the standard exemption***. In fact, section 6012 is listed in the index of most IRC publications as "***exclusion*** from requirement to file".

In its response the IRS also adds another section, **Section 6072(a)**, which simply provides that those required to file an income tax return must do so no later than April 15 of each year. That section imposes a duty to file on no one, but it is cited as such by the IRS.

Thus, the IRS has misrepresented the law in an effort to call the THM's conclusions "frivolous". It has said one thing when mandated by Congress to disclose the legal basis for its right to return information and the filing of a return, but when responding to the THM's contention, it limits its response to liable "taxpayers". The Form 1040 instruction book is issued to the general public, taxpayers and non-taxpayers alike, but by restricting their rebuttal to the THM's analysis of the law only to "taxpayers", ***the IRS bypasses the underlying basic precondition for a requirement to file an income tax return . . . liability for the tax***.

Why? Because as clearly established above there is no statute imposing ***liability*** for the income tax on working Americans, an issue that we've already seen is admittedly not frivolous and not included on the IRS's official list of frivolous arguments.

When the IRS dodges, bobs and weaves, changing its story when challenged, speaking in terms of "taxpayer" as though that includes the general public but without establishing any liability on the part of the general public, much less working Americans, can one blame the THM for believing that their conclusions must be correct? Can one blame the THM for assigning little or no credibility to the contentions of the IRS?

Who Must File? Conclusion

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The THM can find no law making the typical working American liable for the income tax, and, tax laws being strictly construed, concludes that the typical working American is not required by law to keep records, render statements or to comply with regulations, including those designating form and manner of filing returns, and, above all, ***that he is not required by law to file an income tax return***. Is it unreasonable for those in the THM to believe that the law does not obligate them to file income tax returns? Could a reasonable man, examining the letter of the law and seeing the best the IRS has to offer in rebuttal as unfounded and even deceptive, reach a similar conclusion?

Whether one agrees or disagrees with the THM's conclusions it can hardly be said that those conclusions are without any authoritative support, and, seeing the authorities, both statutory and jurisprudential, upon which those beliefs are based, it is at the very least understandable that they could and do honestly and genuinely hold those beliefs. If those beliefs are genuinely held, correctly or incorrectly, then those in the THM are aware of no duty to file or pay income taxes, making their willful and knowing violation of such a duty an impossibility. They are innocent.

Some fun projects for "extra credit":

Project 1

Every employer knows that he is required to withhold income taxes his employees owe to the federal government and pay them in on a regular basis, right? The employer reports his withholding on forms using his Federal Employer's Identification Number ("FEIN" or "EIN"). Where does the employer get that number? By filing Form SS-4, of course. But how many of us have taken a close look at the form? Pull up the **SS-4** and see what it says about withholding. Anything there about the typical working American? Who does it mention . . . who does it not mention? Hint: Look at line 15.

Project 2

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Find the rule or regulation duly published in the Federal Register fixing the standard exemption as mandated by 26 U.S.C. § 151 and the Administrative Procedures Act.

Project 3

Find the rule or regulation duly published in the Federal Register fixing the tables of tax rates for 26 U.S.C. § 1(a)-(e) as mandated by 26 U.S.C. § 1(f) and the Administrative Procedures Act.

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WHAT IS (AND IS NOT) TAXABLE?

Taken from Innocents Revealed CD-ROM
Produced by Truth Attack
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Why does the THM believe that the income tax applies only to income derived from a very narrowly defined set of privileged activities that the Supreme Court says are "taxable" by the federal government and which does not include their laboring for a living?

Many of those in the THM have explored well beyond the question of who, exactly, is identified by the IRC as being liable for the income tax and upon whom the IRC imposes a duty to file an income tax return. As acknowledged elsewhere, if there is no liability clearly and plainly laid by statute imposing liability on the typical working American and, accordingly, no concomitant requirement to keep records, render statements or to file an income tax return, then all other questions and issues are merely academic.

Just as you might wonder why Congress failed to include any statute imposing liability and its accompanying duty to file an income tax return on the typical working American, their curiosity has been aroused, as well, and that curiosity, that desire to understand not only who the law does and does not make liable for the income tax, but "WHY?" is so overwhelming that exploring those other issues, such as what is and is not "income" and what is and is not "taxable" becomes irresistible.

As in other issues raised by those comprising the THM, in order to understand their conclusions we have to follow their path as they conducted an expedition into the wilderness of the IRC in search of an explanation. So, let's begin once again at the beginning. **Section 1** imposes a tax on "taxable" "income", so the subject of the tax must be both "income" and "taxable", but what income is "taxable"? If all income is "taxable" there would be no need to say "taxable income", so there must be some instances where income is NOT "taxable".

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It is obvious that the federal government would not have the power to tax someone for making and selling tortillas in Mexico City. It is also obvious that the States, independent and separate sovereignties, are as distinct from each other and the federal government as Mexico. So somewhere between Washington, DC, and Mexico City there is a line beyond which the federal government's taxing power cannot reach. Those in the THM believe they have found that line and the only way we can evaluate their discovery is to retrace their expeditionary travels.

As in the case of "income", it does not take long to realize that the IRC has no definition for the term. We know from the investigation of the meaning of "income", however, that the Supreme Court, in ***Eisner v. Macomber***, 252 U.S. 189 (1920), held that Congress cannot define Constitutional terms, such as "income", since if it could redefine the words of the Constitution it could redefine its own limitations. The same concept would surely apply where the term itself, "taxable", would be one that would delineate between what is within Congress' taxing authority and what is beyond that reach. So the absence of such a definition should come as no surprise to us.

The Supreme Court has held that Congress' intent in its imposition of the income tax was to tax to the "fullest extent of its authority". See, for example, ***Commissioner v. Glenshaw Glass Co.***, 348 U.S. 426, 429-30 (1955). So, the initial step of our inquiry is to conduct an inventory, or survey, of the scope of Congress' taxing authority.

What is the "fullest extent" of the federal government's taxing power?

A. What are the Constitutional limits on HOW Congress can tax?

Unlike the States, the federal government is a limited sovereignty with authority to exercise only those powers enumerated in its Constitution. It does not have a Constitution because it exists—it exists because it has a Constitution. It can, therefore, have no existence beyond the four corners of that document.

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While just about any premise is open for debate, few would argue with the common understanding that the States formed the federal government for the purpose of addressing mutual needs of the States and to exercise authority over those matters that required some degree of uniformity across the States. Examples of the former would, of course, be the need for a singular voice in matters of foreign policy, a unified national defense and the maintaining of military forces to meet that need. Another example would be the establishment and operation of a postal system, which would understandably include the building of post roads. Examples of the latter would be the authority to enact laws governing bankruptcy, to coin money and to issue and enforce patents and copyrights.

But what does the Constitution have to say about the power to tax? Several Articles pertain to taxation and a quick review would include the following:

Article I, § 2, cl. 3:

"Representatives and ***direct Taxes shall be apportioned among the several States*** which may be included within this Union, according to their respective Numbers... ."

Article I, § 8, cl. 1:

"***The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises***, to pay the Debts and provide for the common Defence and general Welfare of the United States; ***but all Duties, Imposts and Excises shall be uniform throughout the United States***... ."

Article I, § 9, cl. 4:

"***No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken***..."

To these provisions the Sixteenth Amendment has been added:

Amendment XVI - Status of Income Tax Clarified.

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"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."

Thus, one limitation on Congress' taxing authority is that, depending upon whether the tax is direct or indirect, all federal taxes are subjected to one of two rules. All indirect taxes, which would include duties, imposts and excises, are subject to the rule of uniformity, which has been held to mean that they must be uniform, including any graduated tax structure, from State to State. Direct taxes, such as per capita taxes, are subject to the rule of apportionment and must be apportioned among the States by population according to the census.

Since the rule that applies depends on which class of taxes each tax belongs to, it is important, then, to be able to distinguish between the two. One of the best sources for a thorough explanation (several thorough explanations, in fact, since at that time all nine justices rendered separate opinions) is in one of the first tax cases the Supreme Court heard, ***Hylton v. United States***, 3 U.S. 171 (1796), where at issue was a tax imposed on the use of carriages for the conveyance of persons. Another good source for a comprehensive understanding of the distinction between direct and indirect taxes is ***Pollock v. Farmers' Loan & Trust Co.***, 157 U.S. 429 (1895). Be forewarned that *Pollock* is a long and difficult read. The report includes both a very lengthy decision and a summary of the arguments of the parties, but for anyone wanting a complete briefing of the law of taxation relative to the two classes of taxes it is worth the time and effort.

A fair summary of those cases, ***Hylton***, ***Pollock*** and the cases discussed in **Pollock** is that ***direct taxes are mandatory taxes on either person or property.*** By mandatory is meant that they are ***incurred and owed by virtue of their imposition alone***, with no action or election on the part of the taxpayer. ***By requiring that all direct taxes be apportioned among the States the founders prohibited Congress' imposition of a mandatory tax directly on citizens of the States.*** This is consistent with the theme that threads its way throughout the Constitution whereby the founders sought to preclude the federal government from exercising any control over the people

themselves. Taxation is not only a means of raising funds, it is a means of governing conduct, and the founding fathers were well aware of that fact and guarded against the new federal government's exercising any control over their (the States') citizens.

Indirect taxes, on the other hand, are voluntary taxes on privileged activities and, in most instances, avoidable. Indirect taxes are voluntary in the sense that imposition alone does not create a tax liability. ***No tax liability is incurred unless and until the prospective taxpayer decides (exercises his own volition, hence, "voluntary") to avail himself of the privilege of engaging in the taxed activity***, such as manufacturing or the exercise of corporate privileges.

Indirect taxes are usually avoidable in that more often than not they can be passed on to those who benefit from the taxpayer's engaging in the privileged activity. The manufacturer either tacks the tax on to his prices, as in the case of the tire manufacturing tax listed on your receipt for your purchase of tires ("FET", meaning Federal Excise Tax), or simply includes the tax in the price, as in the case of alcohol or tobacco products, thereby passing the tax burden on to those who end up using the manufactured product or those ultimately benefiting from the privileged activity.

Thus, Congress can impose an indirect tax on a certain privileged activity, but no tax is incurred, due or owing unless and until the citizen elects to subject himself to the tax by engaging in the taxed activity or consuming the product whose price includes a tax. The price of almost every product purchased and sold in this country includes some form of indirect tax, whether manufacturing excise tax, or imposts and duties on imports, all of which are, ultimately, "avoided" by the taxpayer by passing that burden on to the end user/beneficiary of the taxed privileged activity.

But in any event, in the case of indirect taxes, whether the taxpayer, such as the manufacturer, or the tax payer (two words), such as the ultimate purchaser, the citizen has the last word on whether he will incur the tax. This restriction on Congress' ability to unilaterally impose a mandatory tax liability directly on a citizen, who always has the final decision on

whether he will avail himself of the privilege and incur the tax, or abstain and pay no tax, is also consistent with the founders' restricting federal government activities where the citizen, not the government, initiates contact, such as postal services, bankruptcies, patents and trademarks.

In all of those instances the federal government offers a service, but no contact is made with the public that is not initiated by the citizen and at the citizen's option. For example, the government can offer postal services or patents, but it cannot direct a citizen to mail a letter or parcel or to invent and patent something. Thus, an indirect tax could be reasonably compared to a kissing booth at the fair. The customer can decide to incur the expense of getting a kiss, but the government cannot grab a passerby, plant one on him and then present him with the bill any more than it can require him to manufacture or consume tobacco products.

Another analogy demonstrating the distinction between direct and indirect taxes would be to compare taxation to fishing, in which case the direct tax would be a spear gun or trawl, the indirect tax a hook baited with a privileged activity.

So, what kind of tax is the income tax? Direct? Or indirect?

If we simply apply what we now know about direct and indirect taxes to the income tax it would seem that the tax, particularly as it has been applied, is a direct tax, wouldn't it? After all, income is not an activity, much less a privileged activity, but is, rather, property. A tax on person or property is clearly a direct tax, isn't it? ***But the Supreme Court has held that it is an indirect tax and, therefore, subject to the rule of uniformity, not the rule of apportionment.*** In order to understand how and why a tax that appears to be on a thing, like "income", can be indirect we have to delve into some history.

The first income tax was imposed during the Civil War and was short-lived. In 1894, however, Congress enacted another income tax that was challenged as an unconstitutional, unapportioned direct tax in ***Pollock v. Farmers' Loan & Trust Co.***, 157 U.S. 429 (1895), noted above for its extensive review of tax classification.

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The 1894 income tax was enacted due to political pressure from working Americans who were bearing the brunt of the tax burden through higher prices for goods caused by protective tariffs and duties. The tax structure protected and served the interests of big businesses and extremely wealthy tycoons emerging from the industrialization of America, but imposed the entire burden of paying for those benefits on the American consumer.

The public was clamoring for a shift of that burden that would require big businesses like railroad, steel, manufacturing and the like to bear a share of the load, particularly since they were the primary beneficiaries of government activities relating to foreign commerce and relations. They wanted a tax imposed on the huge ***profits*** of these big businesses and tycoons and a commensurate reduction in the price elevating tariffs and duties borne by the entire public for the benefit of the few. An excellent source for understanding the political and economic conditions leading to demands for an income tax on big businesses and tycoons can be found in Idaho Senator Phil Hart's well-researched and well-written book, ***Constitutional Income: Do You Have Any?***

The ***Pollock*** Court, after a lengthy and very comprehensive discussion of the previous law and cases concerning the classification of taxes as direct or indirect, concluded that the 1894 income tax was a direct tax and that, being unapportioned among the States, the tax was unconstitutional.

What was unusual about ***Pollock*** is that it represented a departure from traditional considerations. In all previous analyses of classification of taxes the courts had considered mandatory versus voluntary, person or property versus privileged activity, and in some cases whether the tax could be "passed on" to the indirect, or ultimate, beneficiaries of the taxed activity, i.e., "avoidable".

But the Supreme Court in ***Pollock*** did not make its decision on those considerations alone. The ***Pollock*** court's decision was based primarily on the ***source of the income*** and, finding that ***where the source of the income was property that the burden of the tax was imposed on the***

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ownership of property. That approach, which was embraced by only five of the justices, introduced a totally new aspect in the direct vs. indirect issue, the ***source*** or ***burden*** analysis: ***If the SOURCE of the income is property, then the BURDEN of the tax is imposed on the ownership of property and, as such, it is a direct tax requiring apportionment.***

With the arrival of the Twentieth Century, no change having been effected by the 1894 Income Tax Act, the economic and political environment did not allow the public's demand for taxing the profits of big business to blow over. The super rich were becoming the ultra wealthy, the working man still bearing the weight of protective tariffs. While working America was straining to pay high prices caused by the protective tariff based tax structure, a new "royalty", an aristocracy consisting of big money, big banking and big industry "barons", who lived in palatial luxury, was growing and prospering. That led to Congress' enactment of the 1909 Corporate Excise Tax and, in the same year, its proposal of the Sixteenth Amendment, the purpose of which was to overrule ***Pollock so that a tax could be imposed on the profits of big business and its owners***, allowing tariffs and duties to be reduced, thereby shifting some of the tax burden off the working American consumer and onto the new aristocracy.

Thus, while some controversy exists regarding whether its ratification process was flawed, the Sixteenth Amendment was proclaimed by the Secretary of State, Philander Knox, to have been agreed to and appended to the Constitution in 1913:

Amendment XVI - Status of Income Tax Clarified.

"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."

If read out of its legal, historic and economic context, this amendment would seem to grant Congress a new power, creating a hybrid tax that is immune from the rule of apportionment without regard to whether it is direct or indirect. But the context and circumstances leading to its

adoption were not lost on the Supreme Court. Immediately after Knox's controversial proclamation Congress enacted another income tax, the 1913 act, which mirrored the 1894 attempt.

Once again, the income tax was challenged, this time in ***Brushaber v. Union Pacific R.R.***, 240 U.S. 1 (1916). Justice White, who was among the four dissenters in the *Pollock* case, was now Chief Justice White and wrote for what was now a unanimous, not divided, Supreme Court. Given today's common misperception of the Sixteenth Amendment it would probably be surprising to most to learn that the Sixteenth Amendment did not amend the Constitution, but merely clarified the manner in which the Supreme Court determined whether an income tax is direct or indirect, but that is exactly what the Supreme Court held in *Brushaber*.

The ***Pollock*** Court had introduced the "source, or burden, analysis" in classifying an income tax as direct, requiring apportionment among the States, but the Supreme Court held in *Brushaber* that ***the sole purpose and effect of the Sixteenth Amendment was to take that new test, source, away from the Supreme Court***, prohibiting the Supreme Court from considering the source of income ("from whatever source derived") in determining the class of taxes into which an income tax falls and that decision's ultimate determination of whether the tax was subject to the rule of uniformity or the rule of apportionment. ***Thus, once one reads the Brushaber decision he has to be stunned to realize that the Sixteenth Amendment applies only to nine people in the world, the nine justices of the Supreme Court!***

But ***Brushaber*** told us much, much more than that shocking revelation. The government argued that the Sixteenth Amendment had granted Congress a new, immense, taxing authority, the power to tax incomes from any source whatsoever and to tax that income directly, i.e., as a mandatory and unavoidable direct tax, a special direct tax that would enjoy immunity from the Constitutional mandate of apportionment among the States. If so, such a power would have made an incalculable change in the relationship between the federal government and the citizens of the several States because it would for the first time provide Congress with direct access to the public without having to go through the States.

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But the Supreme Court rejected that argument entirely, calling it erroneous, and went on to hold that the Sixteenth Amendment:

1. ***Did not amend the Constitution***, but merely clarified the means by which the Supreme Court could classify an income tax as direct or indirect;

2. ***Did not grant Congress any new taxing powers***;

and went on to add

3. ***That the income tax is an indirect tax***, in the "nature of an excise";

and to warn Congress that

4. ***If it were to apply the income tax in a manner in which it had the effect of a direct tax (i.e., mandatory or on person or property), it would subject the tax to the rule of apportionment.***

Certainly, this is not the current public's conception of the effect of the Sixteenth Amendment, but this is, with equal certainty, the law of the land. ***Brushaber*** is frequently cited as controlling, extant Constitutional law, having been cited as such in well over 400 cases since and as recently as October, 2010, only two months previous to this writing. Thus, the public's conception of the effect of the Sixteenth Amendment is a misconception, one fostered and nurtured by the IRS in many of its publications.

What the Court in ***Brushaber*** failed to do, however, was to clearly explain why a tax on a thing, on property, such as "income" would surely be, could be regarded as indirect, a tax on a privileged activity. The clarification was not long in coming. Only a few weeks later the Supreme Court handed down its decision in ***Stanton v. Baltic Mining Co.***, *240 U.S. 103* (1916). Chief Justice White, again writing for a unanimous court (8-0), reiterated the holding in *Brushaber*:

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"***The provisions of the Sixteenth Amendment conferred no new power of taxation*** but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged and ***being placed in the category of direct taxation subject to apportionment by a consideration of the sources from which the income was derived*** . . ." (emphasis added)

See also ***Peck & Co. v. Lowe***, 247 U.S. 165, 172-3 (1918); and ***Southern Pacific v. Lowe,*** 247 U.S. 330 (1918)

But that does not explain how a tax on "income", which is an object, property, not a privileged activity, can "inherently belong" in "the category of indirect taxation". If one is not already at the limits of his threshold for cognitive dissonance on learning that the Sixteenth Amendment conferred no additional power of taxation to Congress, he would certainly be at the verge of that threshold to learn that ***the income tax is not a tax on income!*** Well, that is exactly what the Supreme Court held in ***Stanton v. Baltic Mining Co.***:

". . . independently of the effect of the operation of the Sixteenth Amendment it was settled in *Stratton's Independence* v. *Howbert*, 231 U.S. 399, that such a tax is not a tax upon property as such because of its ownership, but a true excise levied on the results of the business of carrying on mining operations . . ."

What the devil does that mean? The decision in ***Stanton v. Baltic Mining Co.*** was very abrupt. It stated the problem, that the profits of the Baltic Mining Co. reflected not only gains, but part of Baltic's capital, the ore body that was being depleted every day, but without discussion or explanation simply cited ***Stratton's Independence v. Howbert***, 231 U.S. 399 (1913). ***Baltic Mining Co.*** addressed the same issue as that raised in ***Stratton's*** and stated that the income tax is a ***"true excise levied on the results of the business of carrying on mining operations", the activity, not the income.***

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Both Baltic Mining and Stratton's Independence operated mines, producing and selling the product of their mines. Both received profits from their ventures, and in both cases the unknown relative value of the depletion of their undefined but definitely finite ore body had not been deducted in arriving at the corporate profits. Both contended that the taxation of profits that include both gain and capital would be a property tax requiring apportionment.

In ***Stratton's*** the tax was the Corporate Excise Tax of 1909. As such, the tax was being imposed on both gains and capital, since capital in the form of the company's diminished ore reserves was included in the gross profits. In *Stratton's* ***the court agreed that if the profits themselves were being taxed, then both gain and capital being included in those profits, the tax would be a prohibited unapportioned direct tax.*** But it went on to hold that the tax is not a tax on profits, but rather ***a tax on the exercise of a taxable privileged activity, i.e., the manufacture of mining products and the exercise of corporate privileges***. So here is what the Court was talking about in *Baltic Mining*'s abrupt conclusion—*Stratton's Independence* at 416-417:

"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."

Now, we have a ***tax on an activity, the exercise of "a franchise or privilege"***, as the subject of the tax. In the case of *Stratton's Independence* the Corporate Excise Tax was involved and the tax, ***although measured by the income derived from exercising corporate privileges***, was not on the profits, which in that case admittedly represented both gain and capital, but rather on the exercise of corporate privileges and the manufacture of mining products. See ***Flint v. Stone Tracy***, 220 U.S. 107 (1911).

But in *Baltic Mining* the issue was not a corporate excise tax. It was the 1913 ***Income*** Tax, which ***is***, or certainly appears to be, imposed on income—***a thing—property***. So what the court does in *Baltic Mining* is to adopt the *Stratton's* approach, i.e., that ***the income tax is not really***

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imposed on income, a thing, but rather the engaging in privileged or franchised activities. The income, or profit, is merely the means for determining how much that tax will be.

Ergo, ***the income tax is genuinely an indirect tax, in the "nature of an excise", because it is not imposed on income itself—a thing—but rather the exercise of a privilege—an activity***. The exercise of a privileged activity is by any analysis an indirect tax, since there is no tax owed or due simply by its imposition. In order for the tax to be owed by a taxpayer or due the government the citizen must decide, voluntarily, to incur the tax by engaging in the taxed activity—by accepting and exercising the privilege. Thus it is a tax on a privileged activity that is voluntary and, since the business can and certainly will include the tax in its pricing, it is even avoidable. ***Income is not the subject of the tax, but merely the measure of the amount of the tax.***

Conclusion:

So now we know the rules governing and limiting HOW Congress can impose taxes. It is not permitted to impose a direct, mandatory tax directly on a citizen. Any indirect tax must be uniform from State to State and any direct tax must be apportioned among the States.

We also know what class of tax the income tax falls into—***it is an indirect tax on taxable privileged activities***, and we know that ***the income tax is not a tax imposed on income, but merely imposed on those privileged activities within the federal taxing authority ("taxable") and measured by the income derived from the exercise of those taxable privileges and franchises***.

The IRS's Response

Again, it is not only fair, but revealing, to air out the IRS's position and see how it stacks up against the law. In its "Truth About Frivolous Tax Arguments" publication the IRS identifies one of those "frivolous arguments" as:

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

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

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

What?

The constitutionality of the Sixteenth Amendment? The constitutionality of part of the Constitution? That issue has never been before the courts, much less "invariably upheld when challenged". There is still brewing a controversy over whether the Sixteenth Amendment was ratified by the requisite number of States, but that is a totally different issue and the courts have consistently refused to entertain the issue, calling it a "political" issue rather than a legal issue.

Are they wanting the reader to see that as the constitutionality of the income tax has been invariably upheld when challenged? Because it has not been "invariably upheld". See ***Eisner v. Macomber*** and ***Town v. Eisner***, for example.

And how does the IRS contend that ***Brushaber*** held that the Sixteenth Amendment "authorizes a direct nonapportioned tax upon United States citizens throughout the nation"?

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We just looked at the Brushaber decision and we know that the Supreme Court categorically rejected the government's argument that the Sixteenth Amendment authorized a "direct non-apportioned tax" and clearly held that the Sixteenth Amendment conferred on Congress no new taxing authority, much less that it authorized direct taxation of "United States citizens throughout the nation."

We also know that ***Brushaber*** has not been overturned and that it is still in full force and effect, having been cited as the law of the land in well over 400 cases since and as recently as October, 2010, only two months previous to this writing. So how can the IRS possibly have misread the case? In ***Brushaber*** the Court stated:

"The various propositions are so intermingled as to cause it to be difficult to classify them. We are of opinion, however, that the confusion is not inherent, but rather arises from ***the conclusion that the Sixteenth 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 . . ." (emphasis added)

In fact, the Brushaber Court not only rejected that premise, but also the government's argument that the amendment authorized Congress to tax any incomes from whatever source, holding that the Sixteenth Amendment granted Congress no new taxing authority whatsoever. See also ***Stanton v. Baltic Mining Co.***, *240 U.S. 103* (1916); ***Peck & Co. v. Lowe***, 247 U.S. 165 (1918); and ***Southern Pacific v. Lowe***, 247 U.S. 330 (1918)

But let's take a closer look at what the IRS is contending. While we are attempting to understand how the THM had drawn its conclusions and why the THM holds its beliefs, it is only fair to be equally interested in understanding how and why the IRS has drawn its conflicting conclusions from reading the same law.

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The IRS is not citing Brushaber as holding that the Sixteenth Amendment "authorizes a direct nonapportioned tax upon United States citizens throughout the nation", but rather Collins, an inferior court case, as holding that Brushaber so held!! Even a first year law student would know better than to cite an inferior court's rendition of a Supreme Court case as authority for contending that the Supreme Court held thus and so.

Brushaber can and does speak for itself and is as plain as day. Thus it would be impossible for the IRS to simply say it had discovered and relied solely on *Collins*, but neither looked at nor bothered to read the actual holding in *Brushaber*.

There is only one explanation for citing ***Collins*** as holding that ***Brushaber*** held etc., and that is that ***the IRS knows that it could not cite Brushaber as having held that the Sixteenth Amendment authorized a non-apportioned direct tax because the IRS knows that the Supreme Court in Brushaber held exactly the opposite from what Collins represented it to have held***, not only with respect to the authorization of a non-apportioned direct tax, but the expansion of the taxing authority to include "citizens throughout the nation". The IRS must know that because otherwise it would have simply cited ***Brushaber*** itself.

Its position also exposes a second very disturbing fact, that the IRS is keenly aware that the IRC is Constitutionally limited to income that is "taxable", within its authority, and liability for it limited to nonresident aliens and foreign corporations, whose activities in doing business in the U.S. are clearly within that authority. ***The misrepresentation of Brushaber in this instance clearly proves that the IRS is knowingly misapplying the income tax as though it were a Constitutionally prohibited direct, unapportioned tax***, something the ***Brushaber*** Court indicated would not be tolerated and something the Supreme Court slapped down in ***Eisner v. Macomber*** and ***Towne v. Eisner***, supra.

There can be no better example of the repeated and numerous attempts by the IRS to mischaracterize and misrepresent what it clearly knows is the law, and, therefore, the IRS's rebuttal to the THM's conclusion that the income tax is an indirect tax imposed on privileged

activities within the federal government's taxing authority and measured by income derived from exercising the taxed privilege, not only fails to bear weight with anyone who has bothered to read ***Brushaber***, but utterly destroys the IRS's credibility in any exchange, exposing the IRS as willing to lie, exaggerate and proffer its own strained interpretations and known erroneous holdings by others as controlling law in an attempt to justify what it knows is a misapplication of the income tax.

Conclusion:

The IRS's argument that *Collins*' holding that ***Brushaber*** held the exact opposite of what it actually held alters or takes precedence over the actual Supreme Court holding in ***Brushaber*** clearly demonstrates the willingness of the IRS to stoop to any contrivance, trickery and deceit in order to justify what it apparently knows is a misapplication of the income tax to working Americans.

When those comprising the THM see the IRS resorting to such deception and flagrant and frivolous concoctions and fabrications, it can hardly be any surprise that the IRS's rebuttal of the THM's conclusions fails to alter their beliefs. The THM's belief that the income tax is an indirect tax imposed on privileged activities within the federal government's taxing authority and merely measured by the amount of profit or gain, i.e., "income", derived from the exercise of such privileges, is supported and confirmed by nothing less than the United States Supreme Court itself and the only way the IRS can disagree with, much less impeach, that belief is to lie about and misrepresent the holdings of the Supreme Court.

B. What are the Constitutional limits on WHAT Congress can tax?

The Federal Government's General Taxing Authority

Now that we know that the income tax is an indirect tax and we know that the subject of the tax is privileged activities and the amount of the tax is measured by the amount of income derived

from engaging in the privileged activity, the only task remaining is to define the limits of Congress' taxing power relative to indirect taxation—what privileged activities does Congress have the power to tax?

Since common sense tells us that since Congress cannot define its own Constitutional limitations, the only way to know how far the federal government's taxing arm can reach is to look to the Supreme Court. Fortunately, the Supreme Court has given us very clear and straightforward tests that make it relatively simple to determine whether any activity is within that taxing authority, i.e., "taxable", or without that taxing authority, i.e., not "taxable"—what the Supreme Court calls "exempt".

It has long been the position of the THM that most Americans are not engaging in any privileged activity that is within reach of the federal government's taxing arm. We believe that an examination of the Supreme Court authorities defining the extent of that reach will explain why they believe that so strongly.

The principal case on any sovereign's authority to tax is the famous case of ***McCulloch v. Maryland***, 17 U.S. 316 (1819). Chief Justice John Marshall wrote for the Court which was tasked with determining whether Maryland could tax the Bank of the United States. At that time the States were regarded as what they were (and are today, whether they are regarded as such or not), freestanding, independent sovereignties, creators, not creatures, of the federal government. In order to determine that question the Court had to determine the extent of a sovereign's authority to tax and the Court held:

It may be objected to this definition, that the power of taxation is not confined to the people and property of a state.[3] It may be exercised upon every object brought within its jurisdiction. This is true, But to what source do we trace this right? ***It is obvious, that it is an incident of sovereignty, and is co-extensive with that to which it is an incident. All subjects over which the sovereign power of a state extends, are objects of taxation; but those over which it does not extend, are,***

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upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self-evident.

The sovereignty of a state extends to everything which ***exists by its own authority***, or ***is introduced by its permission*** . . .

and, the Court adds:

That ***the power to tax involves the power to destroy***; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied.

Also noteworthy, is that in defining the extent of the taxing authority of a sovereignty as co-extensive with its jurisdiction, and, particularly, in defining all without that jurisdiction to be ***exempt*** from that authority, we are not hearing this from one who is unsympathetic to the powers of government. Marshall was a staunch Hamiltonian Federalist. ***McCulloch*** is best known and remembered for its *expansion* of federal authority and his maximal views of federal authority are best evidenced in this ruling, where he holds that the Tenth Amendment's "not delegated" does not mean "not delegated" because it does not say "not *expressly* delegated" and that Article I, Section 8, Clause 18's "necessary" does not mean "necessary" because it does not say "*absolutely* necessary".

From this landmark case, which is still regularly relied upon, we can establish the following premises:

1. The ***taxing authority is an incident of sovereignty*** (and that would include the federal government despite its limited sovereignty status);
2. The ***taxing authority is coextensive with that to which it is an incident***;

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3. The ***power to tax therefore extends to all subjects over which the sovereign's power extends***; and
4. ***All subjects over which that power does not extend are "exempt"*** from taxation by the sovereignty.

So, now we have a standard with which to determine what is "taxable" and what is "non-taxable" or what Marshall terms "exempt". ***If the subject is within the sovereign power of a government then it is taxable, but, if not, it is exempt from taxation by that government.***

But the ***McCulloch*** Court did not stop there. It also gave us a very simple test to apply in order to determine whether something is within a sovereignty's power and authority to tax, taxable, or without, exempt. Sovereignty extends to two very simply defined sets of proposed subjects of a tax:

1. ***Those things that exist by its own authority***; and

2. Those things that are introduced by its permission.

An alternate test provided by the Supreme Court in *McCulloch* would be:

3. ***Those things that the federal government has the power to destroy (prohibit).***

It cannot be any simpler or easier than that. If something exists because the sovereign said so, by virtue of its authority to create it or to recognize its existence, or if something occurs only because the government permits it to occur, then it is "taxable". If a person, object or activity falls into either category then it is within the sovereignty of the government and also within the government's co-extensive taxing authority. On the other hand, however, if the person, object or activity proposed as the subject of a tax does not fall into one of those two categories, then it is "exempt".

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If, then, we were to examine the limits of the federal government's authority we also would be establishing the limits of its coextensive taxing authority. Let's review the enumerated powers Section of the Constitution, Article I, Section 8, and see if we can apply this principle to find some examples of each set.

Section 8 - Powers of Congress

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States; *(This clause is the general taxing authority clause, equipping the new federal government with the authority to tax. With the exception of the word "excise", however, which will be the subject of further discussion, the extent of that taxing authority is not defined.)*

To borrow money on the credit of the United States; *(Receiving interest on government bonds would seem to actually fit both tests, since the government bonds would exist by its authority and the payment of interest would require an agreement to do so, i.e., permission.)*

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; *(Since the federal government can regulate it can also prohibit—destroy—and require or establish conditions for its permission, so foreign trade, interstate commerce and trade with the tribes would be activities falling within the federal taxing authority.)*

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States; *(One could reasonably include becoming a citizen or availing one's self of bankruptcy protection would be federally taxable, although it seems it would be in poor taste to do so.)*

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To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures; *(This does not seem to include any activity on the part of anyone other than the government so would not seem to provide any additional subjects of taxation.)*

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States; *(Certainly, the power to prohibit, i.e., destroy, would make counterfeiting a taxable activity and, since Congress has given the Federal Reserve Bank its permission to counterfeit money, a "privilege or franchise" of the highest order, Congress would also be able to tax the Federal Reserve for that activity.)*

To establish Post Offices and Post Roads; *(Postal charges and tolls on federal highways, which are forms of taxation, would seem to be within the federal sovereignty and, hence, its coextensive taxing authority.)*

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries; *(Privileges or franchises flowing from patents and copyrights would certainly fall within those privileged activities that exist by the federal government's authority, so the exercise of such privileges would be within the federal taxing authority.)*

To constitute Tribunals inferior to the supreme Court; *(Accessing federal courts to address legal disputes would definitely be an activity that would not exist but for the federal government's authority to create those courts. Thus, the filing fees and court costs assessed, another form of taxation, would be within the federal government's taxing authority.)*

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations; *(Pirate taxes would be a bit unusual, but apparently within the taxing authority although enforcement of those taxes could present an interesting challenge.)*

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water; *(Letters of Marque would be a way to, perhaps, enforce the piracy taxes*

authorized by the previous clause, much like the power to impose a counterfeiting tax on the Federal Reserve Bank.)

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years; *(Participation in the military, whether as a soldier, civil service employee, vendor or contractor, would certainly be within the federal taxing authority since the activity exists by the federal government's authority and one's participation would require the federal government's permission.)*

To provide and maintain a Navy; *(The same can be said regarding those participating in the Navy, whether as seamen, employees, vendors or contractors.)*

To make Rules for the Government and Regulation of the land and naval Forces; *(Same as the two previous clauses.)*

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions; *(Those participating in any activity relating to the deployment of the Militia for federal purposes would be exercising privileges that would meet both the existence by authority test and the permission test, thus would fall within the federal government's sovereignty and its coextensive taxing authority.)*

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress; *(Same as for the previous clause.)*

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; And *(It would*

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seem that this provision giving exclusive legislative authority in the District of Columbia and federal enclaves would extend federal sovereignty/taxing authority over any privileged activity within that geographic description.)

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof. *(This clause applies only where the previously enumerated powers are concerned, so would not be an expansion of additional powers or subjects of taxation.)*

We also have:

Article IV, Section 3, Clause 2

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; . . . *(This would extend sovereignty/taxing authority to any privileged activity within the territories or other property of the U.S.)*

The enabling clauses for Amendments 13 (abolition of slavery), 14 (citizenship rights), 15 (race no bar for voting), 19 (women's suffrage) and 23 (presidential vote for DC), do not seem to expand the domain of the federal government's sovereignty other than to include enforcement of rights, rather than privileges. Those rights neither exist by the government's authority nor require the government's permission, so it would appear that the coextensive taxing authority of the federal government is not enlarged, either.

So, those items that meet the McCulloch test for being "taxable" activities would seem to be the only activities that the federal government can tax, all other privileged activities being, as Marshall termed it, "exempt". Under this analysis would one's working for a living within a State in any fashion other than those activities described above be a taxable activity? Or would that activity be outside that scope—"exempt" from federal taxation?

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At this stage of our survey of federal taxing authority would it be reasonable for a working American, earning a living by any activity other than those listed above, to conclude that thus far his doing so would fall into the category of activities ***exempt*** from federal taxation?

In *McCulloch*, the decision of the Court was that the sovereignty/taxing authority of one government excludes the sovereignty/taxing authority of another, since it considered the notion that any sovereignty would have the power to destroy/tax that which another sovereignty had the right to create to be "repugnant" and insupportable.

In that case the Court also said that was especially true where the laws of one were considered to be supreme to the conflicting laws of the other. Since in ***McCulloch*** the question was whether a State could tax a creature of the federal government, what about the opposite scenario, where the federal government might propose to tax a creature of a State? What about taxing a privileged activity that exists by the State's authority or is introduced only with the permission of the State? Are both sovereignties, federal and state, mutually exclusive or is the concept of exclusive sovereignty enjoyed only by the federal government?

The Supreme Court has answered that question, clearly recognizing that where the State is sovereign its law is supreme and the federal law cannot intrude, either by legislative regulation or under the guise of taxation. In ***Farrington v. Tennessee***, 95 U.S. 679, 685 (1877), the Supreme Court held that in those areas where the State has dominion it is "***as though the Union were not***", i.e., did not even exist. Surely, then, respecting anything within that State's realm the law of the State would be the supreme authority, would it not?

Thus, just as the State's power of taxation may not be exercised over those items within its borders where federal jurisdiction is supreme, the federal government's authority to tax may not be exercised over those items or activities over which the jurisdiction of the State government is supreme. The principle is further reinforced by the Supreme Court again, in ***Bailey v. Drexel Furniture Company (Child Labor Case)***, 259 U.S. 20(1922), in which case the Supreme Court struck down a federal tax on the employment of children. Chief Justice Taft, wrote:

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"It is the high duty and function of this court in cases regularly brought to its bar to decline to recognize or enforce seeming laws of Congress, dealing with subjects not entrusted to Congress but left or committed by the supreme law of the land to the control of the States. ***We can not avoid the duty even though it require us to refuse to give effect to legislation designed to promote the highest good. The good sought in unconstitutional legislation is an insidious feature because it leads citizens and legislators of good purpose to promote it without thought of the serious breach it will make in the ark of our covenant or the harm which will come from breaking down recognized standards***. In the maintenance of local self government, on the one hand, and the national power, on the other, our country has been able to endure and prosper for near a century and a half.

"Out of a proper respect for the acts of a coordinate branch of the Government, ***this court has gone far to sustain taxing acts as such, even though there has been ground for suspecting from the weight of the tax it was intended to destroy its subject***. But, in the act before us, the presumption of validity cannot prevail, because the proof of the contrary is found on the very face of its provisions. ***Grant the validity of this law, and all that Congress would need to do, hereafter, in seeking to take over to its control any one of the great number of subjects of public interest, jurisdiction of which the States have never parted with, and which are reserved to them by the Tenth Amendment, would be to enact a detailed measure of complete regulation of the subject and enforce it by a so-called tax upon departures from it***. To give such magic to the word "tax" would be to break down all constitutional limitation of the powers of Congress and completely wipe out the sovereignty of the States."
(emphasis added)

And in ***Hill v. Wallace***, 259 U.S. 44 (1922), wherein the Court struck down a federal tax on grain contracts. Chief Justice Taft, again, wrote:

"Our decision, just announced, in the *Child Labor Tax Case, ante*, 20, involving the constitutional validity of the Child Labor Tax Law, completely covers this case. We there distinguish between cases like *Veazie Bank v. Fenno*, 8 Wall. 533, and *McCray* v. *United States*,

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195 U.S. 27, in which it was held that ***this court could not limit the discretion of Congress in the exercise of its constitutional powers to levy excise taxes because the court might deem the incidence of the tax oppressive or even destructive.*** It was pointed out that in none of those cases did the law objected to show on its face, as did the Child Labor Tax Law, detailed ***regulation of a concern or business wholly within the police power of the State***, with a heavy exaction to promote the efficacy of such regulation." (emphasis added)

Justice Sutherland, dissenting in *Burnes Nat'l Bank v. Duncan*, 265 U.S. 17 (1924), a case involving a national bank's right to appointment as executor of an estate, reminded us of this important principle:

"***It is fundamental, under our dual system of government, that the Nation and the State are supreme and independent, each within its own sphere of action; and that each is exempt from the interference or control of the other in respect of its governmental powers, and the means employed in their exercise***. *Bank of Commerce* v. *New York City*, 2 Black, 620, 634; *South Carolina* v. *United States*, 199 U.S. 437, 452, *et seq.; Farrington* v. *Tennessee*, 95 U.S. 679, 685. "How their respective laws shall be enacted; how they shall be carried into execution; and in what tribunals, *or by what officers;* and how much discretion, or whether any at all shall be vested in their officers, are matters subject to their own control, and in the regulation of which neither can interfere with the other." *Tarble's Case*, 13 Wall. 397, 407-8. ***Except as otherwise provided by the Constitution, the sovereignty of the States "can be no more invaded by the action of the general government, than the action of the state governments can arrest or obstruct the course of the national power***. *Worcester* v. *Georgia*, 6 Pet. 515, 570." (emphasis added)

Thus, the taxing authority of the federal government ends where the regulatory authority—sovereignty—of the States begin and are, therefore, limited to those areas of activities over which the States granted the federal government authority and those lands the States granted permission to the federal government to acquire for specific purposes. ***The concept of mutually exclusive taxing authorities applied to State taxation of federal creatures also applies equally***

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to debar federal taxation of creatures of the States and privileged activities within the State's realm, where its law, not that of the federal government, is supreme.

The Federal Government's "Excise" Taxing Authority—A "Cut" Above

All of those taxable activities are based upon the general taxing authority enjoyed by any sovereignty over those activities over which its sovereignty extends. What about specific taxing authority grants? Reference was made to the use of the word "excise" in Art. I, § 8, Cl. 1, above. That word alone has been interpreted as creating a specific taxing authority that goes beyond the scope of the sovereignty of the federal government, which ***McCulloch*** held was also the limits of its taxing authority.

In 1909 Congress enacted the Corporate Excise Tax, imposing a tax on the exercise of corporate privileges. Among those privileges is the very existence of the corporation, its ability to own property, to conduct business and to exist in perpetuity. The tax was imposed as a percentage of profits of the corporation. But how does that measure up with the general taxing authority as defined by the Supreme Court in ***McCulloch***?

Business corporations are typically creatures of the State, not the federal government. The privileges of existence, property ownership, etc., do not exist by the authority of the federal government, but rather that of the State, nor does the creation of a corporation require the permission of the federal government. We know from ***McCulloch***, ***Farrington***, ***Bailey*** and ***Hill***, above, that the federal government's proposed taxation of those subjects within the State's sovereignty exceeds the reach of the federal taxing arm. It would seem obvious, then, that such a tax would never stand Constitutional challenge.

The Corporate Excise Tax was challenged on that very issue in *Flint v. Stone Tracy*, 220 U.S. 107 (1911), but it was upheld. Did ***Flint*** overturn all those cases? No, it did not. ***McCulloch*** and other cases following all dealt with the general taxing authority, but in ***Flint*** the Court was

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looking at what it considered a specific grant of taxing authority apart from the general taxing power enjoyed by all sovereignties.

Article I, Section 8, Clause 1 grants Congress the power to lay and collect taxes, imposts, duties and ***excises***. The ***Flint*** Court interpreted the use of the word "excises" as being a special grant of taxing authority to lay and collect "excise" taxes. It then went on to conclude that the power to impose "excise" taxes included the power to tax those privileged activities generally taxed by "excise" taxes. In doing so, ***Flint*** created a new "taxable island" of activities that are beyond the federal government's sovereignty and within the States' sovereignty, making certain activities taxable by the federal government that are, in fact, otherwise beyond the sovereignty and the coextensive taxing authority of the federal government.

Flint identified those activities on "Excise Island" as:

"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. (emphasis added)

Accordingly, ***there are two distinct areas of limited taxing power afforded the federal government***. First, it has its ***general taxing power, which extends to all subjects of taxation within the sovereignty of the federal government***, i.e., "those subjects that exist by its authority or are introduced by its permission". And, second, ***what we can call "Excise Island", a specific set of privileged activities that are outside that sovereignty***, but shared with the federal government by the Constitution's including the word "excises" in Article I, Section 8, Clause 1.

Thus, Excise Island, surrounded by an exempt sea of all other State controlled activities, would be "inhabited" by the following privileged activities:

1. Manufacture, sale or consumption of commodities;
2. Upon licenses to pursue certain occupations; and
3. The exercise of corporate privileges.

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Anything else would be outside the taxing authority and, to use Marshall's word for it, "exempt" from federal taxation. Not exempt by legislative grace, but fundamentally exempt, by virtue of being outside the Constitutional empowerment of Congress.

Putting It All Together—The Completed Survey of Federal Taxing Authority

Now that we have completed our inventory, or survey, of the taxing authority of the federal government we can compile the survey into a list of privileged activities that are "taxable". Those that are "taxable" and produce profits ("income") would, then, be producing "taxable" "income", the subject of the tax imposed by Section 1.

We have established that there are, essentially, two spheres of federal taxing authority consisting of the general taxing authority enjoyed by any sovereignty as delineated by the Supreme Court in *McCulloch*, and what we have dubbed Excise Island, those activities that can be taxed under the authority to lay and collect excises as delineated by the Supreme Court in *Flint*. Since we are talking about an indirect tax, "in the nature of an excise", we need only concern ourselves with taxable activities.

General Taxing Authority—*McCulloch v. Maryland*

Coextensive with the federal government's sovereignty, which includes

1. Those activities that "exist by its authority"; and

2. Those activities that are "introduced by its permission".

An alternate test that might be applied would be

3. Those activities that the federal government has the "power to destroy" (prohibit).

A listing of those activities that fall within the general taxing authority would include:

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1. Receiving interest on government bonds—Art. I, § 8, Cl. 2
2. Engaging in foreign trade, interstate commerce and trade with the tribes—Art. I, § 8, Cl. 3
3. Becoming a naturalized citizen or availing one's self of bankruptcy protection—Art. I, § 8, Cl. 4
4. Counterfeiting—Art. I, § 8, Cl. 6
5. Sending letters or parcels through the U.S. Postal system (stamp tax) and using federal post roads (highways, taxes on carriers)—Art. I, § 8, Cl. 7
6. Exercising privileges flowing from a patent or copyright—Art. I, § 8, Cl. 8
7. Accessing federal courts to address legal disputes—Art. I, § 8, Cl. 9
8. Engaging in piracy on the high seas or offenses against the law of nations—Art. I, § 8, Cl. 10
9. Exercising privileges flowing from Letters of Marque and Reprisal—Art. I, § 8, Cl. 11
10. Participation in the U.S. military, whether as a soldier, civil service employee, vendor or contractor—Art. I, § 8, Cl. 12
11. Participation in the U.S. Navy, whether as a seaman, civil service employee, vendor or contractor—Art. I, § 8, Cl. 13
12. Engaging in any activity relating to the deployment of the Militia for federal government purposes—Art. I, § 8, Cl. 15
13. Engaging in any privileged activity within the District of Columbia or the federal enclaves—Art. I, § 8, Cl. 17
14. Engaging in any privileged activity within the territories or possessions—Art. IV, § 3, Cl. 2.

"Excising Authority"—*Flint v. Stone Tracy*

Those activities, albeit within State sovereignty, that are customarily subject to excise taxes:

1. Manufacture, sale or consumption of commodities;

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2. Upon licenses for certain occupations; and
3. Exercise of corporate privileges.

That is a total listing of every activity that the Supreme Court has recognized as within the taxing authority of the federal government. Have we found engaging in laboring for a living? Have we been able to include within either the general taxing authority, ***McCulloch's*** coextensive with sovereignty, or the specific taxing authority, ***Flint's*** excising authority, any activity engaged in by the typical working American?

Thus, it would seem entirely reasonable for those in the THM to conclude and believe that their working for a living is not within the federal taxing authority and, therefore, to use Marshall's term, "exempt" from federal taxation, wouldn't it?

The IRS's Response

In general, the IRS avoids the issue of "taxable" by presuming that there is nothing that is not taxable. Since 1954 it has often taken the position that the only exemptions are statutory exemptions, although throughout the history of the income tax treasury regulations (the Secretary's interpretation) have repeatedly instructed "taxpayers" to exclude from gross income any income that is ***"exempt by statute or by fundamental law"*** or ***"not taxable by the federal government under the Constitution"*** or ***"Constitutionally exempt"***. See **Examples of Regulations** acknowledging Constitutional exemption.

Those references, however, disappeared from the regs when the 1954 Act and Code were adopted. Was the Constitution amended? Was ***McCulloch*** or ***Flint*** overturned? No and no. The 1954 Code was represented to Congress as making no substantive changes in the 1939 Code. Only the order and some terminology were to have been altered, but without any substantive effect. One major change in terminology, however, was the very subject of the tax. In all previous income tax acts, from 1916 through 1939, the tax was imposed on "net income". The code and the regs were very clear in informing the "taxpayer" that he should exclude, in fact

not even mention, income that is "Constitutionally exempt", "exempt . . . by fundamental law", or "not taxable by the federal government under the Constitution".

In 1954, however, the subject of the tax was changed to "taxable income". Since the subject itself excluded non-taxable income, then the only explanation we can find is that the Secretary no longer deemed it necessary to inform the taxpayer that exempt income should be excluded when the imposition of the tax itself was confined to "taxable" income.

There is one vestigial remnant of those references to Constitutional exemptions. **26 CFR § 1.861-8T** informs the "taxpayer" that ***any income that is either in whole or in part exempt from taxation should be excluded from gross income***. It then goes on to provide four examples. ***None of those, however, are examples of what IS exempt*** as one would expect to see, ***but rather examples of what is NOT exempt.*** Oddly, ***none of those examples of non-exempt income involve any activity or source of income within the United States, all having only to do with foreign or territorial trade, which would, of course, be within the federal sovereignty (Art. I, § 8, Cl. 3 and Art. IV, § 3, Cl. 2, respectively) and, as such, taxable by the federal government under the Constitution.***

Given the fact that the sole liability provision that clearly makes anyone liable for Subtitle A taxes applies only to withholding agents for non-resident aliens and foreign corporations and that working for a living does not appear to be within either the general or excise authority of the federal government, is it unreasonable for the THM to consider that oddity to be an admission that the income tax does not extend to working Americans within the country? After all, if the income tax were to apply to all activities within the country, at least one of those examples would have involved domestic activity.

As seen above, the IRS has assumed the untenable position that the Sixteenth Amendment authorized Congress to impose a non-apportioned direct tax on incomes from any and every source whatsoever. However, we know from ***Brushaber***, ***Stanton v. Baltic Mining***, ***Peck*** and ***Southern Pacific*** that the Sixteenth Amendment did nothing of the sort.

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The Supreme Court categorically and without qualification rejected the government's argument that the Sixteenth Amendment created a unique class of taxes, a direct tax that would be immune from the apportionment requirement of Article I, Section 2, Clause 3 and Article I, Section 9, Clause 4, and even warned Congress that if an income tax were applied in a way that it had the effect of a direct tax it would not hesitate to strike it down unless it is apportioned.

And the Supreme Court has repeatedly, categorically and without qualification rejected the government's argument that the Sixteenth Amendment granted Congress authority to tax all incomes, regardless of the sources from which they are derived, holding time and again that the Sixteenth Amendment granted Congress absolutely no new or additional taxing authority.

Thus***, if an activity was outside the federal government's taxing authority before the Sixteenth Amendment then it is still outside that authority, i.e., Constitutionally exempt from federal taxation.***

The limits and narrow scope of the income tax law, are clearly and expressly stated in the IRC, that the ***tax is imposed only on "taxable" income***, and that enunciated by the Supreme Court, that the ***income tax is an indirect tax the subject of which is not an object or property (the income itself), but rather privileged "taxable" activities from which profit or gain ("income"), merely the measure of the tax, is derived***. The Supreme Court has also made it painfully clear that ***the Sixteenth Amendment did not enlarge Congress' taxing authority, which is still confined to those activities over which it holds sovereignty and those activities within the power to lay and collect excises as defined in McCulloch and Flint***.

But the IRS has assumed the position that the income tax is a direct tax, both mandatory and applicable to property, "income" whether profit or gain or not, which would relieve it of identifying which taxable activities to which it would apply. That position is in direct conflict with the totally contrary letter of the Code and enunciations of the Supreme Court. In order to do that the IRS has had to misrepresent the ***Brushaber*** holding by relying, instead, on a

misstatement of that holding by an inferior court in *Collins*, not only in spite of ***Brushaber***, but fully aware that it is propounding a falsified version of the true holdings in ***Brushaber*** and its progeny.

In addition to attempting to classify the income tax as a "non-apportioned direct tax", knowing that to be false, it has also misrepresented the holding in *Brushaber* and cases following, claiming that the Sixteenth Amendment granted Congress the additional authority to impose that direct tax on any and all incomes, even future incomes, on "citizens throughout the nation", and has treated gross receipts as "income" despite numerous Supreme Court holdings declaring that a tax on gross receipts is not an income tax, but a direct tax on capital.

Can anyone fault those in the THM from rejecting the IRS's warped and tortured account of the law?

What is (And Is Not) "Taxable"? Conclusion

We've now seen that there are Constitutional limitations on not only what, but how, the federal government can lay and collect taxes. Direct taxes, which are mandatory, i.e., due and owed by virtue of their imposition alone, and imposed on person or property, must be apportioned among the States and, thus, the federal government is prohibited from imposing a mandatory tax directly on citizens. Indirect taxes, taxes imposed on privileged activities, are voluntary because they are owed and due only if the citizen elects to become a "taxpayer" by engaging in the privileged activity subjected to the tax. All indirect taxes are subject to the rule of uniformity.

We have also seen that the Sixteenth Amendment did not grant Congress any new powers of taxation and that it did not create a "hitherto unknown" class of direct taxes that are immune from the Constitutional apportionment requirement. In fact, the sole effect of the Sixteenth Amendment is to prohibit the Supreme Court from applying the *Pollock* "source" or "burden" analysis in determining whether an income tax is direct or indirect. ***The Supreme Court has also instructed us that the income tax is an indirect tax and, therefore, voluntary, imposed not***

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on the income itself, which is merely the measure of the tax, but rather imposed on federally taxable privileged activities.

Through the holdings in *McCulloch* and its progeny and *Flint v. Stone Tracy*, we've been able to compile a complete inventory, or survey, of all activities that are within the taxing reach of the federal government, and none of those include laboring for a living.

So would it be unreasonable for those comprising the THM to conclude and believe that the income tax, even if it were to be amended to impose liability on them, still would not have any application to their working for a living or to the income, if any could be derived from that activity, realized from their personal labor? All of the THM's conclusions in this regard,

That the income tax is an indirect tax imposed on taxable privileged activities and merely measured by income derived from the exercise of the privilege taxed;

That the Sixteenth Amendment did not authorize a non-apportioned direct tax on any and all income no matter where or how realized nor did it grant to Congress any new taxing authority; and

That any privileged activity that does not exist by the federal government's authority or requires the federal government's permission, per ***McCulloch*** and cases following, or is included within the scope of the excise taxing authority, per ***Flint***, is Constitutionally exempt and therefore can produce no "taxable" income;

whether correct or incorrect, can be supported by compelling and clearly stated Constitutional, statutory and jurisprudential authority.

On the other hand, all of the positions and arguments adopted and propounded by the IRS in this regard are not only not supported by such authorities, but fly into the teeth of both statutory and Supreme Court authorities, forcing it to make contrived and irrational claims in order to defend

its positions and having to cite misstatements of Supreme Court holdings because the actual holdings are in direct contradiction to the IRS's claims.

So, can anyone fault the THM for disregarding the official, clearly false positions and declarations of the IRS that it is entitled to exact a portion of the gross receipts received by them in exchange for their personal labors? Is the THM's belief to the contrary unreasonable?

Is the THM turning a "willfully blind" eye to the law? Or is the IRS doing so, ignoring the clear-cut holdings in ***Brushaber***, ***Stanton v. Baltic Mining***, ***Peck v. Lowe***, ***SoPac v. Lowe***, ***McCulloch***, ***Farrington***, *The Child Labor Cases* (***Bailey v. Drexel Furniture*** et al.), ***Hill v. Wallace*** and ***Flint v. Stone Tracy***? Is the IRS being reasonable in totally disregarding all those Supreme Court cases and relying solely on an inferior court's (*Collins*) misstatement of the ***Brushaber*** holding?

Is it so difficult, then, to understand that after learning that there is no law making them liable for the income tax those comprising the THM would, out of an irresistible desire to understand why, go on to examine the Constitutional meaning of "taxable" and the actual effect of the Sixteenth Amendment, concluding that they are not engaging in any taxable privileged activity, the actual subject of the income tax, that could produce "taxable" income?

The people comprising the THM genuinely believe the law, they believe the Constitution, the Code and the Supreme Court of the United States. Is that an unreasonable reliance? In holding these beliefs, based upon those authorities shown above, are they willfully, i.e., with the intent to knowingly violate the law, violating a known legal duty—a crime?

We, the authors of this document, are convinced that the beliefs of the THM are genuinely and honestly held and that in resisting the IRS's attempts to exact payment from them they are not knowingly and willfully violating the law. Given the reasonable basis for those beliefs we also believe these people are entitled to the benefit of a doubt, your presumption that they are innocent and, as such, entitled to our protection from prosecution.

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[3] It is important to note here that the reference to "state" is state with a lower case "s", not State, as in Maryland or Virginia, but state, as in any government or sovereign body.

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Taken from Innocents Revealed CD-ROM
Produced by Truth Attack
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What is the basis for the belief by those in the THM that they have a God-given, fundamental right to earn a living by their own labor and that their exercising that fundamental right is tax-exempt—that laboring for a living is not a "taxable" activity?

If there is no law clearly and plainly imposing liability on the typical working American, then any further inquiry is not really necessary. If one were to have millions of dollars of income, within the Constitutional meaning of that term, in any given tax period, even if it were derived from his exercising a clearly taxable privilege, without any liability for the tax he would owe no income tax, would he? But it is impossible to simply stop there, put the books down and walk away. The question, "Why?", begs—demands—an answer. Why has Congress obviously, knowingly, chosen to omit such an essential provision from the law establishing such a significant source of revenue?

In examining the meaning of the words of **Section 1** imposing a tax on "taxable" "income", the THM has discovered that "income" has a specific legal meaning that is far narrower than its current vernacular usage and they have concluded that it is impossible to ***derive*** income, i.e., profit, from personal earnings. It has also concluded that working for a living is not among those privileged activities within the Constitutional taxing authority of the federal government. But the next inquiry is, since indirect taxes, such as the income tax, are taxes on privileged activities, is working for a living a privileged activity?

Perhaps the best and most succinct discussion of what a privilege is in its essence, as opposed to distinguishing between a right and a privilege, is actually found in a State Supreme Court case,

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Jack Cole Co. v. MacFarland, 337 S.W.2d 453, 206 Tenn. 694 (1960). In that case the Court was faced with a challenge to the State income tax based upon Tennessee's Constitution, which permitted the legislature to tax incomes insofar as they were derived from stocks and bonds that are not taxed ad valorem. In a direct and logical approach to the question the Court held:

The defendant contends that the tax is a privilege tax because the Legislature has designated the receipt or realizing of earnings or income [note the mutually exclusive disjunctive, earnings "or" income] ***as a privilege. Defendant cites numerous cases supporting the contention that the Legislature can name anything to be a privilege and then tax it.***

It cannot be denied that the Legislature can name any privilege a taxable privilege and tax it by means other than an income tax, ***but the Legislature cannot name something to be a taxable privilege unless it is first a privilege.***

* * *

Realizing and receiving income or earnings is not a privilege that can be taxed.

* * *

"***Privileges are special rights, belonging to the individual or class, and not to the mass***; properly, an exemption from some general burden, obligation or duty; ***a right peculiar to some individual or body***." *Lonas v. State,* 50 Tenn. 287, 307.

Since the right to receive income or earnings is a right belonging to every person, this right cannot be taxed as privilege.

This common sense treatment of the question is so obvious that it approaches being self-evident. ***Privileges belong only to the privileged, so if everyone has it, whatever it is, no one is "privileged", so it cannot be taxed as such.*** Although the court referred to the right to receive income, it also referred to privileges as a right, not a privilege or franchise, so it would appear that the court here was not distinguishing between taxable privileges and non-taxable rights, so much as that whether called a "right" or a "privilege", ***if it is common to all men, as opposed to***

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some limited set of persons who enjoy that "right" or "privilege", then it is not a privilege and, thus, is not taxable as such.

We often mistakenly or carelessly refer to rights as privileges and vice versa. How many times have you heard someone, even the courts, refer to our Fifth Amendment ***privilege*** against self-incrimination? Or a corporation's ***right*** to own property or to perpetual existence? ***But is engaging in laboring for a living a right possessed by everyone?*** Or is it a privilege, enjoyed only by the privileged? ***If it is a right, then is exercising an inalienable, fundamental right conferred by our Creator, not government, on every man, not "the few, the proud, the privileged", taxable by the federal government?*** Is that an activity that can be taxed by any government for that matter?

Extending and continuing with ***Jack Cole***'s common sense approach, if the power to tax is the power to destroy, as Chief Justice Marshall stated in ***McCulloch***, then is it plausible, or even coherent, to suggest that we abolished one government for failing to secure our rights in order "to institute [a] new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect [our] Safety and Happiness" and at the same time provided that new government with the power to destroy the rights that government was created to preserve and secure? Such a premise is not only insupportable on its face, it offends both reason and conscience. ***If we have a right, not privilege, to earn a living through our own labors, then, surely, the federal government, created to preserve that right and prohibited by the Constitution, including the Bill of Rights, from injuring or abridging that right, cannot rationally claim to be empowered to tax . . . empowered to destroy . . . that right.***

Our first question, then, is:

Do we, the People, have a fundamental, Constitutionally protected right to earn a living through our own labor?

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That question can only be answered by the Supreme Court, since neither the Congress, by statute, nor the executive branch, by fiat, has the power to define the limits of our rights nor their powers. So, what has the Supreme Court had to say about the question?

The case of ***Butcher's Union v. Crescent City Co.***, 111 U.S. 746 (1884), was mentioned in another segment to this presentation for the proposition that our labor is in fact our property, part of our patrimony, and, in fact, our most "sacred and inviolable" of property. That case, however, is even more notable for its recognition of the right to engage in labor for a living. At issue was whether a 25-year monopoly granted Crescent City on slaughter-house operations within a 1,145 square mile area of Louisiana was entitled to enforcement.

The majority held that it was not entitled to enforcement because no legislature could enter into an irrepealable act, restraining the prerogatives of subsequent legislators. Justice Field's concurrence in that case, however, was a harbinger of what would become a line of scores of cases ***recognizing that the fundamental right to earn a living through one's own labor at an occupation of his own choosing was part and parcel of our right to pursue happiness.*** In that opinion Justice Field stated:

"Among these inalienable rights, as proclaimed in that great document, is ***the right of men to pursue their happiness***, by which is meant ***the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give to them their highest enjoyment.***" (emphasis added)

Justice Field was not alone in his assessment. He was joined in his concurrence by Justice Bradley, who, writing for himself and JJ. Harlan and Woods, also concurred, but on the basis of Field's reasoning, stating:

The right to follow any of the common occupations of life is an inalienable right; it was formulated as such ***under the phrase "pursuit of happiness"*** in the Declaration of

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Independence, which commenced with the fundamental proposition that "all men are created equal, that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and *the pursuit of happiness*." ***This right is a large ingredient in the civil liberty of the citizen***. (emphasis added)

Only two years later, in ***Yick Wo v. Hopkins***, 118 U.S. 356 (1886), the Supreme Court made that pronouncement official, this time as a unanimous court. In that case at issue was a San Francisco ordinance prohibiting laundries from operating in wooden structures. The Court held that the ordinance was an unconstitutional impingement on the right of a resident alien, Yick Wo, to continue to operate his laundry business which was located in a wooden structure. The Court reasoned that:

But ***the fundamental rights to life, liberty, and the pursuit of happiness,*** considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth "may be a government of laws and not of men." ***For, the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself.*** (emphasis added)

From this well sprang a host of cases recognizing the right of every man to employ his skills, strength, energy and intellect to his own advantage and to contract it to others for his own benefit in pursuit of prosperity and happiness.

In ***Allgeyer v. Louisiana***, 165 U.S. 578 (1897), the Supreme Court held invalid a Louisiana statute prohibiting a citizen from contracting outside the State for insurance on his property lying therein because it violated the liberty guaranteed to him by the Fourteenth Amendment.

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In ***Truax v. Raich***, 239 U.S. 33 (1915), an Arizona statute requiring employing a minimum quota of citizens was declared unconstitutional. The Supreme Court held at p. 41:

"It requires no argument to show that ***the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [14th] Amendment to secure***. *Butchers' Union Co.* v. *Crescent City Co.*, 111 U.S. 746, 762; *Barbier* v. *Connolly*, 113 U.S. 27, 31; *Yick Wo* v. *Hopkins, supra; Allgeyer* v. *Louisiana*, 165 U.S. 578, 589, 590; *Coppage* v. *Kansas*, 236 U.S. 1, 14." (emphasis and added)

Again, in ***Adams v. Tanner***, 244 U.S. 590 (1917), the Supreme Court considered a statute prohibiting employment agencies from charging fees for obtaining employment. The Supreme Court held:

"The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the ***right*** of the citizen ***to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation***." (emphasis added)

The Supreme Court was presented with a German teacher's challenge of a Nebraska law which prohibited teaching lessons in any language other than English in ***Meyer v. Nebraska***, 262 U.S. 390 (1923). In holding the law was an unconstitutional infringement on a fundamental right protected by the 14th Amendment, the Supreme Court stated:

"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***

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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; *Yick Wo* v. *Hopkins*, 118 U.S. 356; *Minnesota* v. *Barber*, 136 U.S. 313; *Allgeyer* v. *Louisiana*, 165 U.S. 578; *Lochner* v. *New York*, 198 U.S. 45; *Twining* v. *New Jersey*, 211 U.S. 78; *Chicago, Burlington & Quincy R.R. Co.* v. *McGuire*, 219 U.S. 549; *Truax* v. *Raich*, 239 U.S. 33; *Adams* v. *Tanner*, 244 U.S. 590; *New York Life Ins. Co.* v. *Dodge*, 246 U.S. 357; *Truax* v. *Corrigan*, 257 U.S. 312; *Adkins* v. *Children's Hospital*, 261 U.S. 525; *Wyeth* v. *Cambridge Board of Health*, 200 Mass. 474." (emphasis added)

In ***Massachusetts Bd. Of Retirement v. Murgia***, 427 U.S. 307 (1976), at issue was a Massachusetts law regarding an age limit for police officers. There was no question regarding the right to pursue one's occupation as being protected under the Constitution, but only with respect to the standard of review of the law. In objecting to the court's application of a rational basis standard rather than a strict scrutiny test, Justice Marshall wrote:

"Whether "fundamental" or not, "`***the right of the individual . . . to engage in any of the common occupations of life'" has been repeatedly recognized by this Court as falling within the concept of liberty guaranteed by the Fourteenth Amendment.*** *Board of Regents* v. *Roth*, 408 U.S. 564, 572 (1972), quoting *Meyer* v. *Nebraska*, 262 U.S. 390, 399 (1923). As long ago as *Butchers' Union Co.* v. *Crescent City Co.*, 111 U.S. 746 (1884), Mr. Justice Bradley wrote that ***this right 'is an inalienable right; it was formulated as such under the phrase `pursuit of happiness' in the Declaration of Independence . . . . This right is a large ingredient in the civil liberty of the citizen.***' *Id.*, at 762 (concurring opinion). And in *Smith* v. *Texas*, 233 U.S. 630 (1914), in invalidating a law that criminally penalized anyone who served as a freight train conductor without having previously served as a brakeman, and that thereby excluded numerous equally qualified employees from that position, ***the Court recognized that 'all men are entitled to the equal protection of the law in their right to work for the support of themselves and families.'*** *Id.*, at 641."

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MEMORANDUM

ARE FUNDAMENTAL RIGHTS TAXABLE?

"'In so far as a man is deprived of the right to labor his liberty is restricted, his capacity to earn wages and acquire property is lessened, and he is denied the protection which the law affords those who are permitted to work. Liberty means more than freedom from servitude, and the constitutional guarantee is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling.' *Id.*, at 636." (emphasis added)

There is no doubt that the right to work and to pursue one's chosen occupation is a basic and fundamental right that neither the federal government nor, through the 14th Amendment, the States, may abridge. This is a right that is not owed to the federal government or the Constitution and one the federal government does not grant or permit, thus it neither exists by its authority nor is it introduced by its permission.

Thus, the THM has concluded and believes that laboring for a living, what the typical working American does his entire work life, is not a privileged activity, but rather an activity of right. It cannot be both, and if it is not a privileged activity, as noted in ***Stratton's Independence***, a "privilege or franchise", then it is not the proper subject of any indirect tax. Likewise, if it is not a "privilege or franchise", according to ***Baltic Mining*** it is not a proper subject of the income tax, either.

Is the THM's belief frivolous? In view of the unqualified and numerous declarations of the Supreme Court that the right to work for a living is an inalienable, fundamental, Constitutionally protected right, can anyone contend that the THM's answering our question in the affirmative is without a basis in law? Could any reasonable man, upon seeing these authorities, be expected to reach a similar conclusion?

Having established that the answer to our first question is ***"Yes, working for a living, contracting our labor out to others in order to provide for ourselves and our families is a Constitutionally protected, fundamental right, not privilege, possessed by all, not the few"***, then our next inquiry must be:

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Is the exercise of an inalienable, fundamental, Constitutionally protected right within the power of Congress to tax?

This issue, whether exercising one's right to earn a living through his own labor and at any lawful occupation of his own choosing is Constitutionally exempt, beyond the taxing authority of the federal government, has never been directly addressed. The taxing of fundamental rights is so repugnant to the mind, spirit and conscience of any man that even Congress has not undertaken to impose a tax on the exercise of those rights, the IRS's application of the income tax to the working American despite the absence of any statutory imposition of liability for the tax on him notwithstanding. Therefore there is little direct case law on the issue.

The States, who, through the due process clause of the Fourteenth Amendment, are subjected to the same limitations as Congress against violation of fundamental rights, have, however, attempted to tax the exercise of fundamental rights, so there is some illumination to be gleaned from some cases arising out of those attempts. It would seem that if the States are prohibited from taxing the exercise of a fundamental right by the same Bill of Rights imposed on Congress from the beginning, then that limitation would, surely, apply to Congress, as well.

In 1934, Louisiana's legislature passed an excise tax on publishers of newspapers, magazines and other printed publications. The Supreme Court, in ***Grosjean v. American Press Co.***, 297 U.S. 233 (1936), struck the law down as an abridgement on the fundamental freedom of speech, stating at 244:

"That freedom of speech and of the press are rights of the same fundamental character, safeguarded by the due process of law clause of the Fourteenth Amendment against abridgment by state legislation, has likewise been settled by a series of decisions of this Court beginning with *Gitlow* v. *New York*, 268 U.S. 652,666, and ending with *Near* v. *Minnesota*, 283 U.S. 697, 707. ***The word "liberty" contained in that amendment embraces not only the right of a person to be free from physical restraint, but the right to be free in the enjoyment of all his faculties as well.*** *Allgeyer* v. *Louisiana*, 165 U.S. 578, 589." (emphasis added)

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The Court in ***Grosjean*** pointed out, as it did in ***Murdock*** and *Follett, infra*, that a publishing company was not immune from all taxation, in that it could be taxed on its profits as a corporation or on its property, but the tax in question in ***Grosjean*** was an excise on publishing a newspaper, the exercise of a right, not on the exercise of corporate privileges nor on its property.

A license fee for distributing religious material door to door was struck down by the Supreme Court in ***Murdock v. Pennsylvania***, 319 U.S. 105(1943) as abridging freedom of speech, press and religion. The Court stated:

"The First Amendment, which the Fourteenth makes applicable to the states, declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press . . ." ***It could hardly be denied that a tax laid specifically on the exercise of those freedoms would be unconstitutional.*** Yet the license tax imposed by this ordinance is, in substance, just that."

And:

"***the power to tax the exercise of a privilege is the power to control or suppress its enjoyment.***" (emphasis added)

See also *Jones* v. *Opelika*, 316 U.S. 584 (1943); ***Follett v. McCormick***, 321 U.S. 573(1944); and ***Smith v. Texas***, 233 U.S. 630 (1914).

Striking down a Virginia poll tax in 1966, the Supreme Court in ***Harper v. Virginia Bd. Of Elections***, 383 U.S. 663 (1966), quoted and cited *United States v. State of Texas*, 252 F. Supp. 234 (1966), saying:

"If the State of Texas placed a tax on the right to speak at the rate of one dollar and seventy-five cents per year, no court would hesitate to strike it down as a blatant infringement of the freedom of speech. Yet the poll tax as enforced in Texas is a tax on the equally important right to vote."

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It is important to note that in both ***Grosjean*** and ***Murdock***, the Supreme Court pointed out that where the purported taxpayer is engaging in both the exercise of a right as well as the exercise of a privilege, the privileged activity is taxable although it is done in relation to the exercise of a right. For example, ***Grosjean*** specifically pointed out that the American Press could be taxed for engaging in business as a corporation or for the sale of commodities, including newspapers. In ***Murdock***, the Court also distinguished between a non-taxable exercise of a religious freedom, evangelic activities, and the taxable sale of religious commodities, such as books and other writings. See also, for example, *Jimmy Swaggart Ministries v. Board of Equalization of California*, 493 U.S. 378 (1990).

But where the tax is being imposed on the exercise of the right rather than the exercise of a privileged activity, such as exercising corporate privileges or engaging in the sale of commodities, then the tax must yield to the fundamental right. Exercising a privilege for religious motives, for example, would nonetheless be exercising a privilege, not a right, and, therefore, subject to taxation.

In laboring for a living, however, one is not engaging in any privileged activity, he is exercising an inalienable, fundamental, Constitutionally protected ***RIGHT***, and there is no collateral privileged activity. ***He is not exercising corporate privileges, nor is he manufacturing, selling or consuming commodities for a living. Neither he nor his labor exist by any sovereign's authority*** other than his Maker and ***since his activity is of right he requires no one's permission***. So by both the ***McCulloch*** sovereignty test and the ***Flint*** excise test, confirmed by ***Grosjean***, ***Murdock***, *Jones*, ***Follett***, ***Harper*** and others, the answer to the second question is apparent:

The exercise of a right is not only inalienable and Constitutionally protected against federal and State abridgment and interference, it is also Constitutionally exempt from taxation.

Perhaps that apparent and inescapable conclusion is the reason that for many years, so long as the income tax was imposed on "net income" instead of the exempt income excluding "taxable

income", the tax acts and regulations made it very clear that any income that is ***"exempt . . . by fundamental law"*** or ***"not taxable by the federal government under the Constitution"*** or ***"Constitutionally exempt"*** should not be included in gross income and, in fact need not even be mentioned or otherwise disclosed in the return. See **Examples of Regulations** acknowledging Constitutional exemption.

Even now, when Section 1's imposition of a tax only on "taxable" income, putting the public on notice that it is not imposed on exempt or non-taxable income, **26 CFR § 1.861-8T** informs the "taxpayer" that ***any income that is either in whole or in part exempt from taxation should be excluded from gross income***. It then goes on to provide four examples. None of those, however, are examples of what ***IS*** exempt as one would expect to see, but rather examples of what is ***NOT*** exempt. If you were called upon to give an example of what ***IS*** exempt, would the exercise of a fundamental right, such as the fundamental right to earn a living through one's own labor, come to mind?

For these reasons the THM has contended that not only do we have a fundamental right to labor for a living, our exercise of that right is beyond the taxing arm of the federal government, or any government for that matter. Is that contention frivolous? Without a basis in law? Unfounded? In view of the repeated pronouncements in ***Grosjean***, ***Murdock***, and others, could any reasonable man reach a similar conclusion?

The IRS's Response

Of all the issues giving an account of the IRS's response to this issue, whether the exercise of a fundamental right is fundamentally exempt from taxation, excluded from the scope of the income tax which is imposed only on "taxable" income, is the simplest.

The IRS does not have any response.

A review of the IRS's official list of "frivolous" arguments, it's publication, "The Truth About Frivolous Tax Arguments", reveals that neither the existence of a fundamental right to work for a

living nor the fundamental exemption of exercising that right from taxation appears anywhere in that document. This can be considered nothing less than an admission that the argument that working for a living is not within the scope of the income tax is not a "frivolous" argument and that the IRS has no authorities, even contrived, twisted authorities, not even any of its usual "fractured fairy tales" or inferior courts' misstatements of Supreme Court holdings, that it can cite to contradict the conclusions and beliefs of the THM relative to this issue.

Are Fundamental Rights Taxable? Conclusion

The Supreme Court has left absolutely no doubt that everyone in America, the resident alien included, has a God-given, Constitutionally protected, fundamental, tax-exempt right to earn a living at any lawful business or occupation of his or her own choosing.

It is not surprising that when an issue is so overwhelmingly supported by, literally, dozens of holdings, the THM would adopt a firm belief that the working American, when exercising that fundamental right without having to engage in any related taxable privileged activity, would not be subject to the federal income tax even if there were a statute making him liable, since his fundamental exemption would exclude his personal earnings, whether any income could be derived therefrom or not, from the subject of the tax: "taxable", not exempt, income.

Is it any surprise, then, that the only person liable according to Subtitle A, the income tax law, is the withholding agent required to withhold income taxes from payments to nonresident aliens and foreign corporations, the only persons or entities whose rights are not under the protection of the U.S. Constitution?

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THE

MEMORANDUM REGARDING ASSESSMENTS

Researched and Written by Michael A Bigley

CAVEAT

This Memorandum was prepared and written to explain the proper legal steps the IRS must complete in order to properly and legally assess a tax, and to support an Affidavit previously written which rebutted presumptions and claims that a proper assessment was done by the IRS. It contains general information regarding how assessments are to be done, and should be of value to others. It Is Not Legal Advice or A Legal Opinion. It Is Provided For Your Education. Reproduction is Authorized, However, if changed In Any Way, Remove My Name From The Document.

BACKGROUND

Criticality of a Correct Individual Master File (IMF)

The IMF is contained within the system of records titled "Treasury/IRS 24.030". The IRS utilizes the IMF as the tool to verify the IRS procedures for assessments of tax, and claims the IMF as an accurate tool in compliance with the Internal Revenue Code (IRC), 26 U.S.C. § 6203, and with 26 CFR § 301.6203. The July 22, 1985 Federal Register, 50 F.R. 29816, published descriptions of the systems of records maintained by the IRS on individuals at page 29826, which states:

> "Treasury/IRS 24.030 CADE Individual Master File (IMF); Returns and Information Processing."

Importance of the IMF

In the "Individual Master File (IMF) – Privacy Impact Assessment" approved on November 10, 2009, the IRS states:

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> "All settlements with taxpayers are affected through computer processing of the IMF account. The data therein is used for accounting records, for issuance of refund checks, bill or notices, answering inquiries, classifying returns for audits, preparing reports and other matters concerned with the processing and enforcement activities of the IRS."

The IMF Has Been Used in Court

The Director of the National Computer Center in Martinsburg, West Virginia maintains this system of IMF records on magnetic tapes. Data taken from the magnetic tapes maintained by the IRS Computer Center is frequently used in Federal Court tax litigation to establish such basic facts as an individual's assessed tax liability for a particular year, by the preparation and introduction in evidence of a, "Certificate of Assessments and Payments." In *U.S. v. Buford*, 889 F.2d 1406, (5th Cir. 1989), an IRS records custodian testified that she prepared a, "Certificate of Assessments and Payments," Form 4340, solely from computer generated data taken from the defendant's Individual Master File.[1]

INTRODUCTION

This memorandum is being written to explain "**assessments**". An "**assessment**" is the statutorily required recording of the tax liability.[2] An "**assessment**" must be completed before there is any tax owing, according to the courts[3].

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[1] As noted, IMF data is utilized by the IRS and the Department of Justice and is purported to be in compliance with the assessment requirements set forth in § 6203 of the Internal Revenue Code and with the Treasury Regulations (26 CFR § 301.6203). **The unreliability** of an IRS "Certificate of Assessments and Payments" was demonstrated in *Blackston v. United States*, 778 F.Supp. 244 (D.Md. 1991), **where the court commented upon the irregularities in IRS computer evidence**.

[2] IRM 35.9.2.1 (08-11-2004) Assessment

[3] *United States of America v. Dixon*, **672 F.Supp. 503 USDC, Middle Dist. Ala., (1987)**. "The defendant correctly contends that the basis of tax liability is the assessment. For a **tax liability to be duly collected, it must be first properly assessed**. In order for a **tax deficiency to be assessed against a taxpayer, an assessment officer must sign and date a Form 23-C**." [Emphasis added]

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An "assessment" is NOT one step, but is a sequence of steps that must be completed and therefore is often misunderstood. There are specific steps or tasks that must be completed by the Secretary, before any "tax liability" can be assessed and then would be properly and legally owed. This memorandum will explain these steps and tasks. Once these steps have been completed, and before the "tax liability" is considered to owed, an "assessment" must be done. An "assessment" is an administrative determination of a "tax liability". The statutory and regulatory requirements are codified in 26 U.S.C. § 6203 and 26 C.F.R. § 301.6203-1.

THE PROCESS

A "**tax liability**" must exist before an assessment may be done. How this is created or established is not the point of this memorandum. However, it is worth noting that the Courts have ruled that a tax liability must exist in the statutes[4]. Congress has created laws that "**impose**" a tax, and then they create laws that make specific people "**liable**" to pay the specific tax imposed. Regardless of your understanding of the law, the facts and evidence show that Congress has not written a statute which clearly makes the average American "liable" to pay the income tax. For a full and better understanding of this you should read the "Memorandum" written by Tommy Cryer, a lawyer who was unanimously acquitted by a jury, of all charges of failure to file a tax return.

http://www.truthattack.org/jml/images/stories/PDF/cryer_MEMORANDUM.pdf

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[4] *Bente v. Bugbee* 137 A. 552, 553, 103 N. J. Law 608 . In that case the court held:
A tax is a legal imposition exclusively of statutory origin (37 Cyc.724, 725), and, **naturally, liability to taxation must be read in the statute, or it does not exist**. (Emphasis added).

In *State v. Chicago & N.W.R. Co.*, 112 N.W. 515, 520; 132 Wis. 345, quoting and adopting the definition in *State v. Certain Lands in Redwood County*, 42 N.W. 473, 40 Minn. 512, the court held: **That a tax is a liability created by statute we think admits of no doubt, either upon principle or authority**. (Emphasis added)

In *Boathe v. Terry*, 713 F.2d 1405, at 1414 (1983), quoting; The taxpayer must be liable for the tax. **Tax liability is a condition precedent to the demand. Merely demanding payment, even repeatedly, does not cause liability**". (Emphasis added)

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How the Secretary arrived at the determination that there was a "tax liability", is beyond the scope of this document, so for the sake of this memorandum, we will presume that a "tax liability" exists either as a result of a taxpayer filing a tax return and self proclaiming a tax liability, or that a statutory liability exists, and a proper and legally determined tax deficiency exists. The first requirement for an assessment is that there must be a "tax liability".

This "tax liability" must be recorded in a Summary Record of Assessments, and signed by an Assessment Officer before there is a proper "statutory assessment", per 26 U.S.C. § 6203 and 26 C.F.R. § 301.6203-1.

A **Summary Record of Assessments** is also called an Assessment Certificate[5], and is a Form 23-C, according to the IRS's own publications in IRM 3.17.63.14.7 (10-01-2003). This Form 23-C had been created by an Assessment Officer. The Courts have stated that a requirement for the Form 23C to be completed by hand, was a burden for the IRS, so the IRS is allowed to submit a computer generated RACS 006 Report, "Summary Record of Assessments", to meet the requirements of 26 CFR § 301.6203-1 and 26 USC § 6203. Therefore, the Courts have ruled that a RACS 006 Report meets the legal requirements of a hand completed Form 23-C Summary Record of Assessment.

The Summary Record of Assessment states; "*All principal assessments must be recorded on Summary Record of Assessments (Assessment Certificate)*. The Assessment Certificate is the legal document that permits collection activity.

This Summary Record of Assessment (RACS 006 Report) is a computer generated report which summarizes all assessments made in a particular district on a particular date. It must be signed by a duly authorized Assessment Officer. The date on which an authorized official signs the

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[5] IRM § 3.17.46.2.4(1). Assessment Certificate.
*"**Assessment Certificate**: To **impose a tax as authorized by the Internal Revenue Code**, Assessments are supported by a summary record of assessment **signed by an appointed assessment officer**. All assessments must be certified by signature of an **authorized official** on the Summary Record of Assessment (Form 23C, Assessment Certificate-Summary Record of Assessments). **A signed Summary Record of Assessment authorizes issuance of notice and other collection actions (refer to IRC Regulations 301.6203- 1)." [Emphasis added]*

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Summary Record of Assessments sheet, becomes the "**Assessment Date**", for the "**tax liabilities**" included in that report.

Logic dictates, and it stands to reason that the tax liability must be recorded in the computer. The tax liability is recorded in a Transaction File by entering specific Transaction Codes for the specific type of tax liability. These would include entries such as; TC 150 Tax Assessment Return; TC 300 Examination Tax Assessment; TC 160 Manually Computed Delinquency Penalty; TC 170 ES Tax Penalty; TC 276 FTP Tax Penalty; TC 336 Interest Assessment; TC 240 Miscellaneous Penalty. This entry is later posted in your Individual Master File.

Then a computer created report RACS 006, known as a Summary Record of Assessments is run, and should contain the amount entered in the IMF record. This created Summary Record of Assessments (RACS 006 Report) is signed by a duly authorized Assessment Officer, and the date on which the Assessment Officer signs the Summary Record of Assessments is known as the Assessment Date.

As you can see a Summary Record of Assessments must be created before an Assessment Officer can sign it. The taxpayer's **assessments must be included** in the Summary Record of Assessments to be signed by the Assessment Officer. The date the signature is affixed to the Summary Record of Assessments, by an Assessment Officer, is the legal "Assessment Date" or "23C Date".

Although this is not the point of this declaration, it should be noted that the Summary Record of Assessment (23-C or RACS 006 Report), must be augmented by supporting records, which relate to the summary record.

Case law has reinforced the necessary procedures required in making a valid assessment.

- Bull v. US., 295 U.S. 247 at p.259. in 1935 (Justice Roberts)
  "Some machinery must be provided for applying the rule to the facts in each taxpayer's case, in order to ascertain the amount due. ***The chosen instrumentality for the purpose is an administrative agency whose action is called an assessment*** *...* ***Once the tax is***

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assessed, *taxpayer will owe the sovereign the amount when the date fixed by law for payment arrives...." [Emphasis added]*

- *Howell v. U.S., [96-2] USTC U.S. District Court, Dist. Utah, Cent. Div.; Civ 93-C-952J, 8/9/96 "An assessment pursuant to* ***26 C.F.R. 301.6203-1****, by which the IRS records and demands payment of tax obligations, is a several step process:*
  1. *creation of a summary record of assessment,*
  2. *maintenance of supporting documents,*
  3. *notification of liable parties and,*
  4. *upon request by a targeted taxpayer, the production of pertinent*
  5. *information to liable parties.*

Chapter 63 of Title 26, addresses the subject of assessments, and sheds light on the meaning of the term in the Code. Section 6201 first instructs that "[t]he Secretary[6] is ... required to make the ... assessments of all taxes ... imposed by this title...." 26 U.S.C. §6201(a). Further it provides, "[t]he Secretary shall assess all taxes determined by the taxpayer or by the Secretary ...." § 6201(a)(1). Section 6203 in turn sets forth a method for making an **assessment**: "The **assessment** shall be made by recording the liability of the taxpayer in the office of the Secretary."

At this point I should disclose that I have come across evidence that these assessments are not recorded in the Office of the Secretary as mandated by statute, but are instead recorded in an IMF maintained by the IRS. The Office of the Secretary is a place. I have never seen any evidence, and the IRS has failed to provide any evidence, that assessments made are recorded in the Office of the Secretary as mandated by statute. Instead they are recorded on Summary Records of Assessments, stored at each major Service Center.

As used in the Internal Revenue Code (IRC), the term "**assessment**" involves a "recording" of the amount the taxpayer owes the Government. 26 U. S. C. § 6203; The "**assessment**", is "essentially a bookkeeping notation." *Laing* v. *United States,* 423 U. S. 161, 170, n. 13 (1976). Section 6201(a) of the IRC, authorizes the Secretary of the Treasury, "*to make . . . assessments of all taxes . . . imposed by this title.*" An **assessment** is made "*by recording the liability of the*

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[6] 26 U.S.C. § 7701(a)(11)(B) **Secretary** The term "Secretary" means the Secretary of the Treasury or his delegate.

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taxpayer in the office of the Secretary, in accordance with rules or regulations prescribed by the Secretary." § 6203.[7] See also M. Saltzman, **IRS** Practice and Procedure ¶ 10.02, pp. 10-4 to 10-7 (2d ed. 1991) (when Internal Revenue Service (**IRS**) signs "summary list" of **assessment** to record amount of tax liability, "the official act of **assessment** has occurred for purposes of the Code").[8]

We do not focus on the word "**assessment**" in isolation, instead, we follow "the cardinal rule that statutory language must be read in context, [since] a phrase gathers meaning from the words around it." *General Dynamics Land Systems, Inc.* v. *Cline*, 540 U. S. 581, 596 (2004) (internal quotation marks omitted). In § 1341 and tax law generally, an **assessment** is closely tied to the collection of a tax, *i. e.*, the **assessment** is the official recording of liability that triggers levy and collection efforts.

The first step of the assessment process is to record the tax liability into the computer where it will be used to update the Official IMF record for the taxpayer.

The second step is for the computer to create a Summary Record of Assessments, which summarizes all current assessments and deficiency assessments (tax liabilities) made in a particular district **on a particular date**. The date on which an authorized official signs the Summary Record of Assessments sheet, becomes the "**Assessment Date**" for all legal purposes.

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[7] Section 301.6203-1 of the Treasury Regulations states that an **assessment** is accomplished by the "**assessment** officer signing the summary record of **assessment**," which, "through supporting records," provides "identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the **assessment**." 26 CFR § 301.6203-1 (2003).

[8] The term "**assessment**" is used in a variety of ways in tax law. In the property-tax setting, the word usually refers to the process by which the taxing authority assigns a taxable value to real or personal property. See, *e. g.*, F. Schoettle, State and Local Taxation: The Law and Policy of Multi-Jurisdictional Taxation 799 (2003) ("**ASSESSMENT**—The process of putting a value on real or personal property for purposes of a tax to be measured as a percentage of property values. The valuation is ordinarily done by a government official, the `assessor' or `tax assessor,' who will sometimes hire a private professional to do the actual valuations."); Black's Law Dictionary 112 (7th ed. 1999) (defining "**assessment**" as, *inter alia:* "Official valuation of property for purposes of taxation .—Also termed *tax **assessment***. Cf. APPRAISAL."). See also 5 R. Powell, Real Property § 39.02 (M. Wolf ed. 2000). To calculate the amount of property taxes owed, the tax assessor multiplies the assessed value by the appropriate tax rate. See, *e. g.*, R. Werner, Real Estate Law 534 (11th ed. 2002). Income taxes, by contrast, are typically self-assessed in the United States. As anyone who has filed a tax return is unlikely to forget, the taxpayer, not the taxing authority, is the first party to make the relevant calculation of income taxes owed. The word "self-**assessment**," however, is not a technical term; as IRC § 6201(a) indicates, the **IRS** executes the formal act of income-tax **assessment**.

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A Summary Record of Assessments must be created before an assessment officer can sign it. The taxpayer's **assessments must be included** in the Summary Record of Assessments to be signed by the Assessment Officer. The date the signature is affixed to the Summary Record of Assessments, by an Assessment Officer, is the legal "**Assessment Date**" or "**23C Date**".

Although this is not the point of this declaration, it should be noted that the Summary Record of Assessment (23-C or RACS 006 Report), must be augmented by supporting records, which relate to the summary record. I have found that sometimes this is not done as is mandated by regulation.

Supporting records must provide these **four** pieces of information per 26 CFR § 301.6203-1:

Identification of the taxpayer;
The character of the liability assessed;
The taxable period, if applicable;
The amount of the assessment.

This regulation 26 CFR § 301.6203-1 goes on to state, that if the taxpayer requests a copy of the record of assessment, he shall be furnished a copy of the pertinent parts of the assessment which sets forth **five** pieces of information:

The name of the taxpayer
The date of assessment
The character of the liability assessed
The taxable period
The amounts assessed

This differs from the supporting-records requirements in at least two ways: the pieces of information required, and the purpose for the information.

The IRS uses the RACS 006 Summary Record of Assessments, the Form 4340 Certificates of Assessments, Payments, and Other Specified Matters, to meet the requirements of 26 U.S.C.

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§ 6203, and 26 CFR § 301.6203-1. These are created and stored at specific Service Centers throughout the United States.

The Certified Form 4340's are computer generated reports which take the data from the Official Record, sometimes called the Individual Master File (IMF), for the taxpayer which are stored in MFT 30, or MFT 55 Tax Modules. The Form 4340 Report typically contains two date columns, one is labeled **"Date",** and the other is **"Assessment Date"**.

The information under the "**Date**" column comes from a different location within the IMF records. In the vast majority of the entries on the 4340 Report it comes directly from the IMF file for the exact corresponding entry, and is the "**Transaction Date**" of that same entry in the MFT Tax Module.

If the entry does not have a date in the "**Date**" column, it will have one in the "**Assessment Date**" column. The date in the "**Assessment Date**" column is in fact, the "**Transaction Date**" of that very same entry into the MFT Tax Module. This is confirmed by a comparison of IMF to 4340, and is re-affirmed in writing in the 6209 Manual Section 8 – 9, where it says; "**Transaction Date is 23C date for Compliance or Notice issuance.**" The date under the "**Assessment Date**" column is considered by law to be the "**23C Date**" of assessment.

In most cases, the validity of Form 4340 Certificates of Assessments, Payments, and Other Specified Matters may be challenged or rebutted because of an entry dealing with an Assessment, or abatement which does not have a date in the **"Assessment Date"** column. If this is the case, then the 4340 Report should be scrutinized and challenged, because this entry may not even be in the IMF Tax Module. Entries dealing with dollar amounts without a date under the "**Assessment Date**" column, have either not been assessed properly, or the entries on the Form 4340 Report are not entered into the Official Record MFT Tax Modules.

Therefore any entry dealing with dollar amounts on a Form 4340 without a date under the **"Assessment Date"** column is likely a false or fraudulent entry. With that being said, it does not mean that just because the entry has a date under the **"Assessment Date"** column, that a proper or legal assessment has been performed.

EXHIBIT F

Although lawyers have convinced the Courts that a Form 4340 is, "presumptive evidence" of a proper assessment, nothing could be further from the truth. The Form 4340 does not prove a proper or legal assessment has been performed, nor does it prove or provide the 5 items needed to have a proper and legal assessment per *Howell v. U.S.,* [96-2] USTC U.S. District Court, Dist. Utah, Cent. Div.; Civ 93-C-952J, 8/9/96.

The significance of the lack of an "**Assessment Date**" on any entry which reports any dollar figure under the "**Assessment or Other Debt**" column in the Form 4340 has typically been coupled with the failure of the IRS to provide any additional information regarding the entry, or that the entry has not been entered into the IMF record. Either one of these must raise questions about the completeness of the IRS record, and certainly is prima facie evidence that the Certified Form 4340 presented, does not comply with the attested statement found on the last page of each Certified Form 4340, where the Certifying Officer states;

> *"I certify that the foregoing transcript of the taxpayer named above in respect to the taxes specified is a* ***true and complete transcript*** *for the period stated,* ***and all assessments, abatements****, credits, refunds, and advances or unidentified payments, and the assessed balance relating thereto, as disclosed by the records of this office as of the account status date are shown herein. I further certify that the other specified matters set forth in this* ***transcript appear in the official records of the Internal Revenue Service.***"

The regulation 26 CFR § 301.6203-1, states that the assessment must be recorded in a Summary Record of Assessments. IRM 4.15.3.3.(06-30-1999), states that a Form 23C is to be completed when an assessment is performed. The Courts have stated that a requirement for the Form 23C to be completed by hand, was a burden for the IRS, so the IRS is allowed to submit computer generated RACS 006 Report, "Summary Record of Assessments", to meet the requirements of 26 CFR § 301.6203-1 and 26 USC § 6203.

However, in all fairness the creation and the submitting of a RACS 006 Report, signed by an Assessment Officer, for a specific date, may or may not be evidence of the following;

1) That the amount assessed to the taxpayer is in fact included in the RACS 006 Report submitted as presumed or claimed.

EXHIBIT F

2) That the person who signed the Summary Record of Assessments is in fact an Assessment Officer as mandated by law.
3) That the Assessment Officer who signed it was appointed by the District Director, as mandated by 26 CFR § 301.6203-1.
4) That there is a proper unbroken chain of Delegation Orders from the Secretary to the person performing the job or function.

Proof or evidence that any one of these items has not been complied with, is prima fascia evidence that no proper legal assessment was done. Therefore no tax liability exists.

The duty imposed upon the IRS by the regulation and IRM provision, is to supply the requisite information upon request, to taxpayers who request verification of Assessment. This is done for a purpose and allows the taxpayer to see what evidence the IRS has to affirm the assessment, and to provide the taxpayer an opportunity to rebut that evidence.

CONCLUSION

As you can see there are specific steps that must be taken in order for the IRS to have a legal assessment against you. Failure of one of these steps, or getting them out of order is an indication that the assessment may not be legal.

The Summary Record of Assessments must be created before an assessment officer can sign it. That date and signature becomes the legal "Assessment Date", or "23C Date", but not until a taxpayer's assessments are included in a signed Summary Record of Assessments, can there be a valid assessment.

If the amounts assessed and recorded in the IMF record shown on the Form 4340 Certificates of Assessments, Payments and Other Specified Matters are not in the Summary Record of Assessment, then no proper assessment was done[9].

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[9] IRM §§ 3.17.63.14.7 through 3.17.63.14.9
All principal, interest and penalty assessments **must be recorded on Summary Record of Assessments** (Assessment Certificate). The **Assessment Certificate is the legal document that permits collection activity.**

EXHIBIT F

If the person who signed the Summary Record of Assessments is not an Assessment Officer as mandated by law, then no proper assessment was done.

If the person who signed the Summary Record of Assessment is in fact an Assessment Officer, but was not appointed by the District Director, as mandated by 26 CFR § 301.6203-1, then they are not authorized to sign the Summary Record of Assessment and no proper assessment was done .

If the person who signed the Summary Record of Assessment is in fact an Assessment Officer and was properly appointed by the District Director, as mandated by 26 CFR § 301.6203-1, but cannot produce a proper unbroken chain of Delegation Orders from the Secretary to the person performing the job or function, then they have no authority, and no proper assessment was done.

An assessment is required to start any collection action. The Courts have ruled that without a proper assessment there is no tax owed.

EXHIBIT G

Copied from:
http://www.truthattack.org/jml/index.php/get-involved/what-can-you-do/46-what-can-do-you-do/applying-pressure/142-rebut-irss-calling-the-truth-frivolous

THE REAL TRUTH
ABOUT
THE IRS'S "TRUTH" ABOUT "FRIVOLOUS" TAX ARGUMENTS

An Objective, Authoritative Analysis of the IRS's Official, Anonymous List and Rebuttal of "Frivolous" Tax Issues

PUBLISHED BY TRUTH ATTACK

Putting the government back in its box . . . one tentacle at a time

TruthAttack.org 2

DISCLAIMER

This material is not intended to be considered as legal advice, which can only be rendered with a complete knowledge of the facts of each unique case, nor is it intended to advise, recommend or encourage anyone to fail or refuse to file income tax returns or pay income taxes claimed by the Internal Revenue Service. The sole purpose of this document is to inform the public of the false claims and legal misrepresentations being made to it by its servants and to encourage the public to demand that its representatives in Congress and elected and appointed officials bring the IRS to heel by requiring the IRS to apply the law as enacted by Congress and signed into law by the President, thereby preserving the rule of law essential to any free nation.

ABOUT THE AUTHORS

In compiling this evaluation of the IRS's claims that it has refuted what it calls "frivolous" tax arguments, Truth Attack assembled a panel of the best minds in the field. The authors of this expose' of the IRS's falsehoods and deception set out in its official listing and rebuttal of what it calls "frivolous tax arguments" are tax and legal professionals with over 168 years of experience in taxation and legal matters. Between them they hold ten Bachelor's degrees and five doctorates and hold licenses to practice law in eight states and are admitted in the United States Supreme Court, all twelve federal Circuit Courts of Appeals and numerous federal district courts. Although the person or persons who wrote the Internal Revenue Service's "The Truth About Frivolous Tax Arguments" were, understandably, too ashamed to associate their names with that document, Truth Attack is declining to identify the experts who compiled and drafted this rebuttal of the IRS's lies about the law, not because they were unwilling, but because Truth Attack is unwilling to subject them to the risk of IRS vendettas and assaults. 3

THE REAL TRUTH ABOUT THE IRS'S "TRUTH" ABOUT "FRIVOLOUS" TAX ARGUMENTS

An Objective, Authoritative Analysis of the IRS's Official, Anonymous List and Rebuttal of "Frivolous" Tax Issues

The following is an item-by-item assessment of *The Truth About Frivolous Tax Arguments*, the Internal Revenue Service's official list of what it has dubbed "frivolous" tax arguments. In its publication the IRS purports to debunk numerous arguments that have been made in opposition to the IRS's exaggerated version of the income tax laws.

The assessments of the IRS's claims were made by qualified, highly credentialed attorneys and tax professionals, all of whom not only checked the IRS's claims for accuracy but also verified all of the authorities and points raised in the assessments.

The fact of the matter is that the IRS's publication, *The Truth About Frivolous Tax Arguments*, is riddled with lies, half-truths and misrepresentations. While some of the contentions the IRS calls "frivolous arguments" listed here are without merit some legitimate, real problems with the IRS's application of the income tax are valid and are supported by not only the written law as enacted by Congress, but by the Supreme Court's interpretation of those statutes.

This document sets out the entire IRS "Truth" About publication exactly as it appears on its web site, right down to their choice of font (this font). The real TRUTH about the IRS's phony "Truth" About Frivolous Tax Arguments is simply inserted below in Times New Roman font. None of the IRS's portion of this document has been altered in any way, which can be easily verified by comparing it to their web site.

A NOTE ABOUT INFERIOR COURT CASES:

In its "Truth" About publication the IRS relies on numerous inferior court cases. Inferior courts are those inferior to the Supreme Court and consist of Tax and Claims Courts, Bankruptcy Courts, District Courts and Courts of Appeal, all of which are created by Congress. The IRS acknowledges in its Internal Revenue Manual, and Truth Attack agrees with them on this point, that inferior court holdings are not law and are binding only on the parties to the suit in question, and even then, only as to the years litigated. According to the IRM only Supreme Court cases are binding on it and considered the law of the land, "equivalent to the code".

Why, then, would the IRS rely so heavily on so many cases it considers neither binding nor the law of the land? The reader is invited, encouraged, to pull some of those inferior court cases up and read them carefully. In virtually every instance the statement by the court being relied upon 4

by the IRS is not actually a holding, a ruling or conclusion necessary to a ruling on an issue before the court. The vast majority of such case "holdings" are actually "dictum", extraneous statements by the court of its opinion. In other such inferior court cases the case is selected by the IRS simply because it is wrong. For example, note in the discussion of the *Collins* case below and the court's "holding" that the Supreme Court "held" in the *Brushaber* case exactly the opposite of what the Supreme Court actually held. Rather than tell you what *Brushaber* actually held, the IRS chooses, rather, to hold up an inferior court case because it misrepresented the true *Brushaber* holding. The IRS knew that the *Collins* statement was a lie, but apparently thinks that knowingly repeating the lie of another is not lying.

Time and space do not permit us to chase down all of these inferior court "holdings" or "dicta", and since they are not binding law and can support no legitimate argument that conflicts with the code or the holdings of the Supreme Court, those cases are ignored for the purposes of this work.

FIRST: *ARGUMENTS AND ISSUES THE IRS DOES NOT CLAIM ARE FRIVOLOUS*

To begin with there are some arguments the IRS regularly labels as "frivolous" that are not included in its official list of "frivolous" arguments. First and foremost among the Tax Honesty Movement's objections is its contention that ***there is no statute in the Internal Revenue Code clearly and plainly imposing liability for the income tax on the typical working American***. That objection is not among the IRS's official list of "frivolous" arguments. The IRS does describe that issue in its including among the listed issues the argument that payment of income taxes is voluntary, but it fails to rebut it other than to contend that Section 1 imposes the tax and that Section 6151 tells those liable when and where to pay a tax for which they are liable. Thus, the IRS, by neither including the absence of a liability statute on the list nor producing such a statute,

THE IRS IS ADMITTING NOT ONLY THAT IT IS NOT A "FRIVOLOUS" ARGUMENT BUT ALSO THAT IT HAS NO AUTHORITY REFUTING THE ARGUMENT!!

Also notably absent and, therefore, apparently not "frivolous", is the argument that ***there is no legal basis for the IRS's claim that the basis for moneys received in exchange for our labor***, our "most sacred and inviolable of property", ***is zero,*** making our wages and salaries ***100% profit—received for nothing!?!*** The Supreme Court has repeatedly held that our labor is our property.

The basis (that amount that must be deducted from gross receipts from an exchange in order to determine what, if any, of those proceeds are profit, or income) for any transaction is determined according to Sections 1001 et seq. None of those sections provides for a "zero basis" (the IRS's "rule" for determining how much of our wages or salaries is profit, i.e., income). Every transaction has a "basis" that is either determined by the cost of the property conveyed or, where there is no cost, the value. If our labor is without value then why would anyone be willing to pay us for it? 5

THAT ISSUE IS NOT ON THE IRS'S OFFICIAL LIST OF "FRIVOLOUS" ARGUMENTS!! THUS THE IRS IS ADMITTING NOT ONLY THAT IT IS NOT A "FRIVOLOUS" ARGUMENT BUT ALSO THAT IT HAS NO AUTHORITY REFUTING THE ARGUMENT!!

In addition, the law provides that the income tax is imposed only on "taxable" income, that is, income that is derived from engaging in a *privileged* activity that is *within* the taxing authority of the federal government. See *Stanton v. Baltic Mining*, 240 U.S. 103 (1916). Yet the Supreme Court has held in scores of cases that when we work for a living we are exercising a God-given, Constitutionally protected and tax exempt right, not a privilege. Thus, ***since the tax is only on "taxable" activities and exercising our right to labor for a living is not "taxable", the income tax has no application to our working for a living or any wages or salaries that activity might generate.***

Indeed, the IRS in its regulations (26 CFR 1.861-8T) tells us that we should not even include tax-exempt income in gross income. So what about the Tax Honesty Movement's contention that those of us who work for a living should exclude our wages and salaries, received in exchange for our labor and derived from ***our exercising a right, not a privilege***, as any part of our "gross income"?

THAT ISSUE IS NOT ON THE IRS'S OFFICIAL LIST OF "FRIVOLOUS" ARGUMENTS!! THUS THE IRS IS ADMITTING NOT ONLY THAT IT IS NOT A "FRIVOLOUS" ARGUMENT BUT ALSO THAT IT HAS NO AUTHORITY REFUTING THE ARGUMENT!!

So what about the rest of the IRS's "Truth" About Frivolous Tax Arguments? Just how "truthful" is the IRS's account of these issues?

A. The Voluntary Nature of the Federal Income Tax System

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

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

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

This is a misrepresentation by omission. ***The code section setting forth the requirement to file a tax return is missing from this statement***. The IRS is talking out of both sides of its mouth because in its instructions for the Form 1040 (page 97 of the 2009 instructions) it clearly states something different:

"Our legal right to ask for information is Internal Revenue Code Sections **6001**, 6011, and 6012(a), and their regulations. They say that you must file a return or statement with us for any tax you are **liable** for." 6

Why is Section 6001 mysteriously omitted when that is the first section cited in its own instructions regarding the requirement to file a Form 1040? What is it about that section that the IRS wants to conceal from you?

But the deception continues, progressing from deception by omission to active misrepresentation of the law:

Any taxpayer who has received more than a statutorily determined amount of gross income is obligated to file a return.

This misrepresentation presents another conflict between what the IRS says in the instruction book and what it is saying in this publication purporting to be the "truth". The only thing that prevents this statement from being an outright lie is the word "taxpayer". Since a "taxpayer", the person required to pay the tax, would be liable for the tax, then and only then would the amount of gross income become relevant. A "taxpayer" is defined as one who is "subject to" a tax (26 USC 7701(a)(14), i.e., one liable for a tax. If the statement had been about a "citizen", or "you", it would have been a blatant lie. So why is that so important?

Take another look at the Privacy Act Notice quoted above. Is it addressing "taxpayers"? No, it is addressing "you". Does it say anything about those receiving "more than a statutorily determined amount of gross income"? No, it doesn't. According to the disclosure that the law requires (as opposed to this publication, which is not governed by Congressional mandate) the requirement to file a return is based on whether **"you are liable for"** a tax.

Let's examine the conspicuously omitted section of the code, Section 6001, and see if we can find out what the IRS does not want you to see:

"Every person ***liable*** for any tax imposed by this title or for the collection thereof **shall keep such records, render such statements, *make such returns* and comply with such rules and regulations as the Secretary may from time to time prescribe.**" (emphasis added)

Both the Privacy Act Notice in the instruction book for the Form 1040 and the mysteriously concealed code section, Section 6001, say that only those **LIABLE** for a tax are required to file a return.

What about the other sections that are disclosed? What do they really say? Section 6011 begins with "When required by regulations . . .", but who is "required by regulations" to do anything? Section 6001, above, makes it plain as day that only those **LIABLE** for a tax are obligated to "comply with such . . . regulations". But Section 6011 goes on from there to mention a familiar word:

a) General rule — When required by regulations prescribed by the Secretary any person made **liable** for any tax imposed by this title [*which would include the income tax*], or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. 7

Every person required to make a return or statement shall include therein the information required by such forms or regulations.

So who is required to comply with regulations, including those indicating that a Form 1040 should be completed and filed? Only those persons **liable** for the income tax are required to comply with regulations according to Section 6001.

What about the last section cited? Section 6012(a) is often referred to by the IRS as the sole basis for being required to file a Form 1040, although we now know that the requirement is actually based on Sections 6001, 6011 **AND** (not **OR**) 6012(a). Section 6012(a) actually adds a second precondition for a requirement to file, ***narrowing, not broadening***, that group:

(a) General rule — Returns with respect to income taxes under subtitle A shall be made by the following:

(1) (A) **Every individual having for the taxable year gross income which equals or exceeds the exemption amount** . . .

Notably absent from that section is any requirement to keep records, so how can anyone who kept no records complete a return? Nor does this section make anyone subject to regulations, including those regulations that specify the form, manner and place for filing returns.

This section does not add any "filers" to those LIABLE for a tax, but rather actually *excludes* those who are liable but have income less than the standard exemption. In fact, section 6012 is listed in the index of most IRC publications as "**exclusion** from requirement to file".

Thus, the Truth about this argument is that although we can debate at length the meaning of "voluntary" and its various usages, the IRS has misrepresented the law in an effort to call this argument "frivolous".

Why? Because there is no statute imposing ***liability*** for the income tax on working Americans, an issue that we have already seen is admittedly not frivolous—not on the official list of frivolous arguments. If the Truth about this argument, that a requirement to file a return is based upon whether one is **liable**, had been revealed instead of concealed then the next question would be "Then who does the law say is liable for the income tax and, being liable, must keep records, render statements, make returns and comply with regulations?"

CONCLUSION: Since there is no law making the typical working American liable for the income tax then the typical working American is not required by law to keep records, render statements or to comply with regulations, including those designating form and manner of filing returns. ***Above all, he is not required by law to file an income tax return.*** See Section 6001. So if he does so without being required by law then he must be doing so "voluntarily", strictly of his own election and volition. Thus, filing an income tax return is "voluntary" in the most "voluntary" sense of the word and the IRS's response to that argument is . . . well . . . frivolous.

Failure to file a tax return could subject the non-complying individual to criminal penalties, including fines and imprisonment, as well as civil penalties. 8

CAVEAT: Now, this part of the IRS's contention, while perhaps without legal basis, is true from a factual standpoint. Notwithstanding the law or the absence of law the IRS, acting in concert with the U. S. Department of Justice (DOJ) and the courts, have imprisoned many Americans whose only crime was to discover the Truth about the inapplicability of the income tax to them and to dare to confront the government with that Truth. In case after case the Truth has been paraded before the IRS, DOJ prosecutors and both trial and appellate judges only to have them all turn a willfully blind eye and deaf ear to the law all of them are solemnly sworn to uphold. Anyone daring to expose themselves as being among those who have seen the Truth about the IRS's and DOJ's lies and myths about the income tax law is in jeopardy of harsh reprisals despite the law to the contrary. Thus it is not recommended that you confront them. These tax enforcement agencies are "armed and dangerous" and they will do you harm.

It is recommended that you do the same thing that you would if you were to recognize a band of armed and dangerous fugitives. You would not attempt a citizen's arrest in that case but you would report your sighting to the authorities, wouldn't you? Since reporting the government's illegal activities to the government would be tantamount to informing one of the armed and dangerous fugitives that you have recognized them, that would be imprudent at best, and more likely be a disastrous mistake. The authorities in this case must be those who have authority over the government . . . We the People of America. The owners and masters of the government must be informed of their government's misconduct. Instead of confronting the gang of outlaws, tell your family, your neighbors, your friends, your co-workers and associates. Tell it to the People and call upon them to bring the force of the law down on the government.

In United States v. Tedder, 787 F.2d 540, 542 (10th Cir. 1986), the court clearly states, "although Treasury regulations establish voluntary compliance as the general method of income tax collection, Congress gave the Secretary of the Treasury the power to enforce the income tax laws through involuntary collection . . . . The IRS" efforts to obtain compliance with the tax laws are entirely proper." The IRS issued Revenue Ruling 2007-20, 2007-14 I.R.B. 863, warning taxpayers of the consequences of making this frivolous argument.

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

In August 2007, a U.S. District Court permanently barred Robert Schulz and his organizations, We the People Congress and We the People Foundation, from promoting a tax scheme that helped employers and employees improperly stop tax withholding from wages on the false premise that federal income taxation is voluntary. The court concluded that the First Amendment did not protect the two organizations that operate the website, or their founder, because the site incited criminal conduct. The court also ordered that the web site that sold the materials stating that individuals can legally stop paying taxes be shut. See http://www.usdoj.gov/tax/txdv07214.htm, and http://www.usdoj.gov/tax/txdv07595.htm. The result in this case was affirmed on appeal and certiorari was denied. United States v. Schulz, 529 F. Supp. 2d 341 (N.D.N.Y. 2007), aff'd, 517 F.3d 606 (2d Cir. 2008), cert. denied, 129 S.Ct. 435 (2008).

While not necessarily a key element in determining whether the IRS's responses to these "frivolous" arguments are founded in law or are, themselves, frivolous, it is important to place the *Schulz* case in perspective because it demonstrates the lengths to which government employees and government (as opposed to public) servants will go to quiet any who dare to make any attempt to inform the public of the government's violation of the income tax laws. In this case neither Bob Schulz nor his organizations were permitted a hearing of any kind in spite of the fact that they disputed every allegation of the suit against them and presented proof that they had evidence to support their denials. Due Process was not a factor and the general concept of a fair hearing was no deterrent to either the IRS, the DOJ or the trial or appellate courts, who simply ignored the law, refused to hear any evidence of the facts and summarily issued the injunction sought. 9

Relevant Case Law:

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

Note in passing that the *Helvering* case is cited in support of the IRS's contention here that the income tax is not "voluntary", but the ruling fails to address that point. The cases following are all inferior court cases and, based upon the IRS's own policies and procedures set out in its Internal Revenue Manual (IRM), inferior court cases are binding only on the parties and even then only for the years in question. Thus all of these cases can be disregarded as not binding on either the IRS or the citizen. ***According to the IRM only Supreme Court cases have the effect of law, "equivalent to the code" and lower court decisions are not binding on either the IRS or the citizen.*** So where is the Supreme Court case saying "voluntary" does not mean "voluntary"?

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993), cert. denied, 510 U.S. 1193 (1994) – the court held that "[a]ny assertion that the payment of income taxes is voluntary is without merit."

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

United States v. Richards, 723 F.2d 646, 648 (8th Cir. 1983) – the court upheld conviction and fines imposed for willfully failing to file tax returns, stating that the claim that filing a tax return is voluntary "was rejected in

United States v. Drefke, 707 F.2d 978, 981 (8th Cir. 1983), cert. denied, Jameson v. United States, 464 U.S. 642 (1983) – wherein the court described appellant's argument as „an imaginative argument, but totally without arguable merit.""

Johnson v. Commissioner, T.C. Memo. 1999-312, 78 T.C.M. (CCH) 468, 471 (1999), aff'd, 242 F.3d 382 (9th Cir. 2000) – the court found Johnson liable for the failure to file penalty and rejected his argument "that the tax system is voluntary so that he cannot be forced to comply" as "frivolous."

Woods v. Commissioner, 91 T.C. 88, 90 (1988) – the court rejected the claim that reporting income taxes is strictly voluntary, referring to it as a "„tax protester" type" argument, and found Woods liable for the penalty for failure to file a return.

2. Contention: Payment of tax is voluntary.

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

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

(Section 11 imposes a tax on the taxable income of corporations.) 10

This contention is a total misrepresentation, not only of the position of the Tax Honesty Community, by making the totally unsupported claim that those demanding that the IRS point out any statutory imposition of liability for payment of the tax would never be satisfied, but misrepresents the import of Section 1. The Tax Honesty Community would be satisfied with any statute that clearly and plainly identifies them as liable for the income tax. What they will not be satisfied with is being told they are making a "frivolous argument" by merely asking to be shown any law that entitles the IRS to demand personal information or money from them. Nor are they satisfied with twisted distortions and misstatements of the law.

In order to better understand what Section 1 does and does not do it is beneficial to look at how statutes impose liability for a tax. So, let's look at one example to demonstrate how the law tells us who is liable for a tax. Section 5001 imposes a tax on distilled spirits:

"There is hereby imposed on all distilled spirits produced in or imported into the United States a tax at the rate of $13.50 on each proof gallon and a proportionate tax at the like rate on all fractional parts of a proof gallon."

Notice that this tax is on **ALL** distilled spirits, whether produced in or imported into the United States. By the IRS's reasoning, anyone who has income is liable because Section 1 imposes a tax on taxable income, so anyone who has distilled spirits must be liable for the distilled spirits tax.

Do you have any distilled spirits? The tax is imposed on ALL distilled spirits, domestic and imported. ALL would certainly include those in your liquor cabinet. So where are your distilled spirits records? Why haven't you been filing a distilled spirits tax return?

Well, before you reach for your nitro pills or your distilled spirits, let's look at Section 5005, entitled "Persons Liable for Tax":

"The ***distiller*** or ***importer*** of distilled spirits ***shall be liable*** for the taxes imposed thereon by section 5001(a)(1)."

Are you a distiller or importer? No? Then perhaps that is why even though you have distilled spirits and the tax is imposed on ALL distilled spirits, you are not required to keep records or to file a distilled spirits tax return. Having distilled spirits does not make one liable for the distilled spirits tax. Being a distiller or importer, however, does because a statute plainly and clearly states that distillers and importers are the ones liable for that tax.

Is this an exceptional or unusual provision? No. Every tax in the Internal Revenue Code has a **specific statute** stating exactly who is liable for that tax. In fact, there is a specific liability provision for the income tax, but it has nothing to do with working Americans.

Now, what about the IRS's Section 1? Section 1 is the first section of sub-chapter 1, "Determination of Tax Liability", so wouldn't you expect that some section in this sub-chapter would tell us who is liable for the income tax? The Part, "Tax on Individuals", also would suggest that the tax is going to be imposed on ***someONE***, not just ***someTHING***. Titles and

headings are not law, but that would lead one to believe we are at least in the right part of Subtitle A, the income tax law, to expect to see exactly who the law says is liable for that tax. Now let's take a look at the letter of the law. Section 1 "Tax imposed", a heading. Subsection (a) "Married individuals filing jointly and surviving spouses", more heading, and, finally, the statute:

"There is hereby imposed on the ***taxable income of*** [not ON] (1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and (2) every surviving spouse (as defined in section 2(a)), a tax determined in accordance with the following table: . . ."

and then it goes on to set out the rates of taxation.

Section 1(b), same thing, except that the tax is imposed on the ***taxable income OF*** heads of households and a different set of rates is provided. Subsection (c) is on the ***taxable income OF*** unmarried individuals, (d) the ***taxable income OF*** married individuals filing separately, and, finally, (e) the ***taxable income OF*** estates and trusts. In all those subsections the tax is not imposed on individuals, as the heading suggests, but is on taxable income. So what is taxed? In other words, what is the subject of the tax? ***Taxable income***, that is, income within the meaning of the Constitution and the 16th Amendment that is derived from engaging in an activity that is within the taxing authority of the federal government, ***is the subject of the tax***. Do you see anything there that says anyone is liable? Required to pay? Must pay? Do you know anyone named "taxable income"?

Now, do you have income? Does having income make you liable according to Section 1? Did having distilled spirits make you liable for the tax on ALL distilled spirits? No. It takes a statute to do that—a statute like Section 5005. In fact, does Section 1 say that anyone is liable? No, it doesn't, and the IRS is being dishonest in suggesting that it does.

Are we being literal in our reading of Section 1? We are, indeed, but that is because when it comes to reading tax laws we are supposed to be literal, looking only at the exact and precise letter of the law, assuming nothing, presuming nothing, inferring nothing.

Unless the letter of the law makes one liable, then he is free of the tax. Look at what the Supreme Court said in *U.S. v. Merriam*, 263 U.S. 179, 187-8 (1923):

"On behalf of the Government it is urged that taxation is a practical matter and concerns itself with the substance of the thing upon which the tax is imposed rather than with legal forms or expressions. ***But in statutes levying taxes the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the Government and in favor of the taxpayer.***" (emphasis added) 12

The *Merriam* court goes on to quote Lord Cairns in *Partington* v. *Attorney-General,* saying, "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. ***On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.***" Id, at 188 (emphasis added)

In *U. S. v. Calamaro*, 354 U.S. 351 (1957), the Supreme Court made it clear that the rule of strict construction applies specifically to the question of who is and who is not liable for the payment of a tax, without regard to implication, inference or even legislative intent. Thus, to suggest that in the absence of a clear and plain statutory imposition of liability one is not liable would seem supported by Supreme Court authorities.

So, Section 1, contrary to the IRS's contention, makes no one liable for the income tax. The IRS's contention that it does is clearly false . . . frivolous.

Furthermore, the obligation to pay tax is described in section 6151, which requires taxpayers to submit payment with their tax returns.

Again, this would be a bald faced lie but for the clever use of the term "taxpayer". A taxpayer is one who is "subject to a tax" (26 USC 7701(a)(14)), but what law makes the typical American, living and working here in the States, subject to the income tax? If there is no such law, then those Americans are not "subject to the income tax", nor are they "taxpayers", and under the provisions of Sections 6001, 6011 and 6012(a), they are not required to file an income tax return (see discussion of Contention A-1, above).

So who does Section 6151 apply to? Is it you? Let's look at that section and see:

Section 6151. **Time and place for paying tax shown on returns**

(a) General rule — Except as otherwise provided in this subchapter, when a return of tax is required under this title or regulations, **the person required to make such return** shall, without assessment or notice and demand from the Secretary, pay such tax to the internal revenue officer with whom the return is filed, and shall pay such tax **at the time and place fixed for filing the return** (determined without regard to any extension of time for filing the return).

Obviously, Section 6151 pertains only to one **"required to make such return"**. From our discussion of Contention A-1, we know that **the only persons required to file a return are those LIABLE for the tax**. How could Section 6151, then, apply to anyone who the law had not already identified as **LIABLE** for the income tax? It cannot and it does not.

We also know, then, that since there is no law making the typical working American **LIABLE** for the income tax the Code does not make him one **"required to make such return"**, so Section 6151 cannot and does not apply to the typical working American, a fact admitted by the IRS's omission of that issue in its official list of "frivolous arguments". 13

The falsehood of this statement by the IRS is apparent in that not only does Section 6151 apply only to those whom the law, the IRC, clearly and plainly identifies as liable for the income tax, it is being cited as making someone liable when its only effect is to designate **when** and **where** one who **is** liable and, therefore, **required to file a return**, must pay the tax. When and where? At **the time and place fixed for filing the return**.

CONCLUSION: The Truth about the IRS's response to Contention A-2 is that it is false, misleading and clearly "frivolous", without basis or foundation in law. An actual reading of Section 6151 readily reveals that it does not impose liability on anyone and merely applies to those upon whom liability is already imposed, those "required to make such return", and does no more than its title indicates, stating **when and where** the liable person is required to pay the tax for which he is **LIABLE**. Thus, if one is not under a legal obligation to pay taxes for which he is not liable, then his payment of those taxes must be, again, "voluntary", of his own election and volition (albeit under the extreme duress of intimidation and threats). The IRS's position on this contention is, then, without any basis in law . . . frivolous.

Failure to pay taxes could subject the noncomplying individual to criminal penalties, including fines and imprisonment, as well as civil penalties.

CAVEAT: Again, the caveat above regarding Contention A-1 is reiterated here. These people are armed and dangerous and you cannot rely on either DOJ or the courts to protect you from them.

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

In discussing section 6151, the Eighth Circuit Court of Appeals stated that "when a tax return is required to be filed, the person so required „shall" pay such taxes to the internal revenue officer with whom the return is filed at the fixed time and place. The sections of the Internal Revenue Code imposed a duty on Drefke to file tax returns and pay the . . . tax, a duty which he chose to ignore." United States v. Drefke, 707 F.2d 978, 981 (8th Cir. 1983), cert. denied, Jameson v. United States, 464 U.S. 642 (1983).

In United States v. Kuglin, No. 03-20111 (W.D. Tenn. Aug. 8, 2003), Vernice B. Kuglin faced criminal charges for falsifying Forms W-4 and failing to pay taxes on $920,000 of income between 1996 and 2001, but was acquitted by a federal jury. Kuglin argued that she attempted to determine whether the income was taxable but the Service did not respond to her letters. Government officials issued press releases making it clear that the outcome in Kuglin should be treated as an "aberration" and noting that persons acquitted of criminal tax violations are not relieved of their obligation to pay taxes due. See 2003 TNT 155-12 (Aug. 11, 2003); 2003 TNT 155-13 (Aug. 11, 2003); 2003 TNT 158-2 (Aug. 14, 2003).

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

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

In August 2004, an appellate court affirmed a federal district court preliminary injunction barring Irwin Schiff, Cynthia Neun, and Lawrence N. Cohen from selling a tax scheme that fraudulently claimed that payment of federal income tax is voluntary. United States v. Schiff, 379 F.3d 621 (9th Cir. 2004), cert. denied 546 U.S. 812 (2005); see http://www.usdoj.gov/tax/txdv04551.htm. Also, in October 2005, the trio was convicted by a Las Vegas jury for various criminal charges relating to the federal income tax laws. See 2005 TNT 205-4 (Oct. 25, 2005). 14

Schiff received a sentence of more than 12 years in prison and was ordered to pay more than $4.2 million in restitution to the IRS; Neun received a sentence of nearly 6 years and was ordered to pay $1.1 million in restitution to the IRS; and Cohen received a sentence of nearly 3 years and was ordered to pay $480,000 in restitution to the IRS. See http://www.usdoj.gov/opa/pr/2006/February/06_tax_098.html; 2006 TNT 38-67 (Feb. 24, 2006); 2006 TNT 24-62 (Feb. 3, 2006).
In September 2008, a federal district court in Nevada sentenced Irwin Schiff to 11 months in prison for criminal contempt. The court reinstated 15 criminal contempt convictions imposed during Schiff's 2005 trial for promotion of tax defier schemes. The 11-month sentence is to be served consecutively to the 151-month sentence previously imposed for Schiff's conspiracy and tax convictions. See http://www.usdoj.gov/tax/txdv08789.htm.
In June 2009, Lawrence Cohen, an associate of Irwin Schiff, pled guilty to aiding and assisting in the preparation of a false Form 1040. Cohen faces up to three years in prison and a $250,000 fine. Cohen also agreed to pay restitution for the taxes owed. http://www.justice.gov/opa/pr/2009/June/09-tax-596.html.
In 2007, a dentist, Dr. Elaine Brown, and her husband, Ed Brown, were prosecuted in a federal district court in New Hampshire of conspiracy to defraud the federal government and, as to Dr. Brown, income tax evasion, among other charges. These taxpayers claimed that they were not subject to taxation and that the IRS never responded to their demands for a legal explanation. In an opening statement to the jury, Ed Brown proclaimed, "We will once and for all show beyond the shadow of a doubt . . . that the federal income tax system is a fraud." They failed to do so, however, as the jury convicted the Browns on all charges. See http://www.usdoj.gov/tax/usaopress/2007/txdv07WEM_Browns.pdf. After being sentenced in April, they refused to surrender themselves to authorities and were arrested at their home on October 4, 2007, to begin serving their prison terms.
On January 29, 2009, the Browns were indicted on eleven obstruction and weapons-related charges in connection with the 2007 trial and standoff. In July, the Browns were convicted on all counts. The most serious counts were carrying and possessing firearms and destructive devices in connection with and in furtherance of crimes of violence and carried a possible life sentence, with a thirty-year minimum sentence. http://www.atf.gov/press/releases/2009/07/070909-bos-edward-and-elaine-brown-convicted.html. On October 2, 2009, Elaine Brown was sentenced to thirty-five years in prison, and on January 11, 2010, Edward Brown was sentenced to thirty-seven years in prison. http://www.justice.gov/usao/nh/press/october09/AH_TO_Brown.html; http://www.justice.gov/usao/nh/press/january10/AH_TO_Brown.html.

Relevant Case Law:

United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993), cert. denied, 510 U.S. 1193 (1994) – the court stated that the "[taxpayers"] claim that payment of federal income tax is voluntary clearly lacks substance" and imposed sanctions in the amount of $1,500 "for bringing this frivolous appeal based on discredited, tax-protester arguments."
Schiff v. United States, 919 F.2d 830, 833 (2d Cir. 1990), cert. denied, 501 U.S. 1238 (1991) – the court rejected Schiff's arguments as meritless and upheld imposition of the civil fraud penalty, stating "[t]he frivolous nature of this appeal is perhaps best illustrated by our conclusion that Schiff is precisely the sort of taxpayer upon whom a fraud penalty for failure to pay income taxes should be imposed."
Wilcox v. Commissioner, 848 F.2d 1007, 1008 (9th Cir. 1988) – the court rejected Wilcox's argument that payment of taxes is voluntary for American citizens, stating that "paying taxes is not voluntary" and imposing a $1,500 penalty against Wilcox for raising frivolous claims.
United States v. Bressler, 772 F.2d 287, 291 (7th Cir. 1985), cert. denied, 474 U.S. 1082 (1986) – the court upheld Bressler's conviction for tax evasion, noting, "[he] has refused to file income tax returns and pay the amounts due not because he misunderstands the law, but because he disagrees with it . . . . [O]ne who refuses to file income tax returns and pay the tax owing is subject to prosecution, even though the tax protester believes the laws requiring the filing of income tax returns and the payment of income tax are unconstitutional."
Packard v. United States, 7 F. Supp. 2d 143, 145 (D. Conn. 1998), aff'd, 198 F.3d 234 (2d Cir. 1999) – the court dismissed Packard's refund suit for recovery of penalties for failure to pay income tax and failure to pay estimated taxes where the taxpayer contested the obligation to pay taxes on religious grounds, noting that "the ability of the Government to function could be impaired if persons could refuse to pay taxes because they disagreed with the Government's use of tax revenues."
United States v. Sieloff, 2009 WL 1850197, 104 A.F.T.R.2d 2009-5067 (M.D. Fla. Jun. 25, 2009) – the court rejected the taxpayer's argument that he was not obligated to pay income taxes because the tax system is based upon voluntary assessment and payment.
United States v. Scott, 2009 WL 1439187, 103 A.F.T.R.2d 2009-2336 (D.D.C. May 20, 2009) – the court imposed sanctions of $1,500 under section 6673 against husband and wife petitioners and rejected their argument that payment of income tax is voluntary.
Horowitz v. Commissioner, T.C. Memo. 2006-91, 91 T.C.M. (CCH) 1120 – the court imposed sanctions in the amount of $10,000 in rejecting the taxpayer's arguments, including the frivolous claim that he could find no statute or regulation making him liable for an income tax.
Bonaccorso v. Commissioner, T.C. Memo. 2005-278, 90 T.C.M. (CCH) 554 (2005) – the taxpayer filed zero returns based on the argument that he found no Code section that made him liable for any income tax. The court held that the taxpayer's argument was

section 1 (imposes an income tax), section 63 (defines taxable income as gross income minus deductions), and section 61 (defines gross income). The court also imposed a $10,000 sanction against the taxpayer under section 6673 for making frivolous arguments.

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

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

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

This contention, Contention A-3, is problematic for both those who advocate the filing of "zero returns" and the IRS. Many such advocates have suggested using "zero returns" on the basis of incorrect, even frivolous, arguments, but the impetus behind their appeal is that a citizen who realizes that the IRS's fictional "zero basis" rule it uses to frivolously contend that wages and salaries are 100% profit—income—is baseless is looking for a way to counter that lie. Seeking a way to avoid being charged a tax on a no-profit and no income exchange and prevent their being accused of willful failure to file (see caveats above), these knowledgeable citizens file returns showing that the 1099's or W-2's are incorrect and that the true amount of gross income (within the meaning of the Constitution and the 16th Amendment) is zero.

The IRS has designated Form 4852 as the proper form for correcting or rebutting 1099's and W-2's, but when one uses that form to demonstrate that none of the funds reported were profit (or income), resulting in a zero gross income number on the return, the IRS regards that as a confrontation of the agency's mythical and deceptive "zero basis" practices and the IRS hates to be confronted with the Truth. (See also, discussion of Contention B-2, below.)

To be specifically correct, even if one were **LIABLE** for the income tax, if he did not receive profits in excess of the standard exemption he is excluded by Section 6012(a) from those required to file a return in the first place. The Catch-22 situation here is that when the IRS receives a W-2 or 1099 it presumes that 100% of the funds reported are profit and, although the burden to prove income, that a profit was realized, is on the IRS it merely "proclaims" the profit proven by the W-2 or 1099. Thus, if one were to stand on the law and the facts and refuse to file because he realized no profits or gains (income) he may be in hot water for not filing, but if he truthfully completes a tax return rebutting the IRS's presumption of profits, using forms provided by the IRS for that very purpose, he will be, albeit unlawfully, penalized $5,000 for a "frivolous" filing.

This "shot if you do and hung if you don't" arrangement leaves one with but one "safe" alternative, and that is to lie on the return, falsely stating that gross receipts were all profit, sign what one knows is false under penalty of perjury and pay taxes on the gross receipts as though they were 100% profit. This produces a bizarre configuration in which the victim is required to lie so that the perpetrator can cheat and steal. The victim hands over and the IRS exacts, unlawfully, a portion of his "most sacred and inviolable of property" . . . his labor. It is not

honest, ethical, moral or even legal, but honesty is not a virtue afforded any respect by the IRS. ("In a time of universal deceit, telling the truth is a revolutionary act." George Orwell) Ironically, if one were engaging in selling commodities (a taxable activity) and at the end of the year his records demonstrated that he broke even the IRS would have no problem with a "zero return". But if one who is engaged in laboring for a living (a tax exempt exercise of a fundamental right) were to show that he broke even, he will be penalized or prosecuted for filing a truthful return.

CONCLUSION: Since one without profits is not required by law to file an income tax return (absence of liability aside) then the only requirement to do so would be from some other compulsion . . . fear, intimidation, threats and, where required, force of arms. The IRS's contention that its ability to exact punishment for obedience of the law and disobedience of IRS lore entitles it to forcibly take one's labor is beyond frivolous, it is outrageous. A truthful return (absence of liability aside) showing that none of the gross receipts were profit is more than the law requires of one who earns his living by his own labor and the rejection of the use of forms (Form 4852) specifically provided by the IRS for that purpose is without any lawful basis . . . frivolous.

In December 2005, a federal district court in Arizona permanently barred Beverly J. Hill and Darrell J. Hill (individually and doing business as Superior Claims Management) from, among other things, preparing or filing federal tax returns for any person or entity other than themselves. The court found that the couple filed zero returns on behalf of their clients based on various frivolous tax arguments, thus interfering with the administration and enforcement of the internal revenue laws. United States v. Hill, 2005 WL 3536118, 97 A.F.T.R.2d (RIA) 548 (D. Ariz. Dec. 22, 2005), aff'd, United States v. Romero-Hill, 197 Fed. Appx. 613 (9th Cir. 2006); see also 2005 TNT 248-8 (Dec. 27, 2005).

In April 2006, a federal district court in Michigan permanently barred Charles Conces from promoting several fraudulent tax schemes, including one in which he filed "zero returns" on behalf of his clients on the faulty premise that income is not taxable. See http://www.usdoj.gov/opa/pr/2006/April/06_tax_243.html; see also 2006 TNT 80-36 (Apr. 25, 2006). In March 2007, U.S. Marshals arrested Conces. The arrest resulted from a federal judge's order on February 23, 2007, finding Conces in civil contempt of court for failing to obey a court order entered on February 8. The February 8 order compelled Conces to disclose to the government the identities of certain persons for whom he drafted or provided advice regarding federal income taxes, the identities of the persons who are responsible for his website, and all documents that he drafted or assisted in drafting for these persons. The order was affirmed on appeal, United States v. Conces, 507 F.3d 1028 (6th Cir. 2007), cert. denied, 128 S. Ct. 2449 (2008). Conces refused to disclose the identities and documents as ordered by the court. See http://www.usdoj.gov/tax/txdv07121.htm.

In February 2008, a federal court in Dallas permanently barred Phillip M. Ballard from preparing federal income tax returns for anyone other than himself. The court found that Ballard, whose business is called Asset & IRS Shield, Inc., prepared federal income tax returns for customers that falsely showed nothing but zeroes on most, if not all, lines. See http://www.usdoj.gov/tax/txdv08114.htm.

Relevant Case Law:

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

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

Little v. United States, 2005 WL 2989696, at *4 (M.D.N.C. Nov. 7, 2005), aff'd, 178 Fed. Appx. 230 (4th Cir. 2006) – taxpayer filed income tax returns showing "0" income and "0" tax liability, even though his W-2 Forms showed taxable income. In response, the IRS imposed penalties for submitting frivolous returns in violation of 26 U.S.C. § 6702. The court noted that multiple other courts have upheld such a penalty assessment in similar cases where taxpayers filed a "zero return" based on various "tax protester" arguments. Determining that plaintiff failed to raise any genuine issues of material fact, the court upheld the penalties. 17

Schultz v. United States, 2005 WL 1155203, at *3 (W.D. Mich. 2005) – "Courts have consistently found the arguments made by Plaintiffs, or ones very similar, in support of an all zero return to be frivolous."
Yuen v. United States, 290 F.Supp.2d 1220, 1224 (D. Nev. 2003) – taxpayer's tax returns were substantially incorrect and frivolous, when he filed returns with zeros on nearly every line, and thus, the court decided, assessments of frivolous return penalties were valid.
Gillett v. United States, 233 F.Supp. 2d 874, 881 (W.D. Mich. 2002) – the court stated "[n]umerous federal courts have upheld the imposition of the $500 sanction by the IRS pursuant to 26 U.S.C. § 6702(a) [for frivolous returns], where, as here, a tax form is filed stating that an individual had no income, but the attached W-2 forms show wages, tips, or other compensation of greater than zero."
Bonaccorso v. Commissioner, T.C. Memo. 2005-278, 90 T.C.M. (CCH) 554 (2005) – the taxpayer filed zero returns based on the argument that he found no Code section that made him liable for any income tax. The court held that the taxpayer's argument was frivolous citing to section 1 (imposes an income tax), section 63 (defines taxable income as gross income minus deductions), and section 61 (defines gross income). The court also imposed a $10,000 sanction against the taxpayer under section 6673 for making frivolous arguments.
Halcott v. Commissioner, T.C. Memo. 2004-214 – the court held the taxpayer liable for the penalty under section 6651(a)(1) for failure to timely file his return where the taxpayer filed a "zero return."
Hill v. Commissioner, T.C. Memo. 2003-144, 85 T.C.M. (CCH) 1328, 1331 (2003) – the court imposed a $15,000 penalty under section 6673 because the taxpayer took the frivolous "zero return" position.
Rayner v. Commissioner, T.C. Memo. 2002-30, 83 T.C.M. (CCH) 1161 (2002), aff'd, 70 Fed. Appx. 739 (5th Cir. 2003), cert. denied, 540 U.S. 1139 (2004) – the court imposed a $5,000 penalty under section 6673 where the taxpayer argued the frivolous "zero return" position.

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

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

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

To the IRS's credit, this statement is almost true. Section 6020(b) does not relieve one who is **liable** and, therefore, required to file a return from doing so, but contrary to the IRS's contention here Section 6020(b) does NOT authorize the IRS to do anything. So, who does Section 6020(b) authorize to file a return?

26 U.S.C. § 6020. Returns prepared for or executed by Secretary

(a) Preparation of return by **Secretary** — If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the **Secretary** may prepare such return, which, being signed by such person, may be received by the **Secretary** as the return of such person.

(b) Execution of return by **Secretary**

(1) Authority of **Secretary** to execute return — If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the **Secretary** shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise. 18

Does this section say anything about the IRS? The Secretary refers to the Secretary of the Treasury, not the IRS. Why is the IRS again misrepresenting the law in this document that is purported to be the "truth"? Why isn't the truth good enough? Are those in the IRS simply compulsive liars? Or are they trying to conceal something else from us?

The Secretary can delegate authority to others, but that has to be done by a duly issued Delegation Order (DO). So has the Secretary delegated authority to make and execute income tax returns? A check of the Federal Register, where all rules and regulations directly affecting the public must be published fails to disclose any such delegation order. Since the Treasury Department is a law abiding agency of the federal government, if such a delegation order had been issued then, surely, it would have complied with the law and published it in the Federal Register. Therefore, unless and until otherwise demonstrated and disclosed, it must be presumed that only the Secretary has the authority to sign returns pursuant to Section 6020(b).

CONCLUSION: It is true that Section 6020(b) does not relieve anyone from having to file a tax return when he is liable for a tax and, therefore, required to file. On the other hand, Section 6020(b) does not authorize anyone other than the Secretary himself to execute a return when one required to file fails to do so.

Relevant Case Law:

United States v. Cheek, 3 F.3d 1057, 1063 (7th Cir. 1993), cert. denied, 510 U.S. 1112 (1994) – the court held the district court did not err when it instructed the jury that defendant's belief that Section 6020 permitted the Secretary of the Treasury to prepare a tax return for a person did not negate "in any way" the obligation to file a tax return.

Notice that this case states that the **Secretary, not the IRS**, is permitted to prepare a tax return. So why is it cited as relevant to the IRS's contention is that 6020(b) authorizes the IRS to do so? More deception—more frivolous argument.

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

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

United States v. Barnett, 945 F.2d 1296, 1300 (5th Cir. 1991), cert. denied, 503 U.S. 941 (1992) - where defense counsel in prosecution for willful failure to file individual federal income tax returns raised inference that the IRS actually had some statutory duty to file returns for delinquent taxpayers, court properly instructed jury that IRS has no such duty.

Schiff v. United States, 919 F.2d 830, 832 (2d Cir. 1990) cert. denied, 501 U.S. 1238 (1991) – the court rejected the taxpayer's argument that the IRS must prepare a substitute return pursuant to section 6020(b) prior to assessing deficient taxes, stating "[t]here is no requirement that the IRS complete a substitute return."

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

United States v. Lacy, 658 F.2d 396, 397 (5th Cir. 1981) – the court, in upholding the taxpayer's conviction for willfully and knowingly failing to file a return, stated that" . . . the purpose of section 6020(b)(1) is to provide the Internal Revenue Service with a mechanism for assessing the civil liability of a taxpayer who has failed to file a return, not to excuse that taxpayer from criminal liability which results from that failure." 19

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

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

This contention, *in general*, is incorrect, but to call it frivolous would be a misapplication of the term because there are exceptions to that general rule, such as first party summonses that are subject to Fifth Amendment rights to decline responding, summonses for information or documents that the IRS already has and summonses that lack required approval or are issued for purpose of harassment alone. Those instances, however, do not constitute a basis for a blanket refusal to comply with any summons.

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

The *Schulz* case referred to does correctly indicate that a summons alone does not rise to the level of a court order and, accordingly, refusal to comply does not subject one to exposure to being held in contempt of court, but where the IRS is required to initiate a suit for enforcement of the summons the court can assess the costs associated with that suit against a defendant who fails to make a showing that his refusal was legally justified. Before complying or refusing to comply the summoned person should make a complete and careful evaluation of his rights and obligations and whether the summons is properly issued before refusing to comply.

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

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

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

Relevant Case Law:

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

Schulz v. IRS, 413 F.3d 297 (2d Cir. 2005) ("Schulz II") – the court, upholding its prior per curiam opinion, reported at Schulz v. IRS, 395 F.3d 463 (2d Cir. 2005) ("Schulz I"), held that, based upon constitutional due process concerns, an indictment under 26 U.S.C. § 7210 shall not lie and contempt sanctions under 26 U.S.C. § 7604(b) shall not be levied based on disobedience of an IRS summons until that summons has been enforced by a federal court order and the summoned party, after having been given a reasonable opportunity to comply with the court's order, has refused. The court noted that "[n]either this opinion nor Schulz I prohibits the issuance of pre-hearing attachments consistent with due process and the law of contempts." Schulz II, 413 F.3d at 304. 20

It is interesting to note that when you look at the ruling in *Schulz* one cannot help seeing that compulsory compliance with a summons does not arise until it has been given the force of a court order. If compliance is not compulsory in the absence of a court order, wouldn't that at least resemble "voluntary"? The same caveat noted above regarding the awarding of costs in the enforcement action should be considered before deciding to defy a summons.

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

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

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

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

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

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

The IRS's description of Section 61 is false and deceptive, making the IRS's position in this regard not only frivolous, but fraudulent.

In order to arrive at the conclusion that wages and salaries, etc., are "income" the IRS has had to distort and misstate the substance of Section 61 by the substitution of "and includes" for the true language of the section, "including". While this may appear to be a minor change its effect is to totally misstate the substance of the section. Here is the IRS's misrepresentation of Section 61:

For federal income tax purposes, "gross income" means all income from whatever source derived **and includes** compensation for services. I.R.C. § 61.

That statement would mean that "gross income" a) means all income from whatever source derived, **AND** b) **includes** compensation for services. But here is what Section 61 actually says:

"(a) General definition — Except as otherwise provided in this subtitle, **gross income means all income** from whatever **source derived, including** (but not limited to) the following items: 21

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

Section 61 does not say that gross income includes compensation for services. On the contrary, it says only that gross income means income (which does not define "income") derived from whatever SOURCE. The section goes on to identify those SOURCES as "including" (NOT "and includes") compensation for services. Thus compensation for services is not gross income, but merely one of the sources from which income may (or may not) be derived.

Section 61 does not define "income" nor does it tell us how income is derived from the various sources listed, but to demonstrate the true meaning it is helpful to restate the section using terms that are known to everyone:

Fruit juice means all juice from whatever fruit derived, including oranges, apples, etc.

Does that statement mean that the term "fruit juice" includes oranges and apples? Or does it say that oranges and apples are fruits from which fruit juice may be derived? Of course, it means the latter.

In order to have Section 61 say what the IRS wants you to believe it has substituted "and includes" for "including", completely altering the meaning of the language, lying about what the section actually says. What that false statement does is to convert our fruit juice definition to "Fruit juice means all juices from whatever fruit derived 'and includes' oranges and apples."

Is an orange or an apple 100% fruit juice? Well, neither is compensation for services 100% profit or gain, i.e., "income". Gross income is only the income (profit or gain) that can be **derived from** compensation for services, just as fruit juice is only the juice that can be **derived from** oranges and apples.

Why is the IRS lying to us about the language of Section 61?

We all know how to squeeze juice from an orange, but how do we squeeze profit or gain from a financial exchange? In other words, how does one "derive income" from any transaction? Sections 1001 et seq. set out the rules for determining what part, if any, of an exchange of property for money is "profit" or "gain"—income. In every instance the law provides that before any profit can be "derived" from a transaction the "basis" must be deducted from the price paid. Basis in every instance described in those sections of the code is either the cost or the value of the property.

Our labor is not rendered for another without cost nor is it without value. Laboring for a living is always at the expense of time out of our life span and our working life span, eventually depleting that time entirely. It is at the expense of our exertion, energy, knowledge, skill and talents, all *expended* for the benefit of another. Nor can our labor be without value, since if that were the case who would pay for it? As a practical matter, our labor must be worth more than we receive for it because if it were not the employer could not resell that labor for a profit. 22

The IRS knows that our labor is not only our property, but our most "sacred and inviolable property". *Butcher's Union v. Crescent City Co.*, 111 U.S. 746, 757 (1884). Yet it contends without any lawful basis whatsoever that money received in exchange for that property is 100% profit. **None of the basis sections provides for a "zero basis" for any transaction. NOT ONE!!** So where does the IRS get the notion that moneys received in exchange for labor have a "zero basis"—neither cost nor value? It has dreamed it up, fabricated the "zero basis" rule for wages and salaries received for one's property, his most "sacred and inviolable" of property, at that.

Since it is impossible to assign a specific value for our labor it is also impossible to determine what part, if any, is profit and the Supreme Court has made it very clear to the IRS that where a profit cannot be clearly and distinctly identified and separated from the capital (basis for the property conveyed) no income can be derived from that transaction. *Eisner v. Macomber*, 252 U.S. 189 (1920). The only way one can derive profit or gain—"income"—from labor is by selling the labor of another. That is the only way to generate a known, identifiable profit.

So not only has the IRS had to lie about what Section 61 says, it has also had to lie about what Sections 1001 et seq. say about how to determine how much, if any, of funds received in exchange for our labor is profit or gain—"income".

CONCLUSION: The law, Section 61, does not support the IRS's argument that "gross income includes compensation for services" making that contention by the IRS frivolous, without a basis in law. In order to arrive at its frivolous conclusion the IRS has had to lie about the language of Section 61, changing it to something entirely different from what it actually states. Lying about Section 61, however, was not enough to arrive at the IRS's desired conclusion that our labor is without either cost or value, making our wages or salaries 100% profit, so it also has had to lie about the basis sections, Sections 1001 et seq. These lies constitute not only a frivolous position by the IRS, they rise to the level of fraud.

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

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

The Supreme Court in the *Brushaber* case did find that the income tax is Constitutional, but not because the 16th Amendment authorized Congress to impose such a tax. That case held that the income tax was Constitutional because it is an ***indirect*** tax (a tax imposed on a privileged activity and measured by the amount of profit (income) derived from engaging in that taxable activity (See *Stanton v. Baltic Mining*, 240 U.S. 103 (1916)) and, therefore, was not subject to the requirement of apportionment among the States.

In fact, *Brushaber* held that ***the 16th Amendment did not grant Congress any additional taxing authority***, its only effect being to preclude the Supreme Court from considering the source of

income in deciding whether the tax is direct, requiring apportionment, or indirect, not requiring apportionment. The Court warned Congress, though, that if the income tax were to be applied in such a way as to make it a direct tax (mandatory or imposed on person or property), it would strike it down for failure to comply with the rule of apportionment applicable to direct taxes per Constitution Article I, Section 9, Cl. 4.

Thus, the IRS is misrepresenting the holding in *Brushaber*, but with far less violence to the true holding as it will in its "further discussion" promised above. See discussion of Contentions C-2, D-5 and D-6, below.

All compensation for personal services, no matter what the form of payment, must be included in gross income. This includes salary or wages paid in cash, as well as the value of property and other economic benefits received because of services performed, or to be performed in the future.

Again, this statement, made in absolute and unqualified terms, misstates the law. To say that all compensation for services must be included in gross income is, again, to say that oranges and apples are all juice. Note, however, to the IRS's credit this time they have not purported that its ridiculous and frivolous statement is supported by any law.

However, reviewing Section 61, above, it is interesting to note that wages and salaries are not listed under "compensation for services". And when did "compensation for services" become "compensation for ***personal*** services"? Where do we find services "to be performed in the future" in Section 61? Why does the IRS constantly rephrase and misrepresent the law when it states its positions? Could it be that the law as it is actually written does not support its frivolous arguments?

"Fees, commissions, fringe benefits and similar items" are not the same as "wages and salaries", but if "compensation for services" was intended to mean "wages and salaries", wouldn't one reasonably expect that those would top the list? Why are "wages and salaries" not included in that listing? Good question and one for which the IRS has no answer.

Furthermore, criminal and civil penalties have been imposed against individuals relying upon this frivolous argument.

CAVEAT: Again, the caveat above regarding Contention A-1 is reiterated here. These people are armed and dangerous and you cannot rely on either DOJ or the courts to protect you from them.

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

Taxpayers should not mistake these cases for an indication that frivolous positions that lead to criminal acquittals are legitimate or that the outcome of other cases will protect a taxpayer from sanctions resulting from noncompliance. Furthermore, while a few defendants have prevailed, the vast majority are convicted. Also, even though a taxpayer may be acquitted of criminal charges of noncompliance with Federal tax laws, the Service is still free to pursue any underlying tax liability and is not barred from determining civil penalties. See Helvering v. Mitchell, 303 U.S. 391 (1938); Price v. Commissioner, T.C. Memo. 1996-204.

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

was based on the premise that wages cannot be taxed. See http://www.usdoj.gov/opa/pr/2005/March/05_tax_085.htm; see also 2005 TNT 94-16 (May 16, 2005).
In January 2005, a federal district court in California permanently enjoined Joseph O. Saladino, founder of an organization known as the Freedom and Privacy Committee, from promoting two schemes: the "claim of right" program and the "corporation sole" scheme (discussed below in this outline). See http://www.usdoj.gov/tax/txdv05005.htm; see also 2005 TNT 15-22 (Jan. 24, 2005).
In November 2009, Saladino and three co-defendants were convicted of conspiracy to defraud the United States by interfering with the IRS" ability to accurately assess and calculate income taxes. A fourth co-defendant was acquitted and a fifth pled guilty in September. Saladino faces up to five years in prison and $250,000 in fines.
http://www.oregonlive.com/portland/index.ssf/2009/11/federal_jury_finds_three_guilt.html
Also, in January 2005, a federal district court in North Carolina permanently barred Frank D. Perkinson from selling the "claim of right" program and the "corporation sole" scheme. See http://www.usdoj.gov/opa/pr/2005/January/05_tax_005.htm; see also 2005 TNT 5-16 (Jan. 6, 2005).
In June 2006, Richard M. Blackstock was convicted on thirty-two counts of assisting in the preparation of fraudulent returns based on his involvement in filing various returns claiming deductions for wages, salaries and other compensation under the frivolous "claim of right" theory. See http://www.usdoj.gov/tax/usaopress/2006/txdv06Blackstock_USAO_OK.wpd; see also 2006 TNT129-31 (Jun. 23, 2006).
In March 2008, a federal judge in Michigan barred Donald A. Gray from preparing federal income tax returns. The court found that Gray had been preparing tax returns for his customers based on the theory that wages are not income. The court ordered that Gray be barred from counseling others about the preparation of their returns, from holding himself out as a Certified Public Accountant, and from otherwise interfering with the administration and enforcement of the internal revenue laws. See http://www.usdoj.gov/tax/txdv08163.htm.

Relevant Case Law:

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

This is a total misrepresentation of the holding in *Cheek*. In that case the Supreme Court held that where a defendant holds a good faith belief that he is not required to file a tax return or pay a tax he has not "willfully" violated the law and must be acquitted. The issue was whether the good faith belief was to be considered objectively (Is the belief correct or incorrect—should the defendant believe what he says he believes?) or subjectively (Is the belief, even if irrational, genuinely held?) and the Court held that the subjective standard must be applied. While one of Cheek's beliefs was that the income tax was unconstitutional, he claimed to hold other beliefs that a jury later apparently determined he did not genuinely believe. The court carved out two exceptions to the good faith belief defense, those being 1) that the law is unconstitutional, and 2) that one disagrees with the law. Why the IRS feels the need to skirt the actual issue in *Cheek* is not the subject of this discussion, but the fact is that it has misstated still another authority, choosing to pick and choose what language it wishes without regard to context or accuracy.

Commissioner v. Kowalski, 434 U.S. 77 (1977) – the Supreme Court found that payments are considered income where the payments are undeniably accessions to wealth, clearly realized, and over which a taxpayer has complete dominion.
Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 429-30 (1955) – referring to the statute's words "income derived from any source whatever," the Supreme Court stated, "this language was used by Congress to exert in this field „the full measure of its taxing power." . . . And the Court has given a liberal construction to this broad phraseology in recognition of the intention of Congress to tax all gains except those specifically exempted."

These cases, *Kowalski* and *Glenshaw Glass*, are both cited as relevant to the IRS's position that wages are 100% profit, 100% "gross income". The amazing thing about the IRS's citation of 25

these cases is that **neither case had anything to do with wages or salaries or any other kind of compensation for labor.** ***Still another misrepresentation!***

Kowalski **had absolutely nothing to do with compensation for labor (or for services).** The controversy in *Kowalski* was whether a meal allowance for police officers, which was paid without regard to whether the officer was on or off duty, whether the officer purchased or ate a meal, or whether the officer was on vacation or sick leave, was gain . . . income. The meal allowance was paid above and beyond what the officers were paid for their time and effort . . . ***a gain that is distinct and apart from the exchange of money for labor***. The citation of this case is totally erroneous, so much so that it can be said to be frivolous.

Glenshaw Glass **is even more remote from the issue of whether wages or salaries are 100% profit.** This case dealt with a **company** that had received compensatory and punitive damages in settlement of a lawsuit against another company. The court held that the punitive damages, which were above and beyond the company's losses (damages), were GAIN . . . income. ***Glenshaw Glass*** **had absolutely nothing to do with wages, much less with whether wages are 100% profit or gain . . . income**, yet we find it here misrepresented as such by the IRS.

If the IRS's position is true then why does it find it necessary to lie, both about what Section 61 provides and what the basis sections, Sections 1001 et seq. provide and, now, about what these two cases hold? Because their position is not true and there is no legal support for their position making it . . . well . . . frivolous.

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United States v. Becker, 965 F.2d 383, 389 (7th Cir. 1992), cert. denied, 507 U.S. 971 (1993) – the court found defendant's contention that wages are not income to be "ridiculous."

United States v. Sloan, 939 F.2d 499, 500 (7th Cir. 1991), cert. denied, 502 U.S. 1060 (1992) – in rejecting defendant's argument that the revenue laws of the United States do not impose a tax on income, the court recognized the "Internal Revenue Code imposes a tax on all income."

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

Stelly v. Commissioner, 761 F. 2d 1113 (5th Cir. 1985), cert. denied, 474 U.S. 851 (1985) – the Fifth Circuit affirmed the Tax Court's holding against the taxpayer's argument that taxing wage and salary income is a violation of the constitution because compensation for labor is an exchange, not gain. The Fifth Circuit also fined the taxpayer for bringing a frivolous appeal.

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

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

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

United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1981) – the court affirmed Romero's conviction for willfully failing to file tax returns, finding, in part, that "[t]he trial judge properly instructed the jury on the meaning of [„income" and „person"]. Romero's proclaimed belief that he was not a „person" and that the wages he earned as a carpenter were not „income" is fatuous as well as obviously incorrect."
Callahan v. Commissioner, 103 A.F.T.R.2d 2400, 2009 U.S. App. LEXIS 11342 (7th Cir. May 27, 2009) – the court rejected the petitioner's argument that only "the gain from wages" (not the wages themselves) is taxable and characterized the argument as "beyond frivolous." The court also imposed a $4,000 penalty for filing a frivolous appeal.
Abdo v. United States, 234 F.Supp.2d 553 (M.D. N.C. 2002), aff'd, 63 Fed. Appx. 163 (4th Cir. 2003), cert. denied, 540 U.S. 1120 (2004) – the tax preparer prepared returns based on the argument that labor is an exchange for wages and not taxable. The court cited Connor, supra, when finding that the tax preparer misstated the law.
McCoy v. United States, 88 A.F.T.R.2d (RIA) 7116, 2001 U.S. Dist. LEXIS 18986 (N.D. Tex. Nov. 16, 2001), appeal dismissed, 54 Fed. Appx. 406 (5th Cir. 2002) – the court rejected the taxpayer's argument that wages received were not income and described this position as meritless.
Sumter v. United States, 61 Fed. Cl. 517, 523 (2004) – the court found the taxpayer's "claim of right" argument as "devoid of any merit" and that section 1341 only applies to situations in which the claimant is compelled to return the taxed item because of a mistaken presumption that the right held was unrestricted and, thus, the item was previously reported, erroneously, as taxable income. Section 1341 was inapplicable to Ms. Sumter, because she had a continuing, unrestricted claim of right to her salary income and had not been compelled to repay that income in a later tax year.
Pugh v. Commissioner, T.C. Memo. 2009-138, 97 T.C.M. (CCH) 1791 (2009) – stating that the "petitioner advances shopworn arguments characteristic of tax defier rhetoric," the court rejected the taxpayer's argument that his wages were not taxable because of section 1341. The court imposed a $15,000 section 6673 penalty for advancing frivolous arguments.
Carskadon v. Commissioner, T.C. Memo. 2003-237, 86 T.C.M. (CCH) 234, 236 (2003)– the court rejected the taxpayer's frivolous argument that "wages are not taxable because the Code, which states what is taxable, does not specifically state that „time reimbursement transactions," a term of art coined by [taxpayers], are taxable." The court imposed a $2,000 penalty against the taxpayers for raising "only frivolous arguments which can be characterized as tax protester rhetoric."
Wheelis v. Commissioner, T.C. Memo. 2002-102, 83 T.C.M. (CCH) 1543-45 (2002), aff'd, 63 Fed. Appx. 375 (9th Cir. 2003) – the court rejected the taxpayer's frivolous argument that his wages were not taxable based on his belief that "[p]roperty (money) exchanged for property (labor not subject to tax)" is not subject to income taxation. The court stated that such claims have been "consistently and thoroughly rejected" by the courts and imposed a penalty against Wheelis in the amount of $10,000 for making frivolous arguments.
Cullinane v. Commissioner, T.C. Memo. 1999-2, 77 T.C.M. (CCH) 1192, 1193 (1999) – noting that "[c]ourts have consistently held that compensation for services rendered constitutes taxable income and that taxpayers have no tax basis in their labor," the court found Cullinane liable for the failure to file penalty, stating that "[his] argument that he is not required to pay tax on compensation for services does not constitute reasonable cause."
Abrams v. Commissioner, 82 T.C. 403, 413 (1984) – the court rejected the argument that wages are not income, sustained the failure to file penalty, and awarded damages of $5,000 for pursuing a position that was "frivolous and groundless . . . and maintained primarily for delay."
Reading v. Commissioner, 70 T.C. 730 (1978), aff'd, 614 F.2d 159 (8th Cir. 1980) – the court said the entire amount received from the sale of one's services constitutes income within the meaning of the Sixteenth Amendment.

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

Technically, ***as stated*** this contention is not correct. Even the most inept legal researcher can easily compile an inventory of what the federal government is entitled to tax and that inventory would not be limited to activities producing income from foreign sources. This is, however, a common practice of the IRS and other law defiers in that when it is confronted with a claim or argument it cannot refute it will restate that position as something completely different and then refute its own misrepresentation of the claim. Nevertheless, the contention, as stated here, is incorrect. By stating the contention in such limited terms, however, the IRS is dodging the issue of what is or is not taxable. Why? 27

Whether an activity is "taxable" by the federal government is of paramount importance because the income tax is imposed only on ***"taxable"*** income (IRC § 1). Therefore, it is not imposed on income that is derived from engaging in activities that are not within reach of the federal government's taxing authority.

As seen below, however, the IRS cannot legitimately and honestly respond to the real issue without revealing the very limited scope of the federal taxing authority—the very limited list of those activities that are actually "taxable" by the federal government—and, therefore, capable of producing "taxable" income.

All activities must be either "taxable" or "exempt", beyond the taxing authority of the federal government. So how do we know which category our activities fall into? Since the IRS cannot be honest in addressing this issue without exposing just how narrow the federal taxing authority is, we will provide the Truth:

The **GENERAL** taxing authority of any sovereign, which would include the limited sovereignty of the federal government, was set out clearly in *McCulloch v. Maryland*, 17 U.S. 316 (1819), where Chief Justice John Marshall drew a clear and bright line between what is taxable and all other proposed subjects of taxation, which he called "exempt" because they are outside that authority to tax. The distinction between taxable and exempt was simply stated by Marshall in the statement that "The power to tax involves the power to destroy." The court then went on to rule that since the State of Maryland, a sovereignty, ***did not have the right to destroy, it did not have the right to tax*** that which the federal government, another sovereignty, had the right to create, and, therefore, the National Bank, created by Congress, was "exempt" from taxation by Maryland.

Chief Justice Marshall, however, did not leave the issue on those general terms, but explained exactly how to determine whether a subject is taxable or exempt, saying that ***a sovereignty's right to tax extends only*** to those subjects that either:

1) **"Exist by its authority"** (Such taxable activities would include the exercise of the privileges associated with a patent or copyright, which only exists because the federal government created, issued, the patent or copyright under its authority from Article I, Section 8, Cl. 8.); or

2) **"Are introduced by its permission"** (Examples of these activities would be those the Congress was given the right to govern, regulate, and for which it could require its permission, such as engaging in foreign or interstate trade or trade with the Indian tribes, Article I, Section 8, Cl. 3.)

Thus, according to the Supreme Court the federal government can tax only those **activities that exist by its authority or that require its permission** and that **all other activities are "exempt" from federal taxation—not "taxable". Marshall called this "self-evident"—an obvious Truth.** 28

In addition to the *general* taxing authority, which includes only those subjects that exist by the sovereignty's authority or are introduced by its permission, the **EXCISING** authority was invented by the Supreme Court in 1911 with its ruling in *Flint v. Stone Tracy*, 220 U.S. 107 (1911). That decision was based upon Article I, Section 8, Cl. 1, which states that Congress shall have the authority to lay and collect "excises". The Court held that by using the word "excise" the Constitution permitted the federal government to tax certain activities historically taxed by "excise taxes" even though they are not among those that exist by its authority or are introduced by its permission. The Court held that "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**.'" *Id* at p. 151.

Once we know what is "taxable" by the federal government we can clearly see why the IRS phrased this contention about foreign source income in so limited a manner. How many Americans who are working for a living are within one of the very narrow enumeration of activities that are "taxable" by federal government? Not many. Now that we have a complete listing of what the federal government has the power to tax, we can all compare our activities to that list to easily determine whether we are engaging in a "taxable" activity or, instead, in an activity outside that reach, what Marshall calls "exempt".

Do you, your labor or your occupation exist because the federal government said so—"exist by its authority"?

Do you need the federal government's permission to practice your craft or trade?

Are you, personally (not on behalf of an employer), manufacturing, selling or consuming a commodity for profit? Does your occupation require a license from the federal government?

Are you a corporation? If not, then by what authority can the IRS claim that any income, profit or gain, you might "derive" from engaging in laboring for a living is "taxable"? If your activity, laboring for a living, is not taxable then the only other category for it to be part of is "exempt".

Remember, the IRS in its regulations (26 CFR 1.861-8T) tells us that we should not even include tax-exempt income in gross income. So those of us whose activities are outside the federal taxing authority should not include our profit, much less our gross receipts (wages and salaries), received in exchange for our labor and resulting from our exercising a right, not a privilege, as any part of our "gross income". If we follow the nation's laws instead of the IRS's lies, however, the IRS will react violently.

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

The Law: As stated above, for federal income tax purposes, "gross income" means all income from whatever source derived and includes compensation for services. I.R.C. § 61.

To paraphrase President Reagan, "Well . . . there they go again." Reference is made to the discussion of this misrepresentation of Section 61 in Contention B-1. 29

Further, Treas. Reg. § 1.1-1(b) provides, "[i]n general, all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States." I.R.C. sections 861 and 911 define the sources of income (U.S. versus non-U.S. source income) for such purposes as the prevention of double taxation of income that is subject to tax by more than one country. These sections neither specify whether income is taxable, nor do they determine or define gross income. These frivolous assertions are clearly contrary to well-established legal precedent.

The IRS's reliance on its own misinterpretation as having the force of law is not only presumptuous, it is frivolous and misleading. Treasury regulations all fall into one of two categories, legislative and interpretive. Legislative regulations implement a statutory obligation, defining for the "taxpayer" how, when and where to comply with a duty imposed by the statute. Legislative regulations are very limited in number and are based upon a specific authorization.

All other regulations, however, are called "interpretive" and represent only the Secretary's spin on what a statute means. Interpretive regulations do not have the force of law and impose no duties. Neither type regulation, however, can exceed the scope or portent of the statute it either implements or interprets and that includes defining those who are liable for a tax. *U. S. v. Calamaro*, 354 U.S. 351 (1957). Treasury regulation § 1.1-1 is an interpretive regulation and has no binding effect on anyone. It does not have the force of law and when the IRS holds that interpretation out as "law" it is being less than honest.

Additionally, we already know from Section 6001 that only those liable are required to comply with regulations. Reasoning that a regulation, which can apply only to one who is liable, can make one liable and, therefore, subject to the regulation making him liable, is circuitous, at best, inane and frivolous, at worst.

But just for fun and illumination let's examine that regulation for a minute. 1.1-1(b) is, according to its number, 1, interpretive of Section 1 of the Internal Revenue Code (IRC) and purports to identify those liable for the income tax. There are several problems, however, with the Secretary's non-binding "spin" on Section 1. First, while 1.1-1 purports to identify those liable according to Section 1, that section does not state that anyone is liable for the income tax. How can an interpretation include something that is not there? Clearly, this interpretation exceeds the scope and portent of Section 1. *Id.*

Second, however, is the curious reference to "**all** citizens of the United States." That would seem to include everyone born in the USA, wouldn't it? "All" is pretty "all"-inclusive, isn't it? But if we look at the very next subsection, § 1.1-1(c), we find out that "all" does not include "all", but only those citizens described in subsection (c). Who is that? Is it you?

(c) *Who is a citizen.*

Every person born or naturalized in the United States **and subject to its jurisdiction** is a citizen.

Most people believe that the federal jurisdiction extends to anyone and anything in the country, but that is not correct. The extent of the federal jurisdiction is set out clearly in the Constitution and the limits of that jurisdiction were very well defined in a 1957 DOJ report to Congress on the Jurisdiction of the United States government. That report can be obtained in the law library on the Truth Attack web site, www.truthattack.org. 30

But for the purposes of this exploration into the IRS's deceptive labyrinth of lies and misdirection as demonstrated by its reference to 1.1-1(b) but without adding that "all" means only those "subject to its jurisdiction", there are two basic types of federal "jurisdiction", first, exclusive legislative jurisdiction and, second, subject matter jurisdiction.

Exclusive legislative jurisdiction extends to the District of Columbia and lands acquired by the federal government (with the State's consent) for naval yards, magazines, arsenals and the like over which the State has ceded jurisdiction, called federal "enclaves" (see Article I, Sec. 8, cl. 17) and the territories or possessions (see Article IV, Sec. 3, cl. 2). So if you live in Washington, DC, or on a federally owned facility over which the State has ceded jurisdiction to the federal government or in one of the territories, that would make you "subject to its jurisdiction", making you one of the "all" citizens described in the Secretary's spin on Section 1.

The federal government also has jurisdiction, the authority to govern, over certain activities within the States and those are enumerated in the Constitution in Article I, Section 8. Those include the power to regulate foreign commerce, trade with the tribes, trade with the territories, interstate commerce, the operation of a postal system, including post roads, and other limited powers such as bankruptcy, patents, copyrights, national defense and the coining of money. All other powers other than those enumerated in Article 1, Section 8, or in the enabling clauses of Amendments 13, 14, 15, 19 and 23, are reserved to the States and to the people (see Amendment X). Again, if you are engaging in any of those activities over which the federal government has jurisdiction, then you would be "subject to its jurisdiction", making you one of the "all" citizens described in the Secretary's gratuitous spin on Section 1. If not, however, while you may be a "citizen" for many other purposes, for the purposes of the income tax you are not.

Most of us would be very surprised to learn that while we live and work in the united States (note the lower case for "united", as used in the title of the Declaration of Independence) we are not "subject to" the jurisdiction of the United States government. Only you know where you reside and whether that is in DC, a federal enclave or territory and only you know whether you are engaging in any activity over which the Constitution grants the federal government the right to govern. Are you? If not, then you are not among the "all" citizens within the meaning of that term for the purpose of § 1, the income tax. And that is according to the Secretary's official interpretation of that section. So, if the IRS's *capo tutti capos*, the Secretary of the Treasury, says you are not liable, but the IRS says you are, whom do you believe?

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

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

In August 2005, a Philadelphia jury convicted Larken Rose on five counts of willful failure to file federal income tax returns based on the frivolous section 861 argument. Mr. Rose was sentenced in federal district court to 15 months imprisonment, and must pay a fine of $10,000,

as well as all taxes, interest and penalties that he owes to the IRS. See http://www.usdoj.gov/opa/pr/2005/August/05_tax_418.htm; see also 2005 TNT 157-22 (Aug. 12, 2005); 2005 TNT 225-17 (Nov. 22, 2005).

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

Relevant Case Law:

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

United States v. Thompson, 2009 WL 1531571 (E.D.Cal. May 28, 2009) – the court granted the Service's motion for a default judgment that included $2,596.46 in frivolous return penalties and interest. In a prior case, an injunction had been imposed on the taxpayer and Rule 11 sanctions assessed for making a frivolous "Section 861" argument.

Hillecke v. United States, 2009 WL 2015009 (D. Or. Jun. 30, 2009) – the district court adopted the magistrate judge's opinion and as to the taxpayers" argument that earnings do not constitute gross income because earnings are not listed as an item of income in Treas. Reg. § 1.861-8(f), found the argument frivolous.

Great-West Life Assur. Co. v. United States, 678 F.2d 180, 183 (Ct. Cl. 1982) – the court stated that "[t]he determination of where income is derived or „sourced" is generally of no moment to either United States citizens or United States corporations, for such persons are subject to tax under I.R.C. § 1 and I.R.C. § 11, respectively, on their worldwide income."

Rodriguez v. Commissioner, T.C. Memo. 2009-92, 97 T.C.M. (CCH) 1482 (2009) – the court upheld deficiencies determined by the commissioner, and stated, "The 861 argument is contrary to established law, and for that reason, frivolous." The court also imposed a $25,000 section 6673(a)(1) penalty against the taxpayer in each of two consolidated cases.

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

Corcoran v. Commissioner, T.C. Memo. 2002-18, 83 T.C.M. (CCH) 1108, 1110 (2002), aff'd, 54 Fed. Appx. 254 (9th Cir. 2002), cert. denied, 538 U.S. 1036 (2003) – the court rejected the taxpayers" argument that his income was not from any of the sources in Treas. Reg. § 1.861-8(f), stating that the "source rules [of sections 861 through 865] do not exclude from U.S. taxation income earned by U.S. citizens from sources within the United States." The court further required the taxpayers to pay a $2,000 penalty under section 6673(a)(1) because "they . . . wasted limited judicial and administrative resources."

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

Madge v. Commissioner, T.C. Memo. 2000-370, 80 T.C.M. (CCH) 804 (2000), aff'd, 23 Fed. Appx. 604 (8th Cir. 2001), cert. denied, 537 U.S. 825 (2002) – the court labeled as "frivolous" the position that only foreign income is taxable.

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

Solomon v. Commissioner, T.C. Memo. 1993-509, 66 T.C.M. (CCH) 1201, 1202 (1993), aff'd, 42 F.3d 1391 (7th Cir. 1994) – the court rejected the taxpayer's argument that his income was exempt from tax by operation of sections 861 and 911, noting that he had no foreign income and that section 861 provides that "compensation for labor or personal services performed in the United States . . . are items of gross income."

3. Contention: Federal Reserve Notes are not income.

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

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

The contention that FRN's are not "income" is, obviously, not correct, since "income" can be realized in a number of forms, which would even include foreign currency, but the underlying point raised by this contention, that FRN's are not lawful money, is correct. In addition, the IRS's counter to that contention is not exactly correct, either.

No one in the legitimate Tax Honesty Movement contends that FRN's cannot be income because of Article I, Section 10, of the Constitution. "Income" can be realized in the form of FRN's, Euros or pesos, all of which are forms of currency foreign to the United States government.

Most do, however, challenge whether FRN's are "lawful money". When FRN's were "notes" because they included a "promise to pay" ("will pay to bearer on demand X dollars"), the notes clearly indicated that they were "redeemable in **lawful money** at the United Stated Treasury or at any Federal Reserve Bank." Thus, it is apparent that even when FRN's were actually notes they were not "lawful money", but merely a promise to pay one "lawful money". If one were to give his note to a bank for a loan to purchase a car or home, is that promissory note "money"?

The current version of FRN's, however, promises nothing and makes no reference whatsoever to any relationship to "lawful money".

As pointed out by the IRS in this segment Article I, Section 8, Cl. 5 of the Constitution grants the sole authority and responsibility for coining money to Congress (and Congress alone). Neither that clause, nor any other, authorizes Congress to shirk that responsibility by delegating it to another branch, much less to a privately owned bank (the Federal Reserve Bank is neither owned nor managed by the federal government), any more than it could delegate that responsibility to the Boy Scouts, General Electric or, perhaps most appropriate an example, Disney. FRN's do not meet the definition of "lawful money" and Congress' unconstitutional endowment of a private banking corporation with the power to print and distribute privately issued non-promissory "notes" as money does not legitimize the abdication.

CONCLUSION: While the contention that "income" cannot be expressed in Federal Reserve "Notes" is not valid, neither is the contention that Federal Reserve "Notes" are lawful money. Just as in Mad Magazine's "Spy vs. Spy" comic strip, this passage is a good example of "Lie vs. Lie". 33

Relevant Case Law:

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

Sanders v. Freeman, 221 F.3d 846, 855 (6th Cir. 2000), cert. denied, 531 U.S. 1014 (2000) – in regard to defendant's argument "that imposing sales tax on the sale of legal-tender silver and gold coins unconstitutionally interferes with Congress's exclusive power to coin money is simply untenable," the court recognized that "most, if not all, of the courts that have considered this issue have held that imposing sales tax on the purchase of gold and silver coins and bullion for cash does not infringe on Congress's constitutional power to coin and regulate currency." See also United States v. Davenport, 824 F.2d 1511, 1521 (7th Cir. 1987).

United States v. Condo, 741 F.2d 238, 239 (9th Cir. 1984), cert. denied, 469 U.S. 1164 (1985) – the court upheld the taxpayer's criminal conviction, rejecting as "frivolous" the argument that Federal Reserve Notes are not valid currency, cannot be taxed, and are merely "debts."

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

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

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

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

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

Again, the way this contention is stated is misleading. "Taxpayer" is a legal term defined in the IRC as any person "subject to" a tax. To say that a "taxpayer", a "person subject to the tax", is not a "person subject to the tax" makes the statement clearly wrong. (Have you noticed, yet, how much trouble the IRS goes to in order to avoid using the word "liable"?) How many legs does a dog have if we call the tail a leg? Four, because calling a tail a leg does not make it a leg. Calling one a taxpayer does not make him subject to a tax. A law, a statute enacted by Congress, alone can make one "subject to a tax." Where is the law making the typical working American "subject to" the income tax? The IRS's admission by omission of that issue from this publication's list of "frivolous" arguments, that there is no such law, answers that question loud and clear.

And again, by carefully misstating the contention the IRS renders it insupportable. However, even according to the Secretary of the Treasury, the IRS's boss, the only citizens who are "citizens" for the purpose of the income tax are those who are "subject to the jurisdiction" of the United States government. See the discussion of that issue in the Truth about Contention B-2, above.

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

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

This misrepresentation is one done by making a statement that appears correct enough, but fails to establish the premise, that all citizens are "citizens" "subject to" the income tax. Reread the foregoing paragraph and see if you can find any support for contending that by virtue of being a citizen one is subject to the income tax. Assuming one is a citizen who is subject to the jurisdiction of the United States government, what law then makes him "subject to the income tax"? None.

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

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

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

In September 2006, a California federal district court barred James L. Tolbert from preparing federal tax returns. Tolbert promoted a tax avoidance scheme representing, among other things, that residents of California or other states are not liable for federal income tax because they are citizens of California (or other state) and not the United States, and that American citizens working in the United States need not file federal income returns because "compensation for labor" is totally different in meaning and in law from "income." See http://www.justice.gov/archive/opa/pr/2006/September/06_tax_602.html.

In May 2009, a Connecticut federal district court judge granted the government's motion for a permanent injunction against Deowraj Buddhu and Sunita Buddhu, precluding them from: preparing or assisting in preparing federal tax returns; representing customers before the Internal Revenue Service; owning, working for, or volunteering for tax-return-preparation businesses; and promoting tax-fraud schemes. Sunita Buddhu and her father Deowraj Buddhu had operated a tax return preparation business in which they advised their clients that the IRS does not have authorization or jurisdiction to conduct examination of Connecticut residents" tax returns.http://www.justice.gov/opa/pr/2009/May/09-tax-474.html.

Relevant Case Law:

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United States v. Hilgeford, 7 F.3d 1340, 1342 (7th Cir. 1993) – the court rejected "shop worn" argument that defendant is a citizen of the "Indiana State Republic" and therefore an alien beyond the jurisdictional reach of the federal courts.

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

United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993), cert. denied, 510 U.S. 1193 (1994) – the court rejected the Gerads" contention that they were "not citizens of the United States, but rather „Free Citizens of the Republic of Minnesota" and, consequently, not subject to taxation" and imposed sanctions "for bringing this frivolous appeal based on discredited, tax-protester arguments."

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

United States v. Ward, 833 F.2d 1538, 1539 (11th Cir. 1987), cert. denied, 485 U.S. 1022 (1988) – the court found Ward's contention that he was not an "individual" located within the jurisdiction of the United States to be "utterly without merit" and affirmed his conviction for tax evasion.
O'Driscoll v. IRS, 1991 U.S. Dist. LEXIS 9829, at *5-6 (E.D. Pa. 1991) – the court stated, "despite [taxpayer's] linguistic gymnastics, he is a citizen of both the United States and Pennsylvania, and liable for federal taxes."
Rice v. Commissioner, T.C. Memo. 2009-169, 98 T.C.M. (CCH) 40 (2009) – the court affirmed the imposition of a section 6702 frivolous return penalty against the taxpayer and rejected the taxpayer's claim that he was not liable for income tax because he resided in the "American Republic of Georgia" and was not a United States citizen.
Knittel v. Commissioner, T.C. Memo. 2009-149, 97 T.C.M. (CCH) 1837 (2009) – the court imposed a $7,500 section 6673 penalty against the taxpayer for asserting the frivolous argument (among others) that he was "not a United States person as defined in I.R.C. section 7701(a)(30)."
Bland-Barclay v. Commissioner, T.C. Memo. 2002-20, 83 T.C.M. (CCH) 1119, 1121 (2002) – the court rejected taxpayers" claim that they were exempt from the federal income tax laws due to their status as "citizens of the Maryland Republic," characterized such arguments as "baseless and wholly without merit," and required taxpayers to pay a $1,500 penalty for making frivolous arguments.
Marsh v. Commissioner, T.C. Memo 2000-11, 79 T.C.M. (CCH) 1327, aff"d, 23 Fed. Appx. 874 (9th 2002), cert. denied, 537 U.S. 1029 (2002) - the court rejected the argument that the United States lacked legal standing to assess taxes because Marsh was a descendant from native Hawaiians. The court held that Marsh was a United States citizen subject to tax and not excluded as a purported member of the "Nation of Hawaii."
Solomon v. Commissioner, T.C. Memo. 1993-509, 66 T.C.M. (CCH) 1201, 1202-03 (1993), 42 F.3d 1391 (7th Cir. 1994) – the court rejected Solomon's argument that as an Illinois resident his income was from outside the United States, stating "[he] attempts to argue an absurd proposition, essentially that the State of Illinois is not part of the United States. His hope is that he will find some semantic technicality which will render him exempt from Federal income tax, which applies generally to all U.S. citizens and residents. [His] arguments are no more than stale tax protester contentions long dismissed summarily by this Court and all other courts which have heard such contentions."

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

Some argue that the United States consists only of the District of Columbia, federal territories (e.g., Puerto Rico, Guam, etc.), and federal enclaves (e.g., American Indian reservations, military bases, etc.) and does not include the "sovereign" states. According to this argument, if a taxpayer does not live within the "United States," as so defined, he is not subject to the federal tax laws.
The Law: The Internal Revenue Code imposes a federal income tax upon all United States citizens and residents, not just those who reside in the District of Columbia, federal territories, and federal enclaves. In United States v. Collins, 920 F.2d 619, 629 (10th Cir. 1990), cert. denied, 500 U.S. 920 (1991), the court cited Brushaber v. Union Pac. R.R., 240 U.S. 1, 12-19 (1916), and noted the United States Supreme Court has recognized that the "sixteenth amendment authorizes a direct nonapportioned tax upon United States citizens throughout the nation, not just in federal enclaves." This frivolous contention has been uniformly rejected by the courts. Furthermore, the IRS issued Revenue Ruling 2006-18, 2006-1 C.B. 743, warning taxpayers of the consequences of making this frivolous argument.

This contention is another example of restating an issue in an incorrect form. No one other than the Tin Foil Hat Brigade, led by con artists and snake oil peddlers who take advantage of the gullible, contend that the "United States" consists only of the District of Columbia, federal territories and federal enclaves. But the real issue, just what are the limits of the federal government's jurisdiction and, hence, its authority to tax is a genuine, not frivolous, issue, particularly since the income tax is imposed only on "taxable" income. (See discussion of Contention B-2, above).

The fact is, however, that the *geographic* limits of the federal government's exclusive legislative authority, that area over which the federal government has *sole* dominion, is indeed limited to the District of Columbia, federal territories and federal enclaves (See discussion of Contention B-2 relative to Constitutional authority, both territorial and subject matter.) 36

The legislative authority that the federal government can exercise *within* the various States is set out in the Constitution and is very limited. Those subjects listed in Article I, Section 8 and the enabling clauses of several Amendments are the only things that the federal government has any authority over. Other than those few powers we are governed ONLY by the state governments and ourselves. See Tenth Amendment. In fact, the Supreme Court has held that inside the states except for in those limited instances listed in the Constitution it is "as though the Union were not", i.e., did not exist. *Farrington v. Tennessee*, 95 U.S. 679 (1877)

There are ***two major lies***, however, in this particular statement of "The Law" by the IRS. First, that "The Internal Revenue Code imposes a federal income tax upon all United States citizens and residents, not just those who reside in the District of Columbia, federal territories, and federal enclaves." ***That is a lie!***

The IRC imposes a federal income tax on "taxable income" (Section 1). Do you know any citizen or resident whose name is "Taxable Income"? Nor do we. "Taxable income" is not a citizen, much less "all United Stated citizens and residents". The only person upon whom the IRC imposes liability for the income tax is the withholding agent required to withhold taxes from payments made to nonresident aliens and foreign corporations, neither of which is a citizen or resident of the United States (Section 1461).

The second lie, however, is even bigger if that is possible. Note that the IRS does not contend that "the Supreme Court held thus and so". Instead, it cites an inferior court ruling, *Collins*, that states that the Supreme Court held in *Brushaber* that the "sixteenth amendment authorizes a direct nonapportioned tax upon United States citizens throughout the nation, not just in federal enclaves." Why didn't they simply cite *Brushaber*? **The IRS does not simply cite *Brushaber* because that was not *Brushaber*'s holding! In fact, the Supreme Court has never held that the 16th Amendment authorizes a direct unapportioned tax, not in *Brushaber* nor in any other case. The IRS does not cite *Brushaber* because the holding in *Brushaber* was the *exact opposite* of what the IRS claims!** The *Brushaber* case did not hold what they wanted you to believe, so, instead, the IRS cites an erroneous description of *Brushaber* by an inferior court and offer that as the holding itself. This kind of legal misrepresentation is inexcusable in even the most lax of courts. ***It is a rank form of lying.*** (Is it any wonder that no one at the IRS was willing to put his name on this document?)

In *Brushaber* the government argued that the 16th Amendment granted it the power to impose a direct, unapportioned tax on incomes of any kind, but the Supreme Court expressly rejected that argument, calling it erroneous. See *Brushaber v. Union Pac. R.R.*, 240 U.S. 1, at 12 (1916)

The TRUE holding by the Supreme Court in *Brushaber* is that the 16th Amendment:

1) Did not amend the Constitution;

2) Did not authorize a direct, unapportioned income tax;

3) Did not grant Congress any additional taxing authority—none; and

4) It's sole effect is to prohibit the Supreme Court from considering the source of income in determining whether an income tax is direct or indirect.

The Supreme Court went on in that case to point out that the income tax is an *indirect* tax, "in its nature an excise", and, therefore, not subject to the requirement of apportionment, BUT that if it should be applied in such a way that it has the effect of a direct tax (either mandatory or on person or property, instead of a privileged activity), it would be subjected to the rule of apportionment. This holding was repeated in a case ruled on the very same year by the Supreme Court in *Stanton v. Baltic Mining*, 240 U.S. 103, 112-3 (1916), and by the Supreme Court, again, in *Peck & Co. v. Lowe*, 247 U.S. 165, 172-3 (1918). See also *Southern Pacific v. Lowe*, 247 U.S. 330 (1918)

The government, itself, admits that "it is clear that the income tax is an 'indirect' tax." (See "Some Constitutional Questions Regarding the Federal Income Tax Laws", by Howard Zaritsky, Congressional Research Service, Library of Congress, May 25, 1979, p. 3.)

Why does the IRS, then, lie about the *Brushaber* holding? Why did the court in *Collins* misrepresent that holding? Because they both know that a tax on the exercise of a fundamental right, as in the case of the exercise of our fundamental right to earn a living through our own labor, is not an indirect tax, which can only be imposed on *privileged* activities. A tax on the exercise of a right, which is property, can only be classified as a *direct* tax and, as the Supreme Court clearly stated in *Brushaber*, any such application of an income tax would be subject to the rule of apportionment. Additionally, the Supreme Court has repeatedly held that the exercise of a right is exempt from taxation, thus the IRS feels compelled to concoct some mythical Constitutional exception to that rule in the 16th Amendment.

CONCLUSION: The IRS is lying again, misrepresenting the statutory law in claiming that the IRC imposes an income tax on citizens and residents when it does not, and misrepresenting the Supreme Court's holding in the *Brushaber* case in order to claim that the income tax is a direct tax that is immune from the Constitutional restrictions on such a tax. So while the federal government does have jurisdiction beyond its geographic limitations, that power does not extend to the destruction/taxation of our fundamental rights, nor does the 16th Amendment create a third class of taxes, a direct tax immune to the requirement of apportionment.

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

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

Relevant Case Law:

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

United States v. Cooper, 170 F.3d 691, 691 (7th Cir. 1999) – the court sanctioned defendant for filing of frivolous appeal wherein he argued, in pertinent part, that only residents of Washington, D.C. and other federal enclaves are subject to the federal tax laws because they alone are citizens of the United States. 38

United States v. Mundt, 29 F.3d 233, 237 (6th Cir. 1994) – the court rejected "patently frivolous" argument that defendant was not a resident of any "federal zone" and therefore not subject to federal income tax laws.
In re Becraft, 885 F.2d 547, 549-50 (9th Cir. 1989) – the court, observing Becraft's claim that federal laws apply only to United States territories and the District of Columbia "has no semblance of merit," and noting that this attorney had previously litigated cases in the federal appeals courts that had "no reasonable possibility of success," imposed monetary damages and expressed the hope "that this assessment will deter Becraft from asking this and other federal courts to expend more time and resources on patently frivolous legal positions."
United States v. Ward, 833 F.2d 1538, 1539 (11th Cir. 1987), cert. denied, 485 U.S. 1022 (1988) – the court rejected as a "twisted conclusion" the contention "that the United States has jurisdiction over only Washington, D.C., the federal enclaves within the states, and the territories and possessions of the United States," and affirmed a tax evasion conviction.
Barcroft v. Commissioner, T.C. Memo. 1997-5, 73 T.C.M. (CCH) 1666, 1667, appeal dismissed, 134 F.3d 369 (5th Cir. 1997) – Barcroft claimed that he was not "a „U.S. citizen," subject to federal jurisdiction, such as „officers, employees, and elected officials of the United States,"" and did not "reside within a federal territory such as Washington D.C., or a federal enclave within a State, or a U.S. possession." The court noted that Barcroft's statements "contain protester-type contentions that have been rejected by the courts as groundless," the court sustained penalties for failure to file returns and failure to pay estimated income taxes.

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

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

The shortfall on this declaration of the law is not so much in regards to the debate over the statutory definition of words, such as "person" or "individual". The shortfall is in making the connection between the term "person" and the term "taxpayer". This declaration fails to state what statute makes the typical "person", however defined, "subject to" the income tax, i.e., a "taxpayer".

The IRS says the IRC defines "person" and then makes the unsupported claim that it also "sets forth which persons are subject to federal taxes". While in most cases that is true, as in the case of all other taxes imposed by Title 26, the IRC, there is no statute (other than Section 1461, which makes the withholding agent for nonresident aliens and foreign corporations liable for the income tax) that "sets forth which persons are subject to the federal income tax".

By omission of that issue from this official listing of what the IRS deems "frivolous" arguments the absence of any statute imposing liability on the typical working American, the IRS has admitted that there is no such statute. If there were it would have cited it long before now and put that issue to bed. Instead, it resorts to conclusory statements like this one, that being a person makes one a "taxpayer" subject to the income tax.

CONCLUSION: While the IRS repeatedly contends that everyone is a taxpayer and that the IRC "sets forth which persons are subject to federal taxes", it cannot identify any statute in the IRC that "sets forth which persons are subject to" the income tax. To adopt a position that calling one 39

a "person" makes him a "taxpayer" without being able to cite any statute that makes that person "subject to" the income tax is without a basis in law . . . frivolous.

Relevant Case Law:

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

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

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

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

McCoy v. Internal Revenue Service, 88 A.F.T.R.2d (RIA) 5909, 2001 U.S. Dist. LEXIS 15113, at *21, 22 (D. Col. Aug. 7, 2001), dismissed, 2002 U.S. Dist. LEXIS 8303 (D. Colo. Mar. 28, 2002) (accepting magistrate judge's recommendations and granting motions to dismiss) – the court dismissed the taxpayer's complaint, which asserted that McCoy was a nonresident alien and not subject to tax, describing the taxpayer's argument as "specious and legally frivolous."

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

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

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

This contention is not one endorsed by the consensus of the Tax Honesty Community, most of which are quick to point out that Section 7701(c) gives the term "includes" an expansive, not restrictive, construction.

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

The Law: Section 3401(c) defines "employee" and states that the term "includes an officer, employee or elected official of the United States . . . ." This language does not address how other employees" wages are subject to withholding or taxation. Section 7701(c) states that the use of the word "includes" "shall not be deemed to exclude other things otherwise within the meaning of the term defined." Thus, the word "includes" as used in the definition of "employee" is a term of enlargement, not of limitation. It clearly makes federal employees and officials a part of the definition of "employee," which generally includes private citizens. The Internal Revenue Service issued Revenue Ruling 2006-18, 2006-1 C.B. 743, warning taxpayers of the consequences of making this frivolous argument.

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

In March 2007, a federal court in Michigan issued a temporary restraining order barring Donald A. Gray from preparing federal income tax returns for others. The court found that the Portage, Michigan, man had been preparing income tax returns for

customers based on the

frivolous theory that wages are not income for federal tax purposes unless the wage earner works for the government. See http://www.usdoj.gov/tax/txdv07024.htm.
In May 2007, a federal court in Michigan permanently barred Peter and Doreen Hendrickson from filing tax returns and forms on which they falsely report their income as zero. The injunction order also requires the couple to repay more than $20,000 in federal income, Social Security, and Medicare taxes that they had obtained by filing false tax returns with the IRS. The order notes that the couple based their improper conduct on a book Peter Hendrickson wrote called "Cracking the Code." The book states that federal tax withholding and income taxes on wages are applicable only for a limited class of people, primarily government employees. See http://www.usdoj.gov/tax/txdv07320.htm. In November 2008, a federal court in Michigan arraigned Hendrickson on an indictment charging him with submitting false documents to the IRS. The 10-count indictment charges that Hendrickson filed IRS Forms 1040 and/or IRS Forms 4852 stating that he had received no wages for those years. See http://www.usdoj.gov/tax/usaopress/2008/txdv08_2008-11-12_phendrickson.pdf. On October 26, 2009, a jury found Hendrickson guilty of all 10 counts. http://www.justice.gov/tax/usaopress/2009/phendrickson.pdf.

Relevant Case Law:

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

Montero v. Commissioner, 2009 WL 3929916 (5th Cir. Nov. 19, 2009) – the court affirmed a $20,000 section 6673(a) penalty against the petitioner for advancing frivolous arguments that he is not an employee earning wages as defined by sections 3121 and 3401.
Sullivan v. United States, 788 F.2d 813, 815 (1st Cir. 1986) – the court rejected Sullivan's attempt to recover a civil penalty for filing a frivolous return, stating "to the extent [he] argues that he received no „wages". . . because he was not an „employee" within the meaning of 26 U.S.C. § 3401(c), that contention is meritless. . . . The statute does not purport to limit withholding to the persons listed therein." The court imposed sanctions on Sullivan for bringing a frivolous appeal.
United States v. Latham, 754 F.2d 747, 750 (7th Cir. 1985) – calling the instructions Latham wanted given to the jury "inane," the court said, "[the] instruction which indicated that under 26 U.S.C. § 3401(c) the category of „employee" does not include privately employed wage earners is a preposterous reading of the statute. It is obvious within the context of [the law] the word „includes" is a term of enlargement not of limitation, and the reference to certain entities or categories is not intended to exclude all others."
Peth v. Breitzmann, 611 F. Supp. 50, 53 (E.D. Wis. 1985) – the court rejected the taxpayer's argument "that he is not an „employee" under 26 U.S.C. § 3401(c) because he is not a federal officer, employee, elected official, or corporate officer," stating, "[he] mistakenly assumes that this definition of „employee" excludes all other wage earners."
Pabon v. Commissioner, T.C. Memo. 1994-476, 68 T.C.M. (CCH) 813, 816 (1994) – the court characterized Pabon's position – including that she was not subject to tax because she was not an employee of the federal or state governments – as "nothing but tax protester rhetoric and legalistic gibberish." The court imposed a penalty of $2,500 on Pabon for bringing a frivolous case, stating that she "regards this case as a vehicle to protest the tax laws of this country and espouse her own misguided views."

D. Constitutional Amendment Claims

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

This contention is not held by the Tax Honesty Community. In the *Cheek* case, cited above, the Supreme Court recognized two exceptions to the good faith beliefs that negate willfulness. One was that one believes that the income tax is unconstitutional and the other is that he disagrees with the law (i.e., some government policy or practice, government expenditures for activities that one feels are immoral or wrong, whether for religious or other reasons).

The IRS's purpose in listing this contention, which is not made by the Tax Honesty Community, is a mystery until we note that its discussion below is not aimed at those who think that refusal to pay a tax is justified by conscientious or religious reasons. The IRS's contention below is 41

directed, instead, on the abuse of certain statutes to "gag" people, enjoining them from making certain statements that the IRS considers embarrassing.

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

The Law: The First Amendment to the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The First Amendment, however, does not provide a right to refuse to pay income taxes on religious or moral grounds, or because taxes are used to fund government programs opposed by the taxpayer.

So far, so good. The IRS should have stopped right here. But it seems as though the IRS's contempt for the law and the Truth makes it incapable of making a correct statement of the law and leaving it at that. It has to go on and make a false statement in order to justify other illegal activities even though they are not in any way related to the issue set forth in this contention.

Nor does the First Amendment protect commercial speech or speech that aids or incites taxpayers to unlawfully refuse to pay federal income taxes, including speech that promotes abusive tax avoidance schemes.

Note first the careful wording of this statement. "Nor does the First Amendment protect . . . speech that promotes abusive tax avoidance schemes." "Abusive" does not necessarily mean "unlawful" or "illegal" and "tax avoidance", a perfectly legal activity, is not the same as "tax evasion", a crime.

The "abusive" "tax avoidance" schemes in this instance are often merely statements of Truth about the IRC or its regulations, making the IRS the actual "abuser" in this picture. For years the IRS, with the assistance of the DOJ and the inferior courts, has abused Sections 6700 et seq. (provisions intended to permit the IRS to assess penalties for the sale or promotion of illegal "tax shelters") to enjoin research and educational organizations from distributing truthful information even though the activities enjoined were not tax shelters.

In many cases the IRS has used those provisions relative to abusive "tax shelters" to attack organizations and people who dispense information that the IRS does not want dispensed, claiming it is not protected speech. The most egregious abuse, however, is in refusing to permit such persons or organizations an opportunity to prove that the statements they have made are TRUE.

The IRS has referred to many of those instances throughout this publication, such as actions against Bob Schulz and We The People Foundation. In that case Bob Schulz and WTP were distributing, without charge, a "blue folder" containing a compilation of statutes and regulations pertaining to employer withholding of taxes from employees' pay checks. The folder did not contain any tax filing "schemes" or "method" for understating a tax due, but allowed employers to see the actual statutes and regulations, rather than rely solely on the IRS's publications and brochures.

The IRS contended that the distribution of copies of statutes and its own regulations was an abusive tax shelter and sought an injunction prohibiting Schulz and WTP from distributing the "blue folder". Although Schulz and WTP objected and answered timely and although the defendants demonstrated that the copies they were distributing were true and correct the court

refused to allow them any opportunity to present evidence, any opportunity to confront or call witnesses, and, ***without hearing any evidence, much less a trial***, simply issued the injunction, prohibiting Schulz from even discussing income tax issues and from distributing copies of laws and regulations.

In the case of John B. Kotmair and Save A Patriot Fellowship, the "tax shelter" consisted of statements made publicly by Mr. Kotmair that there is no law imposing liability on the typical working American. SAPF was also selling Mr. Kotmair's book, "*Piercing the Illusion*", which raised a number of issues regarding the IRS's claims and misstatements of the law, but promoted no tax filing "scheme" or "method" whatsoever. Kotmair and SAPF, a longstanding and respected research and education foundation, were also assisting citizens who were engaged in disputes with the IRS, raising objections to IRS violations of laws and its own procedures.

Kotmair and SAPF both objected and timely responded, but neither was allowed to introduce any evidence of the truth of his statements or the accuracy of the statements in the book, even though in discovery the government admitted it had no evidence of false statements by Kotmair or SAPF. The court, ***without hearing any evidence, much less a trial***, summarily issued an injunction against Kotmair and SAPF prohibiting him from speaking about income tax laws, prohibiting him and SAPF from assisting citizens engaged in disputes with the IRS and enjoining the sale or distribution of the book, "*Piercing the Illusion*".

There are a number of such cases where those who would dare to speak the truth or to publicize what the law actually says in contrast to the IRS's tortured version of the law. One other example is found in the case of Bill Benson, who traveled to the capitols of every contiguous state and examined the archived documentation and record on the ratification of the 16th Amendment. He compiled scores of certified records that demonstrate that the required number of states had not in fact ratified the proposed amendment. The IRS contended that the book, "*The Law That Never Was*", is an abusive "tax shelter". Benson filed copies of certified state records demonstrating that he had evidence proving the truth of his statements, but ***the court issued an order striking those exhibits from the record and proceeded to grant summary relief without trial or hearing any evidence***.

The fact is that the First Amendment does protect such speech and such writings, but the Constitution cannot stand up and defend itself. It relies on the People and, above all, the judicial branch, to do so and that is not happening in these cases. Thus far the Supreme Court has chosen to reject every application for review of these issues, which bear not only on First Amendment rights of free speech and a free press, but also on the right to be heard, our right to due process guaranteed by the Fifth Amendment. Until it does, however, there is no reason to expect the IRS or the inferior courts to reform their past conduct and cease their abuse of Section 6700 to quiet those who dare to discover and share the Truth.

Relevant Case Law:

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

This case does support the initial statement, that religious beliefs do not justify a refusal to pay taxes, but has ***absolutely nothing to do with the IRS's gratuitous claim that the First Amendment does not protect political or legal speech*** or writings that the IRS finds embarrassing or difficult to address.

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

Jenkins v. Commissioner, 483 F.3d 90, 92 (2d Cir. 2007), cert. denied, 552 U.S. 821 (2007) - the court upheld the decision of the Tax Court that the collection of tax revenues for expenditures that offended the religious beliefs of individual taxpayers did not violate the Free Exercise Clause of the First Clause, the Religious Freedom Restoration Act of 1993, or the Ninth Amendment. In addition, the court upheld the imposition of a $5,000 frivolous return penalty against Jenkins.

United States v. Indianapolis Baptist Temple, 224 F.3d 627, 629 – 631 (7th Cir. 2000), cert. denied, 531 U.S. 1112 (2001) – the court rejected defendant's Free Exercise challenge to the federal employment tax as those laws were not restricted to the defendant or other religion-related employers generally, and there was no indication that they were enacted for the purpose of burdening religious practices.

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

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

United States v. Peister, 631 F2d. 658 (10th Cir. 1980), cert. denied, 449 U.S. 1126 (1981) – the court rejected Peister's argument that he was exempt from income tax based on his vow of poverty after he became the minister of a church he formed; his First Amendment right to freedom of religion was not violated.

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

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

This contention is, again, stated in terms that make the contention insupportable, primarily through the use of the term "taxpayer". The objection most often made, however, is not relative to the collection of a tax from a "taxpayer" as it is to the collection of the income tax from one who the law has not made "subject to" the tax, i.e., a *non-taxpayer*. The IRS regularly seizes and takes money and property from those whom the law has not made liable for the tax in the first place, making those collection actions something other than "to collect federal income taxes owed by a *taxpayer*."

The Law: The Fifth Amendment to the United States Constitution provides that a person shall not be "deprived of life, liberty, or property, without due process of law . . . ." The U.S. Supreme Court stated in Brushaber v. Union Pacific R.R., 240 U.S. 1, 24 (1916), that "it is . . . well settled that [the Fifth Amendment] is not a limitation upon the taxing power conferred upon Congress by the Constitution; in other words, that the Constitution does not conflict with itself by conferring upon the one hand a taxing power, and taking the same power away on the other by limitations of the due process clause." Further, the Supreme Court has upheld the constitutionality of the summary administrative procedures contained in the Internal Revenue Code against due process challenges, on the basis that a post-collection remedy (e.g., a tax refund suit) exists and is sufficient to satisfy the requirements of constitutional due process. Phillips v. Commissioner, 283 U.S. 589, 595-97 (1931).

The Internal Revenue Code provides methods to ensure due process to taxpayers: (1) the "refund method," set forth in section 7422(e) and 28 U.S.C. " 1341 and 1346(a), where a taxpayer must pay the full amount of the tax and then sue in a federal district court or in the United States Court of Federal Claims for a refund; and (2) the "deficiency method," set forth in section 6213(a),

where a taxpayer may, without

paying the contested tax, petition the United States Tax Court to redetermine a tax deficiency asserted by the IRS. Courts have found that both methods provide constitutional due process.
The IRS issued Revenue Ruling 2005-19, 2005-1 C.B. 819, which discusses this frivolous argument in more detail, warning taxpayers of the consequences of attempting to pursue a claim on these grounds.
For a discussion of frivolous tax arguments made in collection due process cases arising under sections 6320 and 6330, see Section II of this outline.

Relevant Case Law:

Flora v. United States, 362 U.S. 145, 175 (1960) – the United States Supreme Court held that a taxpayer must pay the full tax assessment before being able to file a refund suit in district court, noting that a person has the right to appeal an assessment to the Tax Court "without paying a cent."
Schiff v. United States, 919 F.2d 830 (2d Cir. 1990), cert. denied, 501 U.S. 1238 (1991) – the court rejected a due process claim where the taxpayer chose not to avail himself of the opportunity to appeal a deficiency notice to the Tax Court.

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

No one in the legitimate Tax Honesty Community makes any such contention.

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

The Law: There is no constitutional right to refuse to file an income tax return on the ground that it violates the Fifth Amendment privilege against self-incrimination. In United States v. Sullivan, 274 U.S. 259, 264 (1927), the U.S. Supreme Court stated that the taxpayer "could not draw a conjurer's circle around the whole matter by his own declaration that to write any word upon the government blank would bring him into danger of the law." The failure to comply with the filing and reporting requirements of the federal tax laws will not be excused based upon blanket assertions of the constitutional privilege against compelled self-incrimination under the Fifth Amendment.
The IRS issued Revenue Ruling 2005-19, 2005-1 C.B. 819, which discusses this frivolous argument in more detail, warning taxpayers of the consequences of attempting to pursue a claim on these grounds.

Although this is not a contention advanced by the legitimate Tax Honesty Community as applicable to filing requirements in general or in providing required financial information in particular, this universal pronouncement is not the entire picture because there are instances where the Fifth Amendment can apply to excuse one from filing an incriminating return. Where disclosures required by the return and its filing would be incriminating the Supreme Court has recognized that one's Fifth Amendment right against self-incrimination may be exercised by silence, i.e., failing to file an incriminating tax return. See *Marchetti* v. *United States*, 390 U.S. 39 (1968); *Grosso* v. *United States*, 390 U.S. 62 (1968). See also *Mackey* v. *United States*, 401 U.S. 667 (1971). These cases involved a bookie's failure to register with the IRS and file wagering tax returns because it would have incriminated him with respect to State criminal gambling laws.

Once again the IRS is over-generalizing and omitting pertinent exceptions.

Relevant Case Law: 45

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

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

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

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

United States v. Brown, 600 F.2d 248, 252 (10th Cir. 1979), cert. denied, 444 U.S. 917 (1979) – noting that the Supreme Court had established "that the self-incrimination privilege can be employed to protect the taxpayer from revealing the information as to an illegal source of income, but does not protect him from disclosing the amount of his income," the court said Brown made "an illegal effort to stretch the Fifth Amendment to include a taxpayer who wishes to avoid filing a return."

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

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

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

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

No one in the legitimate Tax Honesty Community makes any such contention. Nevertheless, an interesting issue can be advanced on the basis of the principle of the abolition of slavery by the 13th Amendment. That issue, however, has not yet been determined by the Supreme Court.

When the government "excises" a portion of the fruits of one's labor without any allowance for the value of what was given in exchange—labor—it is in effect taking a portion not only of any profit that might have been realized, but of the property itself. Unlawfully depriving one of his property could be regarded as theft, but when that property is his labor it is apt to analogize that to slavery. In *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), the Supreme Court said "For, the very idea that one man may be compelled to hold his life, ***or the means of living***, or any material right essential to the enjoyment of life [among which is the right to labor for a living], at the mere will of another, seems to be intolerable in any country where freedom prevails, as being ***the essence of slavery itself***." *Id.* at 370.

This would be equivalent to taxing the gross proceeds from the sale of other kinds of property as "income", which the Supreme Court has held is not an income tax because it is a tax on both the income and the capital (basis). See *State Tax on R. Gross Receipts*, 15 Wall. 284, 21 L. Ed. 164; 46

Philadelphia & S. Mail S. S. Co. v. Pennsylvania, 122 U.S. 326, 30 L. Ed. 1200; *Maine v. Grand Trunk R. Co.*, 142 U.S. 217, 35 L. Ed. 994

To take the point one step further, when the government unilaterally decides how much of one's labor it is going to take as its "share" or "cut" (hence, "excise"), it is also deciding how much the laborer will receive. In other words, the government is exercising control over how the entire body of labor will be distributed. Only the owner has that right, thus the government is acting as though it owns one's labor in that it is claiming the right to decide how much, if any, of what that labor is sold for will be given to the laborer. While the Tax Honesty Community does not advance such reasoning as a legal issue, it is certainly not frivolous to make the comparison.

In *Butchers' Union v. Crescent City Co.*, 111 U.S. 746 (1884), the Supreme Court recognized that a man's labor is not only his property, it is his "most sacred and inviolable property". The Supreme Court has also recognized that when generating revenues is at the expense of depletion of property, then at least part of what is received is "capital", not just income, and that taking a portion of the whole sum would not be an indirect income tax, but rather a tax on that property. *Stratton's Independence v. Howbert*, 231 U.S. 399 (1913); *Stanton v. Baltic Mining Co.*, 240 U.S. 103 (1916). But for the exercise of corporate privileges and manufacture of mining products, both taxable activities (See *Flint v. Stone Tracy* cited in discussion of Contention B-2, above), the court would have had a very difficult time upholding the tax.

This argument, that the government's taking of one's human capital is tantamount to claiming an ownership interest in one's labor, slavery, in violation of the 13th Amendment, has not been ruled on by the Supreme Court. The inferior court cases cited below cannot resolve a Constitutional issue, so the matter is not by any means settled. It does, however, present an interesting comparison, particularly taken in light of the almost perfect parallel to *Stratton's* and *Baltic Mining*, but without any taxable activity involved.

CONCLUSION: Since the issue of whether the government's taxing of gross proceeds received in exchange for labor and received at the expense of depletion of one's ability to labor is in violation of the 13th Amendment has not been decided, it is premature to categorize the argument as either well-founded or frivolous. This contention, then, will have to settle, for the time being, for a designation as an interesting subject for debate.

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

Relevant Case Law:

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

United States v. Drefke, 707 F.2d 978, 983 (8th Cir. 1983), cert. denied, Jameson v. United States, 464 U.S. 942 (1983) – the court affirmed Drefke's failure to file conviction, rejecting his claim that the Thirteenth Amendment prohibited his imprisonment because that amendment "is inapplicable where involuntary servitude is imposed as punishment for a crime."

Ginter v. Southern, 611 F.2d 1226 (8th Cir. 1979), cert. denied, 446 U.S. 967 (1980) – the court rejected the taxpayer's claim that the Internal Revenue Code results in involuntary servitude in violation of the Thirteenth Amendment. 47

Kasey v. Commissioner, 457 F.2d 369 (9th Cir. 1972), cert. denied, 400 U.S. 864 (1972) – the court rejected as without merit the argument that the requirements to keep records and to prepare and file tax returns violated the Kaseys' Fifth Amendment privilege against self-incrimination and amount to involuntary servitude prohibited by the Thirteenth Amendment.
Porth v. Brodrick, 214 F.2d 925, 926 (10th Cir. 1954) – the court described the taxpayer's Thirteenth and Sixteenth Amendment claims as "clearly unsubstantial and without merit," as well as "far-fetched and frivolous."
Wilbert v. IRS (In re Wilbert), 262 B.R. 571, 578 (Bankr. N.D. Ga. 2001) – the court rejected the taxpayer's argument that taxation is a form of involuntary servitude prohibited by the Thirteenth Amendment, stating that "[i]t is well-settled American jurisprudence that constitutional challenges to the IRS" authority to collect individual income taxes have no legal merit and are „patently frivolous.""

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

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

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

See discussion of this misrepresentation of the holding in *Brushaber* in the discussion of Contention C-2)

The ironic aspect of this contention is that the ratification of the 16th Amendment, or not, is of absolutely no relevance to the imposition of an income tax. *Brushaber* did not hold that the income tax was Constitutional because of the 16th Amendment. Indeed, the Supreme Court in *Brushaber* held that the ***16th Amendment granted Congress absolutely no new taxing authority***. The reason that the income tax was upheld by *Brushaber* is that the income tax, properly imposed and applied, is an indirect tax, "in the nature of an excise".

The income tax is an indirect tax, "in the nature of an excise", because it is not imposed on the income itself (which would itself be property), but rather on a taxable privileged activity. The tax is merely measured by the amount of benefit in the form of profits derived from the privilege of engaging in that activity. See *Stanton v. Baltic Mining*, 240 U.S. 103 (1916), decided the immediately following *Brushaber*.

The Supreme Court in *Brushaber* also rejected the government's contention that the 16th Amendment permitted a direct tax on incomes that could be imposed without apportionment among the states. As a matter of fact, the Supreme Court in that case warned Congress that if it were to impose an income tax that had the effect of a direct tax (i.e., either mandatory or on person or property), it would strike it down unless such a tax were apportioned among the states.

Brushaber's holding was that ***the sole effect of the 16th Amendment was to prohibit the Supreme Court from considering the source of the income in determining whether an income tax is direct or indirect***, as it had done in the case of *Pollock v. Farmers' Loan & Trust Co.*, 157 48

U.S. 429 (1895). Thus ***the 16th Amendment only applies to nine people***, the nine justices of the Supreme Court.

But even after correcting the misrepresentation of *Brushaber*'s holding, one has to wonder what that has to do with the contention that the 16th Amendment was not properly ratified. That issue was never raised nor ruled upon in *Brushaber*.

As for the merits of the claims being made regarding the ratification process for the 16th Amendment, that issue has never been ruled on by the Supreme Court. The problems at issue regarding the ratification process, however, go far beyond whether Ohio had been properly made a State before 1913. Bill Benson's research shown in his two volume work "*The Law That Never Was*" (referenced below), demonstrates that in many cases there was not a quorum present in the State's legislative body, which precluded the valid adoption of a resolution of ratification. In a number of other cases the State's legislature did not ratify the proposed amendment, but merely indicated that it would ratify a modified version, but all those states were, nevertheless, counted as having ratified the proposed version.

This issue will not be resolved until the Supreme Court agrees to hear it and at this point the odds of that happening are slim and none, because although the 16th Amendment has no legal bearing on the validity or scope of the income tax, the IRS has successfully promoted a myth that has been accepted by the general public as true. That myth is that the 16th Amendment is the Constitutional authority for the IRS's contention that the income tax applies to everyone and to everything that "comes in", which the IRS misrepresents to be "income" (profit or gain). For political reasons, though, to prevent the destruction of that myth, the courts seem determined to dodge the issue. The only thing that will change that is if enough people become aware of those issues and demand they be examined and addressed.

If the 16th Amendment were to be found to have not been properly ratified and, therefore, not part of the Constitution, the legal effect would be nonexistent, but the effect on the public's perception of Congress' power to tax their "incomes" would be devastating to the IRS. The converse of the myth, that without the 16th Amendment Congress cannot impose an income tax, would cause Americans to instantly believe that the neither income tax, whether the one enacted by Congress or the IRS's misrepresented mythical version, would continue to be valid.

One additional point in this regard is that the IRS is also lying when it says that "Since that time, the courts have consistently upheld the constitutionality of the federal income tax." As promised in Brushaber, the Supreme Court has held the income tax to be unconstitutional when applied to capital or property, as in the case of *Eisner v. Macomber*, 252 U.S. 189 (1920), and, again in *Towne v. Eisner, 245 U.S. 418* (1918). Another lie.

CONCLUSION: While the issue of the validity of the ratification of the 16th Amendment has not been judicially settled, the objections being raised (which go far beyond that described by the IRS) are certainly not without a basis in fact and law. On the other hand, the Supreme Court's holding in *Brushaber* makes the validity of that process irrelevant, since the amendment granted Congress no new powers of taxation and changed nothing other than to take "source" of income out of the Supreme Court's classification of an income tax as either direct or indirect. What

makes this issue so important, however, is that the IRS has placed all its weight on the misrepresentation of the effect of that amendment, and "Oh, what a tangled web we weave . . . "

Similarly, Robert L. Schulz, along with his organizations, We the People Congress and We the People Foundation, marketed and distributed to customers a fraudulent "Tax Termination Package" supposedly providing a way for taxpayers to legally stop withholding and paying taxes. The scheme was based on a number of false premises, including the claim that the Sixteenth Amendment was not properly ratified. In August 2007, a federal court permanently enjoined Mr. Schulz and his organizations from promoting the scheme. See http://www.usdoj.gov/tax/txdv07595.htm. United States v. Schulz, 529 F.Supp.2d 341 (N.D.N.Y. 2007), aff'd 517 F.3d 606 (2nd Cir. 2008), cert. denied, 129 S.Ct. 435 (2008).

In March 2008, a federal court in California permanently barred Steven Hempfling from selling a tax fraud scheme that falsely claims to give customers a legal defense against criminal prosecutions for income tax evasion. The court found that Hempfling sold a "16th Amendment Reliance Program" that falsely promised customers that they could rely on the opinion of an Illinois tax defier, William Benson, to stop filing tax returns and to stop paying federal taxes and avoid being convicted of federal tax crimes. The court also barred Hempfling from selling "how-to" manuals that falsely tell customers that IRS tax liens and levies are invalid and that employers are not required to withhold federal income taxes from employees" pay. See http://www.usdoj.gov/tax/txdv08250.htm.

William Benson wrote the book The Law That Never Was, in which he asserts that the Sixteenth Amendment was not properly ratified. On his website, Benson sold his book, accompanied with excepts from state legislative histories, records from the National Archives, court cases, and other materials, in what he titled a "Reliance Defense Package." In January 2008, the District Court for the Northern District of Illinois granted a permanent injunction against Benson, barring him from promoting, organizing, or selling the "Reliance Defense Package" or the "16th Amendment Reliance Package" or any other tax shelter, plan, or arrangement. United States v. Benson, 2008 WL 267055 (N.D. Ill. Jan. 10, 2008). The district court, however, did not require Benson to turn over his customer list. In April 2009, the Seventh Circuit Court of Appeals upheld the permanent injunction but reversed and remanded regarding the customer list. 561 F.3d 718 (7th Cir. 2009).

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

Relevant Case Law:

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

Socia v. Commissioner, 23 F.3d 941 (5th Cir. 1994), reh'g denied, 35 F.3d 568 (5th Cir. 1994), cert. denied, 513 U.S. 1153 (1995) – the court held that defendant's appeals which challenged Sixteenth Amendment income tax legislation were frivolous and warranted sanctions.

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

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

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

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

Stearman v. Commissioner, T.C. Memo. 2005-39, 89 T.C.M. (CCH) 823 (2005), aff' d, 436 F.3d 533 (5th Cir. 2006), cert. denied, 547 U.S. 1207 (2006). – the court imposed sanctions totaling $25,000 against the taxpayer for advancing arguments characteristic of tax-protester rhetoric that have been universally rejected by the courts, including arguments regarding the Sixteenth Amendment. In affirming the Tax Court's holding, the Fifth Circuit granted the government's request for further sanctions of $6,000 against the taxpayer for maintaining frivolous arguments on appeal, and the Fifth Circuit imposed an additional $6,000 sanctions on its own, for total additional sanctions of $12,000.

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

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

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

This contention is entirely true and the IRS's representation of the Supreme Court's holding in *Brushaber* is entirely false. See discussion of this point at Contention C-2 and D-5, above. As has been clearly established, **the Supreme Court in *Brushaber* held that the Sixteenth Amendment does not authorize a direct non-apportioned federal income tax on United States citizens.**

This is at least the third time in this singular document that the IRS has blatantly and knowingly misrepresented—lied—about the Supreme Court's holding in *Brushaber*. We know that it is knowingly attempting to deceive the public about the holding in *Brushaber* because it relies on the misstatement of that holding in *Collins*. No responsible legal discussion would ever rely on a lower court's description of a Supreme Court holding, which is capable of standing on its own.

The plain and simple Truth of the matter is that the IRS is repeatedly lying about the law. If the law supported the IRS's position there would be no need for it to fabricate, distort or engage in such deceptive measures. Thus the only conclusion that one can reach is that the IRS is lying about the law because the Truth about the law contradicts the IRS's contentions, which, having no basis in law, are frivolous.

It is apparent that the IRS cannot handle the truth, cannot be trusted to tell the truth and, therefore, is unworthy of being entrusted with the faithful execution of the law.

Relevant Case Law:

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

United States v. Collins, 920 F.2d 619, 629 (10th Cir. 1990), cert. denied, 500 U.S. 950 (1991) – the court found defendant's argument that the Sixteenth Amendment does not authorize a direct, non-apportioned tax on United States citizens similarly to be "devoid of any arguable basis in law."

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

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

Broughton v. United States, 632 F.2d 706 (8th Cir. 1980), cert. denied, 450 U.S. 930 (1981) – the court rejected a refund suit, stating that the Sixteenth Amendment authorizes imposition of an income tax without apportionment among the states.

United States v. Hockensmith, 104 A.F.T.R.2d 2009-5133, 2009 WL 1883521 (M.D. Pa. Jun. 30, 2009) – the court rejected the taxpayer's arguments that no law created an income tax and that the taxpayer was outside the government's taxing authority. The court held that the Sixteenth Amendment allows for the taxation of income and eliminates the requirement for apportionment among the states.

Maxwell v. Internal Revenue Service, 2009 WL 920533, 103 A.F.T.R.2d 2009-1571 (M.D. Tenn. Apr. 1, 2009) – the court found that the taxpayer's arguments to have been "routinely rejected," principally that there is no law that imposes an income tax nor is there a non-apportioned direct tax that could be imposed on him as a supposed non-citizen.

Stearman v. Commissioner, T.C. Memo. 2005-39, 89 T.C.M. (CCH) 823 (2005), aff'd, 436 F.3d 533 (5th Cir. 2006), cert. denied, 547 U.S. 1207 (2006) – the court imposed sanctions totaling $25,000 against the taxpayer for advancing arguments characteristic of tax-protester rhetoric that has been universally rejected by the courts, including arguments regarding the Sixteenth Amendment. In affirming the Tax Court's holding, the Fifth Circuit granted the government's request for further sanctions of $6,000 against the taxpayer for maintaining frivolous arguments on appeal, and the Fifth Circuit imposed an additional $6,000 sanctions on its own, for total additional sanctions of $12,000.

E. Fictional Legal Bases

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

No one in the legitimate Tax Honesty Community contends that the IRS is not an agency of the United States government.

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

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

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

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

Relevant Case Law:

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

Young v. IRS, 596 F.Supp. 141 (N.D. Ind. 1984) – the court granted summary judgment in favor of the government, rejecting Young's claim that the IRS is a private corporation, rather than a government agency.

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

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

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

courts have held that Congress created the duty to file returns in section 6012(a) and "Congress did not enact the PRA"s public protection provision to allow OMB to abrogate any duty imposed by Congress." United States v. Neff, 954 F.2d 698, 699 (11th Cir. 1992). Also, the IRS issued Revenue Ruling 2006-21, 2006-1 C.B. 745, warning taxpayers of the consequences of making this frivolous argument.

The contention that "taxpayers" are not required to file tax returns due to PRA noncompliance is an unsettled issue. While the Form 1040 does display an OMB control number, the legitimacy of that number is in serious, not frivolous, dispute and the IRS's instruction manual for the Form 1040 does not seem to be in compliance with the Act's disclosure requirements.

Many have sought to obtain information regarding the IRS's application to OMB for control numbers for various forms, but have either been denied that information or the OMB has denied having such information. No one has been able to obtain a direct answer from OMB or the IRS on the IRS's compliance with the PRA, the question having been dodged in all known instances. In addition, there are a number of internal contradictions and conflicts between the internal tables and other materials published by the IRS regarding its compliance which seem to suggest that the IRS is being less than candid in regard to its compliance or not with the PRA.

One group of researchers did uncover OMB/IRS records in the National Archives that seemed to prove that the IRS had failed to qualify for an OMB control number for the Form 1040 but when that discovery was leaked to the public those records mysteriously disappeared from the archives.

This contention will remain unsettled until the actual documentation and verified information regarding the IRS's submissions to OMB and OMB's official actions in regard to those submissions can be obtained for inspection. Unsettled, however, does not equate to frivolous.

Relevant Case Law:

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

Dodge v. Commissioner, 317 Fed. Appx. 581 (8th Cir. 2009) – the court treated the taxpayer's argument that the Form 1040 does not comply with the Paperwork Reduction Act as frivolous.

Wolcott v. Commissioner, *103 A.F.T.R.2d 2009-1300 (6th Cir. 2008) – the court affirmed the Tax Court's decision and rejected the taxpayer's argument that the Form 1040 does not comply with the Paperwork Reduction Act. The court also granted respondent's motion for sanctions under 12 U.S.C. § 1912 for frivolous appeal in the amount of $4,000.*

United States v. Patridge, 507 F.3d 1092 (7th Cir. 2007), cert. denied, 128 S.Ct. 1721 (2008), rehg denied, 128 S.Ct. 2496 (2008) – in the course of upholding the taxpayers conviction for tax evasion, the court addressed and rejected the taxpayers contention that the Paperwork Reduction Act foreclosed his conviction.

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

United States v. Holden, 963 F.2d 1114 (8th Cir. 1992), cert. denied, 506 U.S. 958 (1992) – the court affirmed Holden's conviction for failing to file a return and rejected his contention that he should have been acquitted because tax instruction booklets fail to comply with the PRA.

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

Lonsdale v. United States, 919 F.2d 1440, 1445 (10th Cir. 1990) – the court held that the Paperwork Reduction Act does not apply to summonses and collection notices.
United States v. Wunder, 919 F.2d 34 (6th Cir. 1990) – the court rejected Wunder's claim of a PRA violation, affirming his conviction for failing to file a return.
Saxon v. United States, T.C. Memo. 2006-52, 91 T.C.M. (CCH) 914 (2006) – the court, in imposing $5,000 sanctions against Saxon, found claims that violation of the Paperwork Reduction Act excuses a taxpayer from filing returns or paying taxes have been universally rejected as meritless.

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

No one in the legitimate Tax Honesty Community makes any such contention.

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

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

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

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

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

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

Relevant Case Law:

United States v. Bridges, 86 A.F.T.R.2d (RIA) 5280 (4th Cir. 2000) – the court upheld Bridges' conviction of aiding and assisting the preparation of false tax returns, on which he claimed a non-existent "Black Tax Credit."
United States v. Foster, 2002-2 U.S.T.C. (CCH) ¶ 50,785 (E.D. Va. 2002) – the court held that no provision of the Internal Revenue Code allows for a tax credit for slavery reparations and entered an injunction against Foster (an income tax return preparer) prohibiting him from preparing returns or refund claims based on fabricated tax credits.
United States v. Haugabook, 2002 U.S. Dist. LEXIS 25314 (M.D. Ga. 2002) – the court entered a permanent injunction against Haugabook prohibiting him from preparing returns or other documents to be filed with the IRS claiming a tax credit or refund for reparations for slavery or other fabricated tax credits or refunds. 54

United States v. Mims, 2002 U.S. Dist. LEXIS 25291 (S.D. Ga. 2002) – the court entered a permanent injunction against the defendants prohibiting them from preparing returns or other documents with the IRS claiming a credit or refund for reparations for slavery or any other fabricated tax credit or refund.
United States v. Foster, 2002 U.S. Dist. LEXIS 3092, 2002-1 U.S.T.C. (CCH) ¶ 50,263 (E.D. Va. 2002), aff'd, 51 Fed. Appx. 915 (4th Cir. 2002) – the court held that the United States clearly established its right to recover an erroneously paid refund in the amount of $500,000, plus interest, where the claim for refund was based on the slavery reparation tax credit.
Taylor v. United States, 57 Fed. Cl. 264, 266 (2003) – the court upheld Services denial of Taylors refund claim, which was based on "being reduced to a second class citizen, but billed first class citizenship taxes for over 60 years," holding that the Internal Revenue Code does not contain a provision allowing slavery reparation claims.
George v. Commissioner, T.C. Memo. 2006-121 – the court rejected George's frivolous argument that he is an "Indian not paying taxes" finding that Native Americans are subject to the same federal income tax laws as are other United States citizens, unless there is an exemption created by treaty or statute.
Gunton v. Commissioner, T.C. Memo. 2006-122 – the court rejected Gunton's frivolous arguments finding that Native Americans are subject to the same federal income tax laws as are other United States citizens, unless there is an exemption created by treaty or statute.
Wilkins v. Commissioner, 120 T.C. 109 (2003) – the court found that the Internal Revenue Code does not provide a tax deduction, credit, or other allowance for slavery reparations.

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

No one in the legitimate Tax Honesty Community makes any such contention.

Proponents of this contention encourage individuals to file claims for refund of the Social Security taxes paid during their lifetime, on the basis that the claimants have sought to waive all rights to their Social Security benefits. Additionally, some advise taxpayers to claim a charitable contribution deduction as a result of their "gift" of these benefits or of the Social Security taxes to the United States.
The Law: There is no provision in the Internal Revenue Code, or any other provision of law, which allows for a refund of Social Security taxes paid on the grounds asserted above. In Crouch v. Commissioner, T.C. Memo. 1990-309, 59 T.C.M. (CCH) 938 (1990), the Tax Court sustained an IRS determination that a person may not claim a charitable contribution deduction based upon the waiver of future Social Security benefits.
The IRS issued Revenue Ruling 2005-17, 2005-1 C.B. 823, which discusses this frivolous argument in more detail, warning taxpayers of the consequences of attempting to pursue a claim on these grounds.

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

No one in the legitimate Tax Honesty Community makes any such contention.

Advocates of this idea believe that an "untaxing" package or trust provides a way of legally and permanently "untaxing" oneself so that a person would no longer be required to file federal income tax returns and pay federal income taxes. Promoters who sell such tax evasion plans and supposedly teach individuals how to remove themselves from the federal tax system rely on many of the above-described frivolous arguments, such as the claim that payment of federal income taxes is voluntary, that there is no requirement for a person to file federal income tax returns, and that there are legal ways not to pay federal income taxes.
The Law: The underlying claims for these "untaxing" packages are frivolous, as specified above. Furthermore, the Internal Revenue Service issued Revenue Ruling 2006-19, 2006-1 C.B. 749, warning that taxpayers may not eliminate their federal income tax liability by attributing income to a trust and claiming expense deductions related to that trust.
Promoters of these "untaxing" schemes as well as willful taxpayers have been subjected to criminal penalties for their actions. Taxpayers who have purchased and followed these "untaxing" plans have also been subjected to civil penalties for failure to timely file a federal income tax return and failure to pay federal income taxes.
Section 7408 provides a cause of action for injunctive relief to the United States against a party suspected of violating the tax laws. On November 15, 2001, the United States filed complaints for permanent injunctions pursuant to section 7408 against three individuals (David Bosset, Thurston Bell, and Harold Hearn) for failing to sign tax returns, promoting schemes that they knew were

engaging in the preparation of documents that understate tax liability. United States v. Bosset, No. 8:01-cv-2154-T-26TBM (M.D. Fla. 2001); United States v. Bell, No. 1:CV-01-2159 (M.D. Penn. 2001); United States v. Hearn, No. 1:01-CV-3058 (N.D. Ga. 2001).

On January 29, 2002, a consent order was entered in United States v. Hearn in favor of the United States. The order permanently enjoined Mr. Hearn and his representatives from, among other things, promoting or selling tax shelter plans, including but not limited to the section 861 argument. (See Section I.B.2 of this outline concerning a section 861 argument.) In the order, Mr. Hearn agreed that he relied upon the frivolous section 861 argument in making false or fraudulent statements on federal income tax returns regarding the excludability of wages and other items from income. A permanent injunction order was entered in United States v. Bosset on February 27, 2003, barring Mr. Bosset from promoting the frivolous section 861 argument. A permanent injunction order was entered in United States v. Bell on January 29, 2004, enjoining Mr. Bell from promoting frivolous positions for fraudulent tax schemes. The Third Circuit affirmed the permanent injunction against Bell in July 2005. United States v. Bell, 414 F.3d 474 (3d Cir. 2005).

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

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

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

In November 2005, a federal district court judge in Dallas sentenced Daniel A. Fisher to nearly 20 years imprisonment and ordered him to pay a $1,000,000 fine. The conviction was based, in part, on evidence that Fisher prepared, or aided in preparing, income tax returns that were fraudulent because they involved the creation of sham business entities and transactions aimed at eliminating taxes owed by the taxpayers. See; 2005 TNT 222-27 (Nov. 16, 2005).

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

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

Relevant Case Law:

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

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

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

United States v. Scott, 37 F.3d 1564 (10th Cir. 1994), cert. denied, Skinner v. United States, 513 U.S. 1100 (1995) – the court concluded the true grantor of the trusts was in substance the purchaser, who was also the trustee, as well as the beneficiary. It was as if there were no transfers at all. Therefore the purchaser was subject to tax on all the income of the various trusts. The defendants were the promoters of a multi-tiered trust package marketed to purchasers as a device to eliminate tax liability without losing control over their assets or income.

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

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

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

Lizalek v. United States, T.C. Memo. 2009-122, 97 T.C.M. (CCH) 1639 (2009) – the taxpayer claimed that the Lizalek Trust was created when the Social Security Administration issued a Social Security card to the taxpayer. The taxpayer further claimed it was the trust that earned wages and other income, not the taxpayer. The court held that a valid trust did not exist and that the taxpayer earned the wages and other income includable in gross income.

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

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

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

No one in the legitimate Tax Honesty Community makes any such contention.

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

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

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

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

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

In March 2008, a federal court in Arizona permanently barred Elizabeth A. Gardner and her husband, Frederic A. Gardner, from promoting a tax fraud scheme involving a "corporation sole" program that they had sold to over 300 people. The court found that the Gardners falsely told customers they could use an entity called a "corporation sole" to avoid paying federal income taxes. See http://www.usdoj.gov/tax/txdv08230.htm.

Relevant Case Law: 57

United States v. Heineman, 801 F.2d 86 (2d Cir. 1986), cert. denied, 479 U.S. 1094 (1987) – the court upheld the conviction and three year prison sentence imposed against the defendants for promoting use of purported church entities to avoid taxes.
United States v. Adu, 770 F.2d 1511 (9th Cir. 1985), cert. denied, 475 U.S. 1030 (1986) – the court upheld the conviction against Adu for aiding and assisting in the preparation and presentation of false income tax returns with respect to false charitable deductions to purported church entities.
Svedahl v. Commissioner, 89 T.C. 245 (1987) – the court sanctioned Svedahl under section 6673 in the amount of $5,000 for using contributions to purported church entities to shield income and pay personal expenses.

7. Contention: Taxpayers who did not purchase and use fuel for an off-highway business can claim the fuels tax credit.

No one in the legitimate Tax Honesty Community makes any such contention.

Proponents of this idea assert that taxpayers can claim the section 6421 fuels tax credit without regard to whether they qualify for the credit through the purchase and use of gasoline for an off-highway business. In addition, certain purveyors of fraudulent tax schemes have claimed on behalf of clients (usually on IRS Form 4136, Credit for Federal Tax Paid on Fuels) the tax credit under section 6427 for nontaxable uses of fuel when the taxpayers clearly are not entitled to the credit based on the facts, such as the taxpayers" occupation and income level, type of motor vehicle and how it is used, and the volume of fuel claimed.

The Law: These claims are frivolous. Section 6421(a) allows a tax credit for gasoline purchased and used in an off-highway business. Similarly, section 6427 provides a tax credit to certain purchasers of undyed diesel fuel used in an off-highway business. The diesel fuel credit is allowable both for off-highway business use or any use other than in a registered diesel-powered highway vehicle (e.g., in a private home for personal heating purposes). The circumstances in which the credits are available are specific and limited. The principal requirement is that the fuel be used in an off-highway business. Off-highway business use is the use of fuel in a trade or business or in an income-producing activity other than as a fuel in a vehicle registered for use on public highways. IRS Publication 225 (2008), Farmer's Tax Guide, gives as examples of the off-highway business use of fuels: (1) use in stationary machines like generators, compressors, power saws, and similar equipment; (2) use in forklifts, bulldozers, and earthmovers; and (3) use in cleaning. Also, Publication 510 (2008), Excise Taxes, explains that, with some exceptions, a highway vehicle is one "designed to carry a load over a public highway," including federal, state, county, and city roads and streets. Passenger cars, motorcycles, buses, highway trucks, tractor trailers, etc., generally are highway vehicles. The fuels tax credits, however, are being claimed without regard to these requirements and often in absurdly huge amounts that cannot possibly be for the quantity of fuel expended for off-highway purposes. Notice 2008-14, 2008-4 I.R.B. 310, lists such positions as frivolous.
In November 2007, a federal district court judge in North Carolina permanently barred Nicole Baine from preparing federal income tax returns. According to the government's civil injunction complaint, Baine prepared federal income tax returns for customers fraudulently claiming the fuel tax credits. The court in September entered a similar injunction order against Baine's co-defendant, Anthony Green. See http://www.usdoj.gov/tax/txdv07893.htm.
In January 2008, a federal court in Charlotte, North Carolina, entered a preliminary injunction against Kodjovi Raphael Totou who operates Queen City Tax Services. The order bars Totou from preparing or filing federal income tax returns until August 2008. The government complaint alleges that Totou claimed fraudulent fuels tax credits on customers" returns. See http://www.usdoj.gov/tax/txdv08062.htm. Subsequently, in May 2008, Totou was permanently barred from preparing federal income tax returns. See http://www.usdoj.gov/tax/txdv08430.htm.
In April 2008, a federal judge in Michigan barred Eric D. Parrish from preparing federal income tax returns. The complaint alleged that Parrish's Detroit business, E Professionals, claimed bogus deductions and credits on customers" federal income tax returns. Specifically, Parrish falsely claimed federal fuel tax credits on customers" returns. The court found that Parrish repeatedly engaged in misconduct subject to penalties under federal tax laws, thus warranting the permanent ban on return preparation. See http://www.usdoj.gov/tax/txdv08295.htm.
In May 2008, a federal court in Texas permanently barred Grace Machoko from preparing federal income tax returns for anyone other than herself. The court held that Machoko, whose business is called First Income Tax Services, repeatedly prepared fraudulent tax returns claiming false fuels tax credits. See http://www.usdoj.gov/tax/txdv08452.htm.
In September 2008, a federal court in Dallas barred Farai Chihota from preparing federal income tax returns for others. According to the government's complaint, Chihota's Quick Tax Service prepared returns claiming fraudulent fuel tax credits. See http://www.usdoj.gov/tax/txdv08852.htm.
In 2009, federal courts continued to grant injunctions against those who fraudulently claiming fuel tax credits for their clients. In April, for example, the Chicago-based tax preparation firm El Caminante Inc. and its principal operator Maric Colica were barred from preparing federal income tax returns claiming false fuels tax credits. http://www.justice.gov/opa/pr/2009/April/09-tax-330.html.
In May, Georgia return preparer Ophelia Kelley, who operated two tax return preparation firms, was permanently barred from preparing tax returns for others, in part because of false fuel tax credits. http://www.justice.gov/opa/pr/2009/May/09-tax-435.html.

In June another Georgia-based tax return preparer

Derrick Jackson and his business, Tax Wisdom and International Tax Accounting Services, were permanently barred from preparing federal tax returns for others. http://www.justice.gov/opa/pr/2009/June/09-tax-577.html.

In July, a federal district court in Florida permanently barred J's Corporation, which was operated by Carole Exantus, from preparing federal tax returns. The court determined that J's Corporation repeatedly prepared federal tax returns that claimed false tax credits, including false fuel tax credits, and deductions. http://www.justice.gov/opa/pr/2009/July/09-tax-695.html.

8. Contention: A Form 1099-OID can be used as a debt payment option or the form or a purported financial instrument may be used to obtain money from the Treasury.

No one in the legitimate Tax Honesty Community makes any such contention.

Advocates of this contention encourage individuals to use a Form 1099-OID, Original Issue Discount, or a bogus financial instrument such as a bonded promissory note as what purports to be a debt payment method for credit cards or mortgage debt.

This scheme has evolved somewhat from an earlier frivolous position under which a secret bank account (sometimes referred to as a "straw man" account) was supposedly created at the Treasury Department for each U.S. citizen that individuals could use to pay tax and non-tax debts and claim withholding credits. Those who put forth this theory often argue that the proper way to redeem or draw on the account is to use some form of made-up financial instrument. This has frequently involved what looks like a check drawn on the United States Treasury or other similar paper instruments, e.g., bonded promissory notes.

More recently, this redemption theory asserts that persons can draw on the secret or "straw man" Treasury account by sending a Form 1099-OID to a creditor and the creditor can present the form to the Treasury Department and receive full payment of the debt. The proponents appear to assert that the Form 1099-OID permits them to access their secret Treasury Account for an amount equal to the face amount of the Form 1099-OID in the form of a tax refund.

Proponents of this theory appear to additionally argue that they have sold or transferred their debt or obligation to the person to whom they issued the Form 1099-OID in a transaction subject to sections 1271 through 1275 and that the debt or obligation is transferred with a discount of the full face amount. The issuer of the Form 1099-OID then treats the face amount of the Form 1099-OID as "other income" on the individual's return. The "other income" amount, however, is not included in the taxable income line.

Persons asserting this theory often significantly overstate withholding and claim an excessive refund in an amount close or identical to the inflated withholding.

The Law: As the instructions to the Form 1099-OID indicate, the purpose of the form is to report the original issue discount of holders of OID obligations, like certificates of deposit, time deposits, bonds, debentures, bonus saving plans, and Treasury inflation-indexed securities, having a term of more than one year. OID is simply the excess of the stated redemption of the deposit, bond, or other financial obligation at maturity over its issue price. Under section 1272, OID is taxable as interest over the life of the obligation and must be included in the holder's gross income each taxable year that the obligation is held. Certain obligations are excepted, including United States savings bonds and short-term (less than one year) and tax-exempt obligations.

The Form 1099-OID is in no way a financial instrument. It is not a legitimate method of payment of any public or private debt, and it is not a means to withdraw or redeem money from the Treasury. Furthermore, as the federal Court of Appeals for the Sixth Circuit stated in United States v. Anderson, 353 F.3d 490, 500 (6th Cir. 2003), cert. denied, 541 U.S. 1068 (2004), the Treasury Department does not maintain depository accounts against which an individual can draw a check, draft, or any other financial instrument. The notion of secret accounts assigned to each citizen is pure fantasy.

In addition to potential civil and criminal tax penalties for misuse of the Form 1099-OID, persons who fraudulently use false or fictitious instruments may be guilty of federal criminal offenses, such as under sections 287 and 514(a) of title 18.

The IRS has issued Revenue Ruling 2005-21, 2005-1 C.B. 822 ("straw man") and Revenue Ruling 2004-31, 2004-1 C.B. 617 (commercial redemption) warning taxpayers of the consequences of making such frivolous arguments.

In November 2008, a federal jury convicted Winfield Thomas and Jeanne Herrington, who promoted bogus financial instruments called "Bills of Exchange," of conspiracy to impede the IRS. Herrington was also convicted of corruptly interfering with the administration of the internal revenue laws. Thomas and Herrington claimed taxpayers could use the "Bills of Exchange" to pay their tax liabilities. Thomas was sentenced to 30 months imprisonment and three years of supervised release. Herrington was sentenced to 96 months imprisonment and three years of supervised release. http://www.justice.gov/opa/pr/2009/May/09-tax-532.html.

In August 2009, Rodney K Justin, a North Carolina doctor was convicted of four counts of corruptly obstructing the administration of the internal revenue laws for sending "Bills of Exchange," fictitious financial instruments, to the IRS as payment for over $350,000 in taxes. http://www.justice.gov/opa/pr/2009/August/09-tax-879.html. 59

Recently, the Department of Justice has successfully brought several injunction cases against tax return preparers who utilize the 1099-OID scheme. In August 2009, the District Court for the Eastern District of California granted a preliminary injunction against Teresa Marty individually and through her return preparation business Advance Financial Services, LLC, barring Marty and her business from acting as a federal return preparer. United States v. Marty, 09-cv-006000, 2009 WL 3111823 (E.D. Cal. Aug. 31, 2009); http://www.justice.gov/opa/pr/2009/September/09-tax-937.html. The court found that Marty prepared and filed fraudulent tax returns with false federal tax withholding. The court ordered Marty to provide the United States with a customer list and to notify her customers of the court's order.

In November 2009, injunctions were granted against three tax returns preparers who used Form 1099-OID to claim inflated refunds for their clients. Specifically, a preliminary injunction was granted against Tennessee tax return preparer Karen Liane Miller. Miller v. Commissioner, 2009 WL 4060274 (M.D. Tenn. Nov. 23, 2009); http://www.justice.gov/opa/pr/2009/November/09-ag-1260.html. And permanent injunctions were granted against California tax return preparers Susan Guan, individually and through her company SRN Financial Services Inc., and Jacqueline Cornejo, individually and through her company J.C. Income Tax Services, barring them from preparing tax returns. http://www.justice.gov/opa/pr/2009/November/09-tax-1261.html; United States v. Guan, 2009 WL 4609654, 104 A.F.T.R.2d 2009-7471 (C.D.Cal. 2009); http://www.justice.gov/opa/pr/2009/November/09-tax-1276.html; United States v. Cornejo, 2009 WL 4609602 (C.D.Cal. 2009).

Relevant Case Law:

United States v. Heath, 525 F.3d 451 (6th Cir. 2008) - defendant was convicted of presenting a fictitious financial instrument under 18 U.S.C. § 514(a) for sending to the IRS a so-called "Registered Bill of Exchange" that appeared to be a certified check but for which there was no actual account.

United States v. Anderson, 353 F.3d 490, 500 (6th Cir. 2003), cert. denied, 541 U.S. 1068 (2004) - upholding criminal convictions relating to a conspiracy involving the creation and offering of almost 200 fictitious sight drafts purporting to be drawn on the United States Treasury with an aggregate face value of more than $550 million.

EXHIBIT H

THE MEMORANDUM

Researched and Written by Tommy K. Cryer, J.D.

Filed in support of his Motion to Dismiss
Evasion Charges Filed Against Him
in
United States v. Tommy K. Cryer
No. 06-50164-01
Western District of Louisiana
Shreveport Division

THE MEMORANDUM

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BIOGRAPHIC SUMMARY

Tommy K. Cryer
Attorney at Law
4348 Youree Dr.
Shreveport, LA 71105
CryerLaw@aol.com
Ph. (318) 865-3392

Personal:

Born Lake Charles, LA, September 11, 1949
Married (1) Carolyn Fisher, dec'd.
(2) Bettye "Dee Dee" Woodard

Education:

Sam Houston High School, Moss Bluff, LA, 1967, third in class, American Heritage Award, Continental Oil Scholarship, T. H. Harris Scholarship, JFK Memorial Scholarship, Civitan Award; Activities: Football letterman, FBLA, Beta Club, Drama Club founder and Literary Rally.

McNeese State University, Lake Charles, LA, B.A. 1970 (Psychology, Sociology, Military Science & Pre-Law), 3.4 GPA (Note: Multi-major degree in three years)

LSU Law School, Baton Rouge, LA, J.D. 1973, Honor Graduate, Order of the Coif

Inducted LSU Law School Hall of Fame, 1987.

Military:

Honorably Discharged, Captain, U. S. Army, Adjutant General Corps.

Professional:

Louisiana Constitutional Convention, 1973, Special Advisor and Draftsman (Declaration (Bill) of Rights, Municipalities)

Hargrove, Guyton, Ramey & Barlow, Shreveport, LA, 1973-1975; Oil & Gas, Oil & Gas Transmission (including extensive work in expropriation), Corporate, Estate, Estate Planning, Trusts, Personal Injury and others.

Private Practice, Shreveport, LA, 1975 - Practice has included virtually every aspect of the law, both criminal and civil, with clientele consisting of numerous individuals, families and

businesses (including many third generation clients) whose varied needs have provided experience and expertise across an extremely broad spectrum.

Litigation in all courts, including pro hoc vice appointments to try cases in New York, California and Texas.

Extensive trial experience, bench and jury, and appellate experience including Louisiana Supreme Court, in which have been privileged to successfully advocate numerous cases forging new law (two of which were significant enough that the legislature overturned them within one year).

Civic Activities:

Shreveport Jaycees (exhausted rooster), Board of Directors, Legal Counsel, Chaired numerous projects

Caddo Heights United Methodist Church, Board of Trustees 1974-1980

Shreveport Optimist Club, Board of Directors

Past Master, W. H. Booth Lodge #380, F & AM

Past Master, First Masonic District Lodge

Louisiana Grand Lodge, Law & Jurisprudence Committee; Board of Charities and Benevolences; Education Committee; Certified Instructor; Lecturer at numerous Grand Master's Seminars across the state

Scottish Rite Bodies, Shreveport Valley, 32°

El Karubah Shrine, Shreveport, LA

Past President, Shreveport High Twelve Club

Chairman, Shreveport Republican PAC, 1991-3, Delegate 1992 State Republican Convention; oversaw and consulted for eleven campaigns, left office 11 and 0. (no longer active in politics)

Personal Interests:

Study of History and Constitutional Law

Hunting and Fishing

Woodworking

Licensed Pilot, Multi-engine Land

CAVEAT:

THIS MEMORANDUM WAS PREPARED AND WRITTEN FOR ONE SPECIFIC CASE AND MAY NOT APPLY TO OTHERS.

IT IS NOT OFFERED AS LEGAL ADVICE NOR AS A LEGAL OPINION RELATIVE TO ANYONE OTHER THAN THE PARTY IN THIS CASE AND FOR THE ISSUES PRESENTED BY THIS PARTICULAR PROCEEDING.

THE READER SHOULD OBTAIN INDEPENDENT ADVICE FROM A LICENSED ATTORNEY BEFORE RELYING ON THE APPLICABILITY OF ANY AUTHORITIES CITED HEREIN INSOFAR AS THEY MAY OR MAY NOT APPLY TO THE READER.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

UNITED STATES OF AMERICA	CASE NO. 06-50164-01
V.	JUDGE: HICKS
TOMMY K. CRYER, Defendant	MAGISTRATE: HORNSBY

MEMORANDUM IN SUPPORT
OF
DEFENDANT'S FOURTH MOTION TO DISMISS INDICTMENT

MAY IT PLEASE THE COURT:

STATEMENT OF THE CASE

On October 25, 2006, the government filed herein an indictment charging defendant, TOMMY K. CRYER, hereinafter "Cryer", with two counts of tax evasion, alleging that during the years 2000 and 2001 Cryer had received taxable income but had knowingly and willfully failed to timely file tax returns for said years and that, as an "affirmative act" of evasion Cryer had failed to file tax returns for the Tommy K. Cryer Trust, which, the indictment claims, had received taxable income, thereby (presumably) concealing income and misleading the Internal

Revenue Service, hereinafter IRS, into believing that Cryer had no income for the years 2000 and 2001, all in violation of 26 U.S.C. § 7201.

Defendant now files this motion pursuant to Rule 12(b) to dismiss both counts of the indictment, with prejudice, on the basis that as a matter of law revenues received by him are not taxed or taxable under the provisions of the Income Tax laws and regulations thereunder promulgated, nor are any revenues received by him within the powers of the federal government to tax and that the revenues received by him are exempt from taxation by excise under the Constitution of the United States and that, therefore, an essential element of the charges, a "tax due and owing", is absent in this case.

ARGUMENT AND LAW

There are three essential elements to the crime of tax evasion, namely (1) willfulness; (2) existence of a tax deficiency; and (3) an affirmative act constituting an evasion or attempted evasion of the tax. *Sansone v. United States*, 380 U.S. 343, at 351, 85 S.Ct. 1004, at 1010 (1965); *United States v. Bishop*, 264 F.3d 535 (5th Cir. 2001); *United States v. Dack*, 747 F.2d 1172, at 1174 (7th Cir. 1984); and *United States v. Mal*, 942 F.2d 682, at 687 (9th Cir. 1991); *United States v.*

Silkman, 156 F.3d 833 (8th Cir. 1998). See also *Lawn* v. *United States*, 355 U.S. 339, at 361, 78 S.Ct. 311 (1958). Mr. Cryer strenuously denies all three elements, but the absence of any one element constitutes a defense and is fatal to the charge.

Reserving all rights and objections to the indictment previously raised, it is respectfully submitted that there is, as a matter of law, no tax deficiency due and owing by defendant.

TAX LAWS SUBJECT TO STRICT CONSTRUCTION

Tax laws are clearly in derogation of personal rights and property interests and are, therefore, subject to strict construction, and any ambiguity must be resolved against imposition of the tax. In *Billings v. U.S.*, 232 U.S. 261, 34 S.Ct. 421 (1914), the Supreme Court clearly acknowledged this basic and long-standing rule of statutory construction:

> "**Tax statutes . . . should be strictly construed, and, if any ambiguity be found to exist, it must be resolved in favor of the citizen.** *Eidman* v. *Martinez*, 184 U.S. 578, 583; *United States* v. *Wigglesworth*, 2 Story, 369, 374; *Mutual Benefit Life Ins. Co.* v. *Herold*, 198 F. 199, 201, aff'd 201 F. 918; *Parkview Bldg. Assn.* v. *Herold*, 203 F. 876, 880; *Mutual Trust Co.* v. *Miller*, 177 N.Y. 51, 57."
>
> (Id at p. 265, emphasis added)

Again, in *United States v. Merriam*, 263 U.S. 179, 44 S.Ct. 69 (1923), the Supreme Court clearly stated at pp. 187-88:

> "On behalf of the Government it is urged that taxation is a practical matter and concerns itself with the substance of the thing upon which the tax is imposed rather than with legal forms or expressions. **But in statutes levying taxes the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the Government and in favor of the taxpayer**. *Gould* v. *Gould*, 245 U.S. 151, 153."
>
> (emphasis added)

This rule of strict construction against the taxing authority was reiterated in *Tandy Leather Company v. United States,* 347 F.2d 693 (5th Cir. 1965), where Judge Hutcheson of our 5th Circuit eloquently and unequivocally proclaimed at p. 694-5:

> ". . . In ruling as he did, that the *taxpayer had the obligation to show that sales of the articles in suit were not subject to the excise taxes collected,* the district judge was misled by the erroneous contention of the tax collector into misstating the rule of proof in a tax case. This is: that the burden in such a case is always on the collector to show, in justification of his levy and collection of an excise tax, that the statute plainly and clearly lays the tax; that, in short, the fundamental rule is that taxes to be collectible must be clearly laid.
>
> "The Government's claim and the judge's ruling come down in effect to the proposition that the state of construction of appellants' kits had reached such an advanced level that the tax levied on the

finished products could be collected on their sale, though none had been clearly laid thereon by statute. Shades of Pym and John Hampden, of the Boston tea party, and of Patrick Henry and the Virginians! There is no warrant in law for such a holding. *Gould v. Gould*, 245 U.S. 151, at p. 153, 38 S.Ct. 53, 62 L.Ed. 211. In 51 American Jurisprudence, "Taxation", Sec. 316, "Strict or Liberal Construction", supported by a great wealth of authority, it is said:

> 'Although it is sometimes broadly stated either that tax laws are to be strictly construed or, on the other hand, that such enactments are to be liberally construed, this apparent conflict of opinion can be reconciled if it is borne in mind that the correct rule appears to be that where the intent of meaning of tax statutes, or statutes levying taxes, is doubtful, they are, unless a contrary legislative intention appears, to be construed ***most strongly against the government and in favor of the taxpayer or citizen***. Any doubts as to their meaning are to be resolved against the taxing authority and in favor of the taxpayer. * * *'

"The judgment was wrong. It is, therefore, reversed and the cause is remanded with directions to enter judgment for plaintiffs and for further and not inconsistent proceedings."

(emphasis is the Court's)

See also: *Gould v. Gould*, 245 U.S. 151, 38 S.Ct. 53, 153 (1917); *Royal Caribbean Cruises v. United States*, 108 F.3d 290 (11th Cir. 1997); *B & M Company v. United States,* 452 F.2d 986 (5th Cir. 1971); *Kocurek v. United States*, 456 F. Supp. 740 (1978)*; Norton Manufacturing Corporation v. United States,* 288

F. Supp. 829 (1968); *Grays Harbor Chair and Manufacturing Company v. United States*, 265 F. Supp. 254 (1967); *Russell v. United States*, 260 F. Supp. 493 (1966).

Thus, as we enter into the labyrinth of the Internal Revenue Code and its related regulations, we must do so mindful of the hornbook rule that tax laws are strictly construed and that when the letter of the law is subject to more than one interpretation, it must be construed against the imposition of the tax, the rule of interpretation of taxes being:

> ***"that the burden in such a case is always on the collector to show, in justification of his levy and collection of an excise tax, that the statute plainly and clearly lays the tax; that, in short, the fundamental rule is that taxes to be collectible must be clearly laid."***
>
> *Tandy Leather Company, supra,* at 694.
>
> (emphasis added)

THE INCOME TAX LAW DOES NOT "PLAINLY AND CLEARLY LAY" ANY TAX UPON DEFENDANT OR HIS REVENUE

The Internal Revenue Code does not "Plainly and Clearly Lay" any liability for an income tax on defendant.

The Income Tax Law, Subtitle A of Title 26, United States Code, imposes a tax on the taxable income of certain individuals in § 1:

"***26 U.S.C. § 1.*** **Tax Imposed.**

"(a) Married individuals filing joint returns and surviving spouses

"There is hereby imposed **on the taxable income** of —

"(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

"(2) every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

. . .

"(b) Heads of households

"There is hereby imposed **on the taxable income** of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

. . .

"(c) Unmarried individuals (other than surviving spouses and heads of households)

> "There is hereby imposed **on the taxable income** of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:
>
> . . .
>
> "(d) Married individuals filing separate returns
>
> "There is hereby imposed **on the taxable income** of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table: . . ."
>
> (emphasis added)

but this section does not designate anyone as liable for the payment of the tax.

It should be noted at this point that titles and headings, such as "Married individuals and surviving spouses filing joint returns" and "Heads of households" are not part of the law and have absolutely no legal effect. 26 U.S.C. § 7806. Therefore, the actual statute commences with "There is hereby imposed . . ." The imposition of the tax is on taxable income, only, not on any person or entity. In contrast, see 26 U.S.C. § 884, discussed more fully *infra*, which does impose a tax on an entity.

Subtitle A does, however, designate partners as liable for the taxes on income of a partnership, but only in their "individual" capacities (26 U.S.C. § 701)

while certain partnerships are declared liable for excess recapture of credits (26 U.S.C. 704).

Foreign corporations are specifically designated as the party liable for payment of the "Branch profits tax" imposed by 26 U.S.C. § 884 (which, incidentally, does impose the tax on "any foreign corporation").

The only other party that is identified in the income tax law as liable for the payment of any income tax is revealed in 26 U.S.C. § 1461:

> "***Sec. 1461. Liability for withheld tax***
>
> "Every person required to deduct and withhold any tax under this chapter is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter."
>
> (emphasis added)

"This chapter" is "Chapter 3 - Withholding Tax on Nonresident Aliens and Foreign Corporations". Thus the liable party in this instance is anyone withholding tax on nonresident aliens and foreign corporations.

There are no other references in Subtitle A (the income tax law) to anyone being liable for the tax imposed by § 1 other than those: partners (but only in their "individual" capacity); certain large partnerships in certain excess credit situations;

foreign corporations; and those withholding taxes on nonresident aliens and foreign corporations.

There is only one other party that is identified as being liable for the income tax, but to find that party we have to journey outside the realm of the income tax law to "Subtitle C – Employment Taxes", where we find:

> "**Sec. 3403. Liability for tax**
>
> "The employer shall be liable for the payment of the tax required to be deducted and withheld under this chapter [*"Subtitle C – Employment Taxes; Chapter 24 – Collection of Income Tax at Source on Wages"*], and shall not be liable to any person for the amount of any such payment."
>
> (emphasis and [*bracketed material*] added)

Thus, the only persons being assigned any liability for the income tax imposed by § 1 are those five instances — partners, certain large partnerships, foreign corporations, withholders of taxes on nonresident aliens and foreign corporations and those employers required by Chapter 24 of Subtitle C to withhold taxes on employees.

The absence, or near absence, of a statutory provision specifying exactly who is liable for a tax imposed is not customary. 26 U.S.C. §§ 2032A and 2056A specifically state who is liable for the Estate Tax; 26 U.S.C. § 3102(b) specifically

states who is liable for the FICA tax;: 26 U.S.C. § 3202 specifically states who is liable for the Railroad Retirement Tax; 26 U.S.C. § 3505 specifically imposes liability for Employment Taxes; 26 U.S.C. §§ 4002 and 4003 specify not only who is primarily liable, but who is secondarily liable for the Luxury Passenger Automobile Excise Tax. See also: 26 U.S.C. §§ 4051 and 4052 (Heavy Trucks and Trailers Excise Tax); 26 U.S.C. § 4071 (Tire Manufacture Excise Tax); 26 U.S.C. § 4219 (Manufacturers Excise Tax); 26 U.S.C. § 4401 (Tax on Wagers); 26 U.S.C. § 4411 (Wagering Occupational Tax); 26 U.S.C. § 4483 (Vehicle Use Tax); 26 U.S.C. § 4611 (Tax on Petroleum); 26 U.S.C. § 4662 (Tax on Chemicals); 26 U.S.C. § 4972 (Tax on Contributions to Qualified Employer Pension Plans); 26 U.S.C. § 4980B (Excise Tax on Failure to Satisfy Continuation Coverage Requirements of Group Health Plans); 26 U.S.C. § 4980D (Excise Tax on Failure to Meet Certain Group Health Plan Requirements); 26 U.S.C. § 4980F (Excise Tax on Failure of Applicable Plans Reducing Benefit Accruals to Satisfy Notice Requirements); 26 U.S.C. § 5005 (Gallonage Tax on Distilled Spirits); 26 U.S.C. § 5043 (Gallonage Tax on Wines); 26 U.S.C. § 5232 (Storage Tax on Imported Distilled Spirits); 26 U.S.C. § 5364 (Tax on Wine Imported in Bulk); 26 U.S.C. § 5418 (Tax on Beer Imported in Bulk); 26 U.S.C. § 5703 (Excise Tax on

Manufacture of Tobacco Products); and 26 U.S.C. § 5751 (Tax on Purchase, Receipt, Possession or Sale of Tobacco Products), to name a few.

Considering the "standard in the drafting of taxation laws industry", particularly in view of the requirement of strict construction, the limitation of liability to those five instances cannot be assumed to have been an oversight. In this instance the only ones liable are those specifically named as liable, just as in any other tax provision.

In *United States v. Calamaro*, 354 U.S. 351, 77 S.Ct. 1138 (1957), the Supreme Court reviewed the conviction of a "pick-up man" in a numbers game operation. Calamaro had been convicted of failure to pay an occupational tax, imposed not only on persons who are subject to the excise tax on being "engaged in the business" of wagering, but also on those who are "engaged in receiving wagers" on behalf of one subject to the excise tax.

Although the "pick-up man", Calamaro, was the person who actually received the money from the players, handed out the betting slips to the players and was acting on behalf of the "banker", the Supreme Court held that the he was not one who "engaged in receiving wagers" because "receiving wagers" meant accepting or entering into the wager, not receiving the money for the wager. See

also *Griffin v. United States*, 588 F.2d 521 (5th Cir. 1979); *Fine v. United States*, 206 F.Supp. 520 (Colo. 1962); *Drake v. United States*, 355 F.Supp. 710 (ED Mo. 1973); and *United States v. Mobil Corp*, 543 F. Supp. 507 (ND Tex. 1981) (26 U.S.C. 6001 and 26 CFR 31.6001 stating records "shall at all times be available for inspection" by revenue officers did not permit IRS blanket access, without warrant or summons, to browse through employee W-4's).

In *Calamaro*, the government cited a parallel regulation that more clearly included the "pick-up" man as one who "engaged in receiving wagers", which the Supreme Court effortlessly dismissed:

> "Finally, the Government points to the fact that the Treasury Regulations relating to the statute purport to include the pick-up man among those subject to the § 3290 tax, and argues (a) that this constitutes an administrative interpretation to which we should give weight in construing the statute, particularly because (b) section 3290 was carried over *in haec verba* into § 4411 of the Internal Revenue Code of 1954. We find neither argument persuasive. **In light of the above discussion, we cannot but regard this Treasury Regulation as no more than an attempted addition to the statute of <u>something which is not there</u>. As such the regulation can furnish no sustenance to the statute**. *Koshland* v. *Helvering*, 298 U.S. 441, 446-447. Nor is the Government helped by its argument as to the 1954 Code. The regulation had been in effect for only three years, and there is nothing to indicate that it was ever called to the attention of Congress. The re-enactment of § 3290 in the 1954 Code was not accompanied by any congressional discussion which throws light on its intended scope. In such circumstances we consider the 1954 re-

> enactment to be without significance. *Commissioner* v. *Glenshaw Glass Co.*, 348 U.S. 426, 431. *Calamaro*, supra, at 358-9
>
> (emphasis added)

See also, *Water Quality Ass'n v. United States*, 795 F.2d 1303 (7th Cir. 1986), where, citing and quoting *Calamaro*, the court added at p. 1309:

> "**It is a basic principle of statutory construction that courts have no right first to determine the legislative intent of a statute and then, under the guise of its interpretation, proceed to either add words to or eliminate other words from the statute's language**. *DeSoto Securities Co. v. Commissioner,* 235 F.2d 409, 411 (7th Cir. 1956); see also *2A Sutherland Statutory Construction* § 47.38 (4th ed. 1984). Similarly, **the Secretary has no power to change the language of the revenue statutes because he thinks Congress may have overlooked something**."
>
> (emphasis added)

There is no dispute, nor does the government otherwise contend, that defendant, Mr. Cryer, is not a partner in any partnership, is not a large partnership, nor is he a foreign corporation. Mr. Cryer is not required to withhold any taxes on a nonresident alien nor on any foreign corporation, nor is he required by Chapter 24 of Subtitle C to withhold taxes on any fees he receives. Accordingly, the only way the income tax law could be interpreted as imposing any liability for income tax upon Mr. Cryer is by inference or implication.

"But in statutes levying taxes the literal meaning of the words employed is most important, for ***such statutes are not to be extended by implication*** beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the Government and in favor of the taxpayer." *Merriam, supra.*

If the provisions of the Internal Revenue Code, even considering those outside the Income Tax Law (Subtitle A) fail to "plainly and clearly" lay liability for the tax upon Mr. Cryer, then they cannot be given that effect through strained interpretations, implication or inference. Nevertheless, the government claims that Mr. Cryer owes income taxes "***though none had been clearly laid thereon by statute***. Shades of Pym and John Hampden, of the Boston tea party, and of Patrick Henry and the Virginians! There is no warrant in law for such a holding." *Tandy Leather, supra.*

It is, therefore, respectfully submitted that there is no statute that renders Mr. Cryer liable for an income tax, and, therefore, he is not so liable. Absent a lawful liability for taxes, the essential element, liability for a tax deficiency, is lacking in this case as a matter of law, and, accordingly, it is respectfully submitted that both counts of the indictment should be dismissed, with prejudice.

The Internal Revenue Code does not "Plainly and Clearly Lay" a tax on any of defendant's revenues.

The same rigid rule of strict construction laid down by the Supreme Court in *Billings, Merriam, Gould* and *Calamaro, supra*, applies to the question of what is taxed as well as who is made liable for the tax.

Our second foray into the labyrinth begins as the first, with § 1, which imposes a tax "on taxable income." The first order of business is to determine the definition of the terms in order to define the scope of the tax. However, the first observation is stunning. Although the first 1,564 sections of the Internal Revenue Code are devoted to the Income Tax, the term "income", the very subject of the tax, is not defined. Nor is the term defined in any of the related regulations promulgated by the Treasury Department.

Nor is the term "taxable" defined in the Code or regulations.

The closest thing we have to definitions of "income" and "taxable" are all qualified, "hybrid", definitions, income linked with another term. Thus when a body of statutory law fails to provide a definition of a term, we must use its customary meaning. Turning to dictionaries, we find:

Webster's Dictionary:

Income. "A **gain** or recurrent benefit usually measured in money that derives from capital or labor"

(emphasis added)

Black's Law Dictionary:

Income. "The **return** in money from one's business, labor or capital invested; **gains, profits** or private revenue."

(emphasis added)

and, since federal law provides no definition, we look to other laws:

Louisiana Civil Code:

"Art. *551*. Kinds of fruits

"Fruits are things that are produced by or derived from another thing without diminution of its substance.

"There are two kinds of fruits; natural fruits and civil fruits.

"Natural fruits are products of the earth or of animals.

"Civil fruits are revenues **derived from a thing** by operation of law or by reason of a juridical act, such as rentals, interest, and certain corporate distributions."

(emphasis added)

In the Code we find hybrid definitions for "ordinary income" and "gross income":

> ***"26 U.S.C. § 64.* Ordinary Income Defined.**
>
> "For purposes of this subtitle, the term "ordinary income" includes any **gain** from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b). Any gain from the sale or exchange of property which is treated or considered, under other provisions of this subtitle, as "ordinary income" shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b)."
>
> and
>
> ***"26 U.S.C. § 61.* Gross Income Defined.**
>
> "General Definition — Except as otherwise provided in this subtitle, gross income means all income [*income means income*] from whatever source derived, including (but not limited to) the following items:
> (1) Compensation for services, including fees, commissions, fringe benefits, and similar items; . . ."
>
> (emphasis and [*bracketed material*] added)

While the significance or import of the phrase "from whatever source derived" will be more fully discussed below, it is important at this point to at least note that the phrase "from whatever source derived" is tracked from the Sixteenth Amendment, which provided that an income tax could not be classified as a direct

tax by virtue of the source of that income. *Brushaber v. Union Pac. R.R.*, 240 U.S. 1, 36 S.Ct. 236 (1916); *Tyee Realty Co. v. Anderson,* 240 U.S. 115, 36 S.Ct. 281 (1916); *Stanton v. Baltic Mining Co.*, 240 U.S. 103, 36 S.Ct. 278 (1916) This Amendment was adopted in order to overrule *Pollock v. Farmers' Loan and T. Co.,* 157 U.S. 537, 15 S.Ct. 673 (1895), which held that a tax on income derived from property burdened the property and was, therefore, a direct property tax subject to the requirement of apportionment. Therefore, the reference to "from whatever source derived" is not an indication that Congress may tax any income from any source, but is only an indication that an *income* tax (and a tax only on income) is not to be classified as a direct tax, subject to the requirement of apportionment, by virtue of the source of the income. This is not to say that the tax is to be applied and charged against all income without regard to its source.

The 16th Amendment **did not expand the scope of Congress' power to tax** (*Brushaber, Stanton, Tyee, supra* et al.), thus although the source of income is no longer a factor in determining whether the tax is direct or indirect, neither the jurisdiction of the federal government nor its taxing authority was enlarged to include authority to tax activities and privileges that it could not have taxed before the 16th Amendment. Source of income, then, is still a factor in determining the

scope of the taxing authority of the federal government. (See discussions of *Bailey v. Drexel Furniture Co.*, 259 U.S. 20, 36 S.Ct. 236 (1916); *McCulloch v. Maryland,* 17 U.S. 316 (1819); and others, *infra*) As we will see, those factors were also taken into consideration in the determination of taxable income in the Code and regulations.

The obvious common usage for the term "taxable", although not readily found in Websters, is "able to be taxed", i.e., within the authority of a government to tax.

And finally, we have the hybrid definition of "taxable income":

***26 U.S.C. § 63*. Taxable Income Defined.**

(a) In general

> Except as provided in subsection (b), for purposes of this subtitle, the term "taxable income" means gross income minus the deductions allowed by this chapter (other than the standard deduction).

Thus, when we combine the definitions we have, now, we have:

Income = gains, profits, from capital, labor or both

Taxable = within the authority of the government to tax

Thus, "taxable income" would be all gain [from activities that are within the authority of the federal government to tax] derived from capital, from labor, or from both combined from whatever source [that is within the authority of the federal government to tax] derived, and including certain enumerated items such as gains, or profits, from compensation for services, minus the deductions allowed by this chapter (other than the standard deduction).

"Whatever" does not identify those sources that are within the authority of the federal government to tax, but in checking the index under "Income Tax" we find "sources" and we also find "within the U.S." In order to determine what income is taxable the index of the Code designates the starting point as 26 U.S.C. § 861:

> ***26 U.S.C. § 861.*** **Income from Sources within the United States.**
>
> (a) Gross income from **sources within United States**
>
> The following **items** of gross income shall be treated as income from sources within the United States:
>
> [*This section goes on to list **items** of gross income, but does not define source nor does it specify any sources. Following the statutory text, however, we are referred to the Code of Federal Regulations:*]

"CODE OF FEDERAL REGULATIONS

"General regulations, see **26 CFR Sec. 1.861-1.**

". . . .

"**Computation of taxable income from sources within U.S.** and from other sources and activities, see **26 CFR Sec. 1.861-8**."

(emphasis and [*bracketed material]* added)

So, now our journey into the labyrinth continues into the Code of Federal Regulations:

"26 C.F.R. § 1.861-1 **Income from sources within the United States.**

"(a) Categories of income.
Part I (**section 861 and following**), subchapter N, chapter 1 of the Code, and the regulations thereunder **determine the sources of income for purposes of the income tax**. These sections **explicitly allocate certain important sources** of income to the United States or to areas outside the United States, as the case may be; and, with respect to the remaining income (particularly that derived partly from sources within and partly from sources without the United States), authorize the Secretary or his delegate to determine the income derived from sources within the United States, either by rules of separate allocation or by processes or formulas of general apportionment. The statute provides for the following three categories of income:

"(1) Within the United States. The **gross income** from sources within the United States, consisting of the **items** of gross income specified in section 861(a) plus the items of gross income allocated or apportioned

> to such sources in accordance with section 863(a). See 26 C.F.R. §§ 1.861-2 to 1.861-7, inclusive, and 26 C.F.R. § 1.863-1. **The taxable income from sources within the United States, in the case of such income, shall be determined by deducting therefrom, in accordance with sections 861(b) and 863(a),** the **expenses, losses, and other deductions** properly apportioned or allocated thereto **and** a ratable part of any other **expenses, losses, or deductions which cannot definitely be allocated to some item or class of gross income.** See 26 C.F.R. **§§ 1.861-8** and 1.863-1."
>
> (emphasis added)

There are two distinct provisions contained in this regulation that warrant our attention. First, the section informs us that §§ 861 et seq. are to be used to determine taxable income, but, equally significant, is, second, that besides the deductions of expenses, losses and other deductions referred to in 26 U.S.C. § 63 (taxable income = gross income less deductions), we are now made aware that there are either items or sources of income that CANNOT be (as opposed to "are not") included in gross income to begin with. The inescapable conclusion from this revelation is that not all income is includable in gross income, reaffirming our previous discussion of "from whatever source derived" as being reflective of the 16th Amendment's prohibition of considering the source in classifying the income tax as anything other than an excise, rather than defining the scope of the tax to include "each and every" source.

Now, in order to determine which sources *can* be considered in determining taxable income and, conversely, which sources *cannot* be included in gross income to begin with, § 1.861-1(a)(1) directs us to § 1.861-8:

> ***"26 C.F.R. § 1.861-8*** **Computation of taxable income from sources within the United States and from other sources and activities.**
>
> "(a)In general — (1) Scope. Sections 861(b) and 863(a) state in general terms how to **determine taxable income of a taxpayer from sources within the United States after gross income from sources within the United States has been determined**.
>
> ***[This again confirms that gross income from within the U.S. "whatever" sources derived is not necessarily subject to federal taxation. "Taxable" income, therefore, must be something less than all income from within from "whatever" source. Therefore, some sources within the United States are taxable and some sources within the United States are NOT taxable.]***
>
> "Sections 862(b) and 863(a) state in general terms how to determine taxable income of a taxpayer from sources without the United States after gross income from sources without the United States has been determined. This section provides specific guidance for applying the cited Code sections by prescribing rules for the allocation and apportionment of expenses, losses, and other deductions (referred to collectively in this section as deductions") of the taxpayer. **The rules contained in this section apply in determining taxable income of the taxpayer from specific sources and activities under other sections of the Code, referred to in this section as operative sections. See paragraph (f)(1) of this section for a list and description of operative sections**."
>
> (emphasis and [*bracketed material*] added)

So, what does paragraph (f)(1) of this section identify as those specific sources and activities that determine whether income is taxable?

"(f) Miscellaneous matters —

"(1) Operative sections. **The operative sections of the Code which require the determination of taxable income of the taxpayer from specific sources** or activities and which give rise to statutory groupings to which this section is applicable include the sections described below.

"(i) **Overall limitation to the foreign tax credit**.

"(ii) [Reserved]

"(iii) **DISC and FSC taxable income.**

"(iv) **Effectively connected taxable income. Nonresident alien individuals and foreign corporations engaged in trade or business within the United States….**

"(v) **Foreign base company income.**

"(vi) Other operative sections. The rules provided in this section also apply in determining - -
"(A) The amount of **foreign source items of tax preference** under section 58(g) determined for purposes of the minimum tax;

"(B) The amount of **foreign mineral income** under section 901(e);

"(C) [Reserved]

"(D) The amount of **foreign oil and gas extraction income** and the amount of foreign oil related income under section 907;

"(E) [Reserved] [The **tax base for citizens entitled to the benefits of § 931** and the § 936 **tax credit of a domestic corporation which has an election in effect under §936** - - deleted by amendment]

"(F) [Reserved] [*The exclusion for* ***income from Puerto Rico*** *for residents of Puerto Rico - - deleted by amendment*]

"(G) **The limitation under section 934 on the maximum reduction in income tax liability incurred to the Virgin Islands**;

"(H) [Reserved] [***Income derived from Guam*** *- - deleted by amendment*]

"(I) The **special deduction granted to China Trade Act corporations under section 941**;

"(J) The amount of certain U.S. source income excluded from the subpart F income of a **controlled foreign corporation** under section 952(b);

"(K) The amount of **income from the insurance of U.S. risks** under section 953(b)(5) [*dealing with* ***foreign*** *corporations*];

"(L) **The international boycott factor and the specifically attributable taxes and income under section 999**; and

"(M) **The taxable income attributable to the operation of an agreement vessel under section 607 of the Merchant Marine Act of 1936**, as amended, and the Capital Construction Fund Regulations thereunder (26 CFR, part 3). See 26 CFR 3.2(b)(3)."

(emphasis and [*bracketed material*] added)

These sources, then, are what remains after deducting those items that *"cannot"* "be allocated to some item or class of gross income". 26 CFR § 1.861-1

Whence came this acknowledgement that not all income, "from whatever source derived", is to be included in gross income?

Prior to 1954, the income tax was levied upon "net income". Gross income was, pursuant to the preceding act, the 1939 Code, determined in accordance with the 1940 regulations, of which § 19.22(b)-1 provided:

> "(b) **Exclusions from gross income** — The following items shall not be included in gross income and shall be exempt from taxation under this chapter:
>
> "Sec. 19.22(b)-1. **Exemptions—Exclusions from gross income**—Certain items of income specified in section 22(b) are exempt from tax and may be excluded from gross income. These items, however, are exempt only to the extent and in the amount specified. No other items are exempt from gross income except (1) **those items of income which are, under the Constitution, not taxable by the Federal Government**; (2) those items of income which are exempt from tax on income under the provisions of any Act of Congress still in effect: and (3) the income exempted under the provisions of section 116. Since the tax is imposed on net income, the exemption referred to above is not to be confused with the deductions allowed by section 23 and other provisions of the Internal Revenue Code to be made from gross income in computing net income. As to other items not to be included in gross income, see sections 112 and 119 [*the predecessor of the current 1.861-1 et seq.*] . . . "
>
> (emphasis and [*bracketed material*] added)

The previous regulations for the income tax laws contained similar, if not identical, acknowledgements that not all income is Constitutionally taxable by the federal government (early versions referred to exempt income being that which is not taxable by the federal government "under fundamental law").

The admission made in these regulations is nothing less than shocking. Gross income is defined in the 1939 Code § 22(a) as virtually everything. Code § 22(b) lists some exemptions, like tax free interest and life insurance. But then the government admits, mumbling up its sleeve, that some of those things listed in § 22(a) are also exempt because they are, "under the Constitution, not taxable by the federal government." If some of those items are not taxable, then why include them in gross income in the first place?

Not to make light of the gravity of the matter before the Court, but the best way to illustrate the import of this revelation is to imagine a new game show: Welcome to another exciting episode of "What's My Tax" with your host, Manny Hauls. Our contestant today is John Q. Public! Are you up there John? Well, COME ON DOWN! Now, as you can see, Johnny, we have an array of doors

here, salaries, compensation for services, rents, dividends, interest, and. . .well, there are too many for us to read them all off, but you can see them.

Now, Johnny, as you can see, we've already marked some of those doors for you, like "life insurance" over there, "tax-free interest" back here, just to get you started, but here's the good news: Some of these other doors are actually Constitutionally EXEMPT! That's right, Johnny, EXEMPT! So here's the deal: You pick one of the doors, and if that door is correct, you get an EXEMPTION!! and you get to keep the money we aren't allowed to take. How's that for a prize? (audience cheers)

But here's the catch: If you choose the wrong door, Beulah the chimp will blow her horn and you get the booby prize: INTEREST and PENALTIES!! (audience goes "Aawwww") This would be funny if it were not true.

Similarly, in the 1939 Code itself, there is a clear indication that not all income is Constitutionally taxable income, notwithstanding the 16th Amendment and its "from whatever source derived" phrase. § 115(f)(1) and (h)(2) of the 1939 Code provide:

> "(f) (1) GENERAL RULE—A distribution made by a corporation to its shareholders in its stock or a right to acquire its stock shall not be treated as a dividend to the extent that it **does not**

> **constitute income to the shareholder within the meaning of the Sixteenth Amendment** to the Constitution.
>
> . . .
>
> "(h) EFFECT ON EARNINGS AND PROFITS OF DISTRIBUTION OF STOCKS—The distribution (whether before January 1, 1939, or on or after such date) to a distributee by or on behalf of a corporation of its stock or securities, of stock or securities of another corporation, or of property or money, shall not be considered a distribution of earnings or profits of any corporation . . .
>
> "(2) if the distribution was not subject to tax in the hands of such distributee because it **did not constitute income to him within the meaning of the Sixteenth Amendment to the Constitution** or because exempt to him under section 115(f) of the Revenue Act of 1934, 48 Stat. 712, or a corresponding provision of a prior Revenue Act."
>
> (emphasis added)

Thus, prior to 1954 the tax was imposed on "net income" and although the Code and the regulations did not disclose what income is beyond the ability of the federal government to tax, nor did they disclose what income is not included within the meaning of "income" in the 16th Amendment, at least it did disclose that some items or sources of income are exempt from taxation.

While the citizen seeking to understand what was expected of him would have to conduct a great deal of legal research to identify the limits of the federal taxing authority and to determine what income is and is not included within the

meaning of the 16th Amendment, at least he was, to some extent, "on notice" to look for those exemptions.

The 1954 Code and the regulations promulgated thereunder, which was not considered to have made any significant substantive changes in the income tax law (and which, certainly, did not enlarge the Constitutional scope of federal taxation authority nor the Constitutional definition of "income"), primarily reordered and renumbered the old Code and regulations. The new Code, however, made two very significant "adjustments".

First, the tax was now imposed on "taxable" income. While the term is defined in its hybrid form, "taxable income", in § 63 (drawing our attention from the separate meanings of the words), when placed in context with the second major "adjustment", the term "*taxable*" income becomes monumentally significant.

Second, except for 26 CFR 1.312-6, each and every reference to the Constitution, to fundamental law, to limitations on the federal taxing authority and to the Sixteenth Amendment's meaning of "income" was purged, erased, banished from both the Code and the regulations.

The previous disclosures of Constitutional exemptions, exemptions under fundamental law, Constitutional limitations of federal taxing authority and the

qualified scope of the word "income" within the meaning of the Sixteenth Amendment, were no longer deemed necessary. Since the imposition of the tax itself was limited by changing "net income" to "taxable" income, imposing the tax only on that income the federal government was Constitutionally entitled, *able*, to *tax*, *tax-able*, thereby, technically, excluding all Constitutionally exempt or excluded income from the effects of the tax. By excluding exempt and excluded income in the imposition itself, there was apparently no longer any need perceived by the government to disclose that not all income is "taxable" income.

Thus, § 861 of the Code and its parallel regulations, 26 CFR 1.861-1 et seq. are vestigial disclosures, what is left of the previous § 22(b) exemptions and § 115 qualifications of the meaning of "income". There is, however, another vestigial remnant of those disclosures. Conducting a search of the regulations for "exempt", we are, not surprisingly, led back to § 861, more particularly, 26 CFR 1.861-8T(d)(2)(ii) and (iii):

> "(ii) Exempt income and exempt asset defined — (A) In general. For purposes of this section, the term **exempt income means any income that is, in whole or in part, exempt, excluded, or eliminated for federal income tax purposes**. The term exempt asset means any asset the income from which is, in whole or in part, exempt, excluded, or eliminated for federal tax purposes.

[*Note the absence of reference to "fundamental law", "under the Constitution, not taxable by the federal government", or "not income within the meaning of the Sixteenth Amendment"*]

"(iii) Income that is **not** considered tax exempt.

"The following items are **not** considered to be exempt, eliminated, or excluded income and, thus, may have expenses, losses, or other deductions allocated and apportioned to them:

"(A) In the case of a foreign taxpayer (including a **foreign sales corporation** (FSC)) computing its effectively connected income, gross income (whether domestic or foreign source) which is not effectively connected to the conduct of a United States trade or business;

"(B) In computing the combined taxable income of a **DISC or FSC** [*international or foreign sales corporation*] and its related supplier, the gross income of a DISC or a FSC;

"(C) For all purposes under subchapter N of the Code, including the computation of combined taxable income of a **possessions corporation** and its affiliates under section 936(h), the gross income of a possessions corporation for which a credit is allowed under section 936(a); and

"(D) **Foreign earned income** as defined in section 911 and the regulations thereunder (however, the rules of Sec. 1.911-6 do not require the allocation and apportionment of certain deductions, including home mortgage interest, to foreign earned income for purposes of determining the deductions disallowed under section 911(d)(6))."

(emphasis and [*bracketed material*] added)

Although this provision defines exempt income, it, again and still, does not identify or refer us to what those exemptions are or upon what they are based. Instead, it tells us what is NOT exempt, leading to the reasonable supposition that any income other than that which is not exempt is, or at least may very well be, "exempt, excluded or eliminated" from federal income tax.

Congress and the Treasury Department have statutorily and through regulations, respectively, acknowledged that there are limitations upon Congress' power to tax and that there are items and sources of income that are Constitutionally exempt from taxation by the federal government. 1939 Code and 1940 regulations, *supra*. The present Code and regulations acknowledge that some income CANNOT be attributed to gross income; that some income is exempt from taxation; that the current Code and regulations specify those sources that CAN be included in gross income for determination of taxable income (§ 1.861-8(f)(1)) and specify those items that are not exempt (§ 1.861-8T(d)(2)(iii)).

Remembering that tax laws must be strictly construed and that any ambiguity must be resolved against imposition of the tax, it can, therefore, only be concluded that sources of income other than those enumerated cannot be included in gross income and that items of income other than those items of income

specified as *not* exempt, *are* exempt from the federal income tax. With the sole exception of those sources specifically identified as taxable and those items specifically identified as not exempt, it cannot be said that the tax has "been plainly and clearly laid" on any other sources or items of income. *Billings, Merriam, Gould, Tandy Leather, supra.*

There is no dispute, nor does the government otherwise contend, that Mr. Cryer has received no income, gains, from any of the taxable sources enumerated nor has he received any non-exempt items of income specified, and, therefore, that no tax has been clearly laid on the fees received by Mr. Cryer for legal services.

It is a virtual certainty that the government will argue that there is another interpretation of the Codal and regulatory provisions detailed hereinabove, "But in statutes levying taxes the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used. ***If the words are doubtful, the doubt must be resolved against the Government and in favor of the taxpayer.***" *Merriam, supra.*

If the provisions of the Internal Revenue Code, even considering those outside the Income Tax Law (Subtitle A) fail to "plainly and clearly" lay a tax upon Mr. Cryer's revenues, then they cannot be given that effect through strained

interpretations, implication or inference. Nevertheless, the government claims that Mr. Cryer owes income taxes on those revenues "***though none had been clearly laid thereon by statute***. Shades of Pym and John Hampden, of the Boston tea party, and of Patrick Henry and the Virginians! There is no warrant in law for such a holding." *Tandy Leather, supra.*

It is, therefore, respectfully submitted that the Internal Revenue Code and regulations do not plainly and clearly impose a tax on Mr. Cryer's revenues, and, therefore, there can be no federal income tax owed thereon. Without "plain and clear" imposition of taxes there can be no tax deficiency and that essential element, liability for a tax deficiency, is lacking in this case as a matter of law. Accordingly, it is respectfully submitted that both counts of the indictment should be dismissed, with prejudice.

DEFENDANT'S REVENUES ARE NOT SUBJECT TO FEDERAL TAXATION BY EXCISE

The Federal Taxing Power

The Supreme Court has on countless occasions described the taxing power of the federal government as "all encompassing", and from one standpoint it is "all

encompassing". The manner and means of exercising that "all encompassing" power of taxation are not, however, limitless. A review of the Constitutional provisions specifying those means is helpful in understanding those limitations.

Article I, § 2, cl. 3:

"Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers... ."

Article I, § 8, cl. 1:

"The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States... ."

Article I, § 9, cl. 4:

"No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken... ."

To these provisions has been added:

"**Amendment XVI - Status of Income Tax Clarified.**

"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."

In these provisions are incorporated the long-standing practice and understanding that all taxes must fall into one of two classes, direct or indirect, with duties, imposts and excises being considered as indirect and taxes on property or person as direct.

The limitation on direct taxes is perfectly harmonious and parallel to the intent of the framers in restricting the powers of the new federal government, keeping it at arms length from the citizens of the "Free and Independent States."[1] The gravest concern of both the States and the People was that the federal government would seek to govern the People, whether through regulation or by taxation, a role generally regarded as the exclusive realm of the States—something neither the People nor the States were willing to tolerate or permit. Congress was permitted to tax the public, but only *indirectly*. Any tax on person or property had to be imposed through the States, not directly upon any citizen. The States, not Congress, would then decide through what means and from what resources the tax, more like an assessment, would be paid.

[1] An understanding of the distinction between the nature of the individual and free-standing sovereignty of the States and the restricted and conditional sovereignty conferred by the Constitution is inherent in the fact that the Declaration of Independence did not establish the independence of the "United States", but only of the "Free and Independent States."

There are no Constitutional limitations upon the subject of a direct tax, and, therefore, it can honestly be said that the taxing authority of Congress is "all encompassing." For example, Congress could pass a one dollar tax on each foot of beach frontage, but that tax would not be imposed on citizens owning beach-front property. The total amount of the tax would be calculated and then apportioned among the States, each State receiving an assessment for its apportioned share of the total, and without regard to the fact that most States have no beach frontage.

Indirect taxation, however, was limited by its definition, which excludes the taxation of person or property from its class of taxation. This form of taxation differed in more than the question of means and manner, that distinction being that every indirect tax is voluntary upon and avoidable by the citizen. Any tax upon an activity can be avoided by choosing not to engage in the taxed activity. Thus, the citizen "accedes" or "consents" to the tax by engaging in the activity that is taxed. In this vein, a tax upon the activity of breathing, being unavoidable and not, at least reasonably, within the ability of the citizen to abstain, would not be an indirect tax. While at least in theory a breathing tax could be imposed, it would have to be considered direct and apportioned among the States.

The primary issue, then, in any act of taxation by Congress is whether the tax is indirect, in which case the tax must meet the requirement of uniformity, or direct, in which case the tax must be apportioned among the states. That issue surfaced almost immediately. In *Hylton v. United States*, 3 U.S. 171 (1796), the Supreme Court was required to address a challenge that a tax on carriages "for the conveyance of persons" was a direct tax on property, carriages. The Court, however, distinguished between a tax on the ownership of property and one on the consumption (since carriages wear out) of the property, i.e., an avoidable activity, and upheld the tax as an excise, not requiring apportionment.

In 1861 the first tax on income was enacted. It imposed a tax on all income derived from property and was generally considered and implemented as, although no formal challenge was ruled upon, an indirect excise tax on the use of the property for gain. Thus the lines of demarcation between the two taxes, primarily due to *Hylton*, becomes clearer. A tax on property or person is a direct tax, requiring apportionment, and a tax on privileged and avoidable activities is an indirect tax, requiring uniformity.

The questions remaining, however, are: 1) What is the scope of taxation authority of the federal government in general? And 2) What activities may be the

proper subject of an excise tax? No determination of the extent of the federal taxing authority can be made without first answering those two questions.

The answer to the first was not long in coming. The scope of taxing authority was first and thoroughly dealt with in 1819 in *McCulloch v. Maryland*, 17 U.S. 316 (1819). The Supreme Court was required to define the limits of taxing authority a State[2], Maryland, due to its attempt to tax the national bank, a body established by Congress. Justice Marshall, at p. 429:

> "It may be objected to this definition, that the power of taxation is not confined to the people and property of a state. It may be exercised upon every object brought **within its jurisdiction.** This is true, But to what source do we trace this right? It is obvious, that it is an **incident of sovereignty, and is co-extensive with that to which it is an incident. All subjects over which the sovereign power of a state extends, are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self-evident.**
>
> "The sovereignty of a state extends to everything which exists by its own **authority**, or is introduced by its **permission**."
>
> (emphasis added)

[2] It should be noted, in passing, that the taxing authority in this instance is of a full, free-standing sovereignty, not a limited or conditional sovereignty or sovereignty by convention.

It should be noted that these principles are not some antiquated philosophical enunciations, but are foundational Constitutional law, in full force and effect[3] and relied upon hundreds of times by our courts, even as recently as this year (See *U.S. v. Reynard*, 02-50476 (9th Cir. 1-12-2007)).

Also noteworthy, is that in defining the extent of the taxing authority of a sovereignty as co-extensive with its jurisdiction, and, particularly, in defining all without that jurisdiction to be ***exempt*** from that authority, we are not hearing this from one who is unsympathetic to the powers of government. Marshall was a staunch Federalist. *McCulloch* is best known and remembered for its *expansion* of federal authority and his maximal views of jurisdiction are best evidenced in this ruling, where he holds that "not delegated" does not mean "not delegated" because it does not say "not *expressly* delegated" (at 406) and that "necessary" does not mean "necessary" because it does not say "*absolutely* necessary" (at 414).

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[3] This brief description of the legislative power and sovereignty of the state is found in a variety of subsequent decisions and is thus a well established principle; see *Weston v. City Council of Charlston*, 2 Pet. (27 U.S.) 449, 467 (1829); *The Providence Bank v. Billings*, 4 Pet. (29 U.S.) 514, 564 (1830); *The Piqua Branch of the State Bank of Ohio v. Knoop*, 16 How. 369, 409 (1853); *People of State of New York, ex rel. of the Bank of Commerce v. Commissioners of Taxes and Assessments for the City and County of New York*, 67 U.S. 620, 632 (1863); *Union Pacific Railroad Co. v. Peniston*, 85 U.S. 5, 38 (1873); *The Wheeling, Parkersburg and Cincinnati Trans. Co. v. City of Wheeling*, 99 U.S. 273, 279 (1879); *Society for Savings v. Coite*, 73 U.S. 594, 604 (1868); *Van Brocklin v. Tennessee*, 117 U.S. 151, 155, 6 S.Ct. 670 (1886); *United States v. Rickert*, 188 U.S. 432, 438, 23 S.Ct. 478 (1903); *First National Bank in St. Louis v. Missouri*, 263 U.S. 640, 663, 44 S.Ct. 213 (1924); *Detroit v. Murray Corp. of America*, 355 U.S. 489, 497, 78 S.Ct. 458 (1958);

It can safely be said, then, that the recognition of a State's power to tax, which would either exceed or at least equal that of a sovereignty by convention, as co-extensive with its jurisdiction, would be an ample standard to apply in surveying the authority of the federal government to tax. Therefore, if we proceed with this analysis on the basis of assigning to the federal government the full taxing authority, subject to the restrictions on manner and means of that taxation, of an original and free-standing sovereignty, such as a State, we can be assured that we will not be undercutting or minimizing that authority.

From *McCulloch*, then, we can conclude:

A. The power to tax is co-extensive with the jurisdiction of the taxing authority;

B. All things without that jurisdiction are exempt from taxation by the taxing authority; and

C. The jurisdiction of a sovereignty extends to all things that exist by its authority or are introduced with its permission.

Since the taxing authority of the federal government, then, is co-extensive with it's jurisdiction, a survey of that jurisdiction is necessary in order to define the limits of that taxing authority. Prior to doing so, there is another bookend to the

extent of taxing authority. *McCulloch* not only delineated and defined the area or scope over which a sovereignty may exercise its power to tax, but also defined those areas over which a sovereignty may NOT exercise its power to tax. Marshall at 431:

> That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; **that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control**, are propositions not to be denied.
>
> (emphasis added)

That answers the question of whether a State can tax those matters that are under the jurisdiction of the federal government and where the federal government's authority over those matters is supreme, but what about the reverse of that issue? Who is the supreme authority over those matters within the State's jurisdiction? The answer to that question was also provided by the Supreme Court in *Farrington v. Tennessee*, 95 U.S. 679 (1877)[4], where the Supreme Court recognized that in the areas within State jurisdiction, State law is supreme to that of the federal government. *Farrington* at 685:

> "In cases involving Federal questions affecting a State, the State cannot be regarded as standing alone. It belongs to a union consisting of itself and all its sister States. The Constitution of that union, and "the laws made in pursuance thereof, are the supreme law of the land, . . . any thing in the Constitution or laws of any State to the contrary notwithstanding;" and that law is as much a part of the law of every State as its own local laws and Constitution. *Farmers' & Mechanics' Bank* v. *Deering*, 91 U.S. 29.
>
> "**Yet every State has a sphere of action where the authority of the national government may not intrude. Within that domain the State is as if the union were not. Such are the checks and balances in our complicated but wise system of State and national polity**."
>
> (emphasis added)

Thus, just as the State's power of taxation may not be exercised over those items within its borders where federal jurisdiction is supreme, the federal government's authority to tax may not be exercised over those items or activities over which the jurisdiction of the State government is supreme. The principle is further reinforced by the Supreme Court again, in *Bailey v. Drexel Furniture Company (Child Labor Case),* 259 U.S. 20, 42 S.Ct. 449 (1922)[5], in which case the Supreme Court struck down a federal tax on the employment of children. Chief Justice Taft, writing at p. 37:

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[4] Nor is *Farrington* a relic of bygone days, it is still controlling Constitutional law, having been cited and followed over one hundred thirty times and as recently as 2005, See *Loeffel Steel Products, Inc. v. Delta Brands, Inc.*, (N.D.Ill. 01 C 9389, 7/28/2005)

"It is the high duty and function of this court in cases regularly brought to its bar to decline to recognize or enforce seeming laws of Congress, dealing with subjects not entrusted to Congress but left or committed by the supreme law of the land to the control of the States. **We can not avoid the duty even though it require us to refuse to give effect to legislation designed to promote the highest good. The good sought in unconstitutional legislation is an insidious feature because it leads citizens and legislators of good purpose to promote it without thought of the serious breach it will make in the ark of our covenant or the harm which will come from breaking down recognized standards**. In the maintenance of local self government, on the one hand, and the national power, on the other, our country has been able to endure and prosper for near a century and a half.

"Out of a proper respect for the acts of a coordinate branch of the Government, **this court has gone far to sustain taxing acts as such, even though there has been ground for suspecting from the weight of the tax it was intended to destroy its subject**. But, in the act before us, the presumption of validity cannot prevail, because the proof of the contrary is found on the very face of its provisions. **Grant the validity of this law, and all that Congress would need to do, hereafter, in seeking to take over to its control any one of the great number of subjects of public interest, jurisdiction of which the States have never parted with, and which are reserved to them by the Tenth Amendment, would be to enact a detailed measure of complete regulation of the subject and enforce it by a so-called tax upon departures from it**. To give such magic to the word "tax" would be to break down all constitutional limitation of the powers of Congress and completely wipe out the sovereignty of the States."

(emphasis added)

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[5] *Bailey v. Drexel Furniture Co.* is still controlling Constitutional law, having been cited and followed as controlling nearly 200 times and as recently as 2005, see *Simpson v. U.S.*, 877 A.2d 1045 (D.C. 2005)

And in *Hill v. Wallace*, 259 U.S. 44, 42 S.Ct. 453 (1922), wherein the Court struck down a federal tax on grain contracts. Chief Justice Taft, again, at p. 67:

> "Our decision, just announced, in the *Child Labor Tax Case, ante*, 20, involving the constitutional validity of the Child Labor Tax Law, completely covers this case. We there distinguish between cases like *Veazie Bank* v. *Fenno*, 8 Wall. 533, and *McCray* v. *United States*, 195 U.S. 27, in which it was held that **this court could not limit the discretion of Congress in the exercise of its constitutional powers to levy excise taxes because the court might deem the incidence of the tax oppressive or even destructive**. It was pointed out that in none of those cases did the law objected to show on its face, as did the Child Labor Tax Law, detailed **regulation of a concern or business wholly within the police power of the State**, with a heavy exaction to promote the efficacy of such regulation."
>
> (emphasis added)

Justice Sutherland, dissenting in *Burnes Nat'l Bank v. Duncan*, 265 U.S. 17 (1924), a case involving a national bank's right to appointment as executor of an estate, reminded us of this important principle at p. 26:

> **It is fundamental, under our dual system of government, that the Nation and the State are supreme and independent, each within its own sphere of action; and that each is exempt from the interference or control of the other in respect of its governmental powers, and the means employed in their exercise**. *Bank of Commerce* v. *New York City*, 2 Black, 620, 634; *South Carolina* v. *United States*, 199 U.S. 437, 452, *et seq.; Farrington* v. *Tennessee*, 95 U.S. 679, 685. "How their respective laws shall be enacted; how they shall be carried into execution; and in what tribunals, *or by what officers;* and how much discretion, or whether any at all shall be vested in their officers, are matters subject to their own control, and in

> the regulation of which neither can interfere with the other." *Tarble's Case*, 13 Wall. 397, 407-8. **Except as otherwise provided by the Constitution, the sovereignty of the States "can be no more invaded by the action of the general government, than the action of the state governments can arrest or obstruct the course of the national power**. *Worcester* v. *Georgia*, 6 Pet. 515, 570."
>
> (emphasis added)

Thus, the taxing authority of the federal government ends where the regulatory authority of the States begin and are, therefore, limited to those areas of activities over which the States granted the federal government authority and those lands the States granted permission to the federal government to acquire for specific purposes. Accordingly, the Constitution affords federal legislative jurisdiction over certain enumerated areas of activity and exclusive legislative jurisdiction over certain geographic areas:

> **Article I, § 8:**
>
> To lay and collect Taxes, Duties, Imposts and Excises
>
> To borrow Money
>
> To regulate commerce with foreign Nations, among the States and with Indian Tribes
>
> To establish uniform Rules of Naturalization
>
> To enact Laws on Bankruptcy

To coin Money, regulate the value thereof and of foreign Coin

To fix the Standard of Weights and Measures

To provide for Punishment of counterfeiting

To establish Post Offices and post Roads

To make Patent and Copyright laws

To constitute Tribunals inferior to the supreme Court

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations

To declare War, Grant Letters of Marque and Reprisal and make Rules concerning Captures on Land and Water

To raise and support and regulate Armies and a Navy and to regulate the Militia

To call out the Militia

To govern the District of Columbia [*infra*]

To make laws "necessary and proper" to enforce the Constitution

Enabling Clauses:

To enforce 13th Amendment [*abolition of slavery*]

To enforce 14th Amendment [*equal protection of the law*]

To enforce 15th Amendment [*right to vote*]

To enforce 19th Amendment [*women's suffrage*]

To enforce 23rd Amendment [*prohibition of poll tax*]

Exclusive legislative authority:

Article II, § 8, cl. 17:

> "To exercise exclusive Legislation in all Cases whatsoever, over such District [*of Columbia*] (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."

Article III, § 2:

> "The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States. . ."

([*bracketed material*] added)

That Congress may, then, tax those activities, such as interstate commerce, foreign trade and the exercise of patent rights, would seem established under the *McCulloch* definition. That it may tax any and every privileged activity within those lands over which it has exclusive legislative jurisdiction is equally apparent.

The latter, however is virtually inconsequential, since the federal jurisdiction consists solely of the District of Columbia, the territories and those scattered islands of federal lands over which the States have ceded jurisdiction to the federal government, "federal enclaves". All other territory within the country is in the States, which means they are not within the federal jurisdiction.

Most people would be surprised to learn that they do not live on United States soil and that many have been born, lived and died without ever having set foot on United States soil.

This would be a good time to review one of the regulations discussed hereinabove, more particularly, 26 CFR 1.861-8T(d)(2)(iii):

> "(iii) Income that is **not** considered tax exempt.
>
> "The following items are not considered to be exempt, eliminated, or excluded income and, thus, may have expenses, losses, or other deductions allocated and apportioned to them:
>
> "(A) In the case of a foreign taxpayer (including a **foreign sales corporation** (FSC)) computing its effectively connected income, gross income (whether domestic or foreign source) which is not effectively connected to the conduct of a United States trade or business; [*Jurisdiction to regulate foreign commerce*]
>
> "(B) In computing the combined taxable income of a **DISC or FSC** [*international or foreign sales corporation*] and its related supplier,

> the gross income of a DISC or a FSC; [*Jurisdiction to regulate foreign commerce*]
>
> "(C) For all purposes under subchapter N of the Code, including the computation of combined taxable income of a **possessions corporation** and its affiliates under section 936(h), the gross income of a possessions corporation for which a credit is allowed under section 936(a); and [*Exclusive legislative jurisdiction (all persons, property and activities) in territories or possessions*]
>
> "(D) **Foreign earned income** as defined in section 911 and the regulations thereunder (however, the rules of Sec. 1.911-6 do not require the allocation and apportionment of certain deductions, including home mortgage interest, to foreign earned income for purposes of determining the deductions disallowed under section 911(d)(6))." [*Jurisdiction to regulate foreign commerce*]
>
> (emphasis and [*bracketed material*] added)

There is, however, a second area of taxation granted Congress beyond those particular activities and those federal enclaves of exclusive legislative jurisdiction, and that is in the taxation clause itself. Article I, § 8, cl. 1 grants Congress the power to lay and collect duties, imposts and excises. Duties and imposts are related to foreign trade, leaving the sole remaining grant, for internal taxation, to be excises. Thus, those activities that are included within the power to lay and collect excises would, reasonably, be implicit in the grant. The question, then, is to what extent may an excise tax be laid and collected?

The inquiry must begin with defining what, exactly, an excise tax is.

Webster's Dictionary defines an excise as:

> Excise: obsolete Dutch *excijs* (now *accijus*), from Middle Dutch, probably modification of Old French *assise* session, assessment **1 :** an internal tax levied on the **manufacture, sale, or consumption of a commodity 2 :** any of various **taxes on privileges** often assessed in the form of a license or fee
>
> (emphasis added)

Black's Law Dictionary defines an excise as:

> **Excise taxes** are taxes "laid upon the **manufacture, sale or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges**." *Flint v. Stone Tracy Co.*, 220 U.S. 107, 31 S.Ct. 342, 349 (1911); or **a tax on privileges, syn. "privilege tax"**.
>
> (emphasis added)

The Supreme Court, as noted by Black's, has provided a clear and definite scope of the excise taxing authority. In *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911)[6], the Supreme Court held that:

> "Duties and imposts are terms commonly applied to levies made by governments on the importation or exportation of commodities. **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." *Flint, supra*, at 151
>
> (emphasis added)

[6] Again, *Flint v. Stone Tracy Co.* is controlling and Constitutional law, having been cited and followed over 600 times by virtually every court as the authoritative definition of the scope of excise taxing power.

Now we have two basic areas of internal indirect taxation authority:

1. Taxing authority that is inherent in sovereignty, i.e., "co-extensive with jurisdiction" (*McCulloch, supra*);
2. Authority to lay and collect excises "upon the manufacture, sale or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges (*Flint, supra*).

There is a third area of taxation authority that is not found in the Constitution, nor can any historical or traditional foundation for the taxing authority be found, but since the Supreme Court based its sanctioning of the exercise of taxation over that area as an excise, we can call it an excise of unknown ancestry. This third area of excise of unknown ancestry was established in two cases that, ironically, the Supreme Court believed would be of little significance. The fact, however, is that these cases had a profound effect on taxation in the country that accounts for many of the arcane and mysterious twists, turns and surprising dead ends in the labyrinth of past and current tax codes and regulations.

In *Railroad Co. v. Collector*, 100 U.S. 595 (1879), the Supreme Court was faced with a challenge to a tax on interest paid by corporations. In this particular

case, however, the interest was payable to foreign bond holders. Fully aware of the fact that the foreign bond holders were outside the jurisdiction of the government and that the *situs* of an obligation is always that of the obligee, the Court (sort of) upheld the tax:

> "That the tax was actually collected without resistance, and the present suit is brought to recover it back, is sufficient answer to the assertion that it could not be enforced.
>
> **"Whether Congress, having the power to enforce the law, has the authority to levy such a tax on the interest due by a citizen of the United States to one who is not domiciled within our limits, and who owes the government no allegiance, is a question which we do not think necessary to the decision of this case.**
>
> "The tax, in our opinion, is essentially an excise on the business of the class of corporations mentioned in the statute.
>
> ". . .**The tax is laid by Congress on the net earnings, which are the results of the business of the corporation, on which Congress had clearly a right to lay it; and being lawfully assessed and paid, it cannot be recovered back by reason of any inefficiency or ethical objection to the remedy over against the bondholder.**" *Railroad Co., supra*, at 597-9
>
> (emphasis added)

See also, *United States v. Erie Railway Co.*, 106 U.S. 327 (1882).

So, now we have three areas of indirect taxation authority that the federal government can exercise, those activities within its regulatory authority and all privileged activities within those territories and federal enclaves over which it has exclusive legislative authority (*McCulloch*); excise taxes on the manufacture, sale

or consumption of commodities, licensing of certain occupations and corporate privileges (*Flint, supra*), and, finally, the excise of unknown ancestry or authority on monies payable to nonresident aliens and foreign corporations (*Railroad Co., supra*).

We also have prohibited areas, those being any activities that are within the scope of the regulatory authority of the States (*McCulloch, Farrington, Bailey* and *Hill, supra*) and those activities to which the jurisdiction of the federal government may not apply, i.e., those subjects of taxation that do not exist by the federal government's authority and are not introduced by its permission (*McCulloch, supra*) (with the exception, of course of monies owed nonresident aliens and foreign corporations). In other words every activity outside of those three areas of taxation authority are, in Marshall's words, ***exempt*** from federal taxation.

The income tax is an excise

The next issue is whether the income tax is a direct tax, which can be levied on virtually anything, or an indirect tax, which can only be laid on those activities listed in *Flint*. In 1861 the federal government imposed a tax on income derived from property. The tax was never challenged, but was referred to by Chief Justice

White in *Brushaber* as an excise tax. *Brushaber, supra*, p. 15. Prior to *Brushaber*, however, the nature of the income tax had come into question.

In *Pollock v. Farmers' Loan and T. Co.*, 157 U.S. 429 (1895), the Supreme Court held that the Income Tax Act of 1894 imposing a tax on income from real estate and investments was a direct tax, and, therefore invalid for want of apportionment. The basis of the ruling was that the tax on the revenues from real estate was a burden on the ownership of the real estate, and, hence, a tax on the property itself. The decision that the tax was direct turned on the source of the income, rather than the income itself and was not in agreement with prior Supreme Court reasoning, such as in *Hylton, supra*.

In response to the ruling the federal government sought an amendment to overrule the *Pollock* decision. Ultimately, in 1913, the Sixteenth Amendment to the Constitution was certified as adopted. It read:

> "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."

Congress immediately passed the Income Tax of 1913, imposing a tax on net income, "from whatever source derived." The law was challenged in *Brushaber v.*

Union Pac. R.R. Co., 240 U.S. 1, 36 S.Ct. 236 (1916), requiring the Court to determine the impact of the Sixteenth Amendment on tax authority. Chief Justice White, who had dissented in Pollock, wrote for the Court, holding that the Sixteenth Amendment did not confer any additional authority to tax and that its sole purpose and effect was to preclude the consideration of the source of income in order to reclassify the tax as a direct tax, requiring apportionment.

There has been some confusion regarding the actual import of the *Brushaber* ruling, one court actually holding that the effect of *Brushaber* was to uphold the constitutionality of the Sixteenth Amendment[7](?), and another has held that Congress was given the power to tax incomes by the Sixteenth Amendment[8]. One court, incredibly, cited *Brushaber* as holding that the Sixteenth Amendment "provided the needed constitutional basis for the imposition of a *direct non-apportioned income tax*,"[9] a proposition that the Supreme Court in *Brushaber* categorically rejected! The clear and unequivocal ruling of the Court in *Brushaber* is that the Sixteenth Amendment granted no new powers to Congress:

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[7] See *Funk v. C. I. R.*, 687 F.2d 264 (8th Cir. 1982) and *Miller v. U.S.*, 868 F.2d 236 (7th Cir. 1989)
[8] See Lonsdale v. C. I. R., 661 F.2d 71, 5th Cir. 1981); but, "[I]ts enactment was not authorized by the Sixteenth Amendment." *Brushaber, supra*, at 20.
[9] See *Parker v. Commissioner*, 724 F.2d 469, 471 (5th Cir. 1984); as opposed to *Brushaber, supra*, at 19.

> "It is clear on the face of this text that **it does not purport to confer power to levy income taxes in a generic sense — an authority already possessed and never questioned** — or to limit and distinguish between one kind of income taxes and another, but that **the whole purpose of the Amendment was to relieve all income taxes when imposed from apportionment from a consideration of the source whence the income was derived.**" *Brushaber, supra*, at 17-8
>
> (emphasis added)

nor did the Court recognize a third class of taxes, a direct tax not requiring apportionment:

> "The various propositions are so intermingled as to cause it to be difficult to classify them. **We are of opinion, however, that the confusion is not inherent, but rather arises from the conclusion that the Sixteenth 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 <u>of this erroneous assumption</u> will be made clear by generalizing the many contentions advanced in argument to support it**, . . ." *Brushaber, supra*, at 10-11
>
> (emphasis added)

The effect of the Sixteenth Amendment was not to permit a direct income tax, nor to grant Congress any additional power of taxation. If that conclusion can be in any doubt from the difficulties experienced by some in understanding the *Brushaber* opinion, the point is reiterated in *Stanton v. Baltic Mining Co.*, 240 U.S. 103 (1916), the Supreme Court held:

> ". . . **The provisions of the Sixteenth Amendment conferred no new power of taxation but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged** and being placed in the category of direct taxation subject to apportionment by a consideration of the sources from which the income was derived, . . ." *Stanton*, *supra,* at 112-3
>
> (emphasis added)

and by the Supreme Court, again, in *Peck & Co. v. Lowe*, 247 U.S. 165 (1918), at p. 172-3:

> "**The Sixteenth Amendment**, although referred to in argument, has no real bearing and may be put out of view. As pointed out in recent decisions, it **does not extend the taxing power to new or excepted subjects, but merely removes all occasion, which otherwise might exist, for an apportionment among the States of taxes laid on income, whether it be derived from one source or another**. *Brushaber* v. *Union Pacific R.R. Co.*, 240 U.S. 1, 17-19; *Stanton* v. *Baltic Mining Co.*, 240 U.S. 103, 112-113."
>
> (emphasis added)

and by the Supreme Court, again, in *Eisner v. Macomber*, 252 U.S. 189 (1920), at p. 206:

> **As repeatedly held**, this [*the 16th Amendment*] **did not extend the taxing power to new subjects, but merely removed the necessity which otherwise might exist for an apportionment among the States of taxes laid on income**. *Brushaber* v. *Union Pacific R.R. Co.*, 240 U.S. 1, 17-19; *Stanton* v. *Baltic Mining Co.*, 240 U.S. 103, 112 *et seq.; Peck & Co.* v. *Lowe*, 247 U.S. 165, 172-173.
>
> (emphasis and [*bracketed material*] added)

In a memorandum from the Congressional Research Service, Library of Congress, it was stated, citing both *Brushaber* and *Stanton*, supra, "Therefore, it is clear that the income tax is an 'indirect' tax."[10]

There can be no doubt, the income tax is an indirect tax, not a property tax that is immune from direct tax apportionment, and there can be no doubt that the Sixteenth Amendment did not in any way, shape or form enlarge or enhance the taxation power of Congress. *Brushaber, Stanton, Peck* and *Eisner, supra.* It is, therefore, subject to the same limitations on taxing authority that are established hereinabove, and that is that it cannot tax person or property without apportionment (Article I, § 9, cl. 4), nor any activity that is without either the scope of federal legislative authority (*McCulloch* and *Farrington, supra*), outside the scope of excise (*Flint, supra*) or monies owed to nonresident aliens and foreign corporations (*Railroad Co.* and *Erie R.R., supra*). Nor does the power to tax by excise permit the federal government to tax activities that are solely within the realm of the State jurisdiction (*Bailey* and *Hill, supra*).

[10] See "Some Constitutional Questions Regarding the Federal Income Tax Laws", by Howard Zaritsky, Congressional Research Service, Library of Congress, May 25, 1979, p. 3.

All of these cases, *McCulloch, Farrington, Flint, Railroad Co, Bailey* and *Hill*, are still controlling and the last word of the Supreme Court on the power of the federal government to tax. While there have been other Supreme Court cases upholding the imposition of the income tax, every one of them has been upheld against challenges by corporations and others whose activities are by definition of the excise within the taxing authority. Notwithstanding continuous taxation of income for the last 94 years, there are only two instances where the Supreme Court has ruled on the validity of the income tax with respect to anyone who is either not a corporation or otherwise within the jurisdictional and jurisprudential limitations of the federal taxing authority and in both instances it held the income tax exceeded its Constitutional scope. See *Towne v. Eisner,* 245 U.S. 418, 38 S.Ct. 158 (1918) and *Eisner v. Macomber*, 252 U.S. 189, 40 S.Ct. 189 (1920) That question, then, remains unsettled and unanswered. The principles set forth in those cases, however, do provide the answer by defining the limits of the federal taxing authority with enough certainty to establish that defendant and the revenue he received for services personally rendered in the practice of law are not subject to that taxing authority.

Defendant's activities and revenues are exempt from federal excise taxation[11] as being outside the taxing authority of the federal government

Justice Marshall, in *McCulloch v. Maryland, supra*, stated without qualification or reservation, that:

> It is obvious, that it [the power to tax] is an **incident of sovereignty, and is co-extensive with that to which it is an incident.** All subjects over which the sovereign power of a state extends, are objects of taxation; **but those over which it does not extend, are,** upon the soundest principles, **exempt from taxation. This proposition may almost be pronounced self-evident.**
>
> "The sovereignty of a state extends to everything which exists by its own **authority**, or is introduced by its **permission**."
>
> (emphasis and [*bracketed material*] added)

That principle is still the law of the land. It has never been questioned, challenged nor distinguished into an insignificant corner, much less overruled, probably due to the fact that, as Justice Marshall indicates, the principle is "*obvious*" and "*self evident.*" He also gives us a test by which to determine whether a proposed subject of taxation is within that authority, "the sovereignty of a state (not a political subdivision, but a "state", whether it be the State of

[11] See § 19.22(b), 1940 Code of Federal Regulations

Louisiana or the State of Israel or any other sovereign) extends to everything that exists **by its own authority** or is **introduced by its permission**."

Does defendant exist by authority of the federal government? Does he work, live, practice law by permission of the federal government? The answer to both of those questions is, undoubtedly, no. He is, therefore, not within the sovereign power of the federal government and, therefore, both he and his revenues "are, upon the soundest principles, exempt from taxation" by the federal government.

Defendant, Mr. Cryer, is, and was during the two subject years, 2000 and 2001, engaged solely in the practice of law, under license from the State of Louisiana. He is not engaging in interstate commerce, he is not exercising any corporate privileges, he does not work or reside within the federal jurisdiction, residing and working in the State, within State jurisdiction only. Nor is he engaged in the manufacture or sale of commodities and his occupation requires no license from the federal government. And, obviously, he is not a nonresident alien or foreign corporation to whom a person in the United States owes money.

Accordingly, both Mr. Cryer and his revenues are outside the indirect taxing authority of the United States. The federal government is without authority to tax defendant's revenues because he and his revenue are not either within the

jurisdiction of the federal government nor the scope of the excise taxing authority. Therefore, Where there can be no tax, there can be no tax deficiency, an essential element of the charges against Mr. Cryer, and, therefore, it is respectfully submitted that both counts of the indictment should be dismissed, with prejudice.

Defendant and his revenues are exempt from federal excise taxation because they are within the sole and exclusive jurisdiction of the State

In *Bailey v. Drexel Furniture Co.*, 259 U.S. 20 (1922), the Supreme Court held that the federal government could not tax those activities that were under the sole and exclusive realm of the States. This is still sound, controlling Constitutional law, and is cited as such on a regular basis, and only recently in nullifying a federal tax law that required an organization to disclose the names of its contributors of money for use by or for the benefit of candidates in state and local elections.[12] Reiterating what Justice Taft wrote in *Bailey* at p. 37:

> Grant the validity of this law, and all that Congress would need to do, hereafter, in seeking to take over to its control any one of the great number of subjects of public interest, jurisdiction of which the States have never parted with, and which are reserved to them by the Tenth Amendment, would be to enact a detailed measure of complete regulation of the subject and enforce it by a so-called tax upon departures from it. **To give such magic to the word "tax" would be**

[12] See *National Federation of Republican Assemblies v. U.S.*, 218 F. Supp.2d 1300 (S.D.Ala. 2002)

to break down all constitutional limitation of the powers of Congress and completely wipe out the sovereignty of the States."

(emphasis added)

Hill v. Wallace, supra, followed, reiterating the principle that the State sovereignty cannot be invaded through a so-called exercise of taxing authority. These principles are sound and valid, being in total agreement with the concepts of mutually exclusive sovereignty expressed by Justice Marshall in *McCulloch*. Where one government is sovereign, another cannot be, thus Maryland's attempt to tax the United States Bank, a creation and agency created by and within the sole jurisdiction of the federal government, could not be sustained.

Farrington, supra, in 1877, made it clear that the mutually exclusive nature of sovereignty, and, via *McCulloch*, power to tax, was reciprocal, holding that where the State governs, it is *as though the federal government does not exist.* The cases holding state taxes unconstitutional insofar as they tax any interstate transaction are too numerous to list, but the same principle upon which those cases were based applies to federal attempts to tax activities that are purely within the power of the States to govern.

As Justice Marshall properly, and wisely, observes in *McCulloch*, at p. 431:

> "That **the power to tax involves the power to destroy**; that the power to destroy may defeat and render useless the power to create; that **there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied**."
>
> (emphasis added)

The courts have repeatedly held, as Chief Justice Taft pointed out in *Bailey*, that where there is authority to tax, the tax must be upheld, even if the tax is intended to and does destroy its subject. However, where the subject of the tax is within the realm of another sovereignty which, within that sphere of activities, is supreme, then the tax cannot be sustained.

The practice of law is solely and exclusively within the jurisdiction of the State, and, therefore, is outside both the jurisdiction and the taxing authority of the federal government.

The Supreme Court has acknowledged the States' jurisdiction over the practice of law. *Railroad Trainmen v. Virginia Bar*, 377 U.S. 1 (1964); *Mine Workers v. Illinois Bar Association*, 389 U.S. 217 (1967).

A review of the enumerated powers of Congress, *supra*, readily reveals that the regulation of the practice of law is not among those powers. Accordingly, the regulation of the practice of law is "one of the great number of subjects of public interest, jurisdiction of which the States have never parted with, and which are reserved to them by the Tenth Amendment." *Bailey, supra.* It is within that "sphere of action where the authority of the national government may not intrude. Within that domain the State is as if the union were not." *Farrington, supra.*

Therefore, it is respectfully submitted that the activities and revenues derived from defendant's law practice are exempt from federal taxation, which cannot intrude into or upon that activity. Accordingly, those revenues being exempt, there is no tax deficiency, an essential element of the charges against Mr. Cryer, and, therefore, it is respectfully submitted that both counts of the indictment should be dismissed, with prejudice.

Defendant's revenues are exempt from federal excise taxation[13] because the activity is the exercise of a fundamental, constitutionally protected right, and, therefore, outside the taxing authority of the federal government

Fundamental rights are those described in general terms by Thomas Jefferson in the Declaration of Independence. They are derived from Natural Law, "the Laws of Nature and of Nature's God", not from the Constitution, not from the government. Such rights are inalienable and inviolable, and are not privileges that can be the subject of a tax on privileges.

Therefore, under Marshall's definition of the scope of sovereignty, being those things that exist by its authority or are introduced by its permission, the scope of the federal government's sovereignty cannot extend to the exercise of such rights. The right to work and engage in one's chosen occupation is one of those fundamental rights.

A person's freedom and ability to work is his own property, and that right cannot be taken, bought, sold or bartered away, at least not since the 13th Amendment was adopted. The Supreme Court has recognized this right as a fundamental right and part of the freedom to pursue happiness. In *Butchers' Union Co. v. Crescent City Co.*, 111 U.S. 746, 4 S.Ct. 652 (1884), the Supreme Court was

[13] See § 19.22(b), 1940 Code of Federal Regulations

presented with a case involving a Louisiana statute granting exclusive and irrevocable right to operate stock-receiving and slaughter house operation to Crescent City Company. Crescent City Company had sued Butchers' Union Co. for a restraining order in an effort to enforce its exclusive franchise. The Supreme Court held that the grant was unconstitutional because it purported to be irrevocable, ceding authority of subsequent legislative action rescinding the monopoly grant.

The case has been cited, however, more often for the premises set out in Justice Field's Concurrence, in which he stated at p. 756:

> "As in our intercourse with our fellow-men certain principles of morality are assumed to exist, without which society would be impossible, so certain inherent rights lie at the foundation of all action, and upon a recognition of them alone can free institutions be maintained. These inherent rights have never been more happily expressed than in the Declaration of Independence, that new evangel of liberty to the people: '**We hold these truths to be self-evident' — that is so plain that their truth is recognized upon their mere statement — 'that all men are endowed' — not by edicts of Emperors, or decrees of Parliament, or acts of Congress, but 'by their Creator with certain inalienable rights'** — that is, rights which cannot be bartered away, or given away, or taken away except in punishment of crime — 'and **that among these are life, liberty, and the pursuit of happiness, and to secure these' — not grant them but secure them — 'governments are instituted** among men, deriving their just powers from the consent of the governed.'

> **"Among these inalienable rights, as proclaimed in that great document, is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation,** . . .
>
> "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.** . . ." Adam Smith's Wealth of Nations, Bk. I. Chap. 10."
>
> (emphasis added)

Although this opinion was a concurring opinion, Justice Field was not alone in his assessment. He was joined in his concurrence by Justice Bradley, who, joined by JJ. Harlan and Woods, also concurred, but on the basis of Field's reasoning, stating at p. 762:

> **"The right to follow any of the common occupations of life is an inalienable right**; it was formulated as such under the phrase "pursuit of happiness" in the Declaration of Independence, which commenced with the fundamental proposition that "all men are created equal, that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and *the pursuit of happiness*." **This right is a large ingredient in the civil liberty of the citizen**."
>
> (*italics,* the Court's; **bold** emphasis added)

In *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), the Supreme Court, again, recognized this fundamental right in declaring unconstitutional a statute that would force a Chinese laundry businessman out of business, holding at 370:

> "But **the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions**, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, **the government of the commonwealth 'may be a government of laws and not of men.' For, the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."**
>
> (emphasis added)

In *Allgeyer* v. *Louisiana*, 165 U.S. 578 (1897), the Supreme Court held invalid a Louisiana statute prohibiting a citizen from contracting outside the State for insurance on his property lying therein because it violated the liberty guaranteed to him by the Fourteenth Amendment.

In *Truax v. Raich*, 239 U.S. 33 (1915), an Arizona statute requiring a minimum quota of citizens was declared unconstitutional. The Supreme Court held at p. 41:

> "It requires no argument to show that **the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [14th] Amendment to secure**. *Butchers' Union Co.* v. *Crescent City Co.*, 111 U.S. 746, 762; *Barbier* v. *Connolly*, 113 U.S.

> 27, 31; *Yick Wo* v. *Hopkins, supra; Allgeyer* v. *Louisiana*, 165 U.S. 578, 589, 590; *Coppage* v. *Kansas*, 236 U.S. 1, 14."
>
> (emphasis and [*bracketed material*] added)

Again, in *Adams v. Tanner*, 244 U.S. 590, 37 S.Ct. 662 (1917), the Supreme Court considered a statute prohibiting employment agencies from charging fees for obtaining employment. The Supreme Court, citing and quoting *Allgeyer*, held:

> **"The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation."** *Adams, supra*, at 595
>
> (emphasis added)

The Supreme Court was presented with a challenge by a German teacher of a Nebraska law which prohibited teaching lessons in any language other than English in *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625 (1923). The Supreme Court held the law was an unconstitutional infringement on a fundamental right protected by the 14th Amendment. At p. 399 the Supreme Court stated:

> "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; *Yick Wo* v. *Hopkins*, 118 U.S. 356; *Minnesota* v. *Barber*, 136 U.S. 313; *Allgeyer* v. *Louisiana*, 165 U.S. 578; *Lochner* v. *New York*, 198 U.S. 45; *Twining* v. *New Jersey*, 211 U.S. 78; *Chicago, Burlington & Quincy R.R. Co.* v. *McGuire*, 219 U.S. 549; *Truax* v. *Raich*, 239 U.S. 33; *Adams* v. *Tanner*, 244 U.S. 590; *New York Life Ins. Co.* v. *Dodge*, 246 U.S. 357; *Truax* v. *Corrigan*, 257 U.S. 312; *Adkins* v. *Children's Hospital*, 261 U.S. 525; *Wyeth* v. *Cambridge Board of Health*, 200 Mass. 474."
>
> (emphasis added)

In *Massachusetts Bd. Of Retirement v. Murgia*, 427 U.S. 307, 96 S.Ct. 2562 (1976), at issue was a Massachusetts law regarding an age limit for police officers. There was no question regarding the right to pursue one's occupation as being protected under the Constitution, but only with respect to the standard of review of the law. In objecting to the court's application of a rational basis standard rather than a strict scrutiny test, Justice Marshall writing at 322:

> "Whether "fundamental" or not, "`the right of the individual . . . to engage in any of the common occupations of life'" has been repeatedly recognized by this Court as falling within the concept of liberty guaranteed by the Fourteenth Amendment. *Board of Regents* v. *Roth*, 408 U.S. 564, 572 (1972), quoting *Meyer* v. *Nebraska*, 262 U.S. 390, 399 (1923). As long ago as *Butchers' Union Co.* v. *Crescent City*

> *Co.*, 111 U.S. 746 (1884), Mr. Justice Bradley wrote that this right 'is an inalienable right; it was formulated as such under the phrase `pursuit of happiness' in the Declaration of Independence . . . . This right is a large ingredient in the civil liberty of the citizen.' *Id.*, at 762 (concurring opinion). And in *Smith* v. *Texas*, 233 U.S. 630 (1914), in invalidating a law that criminally penalized anyone who served as a freight train conductor without having previously served as a brakeman, and that thereby excluded numerous equally qualified employees from that position, **the Court recognized that 'all men are entitled to the equal protection of the law in their right to work for the support of themselves and families.'** *Id.*, at 641."
>
> **"'In so far as a man is deprived of the right to labor his liberty is restricted, his capacity to earn wages and acquire property is lessened, and he is denied the protection which the law affords those who are permitted to work. Liberty means more than freedom from servitude, and the constitutional guarantee is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling.' *Id.*, at 636."**
>
> (emphasis added)

See also *In re Slaughter-House Cases*, 16 Wall. 36, 21 L.Ed. 394; *Minnesota v. Barber*, 136 U.S. 313, 10 S.Ct. 862, 34 L. Ed. 455; *Lochner v. New York*, 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937, 3 Ann.Cas. 1133; *Twining v. New Jersey*, 211 U.S. 78, 29 S.Ct. 14, 53 L.Ed. 97; *Chicago, Burlington & Quincy R.R. Co. v. McGuire*, 219 U.S. 549, 31 S.Ct. 259, 55 L.Ed. 328; *New York Life Ins. Co. v. Dodge*, 246 U.S. 357, 38 S.Ct. 337, 62 L.Ed. 772, Ann.Cas. 1918E, 593; *Truax v. Corrigan*, 257 U.S. 312, 42 S.Ct. 124, 66 L.Ed. 254, 27 A.L.R. 375; *Adkins v.*

Children's Hospital, 261 U.S. 525, 43 S.Ct. 394, 67 L.Ed. 785, 24 A.L.R. 1238; *Wyeth v. Cambridge Board of Health*, 200 Mass. 474, 86 N.E. 925, 23 L.R.A., N.S., 147, 128 Am.St.Rep. 439; *Farrington v. Tokushige*, 273 U.S. 284, 47 S.Ct. 406, 71 L.Ed. 646; *Pierce v. Society of Sisters*, 268 U.S. 510, 535, 45 S.Ct. 571, 69 L.Ed. 1070, 39 A.L.R. 468; and *Wysinger v. Crookshank*, 82 Cal. 588, 23 P. 54.

There is no doubt that the right to work and to pursue one's chosen occupation is a basic and fundamental right that the federal government, and, through the 14th Amendment, the States, may not abridge. This is a right that is not owed to the federal government or the Constitution and one the federal government does not grant or permit, thus it neither exists by its authority nor is it introduced by its permission.

The taxing of fundamental rights is so repugnant to the mind, spirit and conscience of any man that even Congress has, with this exception, not undertaken to impose a tax on the exercise of those rights. Therefore there is little case law on the issue. There is, however, some illumination to be gleaned from some home-grown law. In 1934, Louisiana passed an excise tax on publishers of newspapers, magazines and other printed publications. The Supreme Court, in *Grosjean v.*

American Press Co., 297 U.S. 233 (1936), struck the law down as an abridgement on the fundamental freedom of speech, stating:

> "That freedom of speech and of the press are rights of the same fundamental character, safeguarded by the due process of law clause of the Fourteenth Amendment against abridgment by state legislation, has likewise been settled by a series of decisions of this Court beginning with *Gitlow* v. *New York*, 268 U.S. 652,666, and ending with *Near* v. *Minnesota*, 283 U.S. 697, 707. **The word "liberty" contained in that amendment embraces not only the right of a person to be free from physical restraint, but the right to be free in the enjoyment of all his faculties as well.** *Allgeyer* v. *Louisiana*, 165 U.S. 578, 589." *Grosjean, supra*, at 244.
>
> (emphasis added)

The Court in *Grosjean* pointed out, as it did in *Murdock* and *Follett, infra*, that a publishing company was not immune from all taxation, in that it could be taxed on its profits as a corporation or on its property, but this tax was an excise on "the privilege of engaging in such business" (publishing a newspaper), not on the exercise of corporate privilege nor on its property.

A license fee for distributing religious material door to door was struck down by the Supreme Court in *Murdock v. Pennsylvania,* 319 U.S. 105 63 S.Ct. 870 (1943) as abridging freedom of speech, press and religion. The Court stated at p. 108:

> "The First Amendment, which the Fourteenth makes applicable to the states, declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press . . ." **It could hardly be denied that a tax laid specifically on the exercise of those freedoms would be unconstitutional.** Yet the license tax imposed by this ordinance is, in substance, just that."
>
> And at 112:
>
> **"the power to tax the exercise of a privilege is the power to control or suppress its enjoyment."**
>
> (emphasis added)

See also *Jones* v. *Opelika*, 316 U.S. 584, 56 S.Ct. 444 (1943); *Follett v. McCormick*, 321 U.S. 573 64 S.Ct. 717 (1944)

Striking down a Virginia poll tax in 1966, the Supreme Court in *Harper v. Virginia Bd. Of Elections, 383 U.S. 663, 86 S.Ct. 1079* (1966), quoted and cited *United States v. State of Texas*, 252 F. Supp. 234 (1966), a three-judge panel case, that said at p. 254:

> "If the State of Texas placed a tax on the right to speak at the rate of one dollar and seventy-five cents per year, no court would hesitate to strike it down as a blatant infringement of the freedom of speech. Yet the poll tax as enforced in Texas is a tax on the equally important right to vote."

There is, in addition to the repugnancy of imposing a tax on an activity that is the exercising of what is clearly a fundamental right, protected under the Fifth

and Fourteenth Amendments, and in addition to the fact that the exercise of that fundamental right and freedom is beyond the reach of the jurisdictional arm as defined by Justice Marshall in *McCulloch*, still another conflict, and that is that one of the characteristics of an indirect tax is that it is voluntary in the sense that one can avoid payment of the tax by abstaining from the activity taxed. A tax that cannot be avoided by abstention from the activity is a tax on the person or property, not on the activity described. For example, if an excise on tobacco products is imposed, one can simply abstain from consuming tobacco products, avoiding the tax.

However, as was mentioned previously, if a tax were imposed on breathing, a tax that could not be avoided by abstention, or at least not without dire consequences, then such a tax would be a mandatory tax on being (remaining) alive, on one's existence, and would, therefore, be direct, subject to apportionment.

Working, practicing one's craft in one's chosen occupation is, like breathing, not an avoidable activity. While one could resign himself to the life of a hobo, scraping, foraging and begging for his daily bread and living under whatever he can find resembling shelter, that option is only slightly better than abstaining from breathing.

The Supreme Court, in *Brushaber*, did not uphold the constitutionality of the income tax in all respects, but only in that presented to the Court. The Court left the door open for challenges in other situations where the tax would operate to tax a property (as is a fundamental right) or fall into the class of direct taxes:

> "Moreover in addition the conclusion reached in the *Pollock Case* did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, but on the contrary recognized the fact that **taxation on income was in its nature an excise** entitled to be enforced as such **unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct taxation was adopted to prevent, in which case the duty would arise to disregard form and consider substance alone and hence subject the tax to the regulation as to apportionment which otherwise as an excise would not apply to it.**" *Brushaber, supra*, at 16-17.
>
> (emphasis added)

Chief Justice White, obviously, could see that not all income was taxable by the federal government and anticipated that if the income tax were applied to such income that is outside the taxing authority or would in effect require the taxing of person, property or possession, the effect, or substance, not the name, or form, of the tax would be considered and that apportionment would be required, the Sixteenth Amendment notwithstanding.

Recalling the reasoning of Justice Marshall in *McCulloch*, that "the power to tax involves the power to destroy", and that "there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied." at 431.

Applied to and paraphrased for the instant case: ***That the power to tax a fundamental right involves the power to destroy that right, and that there is a plain repugnance in the conferring on any government a power to control the freedoms and rights granted by another, which other, with respect to those very measures, is the most supreme sovereignty, the sovereignty and supremacy of the "Laws of Nature and of Nature's God", are propositions not to be denied.***

It is, therefore, strenuously submitted that where that "privilege tax"[14] is imposed upon the exercise of a fundamental, natural right, as opposed to a privilege, to an unavoidable activity, as opposed to an optional activity, that it must be "concluded that to enforce it" against the wages and fees personally earned in the exercise of that fundamental right "would amount to accomplishing the result

[14] Black's Law Dictionary identifies "privilege tax" as a synonym for "excise tax"

which the requirement as to apportionment of direct taxation was adopted to prevent."

Thus, given that the Supreme Court has made it clear that fundamental rights are not to be abridged by taxation (*Grosjean, Murdock, Follett* and *Harper*, supra), that a fundamental right is not a privilege by authority or permission of the federal government, and, therefore cannot be the proper subject of an *excise (Flint, McCulloch, supra*), that the right to work and engage in one's chosen occupation is his property (*Butchers' Union*, supra) and, therefore ***exempt*** from indirect taxation by the federal government (Article I, § 9, cl. 4 and *McCulloch*), it is respectfully submitted that the income tax, as applied (or claimed to be applied), to wages and fees personally earned, without exercise of corporate privileges, without manufacture or sale of commodities and without the lawful jurisdiction of the federal government, is clearly in violation of the Fifth Amendment in that it deprives and abridges an inviolable, fundamental right, and a violation of Article I, § 9, cl. 4, of the Constitution in that it is in substance a direct tax on property, requiring apportionment.

It is, therefore, respectfully submitted that defendant's revenues, deriving solely from his own labor and effort in the pursuit of his chosen occupation, is

exempt from taxation by the federal government and certainly exempt from indirect taxation by the federal government, and, accordingly, those revenues being exempt, there is no tax deficiency, an essential element of the charges against Mr. Cryer, and, therefore, it is respectfully submitted that both counts of the indictment should be dismissed, with prejudice.

Defendant's revenues do "not constitute income to him within the meaning of the Sixteenth Amendment to the Constitution"[15]

In order to avoid repetition of materials already included hereinabove, a brief review of premises already established is in order:

1. The Internal Revenue Code does not define "income";
2. Webster defines income as a **gain** or recurrent benefit usually measured in money that derives from capital or labor;
3. Black's Law Dictionary defines income as The **return** in money from one's business, labor or capital invested; **gains, profits** or private revenue.
4. Louisiana law defines income, "fruits", as things that are produced by or derived from another thing **without diminution of its substance**.

[15] See § 115, 1939 Revenue Code

5. From 1913 through 1954, the Congress, by statute, acknowledged that some revenues are not income within the meaning of the Sixteenth Amendment (e.g., 1939 Code, § 115);
6. From 1913 through 1954 the Treasury Department in regulations acknowledged that some items are exempt from federal taxation due to either the Constitution or fundamental law and need not be included in gross income (e.g. 1940 Regulations, § 22(b));
7. Following 1954, vestigial remnants of those acknowledgements remain (26 CFR § 1.861-8(f)(1) and 1.861-8T(d)(2)(ii) and (iii));
8. The Supreme Court, in *Brushaber*, kept the door open on any application of the income tax law that would impose a tax on property or person in which case the Supreme Court would look to substance rather than form and require apportionment (*Brushaber*, at 16-17).

We have already discussed two examples of Constitutional exemption acknowledged by the Treasury Department, those activities that are beyond the federal government's jurisdiction and those fundamental rights that are endowed by a superior sovereignty, but what about the regulations acknowledging that some

revenues "do not constitute income within the meaning of the Sixteenth Amendment to the Constitution"?

If Johnny Public were to choose the door marked "wages, salaries and fees *personally earned*", he would win the prize, the exemption, not only because the right to earn a living is exempt as a fundamental right, but because "'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. . . .' Adam Smith's Wealth of Nations, Bk. I. Chap. 10." *Butchers' Union, supra.*

In addition to Webster and Black's above, the Supreme Court weighed in on the definition of "income", the same year the word was used in both the Sixteenth Amendment and the first version of the current imposition of a tax on income. In *Stratton's Independence v. Howbert,* 231 U.S. 399, 400; 34 S.Ct. 136 (1913) the Supreme Court stated:

> "Income may be defined as the **gain** derived from capital, from labor, or from both combined."

and

> " . . . And, **however the operation shall be described, the transaction is indubitably 'business'** within the fair meaning of the act of 1909; and the gains derived from it are properly and strictly the income from that **business**; for **"income" may be defined as the**

> **gains derived from capital, from labor, or from both combined**, combined operations and here we have of capital and labor." *Id* at p. 415
>
> (emphasis added)

Five years later, the Supreme Court in *Doyle v. Mitchell Brothers Co.*, 247 U.S. 179, 38 S.Ct. 467 (1918), states:

> "Yet it is plain, we think, that by the true intent and meaning of the act the entire proceeds of a mere conversion of capital assets were not to be treated as income. **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**. As was said in *Stratton's Independence* v. *Howbert*, 231 U.S. 399, 415: **'Income may be defined as the gain derived from capital, from labor, or from both combined.'**" Id at 184-5
>
> (emphasis added)

As was pointed out, *supra*, the Court in *Brushaber* indicated that in the event that receipts that, if taxed, would have the effect of taxing person or property, the Sixteenth Amendment would not prevent it from applying the rule of apportionment, and one such occasion was presented in *Towne v. Eisner,* 245 U.S. 418, 38 S.Ct. 158 (1918). The district court had ruled that the stock dividend was included in the government's definition of income subjected to the tax. Justice Holmes, writing for the Court:

> "But it is not necessarily true that income means the same thing in the Constitution and the act. **A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content** according to the circumstances and the time in which it is used. . . .**The plaintiff says that the statute as it is construed and administered is unconstitutional. He is not to be defeated by the reply that the Government does not adhere to the construction by virtue of which alone it has taken and keeps the plaintiff's money, if this court should think that the construction would make the act unconstitutional**. *Id* at 425
>
> (emphasis added)

The Supreme Court did think that construction would make the act unconstitutional. The Court went on to hold that the stock dividend was a conversion of capital from one form to another, and, therefore, was not income, regardless of whether the Government's definition included such conversions in its definition.

In another stock dividend case, *Eisner v. Macomber*, 252 U.S. 189, 40 S.Ct. 189 (1920), the Supreme Court ruled the Revenue Act of 1916 (successor of the 1913 income tax) unconstitutional insofar as it applied to stock dividends. The Court held that:

> ". . . Income may be defined as the **gain** derived from capital, from labor, or from both combined," provided it be understood to include **profit** gained through a sale or **conversion of capital assets**, to which it was applied in the *Doyle Case* (pp. 183, 185)."

> "Brief as it is, it indicates the characteristic and distinguishing attribute of income essential for a correct solution of the present controversy. The Government, although basing its argument upon the definition as quoted, placed chief emphasis upon the word "gain," which was extended to include a variety of meanings; while the significance of the next three words was either overlooked or misconceived. "*Derived — from — capital;*" — "the *gain — derived — from — capital*," etc. Here we have the essential matter: *not* a gain *accruing to* capital, not a *growth* or *increment* of value *in* the investment; but **a gain, a profit, something of exchangeable value *proceeding from* the property, *severed from* the capital however invested or employed, and *coming in*, being *"derived,"* that is, *received* or *drawn by* the recipient (the taxpayer) for his *separate* use, benefit and disposal**; — *that* is income derived from property. Nothing else answers the description." *Id* at 207
>
> (*italics* the Court's, **bold** emphasis added)

The only addition or supplement to the Supreme Court's definition of "income" "within the meaning of the Sixteenth Amendment" is in *Commissioner v. Glenshaw Glass Co.,* 348 U.S. 426, 75 S.Ct. 473 (1955).[16] In that case, the Court determined that where treble damages had been awarded in a fraud claim and was paid and received, the exemplary damages, those in excess of the compensatory damages, were income and subject to taxation.

The Court in *Glenshaw Glass* distinguished *Eisner v. Macomber*, stating that the additional damages were "accessions to wealth." In fact, however, the

reasoning behind *Eisner v. Macomber* was actually no different from that in *Glenshaw*, in that the reason stock dividends were found not to be income is that they were not accessions to wealth, i.e., that the corporation was no worse off for the dividend nor was the stockholder any better off for the dividend.

The applicability of the *Eisner* definition of income to Glenshaw's exemplary damages was apparently misunderstood because the compensatory damages were never at issue and were not regarded in the analysis. Had the Court done so, it would have realized that in order to recover three hundred percent, the plaintiff must have first incurred one hundred percent. In other words, the income was three hundred less one hundred, the one hundred being the basis, the capital, that produced a gain, profit or "accession to wealth" of two hundred. Glenshaw Glass received three hundred, but its wealth was only enhanced by two hundred. Macomber received additional shares, but his wealth was not enhanced. Whether *Eisner v. Macomber* or *Glenshaw Glass*, the measure of income is in the GAIN realized.

There is no doubt that had the government contended that all of the treble damage award in *Glenshaw* was income, the Court would have rejected such a

[16] Cited and followed in *Murphy v. I.R.S.*, 460 F.3d 79 (D.C. Cir. 2006)

position. Likewise, if the government were to contend that a widget shop owner could only deduct his shop expenses, but not his cost of goods, from his gross revenue, the Court would not stand for that, either, because that would not only be a tax on the income (gain or profit), but on the capital, as well.

Gain or profit is, without question, that portion of monies received that is above and beyond what was given up, either in property or expense, in order to receive those funds. Gross revenue less cost and overhead equals profit or gain—income. Neither the Court nor the government gave a thought to whether the compensatory damages were income, having backed those compensated damages out of the equation to begin with.

Given the understanding, then, that in order to be income there must first be a gain, or profit, we are prepared to examine whether wages, salaries and fees personally earned (hereinafter referred to collectively as "wages" in the interest of brevity), are income within the meaning of the Constitution.

The Code defines gross income as "income from . . . compensation for services". Since income is gain, profit, then that definition is actually "that portion of compensation for services that is gain or profit." The government's contention is that the gain or profit is everything received for compensation for services, thus

with respect to wages the government contends that gross revenue and gross income are the same. Wages are the only revenue that the government treats as equivalent to income.

A tax on gross revenue as opposed to net gain is not an income tax, but a tax on both capital and income. *State Tax on R. Gross Receipts*, 15 Wall. 284, 21 L. Ed. 164; *Philadelphia & S. Mail S. S. Co. v. Pennsylvania*, 122 U.S. 326, 30 L. Ed. 1200; *Maine v. Grand Trunk R. Co.*, 142 U.S. 217, 35 L. Ed. 994; and since a tax on gross revenue is taxing both income and capital, insofar as the tax on capital is concerned it is not indirect nor is it 'exempt' from the requirement of apportionment.

The problem with wages is that, unlike every other form of "income" described in the code, the government does not permit the wage-earner to back out what he has given up in order to receive those wages. It has been established that a man's labor is his property, the capital. Thus wages are the purchase price for that property. Any other exchange of property for money must generate a profit before it is considered income, so on what basis does the government contend that all of the money exchanged for his property must be and is profit or gain?

While many have contended that wages are not income because they are a fair and equal exchange of value for money and, therefore, a break-even transaction, that position would be difficult to maintain. The sale of a widget is, presumably, an equal exchange of value for money but such a transaction could generate income (or loss) to the seller.

To contend, however, that there is no value contributed by the seller of labor for wages, and that, therefore 100% of all wages are profit, i.e., income, is not only equally untenable, but is offensive to the senses of reason and justice.

Some may be paid far more than the true value of their effort, exertion and proficiency. Others may be paid only a fraction of the value of their labor and skill. It is impossible to determine what portion of wages is basis and what part is gain.

It is equally impossible, however, to seriously contend that all wages are received in exchange for nothing. As absurd as such a proposition sounds, that is what the government is saying when it states that the cost basis for wages is zero. If, however, the wage-earner must give up something in order to receive his wages, then the wages he receives are not free. If the wages are not free, then they are not 100% profit. Employing a *Glenshaw* approach, if he must first sacrifice a loss to

another in order to receive the wages, then only the "exemplary" portion of his wages is income.

The remainder is capital. What the court termed "human capital" in *Murphy v. I.R.S.*, 460 F.3d 79 (D.C. Cir. 2006).

Assuming that any of the wage is above and beyond the amount of expenditure on the wage-earner's part, a tax on the entire wage would have to be considered a tax on both the capital, the expenditure, and the profit, and would, therefore be a tax on the capital, or property, portion of the wage. This is exactly what Chief Justice White was describing when he stated that should the application of the income tax have the effect of taxing property or person, rather than profits and gains, alone, then "duty would arise to disregard form and consider substance alone and hence subject the tax to the regulation as to apportionment." *Brushaber, supra.*

If any portion of wages represents what the wage-earner had to give in exchange for the wages, then that portion, however minute or great, is not income, is not a gain or an accession to wealth, and, therefore, that portion is not "income within the meaning of the Sixteenth Amendment" and would be in conflict with the Constitution to the same and identical extent as in *Towne* and *Eisner, supra.* It is a

tax on gross receipts, which includes the basis or capital, and, therefore, not an income tax. *Gross Receipts, Philadelphia Steamship, Grand Trunk* and *Brushaber*, supra.

The distinction here is not one of mere form or technicality. It is a distinction of substance.

So, what does a wage-earner give up in order to receive his wages? It has been said that "When man is born his days are numbered and filled with trouble." So, too are his work days numbered and filled with toil and exertion. The term "expending" energy is no different than "expend"iture of money or goods. The wage-earner has made an expenditure and received a wage in return.

This and every other court has on innumerable occasions suffered through the monotony of an expert witness recounting statistical and actuarial data in evaluating the remainder of a disabled plaintiff's work life. While those witnesses usually disagree, having used different assumptions and/or data pools, the one thing upon which every one of them does agree is that the work life of any person is not infinite. We are all mortal. These experts will also agree that work life and life expectancy are rarely the same, but in both instances they are not infinite.

When a wage-earner finishes his year of labor and receives his W-2, it reflects his gross *revenue*, what he received, not his gross *income*, what he gained. It does not reflect what he gave up in exchange. He has over the year received the total shown on the W-2, and during the same year he had expended a great deal of energy and labor, he has given a year out of his work life a year out of his life expectancy to another in exchange for his wages. And, yet, the government contends that those wages were all profit, all gain, and that the basis for his earnings was $0.00. He contributed nothing to the exchange and was paid for nothing.

The obvious conflict in the government's assessment of wages as having been paid for nothing is that if that is the case, then the wages are gratuities, gifts, not "income". The government cannot have it both ways, to state that the wage-earner on the one hand realized earnings, or income, but on the other hand received a gift, purely gratuitous.

If we attempt to imagine the most "worthless" employment possible, one that required the absolute least amount of expenditure of effort and no knowledge or skill, we would still have to admit that no matter how much or how little such an employment paid, the employee is not paid for nothing. A night watchman, whose

only requirement is that he remain in the premises overnight, is still giving up something for his wages. He is not being paid for nothing in exchange.

In *Bailey v. Drexel Furniture Co., supra*, Chief Justice Taft stated "All others can see and understand this. How can we properly shut our minds to it?" *Id* at 37.

A few examples should demonstrate that this distinction between wages, salaries and fees personally earned is one of substance:

Example 1: Gains on Capital

Joe places $100,000 in a certificate of deposit earning 6% per annum. Joe gave up his $100,000 for a year and at the end of the year he received $106,000 of which only $6,000 would be income as defined by the act. **Joe still has his original $100,000** and can 'rent' it out again for another year, but he pays taxes only on the $6,000 gain.

Example 2: Gains on Sales

Tom buys a widget for $1 and sells it for $2. Tom gave up $1 in order to receive $2, but only the additional $1 is considered income. **Tom still has his dollar** back and can purchase another widget to sell, but he pays taxes only on the $1 gain.

Example 3: Gains on Labor

Bob pays Bill $50 to unplug Mrs. Haversham's drain for which Bob charges Mrs. Haversham $75. Bob gave up $50 in order to receive $75, but only $25 is considered income, his realized gain of $25 on Bill's labor. **Bob still has his original $50** that he can use to purchase more labor that he can sell for profit, but he pays taxes only on the $25 gain.

But what about Bill's $50? What has Bill given up? Nothing? Bill gave up a day out of his life, he expended his effort and skill, employed the use of his working tools. **Bill no longer has his day or his labor, both are spent**. He cannot, even with every penny of his $50, buy another day or recover the effort he expended, yet according to the government, his $50, every bit of it, is profit, gain, accession to wealth and was received in exchange for nothing. What Bill gave up to receive his $50 was not "nothing", it was "'The ***property which every man has in his own labor***, [and] as it is the original foundation of all other property, so it is the most sacred and inviolable. . . .' Adam Smith's Wealth of Nations, Bk. I. Chap. 10." *Butchers' Union, supra.*

Joe recovered his $100,000, and paid no tax on it; Tom recovered his $1 and paid no tax on it; Bob recovered his $50 and paid no tax on it; but Bill can never

recover his day, energy or labor, but pays tax on his gross revenue, including the value of his day, energy and labor and even if the value of that day, energy and labor exceeds the gross revenue!

We can all agree that a person's labor is not only his property, his capital, but that it is depleted in its employment and, eventually, is exhausted and totally spent. We have two major, landmark Supreme Court decisions, still controlling law, dealing specifically with that issue, and the decisions of the Supreme Court in those two cases makes a conclusion that an income tax on wages is not an income tax, but a tax on gross receipts, taxing both income and capital, and, therefore, unconstitutional.

Stratton's Independence v. Howbert, 231 U.S. 399, 400; 34 S.Ct. 136 (1913) and *Stanton v. Baltic Mining Co.,* 240 U.S. 103, 36 S.Ct. 278 (1916) both dealt with challenges to a tax on profits of mining companies. The first dealt with the Corporation Tax Law of 1909 and the latter with the Income Tax Law of 1913.

The mining companies were contending with an identical issue as we have here with wages, salaries and fees personally earned. They were engaged in a business that required them to deplete their ore deposits in order to conduct that business. They not only incurred costs of operations, overhead and cost of sales,

etc., they incurred the depletion of a finite, albeit of unknown quantity, capital asset. At the end of the mine's life, all of the ore would be gone, just as at the end of our work lives, our ability to earn will be gone. Our human capital will have been exhausted, "sold out".

The wage issue is exactly the same. Not only does one personally earning a wage, salary or fees incurring costs for tools, work clothes and other expenses, he is depleting his working life along with a goodly portion of his life itself, a finite, albeit of unknown duration, capital asset, his "most sacred and inviolable" asset.

The Supreme Court in both mining cases resolved the problem by determining that the tax, insofar as Baltic was concerned, was not an income tax at all, but a tax on the exercise of corporate privileges and the privilege of conducting mining operations that was "measured in income."

In *Stratton's Independence*, that was the case. The law in question was not an income tax, *per se*, but an excise on the exercise of corporate privileges, the Corporation Tax Law of 1909. The Court in *Stratton's Independence* pointed out that Stratton's was a corporation and that it was engaging in business activities that generated mining products, two of the proper objects of an excise. On that basis the Court held that the tax was not on the income of the mining operation, but

rather an excise on the conducting of the business of a mining operation that was measured in income.

But in *Baltic Mining*, the Court *was* dealing with the Income Tax Law of 1913, the same law it dealt with in *Brushaber* and the direct statutory ancestor of our present income tax law. The tax was not a corporation or mining operations tax, it was an *income* tax and identified itself as such.

The Court had only two options: 1) Find that the income tax was taxing both the income and the capital and, therefore, unconstitutional, or 2) find that the income tax was taxing something else. It went with the something else. After stating the case and respective positions, the Court briefly and simply stated:

> ". . . independently of the effect of the operation of the Sixteenth Amendment it was settled in *Stratton's Independence* v. *Howbert*, 231 U.S. 399, **that such a tax is not a tax upon property as such because of its ownership, but a true excise levied on the results of the business of carrying on mining operations**." Id at 114
>
> (emphasis added)

The clear and unmistakable message here is that the only tax that could tax more than income, gross receipts without allowance of deduction for the depletion of the ore body, was a corporate or manufacture of commodities based excise tax. If the income tax could constitutionally tax income of a mining operation, which

would include taxing the depletion of its ore body, then the Court would have simply said so. It did not because it could not.

In the case of wages, salaries and fees personally earned, there are no corporate privileges being exercised. The wage-earner is not (at least not for himself, See *Calamaro, supra*) manufacturing a commodity or conducting mining operations. All he is exercising, and exhausting in the process, is his body, mind and his God-given right to earn a living with both, all at the expense of the loss, or cession, of a good portion of his lifetime here to another in exchange for a wage.

There is no alternate subject of excise. No "something else", as in *Baltic Mining*, and the only conclusion we can reach, based upon the sound, ample and still controlling principles set out in all of the Supreme Court cases referred to herein, is that any tax that taxes 100% of wages personally earned has to be taxing not only the gain the wage-earner realized, if any, but also the asset that the wage-earner gives up in exchange for those wages, salaries and fees.

It is, therefore, respectfully submitted that insofar as the government purports to apply the income tax law as imposing a tax on wages, salaries and fees personally earned, it is in conflict with Article I, § 9, cl. 4, of the Constitution, and is, as so applied, unconstitutional and not entitled to enforcement.

Based upon recent cases involving claims that wages are not income there is an apparently common misconception, an erroneous understanding or belief, that the issue of whether wages, salaries and fees personally earned are "income" within the meaning of the income tax law and, particularly, "within the meaning of the Sixteenth Amendment", has been settled. It has not.

One government official contends that wages are constitutionally taxable income because the Supreme Court has not found them to be otherwise.[17] The same reasoning could be employed to conclude that since the Supreme Court has not found wages, salaries and fees personally earned to be lawfully and constitutionally taxable by the federal government, they are not.

Although numerous cases have been cited as supporting that misconception, a review of the cases commonly cited as such reveals that they fail to support that conclusion. The Supreme Court has never considered the issues here presented, and until it does the latest enunciations from that Court are the law of the land. The position here advanced is not only supported, but mandated, by the current and controlling pronouncements of the principles involved by that body, and no

[17] See "Some Constitutional Questions Regarding the Federal Income Tax Laws", by Howard Zaritsky, Legislative Attorney, updated by John R. Luckey, research assistant, Congressional Research Service, Library of Congress, May 25, 1979, updated September 26, 1984, p. 8

District or Circuit Court can override or negate, much less overturn those Supreme Court pronouncements.

The Court is urged to scrutinize any cases cited to the contrary, and it is suggested that a careful review of those cases mistakenly cited will, it is hoped, clarify that the issue is still in urgent need of resolution and that in the cases generally relied upon to the contrary either the court involved has not actually dealt with the issues here presented, did not have the issue before it, stated no reasoning on any dictum to that effect or is totally without weight.

It is, therefore, respectfully submitted that defendant's revenues, deriving solely from his own labor and effort in the pursuit of his chosen occupation, without involvement of corporate privilege or conduct of manufacturing or sale of commodities, is in conflict with the Constitution and, therefore, invalid as so applied, and, accordingly, those revenues being exluded from taxation as such, "not constituting income within the meaning of the Sixteenth Amendment" or of the Constitution, there is no tax deficiency, an essential element of the charges against Mr. Cryer, and, therefore, it is respectfully submitted that both counts of the indictment must be dismissed, with prejudice.

CONCLUSION

For the reasons hereinabove given and upon the authorities hereinabove cited it is respectfully submitted that there is and can be no tax deficiency, an essential element of the charges against defendant, and, therefore, it is respectfully submitted that both counts of the indictment should be dismissed, with prejudice.

EXHIBIT I

AFFIDAVIT # 1

REGARDING

REAL ISSUES IN THIS CASE

I, Clare Louise Reading, and I, James Leslie Reading, hereafter Affiants are over the age of 18 and mentally competent, have personal knowledge of the statements being made hereafter in this document. I, Clare Louise Reading and I, James Leslie Reading, having been first duly sworn on oath, state the following:

1. Affiants declare that the real issues in this case appear to all be presumed by the Plaintiff as evidenced by the Statement of Facts in which the majority of presumed facts are not in evidence, nor are they accompanied by testimony.

2. Affiants declare that the intention of the Plaintiff's Attorney appears to be to "labeling" defendants as "tax protestors" to demean their character in the eyes of the court, and distract the court so that the Plaintiff is not required to defend their presumptuous positions.

3. The presumptions that Plaintiff has relied upon are erroneous and have no merit under the law. What Defendants' evidence and sworn testimony under penalty of perjury reveals is true. Plaintiff's attorney has presented no testimony or evidence to rebut the statements made by Defendants in rebuttal to SOF # 1, # 2, or # 3, yet the purpose is plain. Plaintiff's Attorney is attempting to label Defendants as a category of people called "tax protesters" in order to dismiss what they have to say.

4. Affiants declare that the Plaintiff's attorney is attempting to avoid the real issues of facts in this case by bringing up statements and claims made by the Defendants in previous legal actions which are not relevant to this case, which is to reduce "federal tax assessments" to judgment.

5. Affiants declare that the government's lien interests are presumed in this case and no testimony or evidence has been presented by the Plaintiff to support this presumption.

6. Affiants declare that before there can be "federal tax assessment" to reduce to judgments they must be properly assessed "tax deficiency".

7. Affiants declare that for there to be a "tax deficiency" there must be a tax return.

8. Affiant declares in this case the only returns in evidence for the years 1993, 1994 and 1995 for Defendants are the one's they filed under penalty of perjury. Where they have self-assessed correctly under the law using the only legal and proper definition of "income" as defined by the US Supreme Court.

9. Affiants declare that the Secretary had the authority to create some returns under the authority of 6020(b), however the Secretary did not do this for the years 1993, 1994 or 1995 for either of the Defendants.

10. Affiants declare that their "gross income" did not equal or exceed the exemption amount as mandated by § 6012 before they would be required to file a return under this statute..

11. Affiants declare that there are statutory requirements that must have been fulfilled to have a proper assessment. This requirements and details are codified in, 26 U.S.C. § 6203, and in 26 C.F.R. § 301.6203. No testimony or evidence has been presented to support this presumption that this was done. However Defendants will present evidence and testimony that they were not.

12. Affiants declare that before there may be any valid assessments for the years in dispute, the Plaintiff must have complied with the statutory requirements of the following statutes: 26 U.S.C. § 6321 **Lien for taxes,** 26 U.S.C. § 6303 **Notice and Demand,** 26 U.S.C. § 6331 Levy and distraint.

13. Affiants declare that for the Plaintiff to prove that they have valid assessments that are entitled to be reduced to judgment, Plaintiff has to prove the essential elements behind the assessments. Those can be identified in § 6212 **Notice of deficiency**; § 6211 **Definition of a deficiency** and § 6020(b) **Returns prepared for or executed by Secretary**.

14. Affiants declare that before there can be an assessment, there must be a valid "tax deficiency" as defined by 26 U.S.C. § 6211.

15. Affiants declare that the Plaintiff has not created any proper or legal returns for the years 1993, 1994 and 1995.

16. Affiants declare that the presumption that the amount reported on the Information Returns (1099's/W2's) are "income" as defined by the U.S. Supreme Court is incorrect.

17. Affiants declare that there are other presumptions made in this case in which no testimony or evidence has been presented by the Plaintiff in support, some of which include but are not limited to:

    a. Is what Defendants earned in exchange for their labor "income" under the law?
    b. What is the legal definition of "income" as it is used in the statutes?
    c. Does **Section 1 of Subtitle A** impose a tax on both "taxable income" and "non taxable income"?
    d. Does **Section 1 of Subtitle A** impose a liability?
    e. Is there a statute that does make Defendants liable?
    f. Is there a statute that required Defendants to file a tax return if they have no "income"?

18. Affiants declare that the math and calculations to arrive at the alleged "federal tax assessment" claimed to be owed contains many errors. See Defendant's Exhibit X Affidavit Regarding 4549 and other exhibits.

19. Affiants declare that other presumptions have been made in which no testimony or evidence has been presented to the court. The presumption that the IRS employee who performed the tasks outlined by statute has the proper and legal authority (delegated from the Secretary) to them to operate on behalf of the Secretary, as requested in unanswered Discovery, is unsupported and remains unproven.

20. Affiants declare that the Secretary may delegate his authority to others via Delegation Orders; however, no testimony or evidence has been presented to show a complete unbroken chain of Delegation Orders from the Secretary to the IRS employee making the assessments or certifying documents in Plaintiff's Exhibits has been identified, and Affiants believe that none exists.

21. Affiants declare that in the creation of the alleged tax deficiency, liability, and assessments, the IRS employee violated or failed to comply with Delegation Orders, Statutes, Regulations, and their own Internal Revenue Manual Provisions as mandated by law.

22. Affiants declare that before there can be an assessment, there must be a valid "tax deficiency" as defined by 26 U.S.C. § 6211.

23. Affiants declare that for there to be valid "tax liability" there must be a statute that imposes the tax and a statute that makes Defendant "liable" to pay the tax.

24. Affiants declare that the assessments were not done correctly as mandated by statute and regulation. See Defendant's Exhibit X Affidavits Regarding RACS 006.

25. Affiants declare that the Plaintiff has failed to provide the statutes where Congress has made Defendants liable and continues to operate as if it exists.

26. Affiants declare that the "tax deficiencies" created by the IRS were not done properly and legally.

27. Affiants declare that the Substitutes For Return (SFR's) created by the IRS were done under color of law, and that no Delegation Order or IRM provision authorizes a 1040 SFR to be created. See Defendant's Exhibit X Affidavit Regarding SFR's.

28. Affiants declare that they have no evidence and that Plaintiff has not presented any testimony or evidence that would show a complete unbroken chain of Delegation Orders from the Secretary to the IRS employee who created the returns under 26 U.S.C. § 6020(b), and believe none exists.

29. Affiants declare that prima facie evidence exists to show that Delegation Order 182 did not and does not allow a 1040 or Individual Income Tax Return to be created under the authority of 6020(b). See Defendant's Exhibit X Affidavit Regarding SFR's.

30. Affiants declare that the Plaintiff cannot provide a Delegation Order which shows that they may create a 1040 tax return.

31. Affiants declare that the Secretary or his delegate created a tax return not authorized by IRM 5.1.11.9 (05-29-1999) or by IRM 5.1.11.6.8 (03-01-2009) for Defendants. Therefore such return was created in violation of these IRM provisions and under *color of law*.

32. Affiants declare that IRS does not comply with the statutes, regulations and IRM provisions, as they must before the collection of the alleged tax deficiencies.

33. Affiants declare that tax returns(s) submitted by the Defendants do not meet the legal definition of a frivolous return defined by Congress in 26 U.S.C. § 6702(a).

34. Affiants declare that the Secretary has failed comply with the requirements outlined in 26 U.S.C. § 6703(a).

35. Affiants declare that the penalties were not assessed properly, as mandated by § 6203 and its regulation, therefore, the penalties should not be included in the debt alleged to be owed.

36. Affiants declare that the burden of proof mandated by 26 U.S.C. § 6201(d) has not been met by the Secretary, because Defendant(s) have disputed the claims by the third parties in labeling "receipts for labor" as "income", but the Secretary has not provided evidence or testimony to support the disputed claims.

Affiants declare: I am not an expert in the law however I do know right from wrong. If there is any human being damaged by any statements herein, if he will inform me by facts I will sincerely make every effort to amend statements based on verifiable evidence or testimony. I hereby and herein reserve

the right to amend this document as necessary in order that the truth may be ascertained and proceedings justly determined. If the parties given notice by means of this document have information that would controvert and overcome this Affidavit, please advise me IN WRITTEN AFFIDAVIT FORM within thirty (30) days from receipt hereof providing me with your counter affidavit, proving with particularity by stating all requisite actual evidentiary fact and all requisite actual law, and not merely the ultimate facts or conclusions of law, that this Affidavit Statement is substantially and materially false sufficiently to change materially my status and factual declarations. Your silence stands as consent to, and tacit approval of, the factual declarations herein being established as fact as a matter of law.

Jurat

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, 28 USC § 1746(1).

Reserving ALL Natural God-Given unalienable birthrights, waiving none,

/s/ Clare Louise Reading

Clare Louise Reading

/s/ James Leslie Reading

James Leslie Reading

Arizona State)
) ss
Maricopa County)

The above named persons, appeared before me, a Notary, subscribed, sworn under oath this 8 day of August 2012.

Notary Public

My Commission expires: 3/25/2016

KEVIN S. KEPLINGER
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
March 25, 2016

EXHIBIT J

AFFIDAVIT # 2 REGARDING

ASSESSMENTS FOR 1040 TAX YEARS 1993, 1994, 1995, 2008

PREFACE

The attached Memorandum was written to explain assessments. It should be read first, and referred to if needed as you read this Affidavit. **See Exhibit F Memorandum on Assessments.**

An "assessment" must be completed before there is any tax owing, according to the courts[1]. An "assessment" is NOT one step, but it is a sequence of steps that must be completed; and therefore, the assessment process is often misunderstood. There are specific steps or tasks that must be completed by the Secretary, before any tax is properly and legally owed. Exhibit F will explain these steps and tasks. Once these steps have been completed, the "tax liability" is considered assessed. An "assessment" is an administrative determination of a "tax liability". The statutory and regulatory requirements are codified in 26 U.S.C. § 6203 and 26 C.F.R. § 301.6203-1.

AFFIDAVIT

I, James Leslie Reading, hereinafter Affiant, am a natural born citizen of the United States of America and a citizen of Arizona, am over the age of 18 and mentally competent. Affiant has personal knowledge of the statements being made hereafter in this document. I, James Leslie Reading, having been first duly sworn on our oath, state the following:

1. I have used personal computers regularly since 1989, including word processing and work with databases and spreadsheets.

2. I have had and maintain close contact with people who have earned college degrees as

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[1] *United States of America v. Dixon*, **672 F.Supp. 503 USDC, Middle Dist. Ala., (1987)**. "The defendant correctly contends that the basis of tax liability is the assessment. For a **tax liability to be duly collected**, it **must be first properly assessed**. In order for a **tax deficiency to be assessed against a taxpayer, an assessment officer must sign and date a Form 23-C**." [Emphasis added]

computer programmers and who perform computer trouble shooting and repair.

3. These experts have shown me some of the many intricacies in the precise manner in which computers are programmed to work.

4. This affidavit is being provided to support what these programmers and experts have shown and taught me, in particular, about the computer systems of the Internal Revenue Service, coupled with my personal knowledge of decoding the IRS Internal Master Files together with my study of the Internal Revenue Code, Title 26 of the United States Code, the Code of Federal Regulations, the Statutes at Large, the Congressional Record, the Federal Register, and case law of the Arizona Tax Division of the Maricopa County Superior Court, tax cases from various U.S. District Courts, U.S. Tax Court and many U.S. Supreme Court rulings.

5. The information contained in this affidavit describes the authority relied upon in Title 26 of the Internal Revenue Code, and their supporting Regulations, Internal Revenue Manual provisions, and supporting case law, in addition to the IRS Processing Codes and Information Manual (Formerly Titled: ADP and IDRS Information) Operating Manual 6209.

6. The duty imposed upon the IRS by the regulation 26 CFR 301.6203-1, is to supply the required information upon request to taxpayers who ask for verification of Assessment. This allows the taxpayer to see what evidence the IRS has to affirm the assessment, and to provide the taxpayer an opportunity to rebut that evidence.

7. The IRS has provided James L. Reading with a Certified Form 4340 for the tax year 1993, 1994, and 1995 created from the MFT 30 Tax Module for Penalties. This, along with RACS 006 "Summary Record of Assessments" dated 04/23/2001, were provided as evidence of a proper assessment for these penalties.

8. A review of Certified Form 4340 created from the MFT 30 Tax Module for the tax year **1993**, shows the following assessments tax and penalties:

Explanation of Transaction	Amount	Assessment Date
• LATE FILING PENALTY	$11,618.00	04/23/2001
• ADDITIONAL TAX ASSESSED	$54,595.00	04/23/2001
• INTEREST ASSESSED	$52,245.37	04/23/2001
• FAILURE TO PAY TAX PENALTY	$11,618.00	04/23/2001
• ESTIMATED TAX PENALTY	$ 2,149.74	04/23/2001

9. A review of Certified Form 4340 created from the MFT 30 Tax Module for the tax year **1994**, shows the following assessments tax and penalties:

Explanation of Transaction	Amount	Assessment Date
• LATE FILING PENALTY	$ 14,186.02	04/23/2001
• ADDITIONAL TAX ASSESSED	$ 63,049.00	04/23/2001
• INTEREST ASSESSED	$ 52,467.51	04/23/2001
• FAILURE TO PAY TAX PENALTY	$ 15,762.25	04/23/2001
• ESTIMATED TAX PENALTY	$ 3,211.72	04/23/2001

10. A review of Certified Form 4340 created from the MFT 30 Tax Module for the tax year **1995**, shows the following assessments of taxes and penalties:

Explanation of Transaction	Amount	Assessment Date
• LATE FILING PENALTY	$ 9,436.05	04/23/2001
• ADDITIONAL TAX ASSESSED	$ 41,938.00	04/23/2001
• INTEREST ASSESSED	$ 27,329.46	04/23/2001
• FAILURE TO PAY TAX PENALTY	$ 10,484.50	04/23/2001
• ESTIMATED TAX PENALTY	$ 2,274.00	04/23/2001

11. There is no disagreement that Certified Form 4340 for the Form 1040 (Created from MFT 30 Tax Module) states the taxes and penalties in item 8, 9, and 10 were alleged to be assessed on 04/23/2001. There is no disagreement that the "Assessment Date" of 04/23/2001, listed above is the claimed, "**23C Date**" or the "**Date of Assessment**" on the Form 4340. It is in fact the "**Transaction Date**" of that same entry found in the IMF records. The "**Transaction Date**" is the date this entry was made into the computer to the Transaction File. **See Exhibit F Page 9 ¶2 - ¶5.**

12. The IRS has provided the RACS 006 Summary Record of Assessments dated and signed on

04/23/2001, as proof of assessment, and these are the documents that I will address next. ***See*** **Exhibit J-1 RACS 006 Report Date 04/23/2001.**

13. There is one entry, which I call to your attention, and this is marked as Item # 1, on the RACS 006 Summary Record of Assessments. This is the date and time that this report is run or created. It is a standard requirement in report generation programs, that the date and time the report was created or run, is printed. This requirement provides the person reviewing the document, additional information regarding the period that the report covers. This is required by law, and is necessary to allow authentication, should it be challenged in Court. In most report generating applications, the person must select the period of time that he wants the computer to collect and display the data within the database for the report. Since only one date is provided on this report, it is assumed to cover everything in the database, from the beginning of the database to the run date. In this case this report dated **04/23/2001, was run on 04/20/2001 and 07:45:18** in the morning.

14. Equipped with this information and understanding, it is impossible for data or amounts assessed on 04/23/2001, in the Certified Forms 4340 for the tax year 1993, 1994 or 1995 to be in the computer on 04/20/2001, which is the date on which this report was created. Any presumption or claim that this Summary Record of Assessments contains James L. Reading's assessment is false. This is because the, "**Assessment Date**" on the Form 4340 is the "**Transaction Date**" of the same entry in the IMF MFT 30 Tax Module, and these entries were not entered into the local area computer until 04/23/2001. The computer cannot contain nor output data which has not yet been entered into it.

15. As a simple example of this concept, I present the following; If you went on line to your bank account on Friday, 04/20/2001 at 07:45:18 in the morning and printed out of all transactions (credits and debits) for the past 12 months from your account, the computer would print out a report with all transactions for the past 12 months. Would you expect to see a check you have not written yet to be in this report? Of course not! Now, if you wrote a check for $1,000 on Monday, 04/23/2001 and the person you gave it to, ran down to your bank to cash it that very same day. Would the $1,000 check you wrote on Monday, 04/23/2001 appear on the printout you received from the bank on Friday, 3 days before? Of course not! Why? Because the check had not been written yet, and it also had not been presented to the bank for payment yet. The same is true here in this case. How can a check

(assessment) not written until 04/23/2001 be in a report created on 4/20/2001 by the Bank (IRS)? It cannot!

16. The Summary Record of Assessments must be created **before** an assessment officer can sign it. His/her signature and the date, becomes the legal, "**Assessment Date**" or "**23C Date**", but not unless the taxpayer's assessments are included in the signed Summary Record of Assessments, can there be a valid assessment against the taxpayer.

17. Therefore, the presumption or claim by the IRS that the RACS 006 Report presented with the assessment date of 04/23/2001, contains James L. Reading's assessment for tax year 1993, 1994 and 1995 is false.

18. Therefore, the Summary Record of Assessments dated 04/23/2001 does not contain assessments for James Leslie Reading. There is no proper or legal assessment for tax year 1993 1994 and 1995 attributable to James Leslie Reading. The IRS's claim is false because the alleged assessment attributable to James Leslie Reading was not recorded in the Summary Record of Assessments, as required by regulation 26 CFR § 301.6203-1, and, which is required to meet the Congressional mandate in 26 USC § 6203.

CONCLUSION

19. The RACS 006 Summary of Record of Assessments dated 04/23/2001, has failed to provide evidence that the amount claimed to be assessed in the Certified Form 4340 for the tax years 1993, 1994 and 1995 has in fact been assessed as mandated by statute 26 USC § 6203 and regulation 26 CFR § 301.6203-1 on 04/23/2001, as claimed.

20. This declaration and analysis of the RACS 006 Summary of Record of Assessments dated 04/23/2001, provides *prima facie evidence* that the assessment amounts claimed to be assessed on 04/23/2001, in the IMF records, were in fact **not assessed** (recorded) or contained in the RACS 006 Summary of Record of Assessments dated 04/23/2001.

21. The Summary Record of Assessments must be created before an assessment officer can sign it. That date and signature becomes the legal, "Assessment Date" or "23C Date", **but not**

until a taxpayer's assessments are included in a signed Summary Record of Assessments, can there be a valid assessment.

22. All evidence shows that there was no statutorily proper assessment, as required by law, performed by the IRS. Therefore, any reasonable person must conclude that there are no valid or enforceable assessments against James L. Reading for the tax year 1993, 1994 and 1995. All claims by the IRS, of a debt owed by James L. Reading for the year 1993 1994 and 1995 are frivolous claims under the law, because they were not properly assessed as mandated by law, and must be removed or withdrawn.

Jurat

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, 28 USC § 1746(1).

Reserving ALL Natural God-Given unalienable birthrights, waiving none,

/s/ James Leslie Reading

Arizona State)
) ss
Maricopa County)

The above named person, appeared before me, a Notary, subscribed, sworn under oath

this 8th day of August, 2012.

Notary Public

My Commission expires: 3/25/2016

SEAL

KEVIN S. KEPLINGER
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
March 25, 2016

Exhibit J-1

ITEM # 1

A

Race Report-006 Summary Record of Assessments

Page: 1
04/20/2001
07:45:18

OGDEN

Certificate Number 13329010423003 Assessment Type Regular Assessment Date 04232001

Current Assessments

Class of Tax	Items	Tax	Penalty	Interest
WITHHOLDING	28486	$613,825,204.40	$17,033,218.56	$1,906,650.75
INDIVIDUAL	59186	$2,894,713,038.69	$7,181,694.12	$7,036,105.08
CORPORATION	10840	$663,422,079.41	$5,632,557.67	$721,661.29
EXCISE	3302	$13,241,087.28	$2,869,486.76	$39,273.33
ESTATE & GIFT	212	$95,628,310.10	$475,318.12	$857,762.53
CTA	1	$0.00	$189.96	$0.00
FUTA	9899	$16,957,166.63	$432,044.07	$264,433.61
Total Current Assmts	97906	$4,224,786,911.51	$33,616,709.26	$10,525,886.59

Deficiency Assessments

WITHHOLDING	14	$34,605.00	$7,822.72	$5,386.36
INDIVIDUAL	1760	$7,883,282.66	$2,562,448.59	$2,889,659.68
CORPORATION	43	$9,099,551.00	$524,481.64	$1,759,725.75
EXCISE	0	$0.00	$0.00	$0.00
ESTATE & GIFT	6	$211,777.00	$0.00	$40,409.87
CTA	0	$0.00	$0.00	$0.00
FUTA	10	$3,169.24	$1,672.78	$1,087.35
Total Deficiency Assmts	1833	$17,232,384.90	$3,096,425.73	$4,690,269.01
Total Assessments	99739	$4,239,019,296.41	$36,713,134.99	$15,216,155.60

Exhibit J-1

B

Race Report-006 Summary Record of Assessments Page: 2
04/20/2001
07:45:18

OGDEN

Certificate Number 13320010423003 Assessment Type Regular Assessment Date 04232001

Tax Class Summary

Tax Class	Items	Amount
WITHHOLDING	28480	$532,812,887.79
INDIVIDUAL	40916	$1,022,262,223.82
CORPORATION	16883	$671,160,056.76
EXCISE	3502	$15,140,047.37
ESTATE & GIFT	418	$30,913,607.62
CTA	1	$189.96
FUTA	9909	$17,689,573.68

Principal Taxpayers And Amounts Related to Jeopardy Assessments	Number	Amount
	0	$0.00

Certification

I certify that the taxes, penalty, and interest of the above classifications, hereby assessed, are specified in supporting records, subject to such corrections as subsequent inquiries and determinations in respect thereto may indicate to be proper.

Signature (For Submission Processing Center Director of Internal Revenue Service)

Susan R. Morgan
Assessment Officer

Date 4-23-01

Race Report-006 Summary Record of Assessments Page: 3
04/20/2001
07:45:18

OGDEN

Certificate Number [illegible] Assessment Type Assessment Date
Regular 04232001

Document Locator Number	Account Date
[illegible]	04232001
[illegible]	04232001
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
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[illegible]	04232001

EXHIBIT K

AFFIDAVIT # 3 REGARDING
ASSESSMENTS FOR 1040 TAX YEARS 1994 & 1995

PREFACE

The attached Memorandum was written to explain assessments. It should be read first, and referred to if needed as you read this Affidavit. **See Exhibit F Memorandum On Assessment**

An "assessment" must be completed before there is any tax owing, according to the courts[1]. An "assessment" is NOT one step, but it is a sequence of steps that must be completed; and therefore this assessment process is often misunderstood. There are specific steps or tasks that must be completed by the Secretary, before any tax is properly and legally owed. The attached memorandum will explain these steps and tasks. Once these steps have been completed, the "tax liability" is considered assessed. An "assessment" is an administrative determination of a "tax liability". The statutory and regulatory requirements are codified in 26 U.S.C. § 6203 and 26 C.F.R. § 301.6203-1.

AFFIDAVIT

I, **Clare Louise Reading**, being first duly sworn on oath, state that I am over the age of 18 and have firsthand knowledge of the following facts and provide this Affidavit of my own free will.

1. I have been the clerical assistant for my husband since 1992. I have used personal computers regularly since 1989, including word processing and work with databases and spreadsheets.

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[1] *United States of America v. Dixon*, **672 F.Supp. 503 USDC, Middle Dist. Ala., (1987)**. "The defendant correctly contends that the basis of tax liability is the assessment. For a **tax liability to be duly collected**, it **must be first properly assessed**. In order for a **tax deficiency to be assessed against a taxpayer, an assessment officer must sign and date a Form 23-C**." [Emphasis added]

2. I have had and maintain close contact with people who have earned college degrees as computer programmers and who perform computer trouble shooting and repair.

3. These experts have shown me some of the many intricacies in the precise manner in which computers are programmed to work.

4. This affidavit is being provided to support what these programmers and experts have shown and taught me, in particular, about the computer systems of the Internal Revenue Service, coupled with my personal knowledge of decoding the IRS Internal Master Files together with my study of the Internal Revenue Code, Title 26 of the United States Code, the Code of Federal Regulations, the Statutes at Large, the Congressional Record, the Federal Register, and case law of the Arizona Tax Division of the Maricopa County Superior Court, tax cases from various U.S. District Courts, U.S. Tax Court and many U.S. Supreme Court rulings.

5. The information contained in this affidavit describes the authority relied upon in Title 26 of the Internal Revenue Code, and their supporting Regulations, Internal Revenue Manual provisions, and supporting case law. In addition, the IRS Processing Codes and Information Manual (Formerly Titled: ADP and IDRS Information) Operating Manual 6209.

6. The duty imposed upon the IRS by the regulation, is to supply the required information upon request to taxpayers who ask for verification of an Assessment. This allows the taxpayer to see what evidence the IRS has to affirm the assessment, and to provide the taxpayer an opportunity to rebut that evidence.

7. The IRS has provided **Clare Louise Reading** with a Certified Form 4340 for the tax year **1994** and **1995,** created from the MFT 30 Tax Module for taxes and penalties. This, along with RACS 006 "Summary Record of Assessments" dated **04/23/2001,** were provided as evidence
of a proper assessment for these taxes and penalties.

8. A review of Certified Form 4340 created from the MFT 30 Tax Module for the tax year **1994,** shows the following assessments tax and penalties:

Explanation of Transaction	Amount	Assessment Date
• LATE FILING PENALTY	$ 5,229.61	**04/23/2001**
• ADDITIONAL TAX ASSESSED	$ 25,243.00	**04/23/2001**
• INTEREST ASSESSED	$ 19,342.15	**04/23/2001**
• FAILURE TO PAY TAX PENALTY	$ 5,810.75	**04/23/2001**
• ESTIMATED TAX PENALTY	$ 1,206.09	**04/23/2001**

9. A review of Certified Form 4340 created from the MFT 30 Tax Module for the tax year **1995**, shows the following assessments of taxes and penalties:

Explanation of Transaction	Amount	Assessment Date
• LATE FILING PENALTY	$ 2,810.02	**04/23/2001**
• ADDITIONAL TAX ASSESSED	$12,489.00	**04/23/2001**
• INTEREST ASSESSED	$ 8,138.62	**04/23/2001**
• FAILURE TO PAY TAX PENALTY	$ 3,122.25	**04/23/2001**
• ESTIMATE TAX PENALTY	$ 677.18	**04/23/2001**

10. It is a fact and there can be no disagreement that reported in Certified Form 4340 for the Form 1040 (Created from MFT 30 Tax Module), the taxes and penalties stated above in item 8 and 9 were alleged to be assessed on **04/23/2001**. There is no disagreement that the "**Assessment Date**" of **04/23/2001**, listed above is the claimed, "**23C Date**" or the "**Date of Assessment**" on the Form 4340 is in fact the "**Transaction Date**" of that same entry found in the IMF records. The "**Transaction Date**" is the date this entry was made into the computer to the Transaction File. ***See* Exhibit F Memorandum On Assessments Page 9 ¶2 - ¶5.**

11. The IRS has provided the RACS 006 Summary Record of Assessments dated and signed on **04/23/2001**, as proof of assessment, and these are the documents that I will address next. ***See* Exhibit J-1 RACS 006 Report Date 04/23/2001.**

12. There is one entry, which I would like to call to your attention, and this is marked as Item # 1, on the RACS 006 Summary Record of Assessments. This is the date and time that this report is run or created. It is a standard requirement in report generation programs, that the date and time the report was created or run, is printed. This requirement provides the person

reviewing the document, additional information regarding the period that the report covers. This is required by law, and is necessary to allow authentication, should it be challenged in Court. In most report generating applications, the person must select the period of time that he wants the computer to collect and display the data within the database for the report. Since only one date is provided on this report, it is assumed to cover everything in the database, from the beginning of the database to the run date. In this case this report dated **04/23/2001,** was run on **04/20/2001 and 07:45:18** in the morning.

13. Equipped with this information and understanding, it is impossible for data or amounts assessed on **04/23/2001**, in the Certified Forms 4340 for the tax year **1994** and **1995**, to be in the computer on **04/20/2001,** which is the date on which this report was created. Any presumption or claim that this Summary Record of Assessments contains **Clare Louise Reading's** assessment is false. This is because the, "**Assessment Date**" on the Form 4340 is the, "**Transaction Date**" of the same entry in the IMF MFT 30 Tax Module, and these entries were not entered into the local area computer until **04/23/2001.** The computer cannot contain nor output data, which has not yet been entered into it.

14. To demonstrate the significance and importance of this, compare this with Internet banking.

If you went on line to your bank account on Friday **04/20/2001** and **07:45:18** in the morning and printed out of all transactions (credits and debits) for the past 12 months from your account, the computer would print out a report with all transactions for the past 12 months. Would you expect to see a check you have not written yet to be in this report? Of course not! Now, if you wrote a check for $1,000 on Monday **04/23/2001** and the person you gave it to, ran down to your bank to cash it that very same day, would the $1,000 check you wrote on Monday **04/23/2001** be on the printout you received from the bank on Friday 3 days before? Of course not! Why? Because the check had not been written yet, and it also had not been presented to the bank for payment yet. The same is true here in this case. How can a check (assessment) not written until **04/23/2001** be in a report created on **04/20/2001** by the Bank (IRS)**?** It cannot!

15. The Summary Record of Assessments must be created **before** an assessment officer can sign it. His/her signature and date, becomes the legal, "**Assessment Date**" or "**23C Date**", but

not unless the taxpayer's assessments are included in the signed Summary Record of Assessments, can there be a valid assessment against the taxpayer.

16. Therefore, the presumption or claim by the IRS that the RACS 006 Reports presented with the assessment date of **04/23/2001,** contains **Clare Louise Reading's** assessment is false.

17. Therefore, since the Summary Record of Assessments dated **04/23/2001,** does not contain **Clare Louise Reading's** assessments, there is no proper or legal assessment, because **Clare Louise Reading's** assessments were not recorded in the Summary Record of Assessments, as required by regulation 26 CFR § 301.6203-1, which is required to meet the Congressional mandate in 26 USC § 6203.

CONCLUSION

18. The RACS 006 Summary Record of Assessments dated **04/23/2001,** has failed to provide evidence that the amount claimed to be assessed in the Certified Form 4340 for the tax year **1994** and **1995**, has in fact been assessed as mandated by statute 26 USC § 6203 and regulation 26 CFR § 301.6203-1 on **04/23/2001,** as claimed.

19. This declaration and analysis of the RACS 006 Summary of Record of Assessments dated **04/23/2001**, provides *prima facie evidence* that the assessment amounts claimed to be assessed on **04/23/2001,** in the IMF records, were in fact **not assessed** or contained in the RACS 006 Summary of Record of Assessments dated **04/23/2001.**

20. The Summary Record of Assessments must be created before an assessment officer can sign it. That date and signature becomes the legal, "Assessment Date" or "23C Date", **but not until a taxpayer's assessments are included** in a signed Summary Record of Assessments, can there be a valid assessment.

21. All evidence shows that there was no statutorily proper assessment, as required by law, performed by the IRS. Therefore, any reasonable person must conclude that there are no valid or enforceable assessments against **Clare Louise Reading** for the tax year **1994** and **1995**. All claims by the IRS, of a debt owed by **Clare Louise Reading** for the year **1994** and

1995 are frivolous claims under the law, because they were not properly assessed as mandated by law, and must be removed or withdrawn.

Jurat

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, 28 USC § 1746(1).

Reserving ALL Natural God-Given unalienable birthrights, waiving none,

/s/ Clare Louise Reading

Clare Louise Reading

Arizona State)
) ss
Maricopa County)

The above named person, appeared before me, a Notary, subscribed, sworn under oath

this 8th day of ~~July, 2012.~~ August 2012 ka

_____
Notary Public

My Commission expires: 3/25/2016

SEAL

KEVIN S. KEPLINGER
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
March 25, 2016

EXHIBIT L

AFFIDAVIT # 4

REGARDING CIVIL PENALTIES

I, Clare L. Reading, and James L. Reading, hereafter Affiants, are natural born citizens of the United States of America and citizens of Arizona, are over the age of 18 and mentally competent, and have personal knowledge of the statements being made hereafter in this document. I, Clare L. Reading and James L. Reading having been first duly sworn on oath, state the following:

STATEMENTS REGARDING MISAPPLICATION OF § 6702

1. Affiants declare that the Plaintiff's client has issued Civil Penalties against Affiants and did not comply with administrative procedure, statues and regulations as mandated in the creation of these.

2. Affiants declare that such failures to comply equates to violations of statues, regulations and these administrative procedures.

3. Affiants declare that according to the U.S. Supreme Court in Morton v. Ruiz, 415 U.S. 199, 94 S.Ct. 1055, 39 L.Ed.2d 270 (1974), "***agencies must follow all internal procedures if the agency action will affect a person's Constitutional rights***". In additions "***Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required***". Service v. Dulles, 354 U.S. 363, 388 (1957); Vitarelli v. Seaton, 359 U.S. 535, 539 -540 (1959).

4. Affiants declare that that 26 U.S.C. § 6702 states in part:

> ***26 U.S.C. 6702. Frivolous income tax return***
> ***(a) Civil penalty for frivolous tax returns***
> ***A person shall pay a penalty of $5,000 if—***
> ***(1) such person files what purports to be a return of a tax imposed by this title but which—***

5. Affiants declare that that 26 U.S.C. § 6671(b) defines the word "person" as:

> ***26 U.S.C. § 6671. Rules for application of assessable penalties***
> ***(b) Person defined***
> ***The term "person", as used in this subchapter, 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 occurs.***

EXHIBIT L

6. Affiants declare that they do not meet this legal definition of the word "person", and no testimony or evidence has been presented by the Plaintiff to support any claim by them that we do.

7. Affiants declare that we had no **duty to perform the act in respect of which the violation occurs,** and no testimony or evidence has been presented which would rebut this claim.

STATEMENTS REGARDING FAILURE TO COMPLY WITH 26 U.S.C. § 6703(a)

8. Affiants declare 26 U.S.C. § 6703(a) states:

> § 6703. Rules applicable to penalties under sections 6700, 6701, and 6702
> (a) Burden of proof
> In any proceeding involving the issue of whether or not any person is liable for a penalty under section 6700, 6701, or 6702, the burden of proof with respect to such issue shall be on the Secretary.

9. Affiants declare the IRS has failed to provide any testimony or evidence that the tax returns filed are frivolous and meet the conditional requirements set forth in 6702(a) by Congress.

10. Affiants declare that the IRS will not even identify the frivolous position(s) they believe make the returns frivolous.

STATEMENTS REGARDING FAILURE TO COMPLY WITH 26 U.S.C. § 6751(b)

11. Affiants declare that as part of the Internal Revenue Service Restructuring and Reform Act 1998, Congress mandated in 26 U.S.C. § 6751(b), that the individual issuing the penalty gets their immediate supervisor's written approval, **before** a penalty may be assessed.

12. Affiants declare that IRM 20.1.1.2.3 (12-11-2009) also mandates this requirement to obtain the **immediate supervisor's written approval, before a penalty may be assessed**. This same IRM provision also clearly defines who the immediate supervisor is, under the law so there should be no question of who must approve it. [*See*: Exhibit L-3 IRM 20.1.1.2.3 (12-11-2009].

13. Affiants declare that there is no testimony or evidence provided by the Plaintiff to support the presumption that the signatures on the Forms 8278 are those of the immediate supervisor's as

EXHIBIT L

mandated by law. Even so, the IRM 20.1.1.2.3 (12-11-2009) Managerial Approval for Penalty Assessments requires that the approval be written in the case history document.

14. Affiants declare that the IRS has refused to provided the documents including the "Penalty Approval Form" to show that the Civil Penalties issued against Affiants were approved in writing, as mandated by 26 U.S.C. § 6751(b). Instead, they remain silent which the Courts have ruled is fraud[1].

15. Affiants declare that the Form 8278 is not the "Penalty Approval Form" called for by IRM 20.1.5.1.6 (07-01-2008) Managerial Approval of Penalties, **or** IRM 4.10.12.2.2 (11-09-2007) Control of Inventory Items **or** IRM 4.10.12.6 (11-27-2009) Examination Case Processing that must be signed and in the case file.

16. Affiants declare that theses penalties were issued in Administrative Procedural Violation of IRM 21.3.1.1. The IRM 21.3.1.1 provides guidelines for Computer Paragraph (CP) notices and it specifically instructs the reader to, "Refer to Document 6209, IRS Processing Codes and Information, Section 9 for a complete list of notices."[2] According to Document 6209, IRS Processing Codes and Information 2010, computer generated notices with 3-digits are mailed to a business with a Business Master File (BMF) and thus, are not meant for individuals with an IMF.[3] The Secretary sent Affiants, individuals with an IMF, purported Notices CP504 to their last known address.

17. Affiants declare that they have copies of many of the 8278 forms provided by the IRS used in the creation and issuance of these civil penalties. Affiant declares there are obvious indications on the face of these documents that show some have been modified from the original form design, and do

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

[2] IRM 21.3.1.1 (10-01-2011) Notice Overview –This section provides guidelines for identifying and resolving inquiries concerning Computer Paragraph (CP) notices, internal notices and notices issued during the processing of a return. Guidelines for balance due notices and delinquent return notices are found in IRM 5.19.1, Balance Due , and IRM 5.19.2, Return Delinquency. Refer to Document 6209, IRS Processing Codes and Information, Section 9 for a complete list of notices.

[3] Document 6209, IRS Processing Codes and Information 2010 manual, page 9-1. "2 General – Computer generated notices and letters of inquiry are mailed to taxpayers in connection with tax returns for BMF and IMF. Computer paragraph (CP) numbers (3-digit number for BMF AND IRAF, 2-digit number for IMF) are located in the upper right corner of the notices and letters."

EXHIBIT L

not contain the signature of the immediate superior as presumed or erroneously claimed by some IRS Disclosure Officers, and Settlement Officers.

18. Affiants declare that the Civil Penalties issued for the year 2008 were the subject matter in a CDP Hearing on Dec 14, 2010. The Settlement Officer had two copies of a Form 8278 created for Defendants, and the Settlement Officer falsely claimed that Tina K. Smith was the immediate supervisor for Cindy Bingham, the Tax Examiner. This statement was rebutted in that meeting and reaffirmed later. [*See*: Exhibit L-1 Affidavit True Supervisor of Cynthia Bingham].
19. Affiants declare that for the year 2008 Civil Penalties a CDP hearing was held in December 14, 2010, and testimony and evidence was provided to the IRS employee's who conducted the meeting, which showed that these penalties were issued under *color of law* and nearly every claim they made was rebutted and evidence was given to show that they were trained incorrectly and operating in violation of the law.
20. Affiants also declare that the IRS **Appeals Division failed to issue a Notice of Determination**, as mandated by 26 Sec. 301.6320-1, in effect including civil penalties "hung" in the administrative process and not prime for judgment.
21. Affiants declare that several Internal Revenue Manual Provisions require that this approval be on specific documents which are not in Affiant's case file. The following is a partial list:

- IRM 20.1.5.1.6 (07-01-2008) Part 2 Managerial Approval of Penalties states; "*The employee initially proposing the penalty* ***should indicate the name of the penalty, the Code section and the amount of the penalty on Form 4700, Examination Workpapers, Form 4318, Examination Workpapers Index or Form 5772, EP/EO Workpaper Summary for TE/GE cases****. The penalty computation should also be* ***documented in the case file****.*"
- IRM 20.1.5.1.6 (07-01-2008) Part 4 "***For SB/SE exam cases, written managerial approval should be documented on the Penalty Approval Form, workpaper 300.***"
- IRM 20.1.5.1.6 (07-01-2008) Part 6 "***For W&I and SB/SE campus cases, written managerial approval should be documented on Form 4700.***"
- IRM 4.10.9.2.3.3 (01-12-2010) Part 2 Miscellaneous Lead Sheet Content states; "*Penalty -- Some penalties require managerial approval. When managerial approval is required managers must complete the appropriate sections of WP-300, Penalty Approval Form.*
- IRM 4.10.9.2 (01-12-2010) Workpaper Format states it requires a Form 4700.
- IRM 4.10.12.2.2 (11-09-2007) Part 6 Control of Inventory states; "*Penalty Approval Form*"
- IRM 4.10.12.6 (11-27-2009) Part 6 Examination Case Processing states; "*Penalty Approval Form*"

EXHIBIT L

- IRM 20.1.1.2.3 (12-11-2009) Part 6 Managerial Approval for Penalty Assessments states; "*Case History Document*".
- IRM 20.1.1.2.3.1 (12-11-2009) Examination Change Reports Assessing Penalties requires that any penalties on the Form 4549 be approved in writing.
- IRM 20.1.6.1.9.1 (02-08-2008) Responsibilities Part 1 states; "*Examiners will attach Form 3198, Special Handling Notice for Examination Case Processing, to each penalty case file, identifying it as a return preparer penalty case and referencing the applicable IRC section.*"
- IRM 4.10.6.3.4 (05-14-1999) Managerial Involvement states; Group Manager approval required on under reporting. Penalty Screening Committee Form 13130 required.

22. Affiants declare that several Internal Revenue Manual Provisions require that this approval be on specific documents known as, "**Penalty Approval Form**", IRM 4.10.12.2.2 (11-09-2007) Control of Inventory Items; IRM 4.10.12.6 (11-27-2009) Examination Case Processing Requires "**Penalty Approval Form.**"

- IRM 4.10.12.2.2 (11-09-2007) Part 6 Control of Inventory states; "**Penalty Approval Form**"
- IRM 4.10.12.6 (11-27-2009) Part 6 Examination Case Processing states; "**Penalty Approval Form**"

23. Affiants declare that the IRS has failed to provide any document with the written approval of the immediate supervisor or any "Penalty Approval Form" as mandated by the IRM.

24. Affiants declare that the Forms 8278 are not the "**Penalty Approval Form**" called out by these IRM provisions, nor is it what the immediate supervisor's written approval is to be recorded on as mandated by 26 U.S.C. § 6751(b). Therefore, there is no evidence that the IRS complied with the statutory requirement before the penalty was assessed.

25. Affiant is not in receipt of any documents presented by the IRS, which show that the reviewer's or manager's name on these documents are, in fact, the immediate supervisor, as defined by IRM 20.1.1.2.3 (12-11-2009) Part (12). Therefore, Affiants declare that the willful presentment of these documents, claiming that they meet this requirement of to § 6751(b), is an attempted fraud.

STATEMENTS REGARDING ADMINISTRATIVE VIOLATIONS

EXHIBIT L

26. Affiants declare that 26 U.S.C. § 6671(a) is very clear that the Secretary must *assess* and collect civil penalties as a tax.[4]

27. Affiants declare that according to the FOIA responses we have seen and documents provided by the Plaintiff, the IRS made the original determination and recorded this on a Form 8278 using a PRN of 666.

28. Affiants declare that these Civil Penalties appear in Affiant's IMF as **TC 240** entries in amounts of either $500.00 or $5,000.00 depending on what tax years they were issued.

29. Affiants declare that these Civil Penalties appear in the Forms 4340's DuffyExC-1 thru DuffyExC-10 and DuffyExD-1 thru DuffyExD-11 as **Miscellaneous Penalty** entries in amounts of either $500.00 or $5,000.00 depending on what tax years they were issued.

30. Affiants declare that these civil penalties were created and issued in violation of administrative procedures regarding the proper use of TC 240 and data from the Forms 8278.

31. Affiants declare that Document 6209, IRS Processing Codes and Information 2010, page 11-45, establishes that a Transaction Code (TC) 240 may not be used when it is based on Form 8278.[5]

32. Affiants declare that IRM 20.1.10.10.1.1[6] states that most return-related penalties are assigned specific Transaction Codes (TC), and are not assessed or abated using data from Form 8278. IRC 6702 frivolous submission is a return-based penalty it may be issued on any submission and even if there is no tax liability.

33. Affiants declare that the IRM 20.1.10.10.1.2[7] states that a frivolous return penalty is documented using Form 8278 with a Penalty Reference Number (PRN) of 666, yet the Secretary used Forms

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[4] 26 U.S.C. § 6671(a) Penalty assessed as tax. The penalties and liabilities provided by this subchapter shall be paid upon notice and demand by the Secretary, and shall **be assessed and collected in the same manner as taxes.** Except as otherwise provided, any reference in this title to "tax" imposed by this title shall be deemed also to refer to the penalties and liabilities provided by this subchapter. [emphasis added]

[5] Document 6209, IRS Processing Codes and Information, 2010, "Most return-related penalties are assigned specific Transaction Codes (TC), and are not assessed or abated using data from Form 8278. Penalties should always be assessed/abated using the appropriate PRN or TC. The TC 240 and TC 241 are generated transaction codes and should not be used to assess or abate a miscellaneous civil penalty that has a PRN." pg. 11-45. (underline emphasis in original)

[6] IRM 20.1.10.10 (05-18-2010) IRC Section 6702 Frivolous Tax Submissions – 1. IRC 6702 provides for penalties for frivolous tax submissions.

[7] IRM 20.1.10.10.1.2 (05-18-2010) Assertion/Assessment – 1. The penalty is: A. Input on IDRS using information provided on Form 8278, B. Assessed using PRN 666 (after January 24, 2005), and C. Not subject to deficiency procedures.

8278 to document a return-based penalty. The IRS then placed the amounts in Affiants' IMF MFT 55 files using TC 240, violating their own procedures, which states that TC 240 should not be assessed using data from Forms 8278. [*See*: Exhibit L-2 Summary of Civil Penalties].

34. Affiants declare that the Miscellaneous Penalty entry on the Forms 4340 is generated as a result of the TC 240 entry in Affiants' IMF record.

35. Affiants declare that the date under the Assessment Date (23C, RAC 006) column on the Forms 4340 is the "Transaction Date" for the same entry in Affiants' IMF records.

36. Affiants declare that DuffyEXC-1 thru DuffyExC-10 are Certified Forms 4340 for Civil Penalties against James L. Reading, which in the Document Location Number (DLN), indicates a Document Code 54 for each Miscellaneous Penalty issued and a Blocking Code of 520. [*See*: Exhibit L-2 Civil Penalty Information From 4340 with DLN].

37. Affiants declare that the Exhibits DuffyExD-1 thru DuffyExD-11, which are Certified Forms 4340 for Civil Penalties against Clare L. Reading, which in the Document Location Number (DLN), also indicates a Document Code 54 for each Miscellaneous Penalty issued and a Blocking Code of 520. [*See*: Exhibit L-2 Civil Penalty Information From 4340 with DLN].

38. Affiants declare that the DLN associated with each TC 240 states a Doc Code 54. The IRM Exhibit 3.12.21-5[8] provides a list of the valid Doc Codes associated with TC 240: **A Doc Code 54 is not listed as a valid Doc Code for TC 240**. As can be seen, Doc Code 51 or 52 is authorized with a TC 240 entry to the MFT 30, 31 or 55 tax modules.

39. Affiants declare that in IRM Exhibit 3.17.244-9[9], the IRS again confirms this by providing a separate table listing the valid Doc Codes associated with TC 240; again, Doc Code 54 is not listed as a valid code for TC 240.

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[8] IRM Exhibit 3.12.21-5 Valid IMF Transaction Code Table

Trans Code Debit(+)	Trans Code Credit(-)	Section	**Doc Code**	MFT
240	241	02-19	**51, 52**	30, 31, **55**

[9] IRM Exhibit 3.17.244-9 Valid IMF Transaction Codes

Trans Code Debit(+)	Trans Code Credit(-)	Section	Doc Code	MFT
240	241	02-19	51, 52	30, 31, 55

EXHIBIT L

40. Affiants declare that Blocking Code 520-529 used with a TC 240 in the MFT 55 tax module means the amount was assessed as a **USER FEE**. According to the IRM at 3.5.61.24.1 (01-01-2012) IMF Blocking Series Chart (Document Code 54) says that the assessment is assessed as a user fees. [*See* Defendant's Exhibit L-4 IRM 3.5.61.24.1]

41. Affiants declare that the method used by the IRS to enter a TC 240 is to enter a TC 290 into a different database which is designed to create the TC 240 automatically for the IRS. Once the TC 240 is created in this separate database not subject to the strict statutory compliance check as the IMF, the entries are transferred over to the IMF file, which does not check it again since it has a Cycle Post Date. As a result of this, there is always a TC 290 for $0.00 following every TC 240 and they both have the same DLN, Transaction Date and Cycle Post Date.

42. In order to keep the TC 290 from being rejected by the Main Frame Computer, they must use a Doc Code of 54 and a Blocking Code of 520 -529. Affiants declare that evidence of this is found in a review of the 6209 Manual, Year 2010, Page 8-77 where it states: "MFT 55 Adjustments Transactions; a, TC 290 doc code 54 input to MFT must be blocked .... 520-539..." As stated above, this is why the TC 290 and the TC 240 have the same DLN. This is also why the TC 240 has the wrong Doc Code, 54, when it should have a Doc Code of 52.

43. Affiants declare that there are administrative procedural violations with these Civil Penalties issued by the IRS in each one of these TC 240 entries shown on the Certified Forms 4340 for Defendants.

44. Affiants declare that IRM Exhibit 3.17.46-8[10] additionally shows that when Doc Code 54 is paired with Blocking Series 520-529, as in the 4340's, TC 240 is also not on the list of "valid transaction codes". Yet the Secretary recorded a TC 240 with Doc Code 54 in Affiants' IMFs, with most of them using Blocking Series 520-529.

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[10] Exhibit 3.17.46-8 Validity Table – DOCUMENT CODE/BLOCKING SERIES AND TRANSACTION CODE TABLE – This table contains the Document Code/Blocking Series/Transaction Code combinations that are valid on the ANMF System.

DOCUMENT CODE BLOCKING SERIES	TRANSACTION CODE
54 / 190 - 198	240
54 / 000 - 999	161 171 181 201 235 241 270 271 281 291 301 311 321 340 341 351 360 361 430 610 611 640 641 650 661 662 670 671 681 682 690 691 694 700 702 710 716 730 732 764 765 766 767 820 822 850 852

EXHIBIT L

45. Affiants declare that according to the Document Location Number for all Civil Penalties issued against Defendants, they were not assessed as a tax but instead as a **USER FEE**. This is in direct violation of 26 U.S.C. § 6671(a), which states that they must be assessed as a **tax**.

46. Affiants declare that because this penalty was documented using Form 8278 with PRN 666 and the DLN indicates a Doc Code of 54 with Blocking Code of 520, these entries were imposed inconsistently with the procedural requirements. Therefore, any reasonable person would conclude the IRS' records about Affiant cannot be reasonably relied upon to show that the Secretary made a procedurally proper assessment of the civil penalty.

47. Affiants declare that the Forms 4340 show the Document Location Number and each Entry TC 240 has a Document Code of 54, however the only authorized Document Codes are 51 or 52. This is forensic evidence of wrong doing by the IRS in order to enter the Civil Penalty TC 240 into the IMF file.

48. Affiants declare that the Forms 4340 show the Document Location Number, and each Entry TC 240 has Blocking Codes of 520-529.

49. Affiants declare that there are administrative procedure violations with these Civil Penalties issued by the IRS in each one of these TC 240 Entries shown on the Certified Forms 4340.

50. Affiants declare that the IRM 20.1.10.10.1.1[11] states that an IRC 6702 frivolous tax submission is a penalty issued under the authority of 26 U.S.C. § 6702(a) and would be a return-based penalty.

51. Affiants declare that the IRM 20.1.10.10.1.2[12] states that a **frivolous** return penalty is documented using Form 8278 with a Penalty Reference Number (PRN) of 666, yet, the Secretary used Forms 8278 to document a **return**-based penalty.

52. Affiants declare that because this penalty was documented using Form 8278 with PRN 666 and the records reflect that it was imposed using TC 240, the penalty was imposed inconsistently with the procedural requirements. Thus, the IRS' records about Affiants cannot be reasonably relied upon to show that the Secretary made a procedurally proper assessments of the civil penalties.

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[11] IRM 20.1.10.10 (05-18-2010) IRC Section 6702 Frivolous Tax Submissions – 1. IRC 6702 provides for penalties for frivolous tax submissions.

[12] IRM 20.1.10.10.1.2 (05-18-2010) Assertion/Assessment – 1. The penalty is: A. Input on IDRS using information provided on Form 8278, B. Assessed using PRN 666 (after January 24, 2005), and C. Not subject to deficiency procedures.

EXHIBIT L

53. Affiants declare that they have physical evidence that these amounts were not assessed properly or legally, as mandated by statute and regulation. See Affidavits regarding no valid assessments and their Memoranda.

54. Affiants declare that Pursuant to 26 U.S.C. § 6671, the penalties within Title 26, Subtitle F, Chapter 68, Subchapter B, shall be "assessed and collected in the same manner as taxes."[13] The civil penalties in Affiants' IMFs reveal the following:

- The civil penalties are listed under MFT 55 (penalties).
- The Transaction Codes 240 used Doc Code 54.[14]
- The Transaction Codes 240 used Blocking Series 520-529.
- The IRM indicates that TC240s are created with Computer Forms (CF) 5147.[15, 16, 17]

55. Affiants declare that IRM 3.5.61.24.1[18] states that when a CF5147 is paired with Doc Code 54 and Blocking Series 520-529 on an IMF MFT 55, the amount assessed is a USER FEE. By our count, there are at least twenty-one (21) Transaction Codes 240 in our IMFs with Doc Code 54 and Block Series 520-229, meaning that all of these was assessed as **user fees**!

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[13] 26 U.S.C. § 6671(a) Penalty assessed as tax. "The penalties and liabilities provided by this subchapter shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this title to "tax" imposed by this title shall be deemed also to refer to the penalties and liabilities provided by this subchapter."

[14] IRM 3.5.61.8.12 (01-01-2011) IDRS Source Document Requests – 2. Attach source documents for Doc Codes 54, 78 and 64 to the transaction record before filing. The source document becomes part of the document filed and is not requisitioned separately.

[15] IRM 3.5.61.23 (01-01-2011) Special Handling for 5147 – This subsection provides the guidelines for association of Form 5147 with source documentation.

[16] IRM 3.5.61.3.61 (01-01-2012) IDRS Source Documents - Sending to the Files Function

IRM 3.5.61.3.61.1 (01-01-2012) IDRS Source Documents - Receipt in the Files Functions

[17] IRM 4.4.32.11 (12-17-2010) Shipment of Source Document Folders. Folders MUST be shipped daily to the File Functions. As the functions must associate Computer Form (CF) 5147, IDRS Transaction Record, with the source documents within three (3) workdays after input, they should be notified immediately of any shipment delays. Computer Form (CF) 5147 is generated at the campus each time a master file action occurs. It contains the refile Document Locator Number (DLN) and related information regarding the action. IRM 3.5, Accounts Services.

[18] IRM 3.5.61.24.1 (01-01-2012) IMF Blocking Series Chart (Document Code 54) – "The non re-file DLN blocking series cannot contain an original tax return. (From the Blocking Series table)… "500-529 X For BMF MFT 13/IMF MFT 55 (**User Fee**), no original return or any other source document is required." [emphasis added]

EXHIBIT L

56. Affiants declare that since 26 U.S.C. § 6671(a) requires that Civil Penalties be assessed as a tax, then assessing them other than as a tax would be a violation of 26 U.S.C. § 6671(a).

57. Affiants declare that according to the IRM 1.32.19.2.1,[19] a user fee is not a tax. It is fee for a service or item of value provided by the IRS for a federal activity that provides a benefit to Affiants, greater than what is available to the general public,[20] charging Affiants no more than the full cost to the government.[21]

58. Affiants declare that the user fees the Secretary can collect are outlined in the IRM 1.32.19.6.[22] Thus, the Secretary has violated his own administrative procedures because he's attempting to claim a civil penalty is a user fee, which is not among the user fees he can charge nor collect.

59. Affiants declare that the method they use is to take hand-written data on a Form 13128 "On-Line Adjustment", and open the IDRS Transaction Database. Using the CF5147 input screen, go the sequence number listed on the Form 13128 and make corrections to the data in that sequence number or "make the on-line-adjustment". When the computer operator inputs the data into the CF5147 screen as instructed, the computer will automatically create a TC 240 for the IRS in this IDRS database.

60. Affiants declare that the Forms 4340 show the Document Location Number and each Entry TC 240 has a Blocking Codes of 520-529. This is the blocking series. 520 with MFT 55 is for a user fee, See Ch 4. Pg 1. According to the IRM at 3.5.61.24.1 (01-01-2012) IMF Blocking Series Chart (Document Code 54) says that the assessment is assessed as a user fees.

STATEMENTS REGARDING CERTIFICATION OF FORM 4340

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[19] IRM 1.32.19.2.1 (10-29-2008) General Authority – Federal agencies are generally authorized to collect user fees in 31 USC § 9701, which states that government agencies can prescribe regulations establishing fees for services or items of value provided by the agencies.

[20] IRM 1.32.19.3 (10-29-2008) Definitions – User fees are charges or assessments levied by a Federal agency on persons or entities directly benefiting from a service provided by a government program or activity. User fees are charged for Federal activities that provide recipients with benefits greater than those provided to the general public.

[21] IRM 1.32.19.2.1.1 (10-29-2008) Policy – It is IRS policy to not charge a rate that is greater than full cost to the Government.

[22] IRM 1.32.19.6 (10-29-2008) User Fees – The IRS charges specific user fees for various services.

EXHIBIT L

61. Affiants declare that the Forms 2866 and the Forms 4340 for the years 1997 thru 2006 for James L Reading found in (DuffyExC-1 thru DuffyExC-9) and the same forms for the years 1997-2007 for Clare L, Reading found in (DuffyExD-1 thru DuffyExD-10) were not certified by a duly authorized IRS Employee, as mandated per W & I Delegation Order WI-11-5.

62. Affiants declare that the Forms 2866 and the Forms 4340 listed for the years and persons above were certified by Debbie Bybee Department Manager. However Delegation Order W & I Delegation Order WI-11-5 only authorizes:

> Accounting Operations Manager
> Submission Processing
> Operations Managers
> Field Compliance Services

63. Affiants declare that only properly certified documents are authorized to be submitted into evidence under F.R.O.E. Rule 902 Self-Authenticating.

64. Affiants declare that the Forms 2866 and the Forms 4340 for the years 2007 & 2008 for James L Reading, (DuffyExC-10) and the same forms for the years 2008 for Clare L, Reading (DuffyExD-11) are signed by the Accounting Operations Manager Steve Bonnemort who by title is authorized by Delegation Order W & I Delegation Order WI-11-5.

65. Affiants declare that each Civil Penalty issued was issued by IRS employees who work for the Small Business / Self Employed Division of the IRS, not the Wage & Investment Division. These are two separate divisions and each has its own Officers authorized to certify documents, per Delegation Order 198.

66. Affiants declare that the Forms 2866 and the Forms 4340 for the years 2007 & 2008 for James L Reading and for the year 2008 for Clare L, Reading may very well not be certified correctly because according to Delegation Order 198 and Rule 44, the documents must be in the custody of the person executing the certification. IRM 11.3.6.1 (04-30-2009) Background has a Note which is provided below and Part 7 which says; "Certifications may be issued only for records in the custody of the certifying officer."

> **The certifying officer cannot attest to something he/she has not observed. Therefore, it is usually inappropriate to rely upon the oral "assurance" of other IRS personnel that the document being certified is a true and correct copy of the original.**

EXHIBIT L

67. Affiants declare that the Forms 2866 and the Forms 4340 for the years 1997 thru 2006 for James L Reading and for the year 1997 thru 2007 for Clare L, Reading, which were signed by what appears to be an unauthorized person, very well may not qualify as being certified correctly, because according to Delegation Order 198 and Rule 44, the documents must be in the custody of the person doing the certification. IRM 11.3.6.1 (04-30-2009) Background has a Note stated above and Part 7 which says; "Certifications may be issued only for records in the custody of the certifying officer."

STATEMENTS REGARDING ASSESSMENTS AND NOTICES

68. Affiants declare that we deny receiving valid notices and demands for tax within the 60-day statutory[23] and regulatory[24] limits at our business, dwelling, or at our last known address. Multiple circuit courts have ruled that the Secretary loses his "awesome nonjudicial collection powers."[25] See also See *United States v. Chila*, 871 F.2d 1015 (11th Cir. 1989); *United States v. Berman*, 825 F.2d 1053 (6th Cir. 1987) on remand U.S.T.C. 88-2 Para. 9550, 1988 WL 126557 (S.D.Ohio 1988) after remand 884 F.2d 916 (6th Cir. 1989); and *Marvel v. United States*, 719 F.2d 1507 (10th Cir.1983).

69. Affiants declare that the Secretary or his alleged delegates stated our returns were frivolous pursuant to 26 U.S.C. § 6702, while simultaneously failing to prove that we, as individuals, could be charged with a civil penalty. The Supreme Court noted that the Secretary has the burden of proof by a preponderance of the evidence.[26]

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[23] 26 U.S.C. § 6303. Notice and demand for tax – (a) General rule. Where it is not otherwise provided by this title, the Secretary shall, as soon as practicable, and within 60 days, after the making of an assessment of a tax pursuant to section 6203, give notice to each person liable for the unpaid tax, stating the amount and demanding payment thereof. Such notice shall be left at the dwelling or usual place of business of such person, or shall be sent by mail to such person's last known address.

[24] 26 CFR § 301.6303-1 Notice and demand for tax. (a) General rule. …the director… after the making of an assessment of a tax pursuant to section 6203, give notice to each person liable for the unpaid tax, stating the amount and demanding payment thereof. Such notice shall be given as soon as possible and within 60 days.

[25] "Nevertheless, this Court concludes, consistent with the views expressed in Berman, Marvel, and Chila that the appropriate "sanction" against the I.R.S. for its failure to comply the § 6303(a) notice and demand requirement is to take away its awesome nonjudicial collection powers." *Blackston v. US*, 778 F. Supp. 244 (D.MD 1991)

[26] "Civil suits and administrative proceedings generally require proof by a preponderance of the evidence." *Herman & MacLean v. Huddleston*, 459 U.S. 375, 387-88, 103 S.Ct. 683, 689-90, 74 L.Ed.2d 548 (1982)

EXHIBIT L

70. Affiants declare that no letter provided by the IRS has provided any proof[27, 28] that we met the legal requirements of 26 U.S.C. § 6671(b)[29] as required by 26 U.S.C. § 6703.[30] The IRM 4.10.12.1.3,[31] 4.10.12.1.3.1,[32] and 20.1.10.10.1[33] fail to outline any procedure to determine if we met the legal characteristics of a 26 U.S.C. § 6671(b) "person" in direct contradiction to IRM 1.11.6.2, which states that the IRM is "for administering the laws."[34] Instead, there is a blatant lack of procedures to administer 26 U.S.C. § 6671(b). In violation of the IRM and *under color of law*, the Secretary skipped that legal requirement and focused exclusively on the tertiary issues of 26 U.S.C. § 6702,[35] presuming we FIRST met the legal requirements of 26 U.S.C. § 6671(b) "person" who then violated the secondary issues of section 6702.[36] He assessed us with many $500.00 and some $5,000.00 civil penalties for filing allegedly 'frivolous' returns.

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[27] "The standard of proof in these cases is usually a preponderance of the evidence, and by statute the burden of proof is often placed on the government. See, e.g., I.R.C. § 6703 (applicable burden on government in actions brought under §§ 6700-02); *Franklet v. United States*, 578 F.Supp. 1552 (N.D.Cal.1984), aff'd, 761 F.2d 529 (9th Cir.1985) (government burden of proof by a preponderance of the evidence in § 6702 actions); H & L Schwartz, Inc., supra, aff'd sub nom., *Bond v. United States*, 872 F.2d 898 (9th Cir.1989) (government burden of proof by a preponderance of the evidence in §§ 6700, 6702 actions)." *Mattingly v. US*, 924 F. 2d 785 (8th Cir. 1991)

[28] "Neither the courts nor the parties suggest any question about the propriety of using the preponderance standard with respect to § 6700 and § 6702. The legislative history of § 6703 also states that:

> [i]n any proceeding involving the issue of whether any taxpayer is liable for the tax shelter promoter penalty, the civil aiding or assisting penalty, or the frivolous return penalty, the burden is on the Secretary to prove the conduct giving rise to the penalty.

(Emphasis added.) Id. at 271, reprinted 1982 U.S. Code Cong. & Admin. News at 1018. The plain language of § 6703, the legislative history, and the simultaneous enactment of these sections persuade us that the provisions should be governed by a uniform standard of proof." *Mattingly v. US*, 924 F. 2d 785 (8th Cir. 1991)

[29] 26 U.S.C. § 6671(b) Person defined. "The term "person" as used in this subchapter, 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 occurs." [30] 26 U.S.C. § 6703(a) In any proceeding involving the issue of whether or not any person is liable for a penalty under section 6700, 6701, or 6702, the burden of proof with respect to such issue shall be on the Secretary.

[30] 26 U.S.C. § 6703(a) In any proceeding involving the issue of whether or not any person is liable for a penalty under section 6700, 6701, or 6702, the burden of proof with respect to such issue shall be on the Secretary.

[31] IRM 4.10.12.1.3 (11-09-2007) Identification of Frivolous Documents

[32] IRM 4.10.12.1.3.1 (11-09-2007) Detecting Frivolous Filings

[33] IRM 20.1.10.10.1 (05-18-2010) IRC Section 6702(a) Civil Penalty for Frivolous Tax Returns

[34] IRM 1.11.6.2 (05-07-2010) Using the IRM – The IRM is the primary, official source of instructions to employees relating to the organization, administration and operation of the IRS. The IRM contains the directions employees need to carry out their responsibilities in administering the laws or other agency obligations. It ensures that employees have access to current procedures.

[35] 26 U.S.C. § 6702(a)(2) the conduct referred to in paragraph 1–
(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or
(B) reflects a desire to delay or impede the administration of Federal tax laws.

[36] 26 U.S.C. § 6702(a)(1) such person files what purports to be a return of a tax imposed by this title but which—

EXHIBIT L

71. Affiants declare that due process was not complete for the Civil Penalties issued for the years 2008 for both Clare L. and James L. Reading. A CDP Hearing was provided on Dec 14, 2010 and after the presentment of a ponderous of evidence by Affiant Clare Reading, the Appeals Office refused to provide a Notice of Determination. Therefore these penalties are prematurely considered in this case and should be removed.

STATEMENTS REGARDING ASSESSMENTS

72. Affiants declare that presumption that these amounts reported in the MFT 55 Tax Modules for each TC 240 entries have been assessments as mandated by Internal Revenue Code (IRC), 26 U.S.C. § 6203, and with 26 CFR § 301.6203 is without merit under the law. No testimony or evidence has been provided by the Plaintiff to support the presumption that the amounts are in the totals in the Summary Record of Assessments (RACS 006) reports provided to support the assessment.

73. Affiants declare that they have *prima facie* evidence that in fact these amounts are not in the Summary Record of Assessments (RACS 006) presented by the IRS as evidence of assessment. [*See*: Exhibit Q & R Affidavits Regarding Assessment of Penalties].

74. Affiants declare that presumption that the person who signed the Summary Record of Assessments is in fact an Assessment Officer as mandated by law, has not been proven. No testimony or evidence has been provided by the Plaintiff to support the alleged fact.

75. Affiants have no evidence and believe that none exists to support the presumption that if the person who signed the Summary Record of Assessments is in fact an Assessment Officer, and was appointed by the District Director, as mandated by 26 CFR § 301.6203-1. No testimony or evidence has been provided by the Plaintiff to support the presumption.

76. Affiants have no evidence and believe that none exists to support the presumption that there is a proper unbroken chain of Delegation Orders from the Secretary to the Assessment Officer. No testimony or evidence has been provided by the Plaintiff to support this presumption.

(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or
(B) contains information that on its face indicates that the self-assessment is substantially incorrect, and [emphasis added]

EXHIBIT L

Affiants declare we are not experts in the law; however, we do know right from wrong. If there is any human being damaged by any statements herein, if he will inform us by verifiable facts, we will sincerely make every effort to make correction(s). We hereby and herein reserve the right to amend this document as necessary in order that the truth may be ascertained and proceedings justly determined. If the parties given notice by means of this document have information that would controvert and overcome this Affidavit, please advise us IN WRITTEN AFFIDAVIT FORM within thirty (30) days from receipt hereof providing us with your counter affidavit, proving with particularity by stating all requisite actual evidentiary fact and all requisite actual law, and not merely the ultimate facts or conclusions of law, signed under penalty of perjury, that this Affidavit or any part of it, is substantially and materially false sufficiently to change materially our status and factual declarations. Your silence stands as consent to, and tacit approval of, the factual declarations herein being established as fact as a matter of law.

Jurat

EXHIBIT L

We declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, 28 USC § 1746(1).

Reserving ALL Natural God-Given Unalienable Birthrights, Waiving None, Ever,

/s/ Clare L. Reading

Clare L. Reading

/s/ James Leslie Reading

James L. Reading

Arizona State)
) ss
Maricopa County)

The above named person, appeared before me, a Notary, subscribed, sworn under oath this 8th day of August 2012.

Notary Public

My Commission expires: 3/25/2016

KEVIN S. KEPLINGER
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
March 25, 2016

EXHIBIT L-1

Affidavit RE:
The True Supervisor of Cynthia Bingham,
IRS Form 8278, signed: 7/30/09

I, Clare Louise Reading, hereinafter, Affiant, declare that I am of the age of majority and am competent to make the following statements that are true, correct, complete and not intended to mislead, to the best of my ability:

1) Affiant states: On July 30, 2009, Cynthia Bingham ID# 0469246241, was a Tax Examiner / Originator of the Civil Penalties entered on Form 8278.
Affiant states that the telephone numbers for Cynthia Bingham are:
(801) 620-3241(?) / (866) 899-9083 ext. 8235 / (801) 620-2322.

2) Affiant further states: On December 14, 2010, during the Appeals Collection Due Process Hearing regarding Civil Penalties for 2008 for both James Leslie Reading and Clare Louise Reading, with Michael A. Bigley present, Appeals Officer, Bernice Mason, kept her thumb over the telephone number that was printed on the lower right corner of the Form 8278, "Assessment and Abatement of Miscellaneous Civil Penalties".

3) Affiant further states: Curiosity won out, and with Michael A. Bigley present, on Tuesday, December 21, 2010, I telephoned the number typed on the Form 8278 at Box 13: 801-620-2338, and left a message requesting a return call.

4) Affiant further states: Within the hour, at 12:17 PM, IRS employee, Connie Gertz, returned my call.

5) Affiant further states: I told Connie Gertz that I would like to know who the immediate supervisor of Cindy Bingham is and her response was that "Kristen Nichols has been her immediate supervisor for over one year."

6) Affiant further states: Connie Gertz stated that she did not know of Tina K. Smith and had never heard of her.

7) Affiant further states: Connie Gertz stated that Tina K. smith was not listed in her IRS Employee Directory.

8) Affiant further states: the points in 5), 6) and 7) herein above cause Affiant to believe that there is no evidence that Tina K. smith was the immediate supervisor of Cynthia Bingham on July 20, 2009, and Affiant believes that none exists.

9) Affiant further states: In accordance with I.R.M. 20.1.10.9.2 (01-01-2006) Penalty Computation is to be made only once for a husband and wife filing a joint return (see: LEM 20.1.10).

EXHIBIT L-1

10) Affiant further states: In accordance with I.R.M. 20.1.10.9.3 (01-01-2006) The Assertion / Assessment on Form 8728 will not be used for a joint return and that Form 5734, Non-Master File Assessment Voucher, will be used for the joint assessment of the penalty (see: IRM Part 5.1.1, Collection Process, for further information.)

11) Affiant further states: Freedom of Information Act (FOIA) dated January 30, 2012 from the IRS Disclosure Office at 3007 Knight Street, Room 100, Shreveport, LA 71105-2525 states:

> "You asked for copies of Form 5734, Non-Master File Assessment vouchers for tax years 1997 through 2008. I found no documents specifically responsive to your request.
>
> If you have any questions please call me at 318-683-6324 of write to: Internal Revenue Service, disclosure Scanning Operation – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please Refer to case number F12025-0014.
>
> Sincerely, Brinda L. Brown, Disclosure Specialist, Disclosure Office 10"

12) Affiant further states: In conclusion, the Civil Penalties registered against James Leslie Reading and against Clare Louise Reading are both null and void.

13) Affiant demands: The truth must be entered into each Permanent Record and updated in all Internal Master Files (IMF) and other files kept by the IRS regarding James Leslie Reading and Clare Louise Reading.

Further, Affiant sayeth naught.

Acknowledgment

I declare under penalty of perjury under the laws of the United States of America pursuant to Title 28 § 1746(1) that the foregoing is true and correct to the best of my knowledge, understanding and belief and that this is my true and correct signature.
All rights retained without recourse.

Clare Louise Reading

Arizona State, a Republic)
) ss.
Maricopa County)

The foregoing instrument was executed and acknowledged before me this 8th day of February, 2012, by Clare Louise Reading, personally known to me, or who provided satisfactory identification.

Signature of Notary Public

OFFICIAL SEAL
ELAINE ANN CARLTON
Notary Public - State of Arizona
GILA COUNTY
My Comm. Expires July 19, 2012

My Commission expires: July 19, 2012

seal

EXHIBIT L-2

Information for Certifed Forms 4340

Exhibit #	Document	Name	Year	Type	TC- 240	Amount
Duffy Ex C-1	Form 4340	James Reading	1997	CIVPEN	Misc Penalty	$ 500.00
Duffy Ex C-2	Form 4340	James Reading	1998	CIVPEN	Misc Penalty	$ 500.00
Duffy Ex C-3	Form 4340	James Reading	1999	CIVPEN	Misc Penalty	$ 500.00
Duffy Ex C-4	Form 4340	James Reading	2000	CIVPEN	Misc Penalty	$ 500.00
Duffy Ex C-5	Form 4340	James Reading	2002	CIVPEN	Misc Penalty	$ 500.00
Duffy Ex C-6	Form 4340	James Reading	2003	CIVPEN	Misc Penalty	$ 500.00
Duffy Ex C-7	Form 4340	James Reading	2004	CIVPEN	Misc Penalty	$ 500.00
Duffy Ex C-8	Form 4340	James Reading	2005	CIVPEN	Misc Penalty	$ 500.00
Duffy Ex C-9	Form 4340	James Reading	2006	CIVPEN	Misc Penalty	$ 5,000.00
Duffy Ex C-10	Form 4340	James Reading	2008	CIVPEN	Misc Penalty	$ 5,000.00
[redacted]						
Duffy Ex D-1	Form 4340	Clare Reading	1997	CIVPEN	Misc Penalty	$ 500.00
Duffy Ex D-2	Form 4340	Clare Reading	1998	CIVPEN	Misc Penalty	$ 500.00
Duffy Ex D-3	Form 4340	Clare Reading	1999	CIVPEN	Misc Penalty	$ 500.00
Duffy Ex D-4	Form 4340	Clare Reading	2000	CIVPEN	Misc Penalty	$ 500.00
Duffy Ex D-5	Form 4340	Clare Reading	2001	CIVPEN	Misc Penalty	$ 500.00
Duffy Ex D-6	Form 4340	Clare Reading	2002	CIVPEN	Misc Penalty	$ 500.00
Duffy Ex D-7	Form 4340	Clare Reading	2003	CIVPEN	Misc Penalty	$ 500.00
Duffy Ex D-8	Form 4340	Clare Reading	2004	CIVPEN	Misc Penalty	$ 500.00
Duffy Ex D-9	Form 4340	Clare Reading	2005	CIVPEN	Misc Penalty	$ 500.00
Duffy Ex D-10	Form 4340	Clare Reading	2006	CIVPEN	Misc Penalty	$ 5,000.00
Duffy Ex D-11	Form 4340	Clare Reading	2006	CIVPEN	Misc Penalty	$ 5,000.00

DLN	Cycle Post Date	CPD-Decoded	Assessment Date
92254-520-**520**06-7	20071908	05/14/07	05/21/07
92**54**-520-**520**05-7	20071908	05/14/07	05/21/07
92**54**-517-**520**11-7	20071908	05/14/07	05/21/07
92**54**-516-**520**07-7	20071808	05/07/07	05/14/07
92**54**-516-**520**04-7	20071808	05/07/07	05/14/07
92**54**-516-**520**03-7	20071808	05/07/07	05/14/07
92**54**-516-**520**06-7	20071808	05/07/07	05/14/07
92**54**-516-**520**05-7	20071808	05/07/07	05/14/07
92**54**-675-**520**19-7	20074808	12/03/07	10/22/07
92**54**-605-**520**14-7	20093108	08/06/09	08/17/09
[redacted]			
92**54**-480-**520**00-7	20071308	04/02/07	04/09/07
92**54**-480-**520**01-7	20071308	04/02/07	04/09/07
92**54**-480-**520**02-7	20071308	04/02/07	04/09/07
92**54**-480-**520**03-7	20071308	04/02/07	04/09/07
92**54**-480-**520**04-7	20071308	04/02/07	04/09/07
92**54**-480-**520**05-7	20071308	04/02/07	04/09/07
92**54**-501-**520**00-7	20071608	04/23/07	04/30/07
92**54**-502-**520**03-7	20071608	04/23/07	04/30/07
92**54**-480-**520**06-7	20071308	04/02/07	04/09/07
92**54**-675-**520**21-7	20074108	10/15/07	10/22/07
92**54**-605-**520**15-9	20093108	08/06/09	08/17/09

EXHIBIT L-3

Managerial Approval for Penalty Assessments

IRM 20.1.1.2.3 (12-11-2009) Managerial Approval for Penalty Assessments

1. IRC section 6751(b)(1) states, "**In general, that no penalty under the Code shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate**. " At this time, the Secretary **has not designated any higher level official to approve initial determinations.**
2. Notwithstanding the exception noted in paragraph 3 below, this approval requirement will also apply to the imposition of any fraud penalty including fraudulent failure to file penalty under IRC section 6651(f).
3. IRC section 6751(b)(2) provides an exception to the managerial approval requirement for penalties calculated through electronic means. This exception applies to the following penalties: IRC section 6651 (failure to file tax return or to pay tax), IRC section 6654 (failure by individual to pay estimated income tax), IRC section 6655 (failure by corporation to pay estimated income tax), and any other penalties automatically calculated through electronic means (see paragraph 5 below).
4. For purposes of this section, the term "penalty" includes any addition to tax or any additional amount (IRC section 6751(c)).
5. "Penalty automatically calculated through electronic means " means something more than merely an electronic device to perform arithmetic functions to determine the amount of a penalty. Instead, the assessment of a penalty qualifies as one calculated through electronic means if the penalty is assessed **free** of any independent determination by an IRS employee as to whether the penalty should be imposed against a taxpayer.
6. **The managerial review and approval must be documented in writing and retained in the case file. The manager must indicate the decision reached, and sign and date the case history document.**

EXHIBIT L-3

Managerial Approval for Penalty Assessments

7. IRC section 6751(b) does not require the IRS to provide a taxpayer with a copy of the manager's written approval of penalties assessed against the taxpayer. However, the IRS may wish to provide the taxpayer with a courtesy copy of the document showing that a manager approved the penalties. Taxpayers are entitled to request these documents under the Freedom of Information Act.
8. IRC section 6751(b) provides that the assessment of a penalty shall be "approved (in writing) by the immediate supervisor of the individual making the initial determination of such assessment." Generally, **an immediate supervisor is the person who writes an employee's evaluation or approves the employee's leave.** On-the-Job Instructors do not qualify as the "immediate supervisor" for the purpose of IRC section 6751(b).

Exhibit 20.1.1.6-5 (08-20-1998) Penalty Reference Numbers (500 Series)

665 6702	Frivolous Income Tax Return. ♦ If any individual files what purports to be an income tax return, which either: ♦ contains insufficient information, or ♦ contains on its face substantially incorrect information, and ♦ where the conduct will delay or impede the administration of Federal income tax laws or is a frivolous position. ♦ The penalty is assessed at $500 per return deemed to be frivolous. Each of the following eight reference numbers relate to a specific type of frivolous return.
666 6702	Frivolous arguments (General) to reduce taxes or delay the collection of taxes. ♦ The penalty is assessed at $500 per return deemed to be frivolous.
667 6702	The "penalty of perjury" statement was altered or deleted ♦ The penalty is assessed at $500 per return deemed to be frivolous.
668 6702	The return did not contain enough information to be processed. ♦ The penalty is assessed at $500 per return deemed to be frivolous.
669 6702	The claim that wages not paid in gold or silver is frivolous. ♦ The penalty is assessed at $500 per return deemed to be frivolous.
670 6702	The war credit or deduction claimed is not provided for in the Internal Revenue Code. ♦ The penalty is assessed at $500 per return deemed to be frivolous.
671 6702	The credit claimed for the decrease or discounted value of Federal Reserve Notes represents a frivolous position. ♦ The penalty is assessed at $500 per return deemed to be frivolous.
672 6702	The claim that wages and payments for services are not income or profits because there was a fair exchange is a frivolous position. ♦ The penalty is assessed at $500 per return deemed to be frivolous.
673 6702	The refusal to furnish information needed to determine income tax liability on constitutional grounds.

EXHIBIT L-3

Managerial Approval for Penalty Assessments

	♦	The penalty is assessed at $500 per return.
674	6723	Failure to Comply with Other Reporting Requirements. Failure to Provide Notice of Partnership Exchange.
	♦	a penalty of $50 is imposed for each failure to comply timely with specified information reporting requirements.
	♦	The maximum penalty for failure to comply with all specified information reporting requirements is $100,000 per year.
675	6722(b)	Failure to Notify Partnership of Exchanged of Partnership Interest.
	♦	This penalty applies to statements required to be furnished before January 1, 1990.
	♦	The penalty is assessed at $50 per payee statement not timely or correctly furnished.
676	6038B	Notice of Certain Transfers to Foreign Persons (Failure to File Form 926)
	♦	The penalty is assessed at 25 percent of the amount of the gain realized on the exchange.
677	6677	Failure to File Information Returns with Respect to Certain Foreign Trusts.
	♦	5 percent of the amount transferred to a trust, or
	♦	5 percent of the value of the corpus of the trust at the close of the taxable year, but
	♦	not more than $1,000.
678	6039E	Failure to provide Information concerning Residence Status.
	♦	$500 for each failure to provide the required information.
679	6039E	Failure to provide Information concerning Residence Status. (Taxpayer Identification Number).
	♦	$500 for each failure to provide the required information.
	6662	Imposition of Accuracy-Related Penalty
680	6662(f)	Substantial Overstatement of Pension Liabilities
681	6662(d)	Substantial Understatement of Income Tax.
682	6662(g)	Substantial Estate or Gift Tax Valuation Understatement
683		Reserved
684	7519	Required Payments for Entities Electing Not to Have Required Taxable Year.
	♦	The penalty is assessed for failing to make an election payment.
	♦	The penalty is assessed at 10 percent of the under paid amount and is assessed on MFT 15.
685	6712	Failure to Disclose Treaty-Based Return Position.
	♦	The penalty is assessed at:
		♦ $1,000, individual,
		♦ $10,000, corporation.
686	6651(f)	Increase in Penalty for Fraudulent Failure to File
	♦	15 percent per month,
	♦	for a maximum of 5 months,
	♦	not to exceed 75 percent of the total tax.

Form	Title (Purpose)	IRM Section
8868	Application for Extension of Time To File an Exempt Organization Return	IRM 3.5.61.3.45
8869	Qualified Subchapter S Subsidiary Election	IRM 3.5.61.4.6
8871	Political Organization Notice of Section 527 Status	IRM 3.5.61.3.36
8872	Political Organization Report of Contributions and Expenditures	IRM 3.5.61.3.36
8875	Taxable REIT Subsidiary Election	IRM 3.5.61.4.11
8918	Material Advisor Disclosure Statement	IRM 3.5.61.3.47
8925	Report of Employer-Owned Life Insurance Contracts	IRM 3.5.61.3.48
SS-4	Application for Employer Identification Number	IRM 3.5.61.3.50

3.5.61.24
(01-01-2012)
Special Handling for 5147

(1) This subsection provides the guidelines for association of Form 5147 with source documentation.

3.5.61.24.1
(01-01-2012)
IMF Blocking Series Chart (Document Code 54)

(1) The following chart reflects IMF Document Code 54 blocking series requirements for associating Form 5147.

(2) A Re-file DLN indicates that an original tax return must be present for association action. The CP 55 blocking series is automatically associated with a tax return when the CP 55 is generated.

Note: A Re-file DLN with IDRS number "04099XXXXX" is systemically generated and will not have an original return for association.

(3) The non re-file DLN blocking series cannot contain an original tax return.

IMF	Blocking Series	Re-file DLN	Non Re-file DLN	Comments
	000-049	X		
	050-179		X	
	180-198	X		CP 55 generated
	199		X	
	200-289		X	
	290-299	X		
	300-309	X		CP 55 generated
	310-319	X		CP 55 generated
	400-499		X	
	500-529	X		For BMF MFT 13/IMF MFT 55 (User Fee), no original return or any other source document is required.
	530-539	X		CP 55 generated
	540-549	X		
	550-589	X		
	590-599		X	
	600-698	X		
	700-779	X		
	780-789	X		CP 55 generated
	790-799	X		
	800-899	X		
	900-909	X		CP 55 generated if TC 294 or TC 295
	910-919		X	

EXHIBIT M

AFFIDAVIT # 5
REGARDING CERTIFICATIONS AND CERTIFIED MAIL RECEIPT OF NOTICE OF DEFICIENCY

I, Clare Reading, and I, James Leslie Reading, hereinafter, Affiants, are over the age of 18 and mentally competent. Affiants have personal knowledge of the statements being made hereafter in this document. I, Clare Reading, and I, James Leslie Reading, having been first duly sworn on our oath, state the following:

1. Plaintiff has provided Exhibits VaheExL-1 and VaheExL-2 in Declaration of Debra Vahe as evidence that the Notice of Deficiencies were mailed as mandated by statute.
2. Affiants declare that the VaheExL-1 is a Certification of Official Record attached to a Substitute for Form 3877, which shows a Mail Certification Number of Z096928394 for James L. Reading, 2425 East Fox Mesa AZ 85213-5320, for tax years 9312 (1993); 9412 (1994); 9512 (1995); 9612 (1996).
3. Affiants declare that the VaheExL-1 Substitute for Form 3877 does not appear to be signed by a USPS employee, but instead seems to be signed by an IRS employee.
4. Affiants declare that I.R.C. § 7502(c)(1), (2). The Treasury Department, in turn, has issued a regulation providing that a sender's certified mail receipt that is postmarked **by a postal employee is *prima facie* evidence of delivery**. Treas. Reg. § 301.7502-1(c)(2).
5. Affiants declare this Form 3877 provided is not a true copy of the document. Any reasonable person can see this has been altered using some method other than redacting using blacking out sensitive information.
6. Affiants declare that this Notice of Deficiency presented in DuffyExG does not have any Certified Mail Number printed on it, which would prove that it was the document indentified in VaheExL-1 or DuffyExJ with the Certified Mail # Z096928394 as the one mailed on 11-15-2000.
7. Affiants declare that in reviewing VaheExL-1 and DuffyExJ Notice of Mailing, that the letter identified with Certified Mail # Z096928394 is not identified by title as a Notice of Deficiency.

8. Affiants declare that in reviewing VaheExL-1 and DuffyExJ Notice of Mailing, that the letter identified with Certified Mail # Z096928394 states it was for the tax years 9312, 9412, 9512, 9612.

9. Affiants declare that in reviewing VaheExL-1 and DuffyExJ Notice of Mailing, that the letter identified with Certified Mail # Z096928394 is not identified by title as a Notice of Deficiency.

10. Affiants declare that the Notice of Deficiency presented in DuffyExG cannot be the document or letter that was claimed to be mailed and reported on the Form 3877 in VaheExL-1 or in DuffyExJ, because that document was for tax years 9312, 9412, 9512, and 9612 and the Notice of Deficiency in DuffyExG is only for three years 9312, 9412, 9512.

11. Affiants declare that as additional evidence that no Notice of Deficiency was sent, there are no TC-494[1] entries in Affiant's IMF records for the years 1993, 1994 or 1995. A TC 494 is the Transaction Code used in the IMF record to record that a Statutory Notice of Deficiency was sent.

12. Affiants declare there is no credible evidence provided by the Plaintiff to support the fact that they did in fact mail a copy of the Notice of Deficiency to James L. Reading, as falsely claimed or presumed.

13. Affiants declare that the VaheExL-1 is a Certification of Official Record attached to a Substitute for Form 3877, which shows a Mail Certification Number of Z096928396 for Clare L. Reading, 2425 East Fox Mesa, AZ 85213-5320, for the tax years 9412 (1994); 9512 (1995).

14. Affiants declare that the Plaintiff has provided DuffyExH Notice of Deficiency Form Clare L. Reading for the years 1994-1995 and claims it was allegedly mailed with Mail Certification Number of Z096928396.

15. Affiants declare that there is no indication, markings or writings physically on the document that would positively identify that this letter was mailed with the Certified Mail Number of Z096928396, as claimed in VaheExL-1.

16. Affiants declare that in reviewing VaheExL-1 and DuffyExJ Notice of Mailing, that the letter identified with Certified Mail # Z096928396 is not identified by title as a Notice of Deficiency.

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[1] 6209 Manual Year 2003 Page 8-27 states; TC 494 Indicates that a Statutory Notice of Deficiency (90-day) was issued. Issuing Organization Code two position numeric only (70. 71, 84). CC: STN 90

17. Affiants declare that currently the IRS now does affix the Certified Mail Number on the letters to show the direct connection between letters and Certified Mail Forms to remove all doubt; however, they did not in this case, which raises serious questions about whether or not this letter was, in fact, mailed as claimed, and if it was mailed with this Certified Mail number, as claimed.

18. Affiants declare that the Certification Form 2866 has two printed names on it and then it is signed by a third different person, Dorsey [sp], for Paula M. Curren, Disclosure Manager, Office 7.

19. Affiants declare that no testimony or evidence was presented, which would prove that this third person has the legal authority to sign for Paula M. Curren, Disclosure Manager, Office 7. Such person would have to have a Delegation Order to sign Certifications of documents.

20. Affiants declare that that Disclosure Office 7 is located in Greensboro NC and services the states Florida, Kentucky, North Carolina, Virginia. [*See*: URL

21. Affiants declare that Paula Curren is listed as public liaison on this URL for Florida, Kentucky, North Carolina, Virginia. http://www.irs.gov/foia/article/0,,id=120681,00.html.

22. Affiants declare that all indications on the documents show that the Defendants' records were maintained in Ogden Utah, but the Notice of Deficiencies were allegedly mailed from Phoenix Arizona.

23. Affiants declare that the Certification Form 2866 that was attached to the substitute for Form 3877 is signed by Disclosure Department, which does not have custody of the records, as mandated by Delegation Order 198. [*See*: Defendant's Exhibit M-2 Delegation Order 198].

24. Affiants declare that to certify documents not in their computer is a violation of IRM 11.3.6.1 (04-30-2009) Background (Certification) Part 7. [*See* Exhibit M-1 IRM 11.3.6.1 (04-30-2009)]

25. Affiants declare that the Certification Form 2866 that was attached to the substitute for Form 3877 is signed by Disclosure Department, which does not have custody of the records, as mandated by Rule 44. [*See*: Defendant's Exhibit M-3 Rule 44].

26. Affiants declare that there is no testimony or evidence that the person who signed these has legal authority to sign for Paula M. Curren. Without testimony or evidence of such authority, this document is not valid under the law.

27. Affiants declare that since the records were allegedly in the custody of Wage & Investment then the certification must come from them, since they have custody of the records.

28. Affiants declare that Delegation Order W& I W 11-05 only authorizes a few people to provide Certificate of Official Records Form 2866, and the people listed on the VaheExL-1 & VaheExL-2 are not authorized by this Delegation Order. [*See*: Defendant's Exhibit M-4 Delegation Order W& I W 11-05].

29. Affiants declare that Delegation Order W& I W 11-05 gets its authority from Delegation Order 198. Affiants declare that Delegation Order 198 does not authorize anyone from Disclosure to complete Certifications. [*See*: Defendant's Exhibit M-2 Delegation Order 198].

30. Affiants conclude that these documents do not meet the legal requirements set forth in Rule 902 as Self-Authenticating since they were not certified properly.

31. Affiants declare that the Plaintiff provided a Substitution Form 3877, rather than the real Form 3877 Record of Certified and Registered Mailings.

32. Affiants declare that the Plaintiff has failed to provide Postal Service Form 3849 Receipt for Delivery, as requested in Defendant's Request for Documents.

33. Affiants declare that the Plaintiff has failed to provide the information requested in Defendants' Interrogatories and Request For Documents which stated, "Please identify all evidence, whether documentary or testimonial (**identifying fully the person able to provide such testimonial evidence**), proving or disproving or tending to prove or disprove that the NOD was mailed by certified or registered mail to the last known address(es) of the person(s) named."

34. Affiants declare that logic and reason show that the persons who presented the Certification of Official Record Form 2866 do not have any firsthand knowledge regarding the mailing of this document.

35. Affiants declare that it appears "Dorsey" received these documents from some unidentified person from a different office and then attempted to attest to the document as part of the ordinary course of its business to record mailing of Notices of Deficiencies.

36. Affiants declare that then Debra Vahe maked a Declaration that VaheExL-1 and VaheExL-2 are "copies"; albeit copies of what appears to be flawed documents, without testimony or evidence to the

contrary, "certified" by IRS employees without the proper authority to do so and; therefore, have no validity whatsoever.

37. Affiants declare that the importance of IMF is stated, In the "Individual Master File (IMF) – Privacy Impact Assessment" approved on November 10, 2009, where the IRS states:

> "All settlements with taxpayers are affected through computer processing of the IMF account. The data therein is used for accounting records, for issuance of refund checks, bill or **notices**, answering inquiries, classifying returns for audits, preparing reports and other **matters concerned with the processing and enforcement activities** of the IRS."

38. Affiants declare that a Transaction Code (TC) 494 was created to be used when a Notice of Deficiency is issued, per IRS 6209 Manual Year 2003.

39. Affiants declare that a review of James L. Reading's IMF records for the years 1993, 1994, 1995 and for Clare Louise Reading's IMF records for the year 1994 and 1995 show **NO** TC-494 present. This fact is additional evidence that the alleged Notices of Deficiency were never mailed as mandated by statute.

Affiants declare we are not experts in the law however, we do know right from wrong. If there is any human being damaged by any statements herein, if he will inform us by verifiable facts we will sincerely make every effort to make correction(s). We hereby and herein reserve the right to amend this document as necessary in order that the truth may be ascertained and proceedings justly determined. If the parties given notice by means of this document have information that would controvert and overcome this Affidavit, please advise us IN WRITTEN AFFIDAVIT FORM within thirty (30) days from receipt hereof providing us with your counter affidavit, proving with particularity by stating all requisite actual evidentiary fact and all requisite actual law, and not merely the ultimate facts or conclusions of law, signed under penalty of perjury, that this Affidavit is substantially and materially false sufficiently to change materially our status and factual declarations. Your silence stands as consent to, and tacit approval of, the factual declarations herein being established as fact as a matter of law.

Jurat

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, 28 USC § 1746(1).

Reserving ALL Natural God-Given Unalienable Birthrights, Waiving None,

/s/ Clare Louise Reading

Clare Louise Reading

/s/ James Leslie Reading

James Leslie Reading

Arizona State)
) ss
Maricopa County)

The above named person, appeared before me, a Notary, subscribed, sworn under oath this 8 day of August, 2012.

Notary Public

My Commission expires: 3/25/2016

seal

KEVIN S. KEPLINGER
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
March 25, 2016

AFFIDAVIT # 5 BY DEFENDANTS

REGARDING

INVALID CERTIFICATIONS ON PLAINTIFF'S EXHIBITS

I, Clare L. Reading, and James L. Reading hereafter Affiants are natural born citizens of the United States of America and of Arizona, are over the age of 18, mentally competent, and have personal knowledge of the statements being made hereafter in this document. I, Clare L. Reading and James L. Reading having been first duly sworn on oath, state the following:

1. Affiants declare that this Affidavit is being written to show evidence of violations to certify why Plaintiff's Exhibits called out below are not certified correctly as mandated by Delegation Order 198, W&I Delegation Order WI-11-5, Rule 44 or IRM 11.3.6.1 (04-30-2009) Background. As such, Affiants question that the documents are admissible. [See: Exhibit M-2 Delegation Order 198].

2. Affiants understand the CERTIFICATE OF OFFICIAL RECORD Form 2866 is used by the Plaintiff to provide **Proof of Official Record** and when certified correctly, would meet the requirements set forth in F.R.O.E. 902 and F.R.C.P. Rule 44.

3. Affiants understand that the authority to sign this Certification of Official Record Forms 2866 has been delegated to specific people (by titles) in Delegation Order 198 by the Deputy Commissioner.

4. Affiants declare Delegation Order 198 (Rev. 5) is found in IRM 1.2.2.10.5 (09-07-2001). This Delegation Order was written by Bob Wenzel, Deputy Commissioner. In this Delegation Order, Deputy Commissioner Wenzel is re-delegating authority "To affix the Seal of the Office of the Internal Revenue Service to any certificate, or attestation required to be made by the officer for whose office such seal is established in authentication of originals and copies of books, records, papers, writings, and documents of the Internal Revenue Service **in the custody of such officer**, for all purposes, including the purpose of 28 U.S.C. 1733(b), Rule 44 of the Federal Rules of Civil

Procedure, and Rule 27 of the Federal Rules of Criminal Procedure." [*See*: Exhibit M-3 Rule 44 Proof of Official Record].

5. Affiants understand that this authority was provided specifically to people (by title) to perform certification on documents within their custody, and specify authorized Division Commissioners; and Submission Processing in W&I and SBSE.

6. Affiants understand that W&I Delegation Order WI-11-5 gets its authority from Delegation Order 198, and is clearly stated on that document. [***See*: Exhibit M-4 W&I Delegation Order WI-11-5**]

7. Affiants declare that they have read and studied Delegation Order 198; F.R.C.P. Rule 44; W&I Delegation Order WI-11-5; and IRM 11.3.6.1 (04-30-2009). Everyone one of these documents state the need that the **records must be in the custody of the Officer who does the certification**. [See: Exhibit X IRM 11.3.6.1 (04-30-2009) Background]

8. Affiants declare that after looking at the Exhibits submitted by Plaintiff with Certification of Official Record Form 2866 attached, Affiants have noticed several things that should be brought to the Court's attention.

9. Affiants declare all but two are from the Wage & Investment Division. These two exceptions were VaheExL-1 and VaheExL-2, both certified by Disclosure Office 7.

10. Affiants declare that VaheExL-1 and VaheExL-2 Certification Form 2866 have two printed names on them, and then they are signed by a third person, Dorsey [sp], for Paula M. Curren, Disclosure Manager, Office 7.

11. Affiants declare that no testimony or evidence was presented, which would prove that this third person has the legal authority to sign for Paula M. Curren, Disclosure Manager, Office 7. Such person would have to have a Delegation Order to sign Certifications.

12. Affiants declare that Disclosure Office 7 is located in Greensboro NC and services the states Florida, Kentucky, North Carolina, Virginia.

13. Affiants declare that Paula Curren is listed as public liaison on this URL for Florida, Kentucky, North Carolina, Virginia. http://www.irs.gov/foia/article/0,,id=120681,00.html.

14. Affiants declare that all indications on the documents show that the Defendants' records were maintained in Ogden Utah, but the Notice of Deficiencies mailing were allegedly mailed from Phoenix Arizona.

15. Affiants declare that on the face, it appears that this certification is flawed because there is no testimony or evidence presented that would show that these documents were in the custody of as mandated by IRM 11.3.6.1 (04-30-2009) Background Part (7) states; "***Certifications may be issued only for records in the custody of the certifying officer***." In addition there is a Note which says; *"The certifying officer* ***cannot attest to something he/she has not observed****. Therefore, it is usually* ***inappropriate to rely upon the oral "assurance" of other IRS personnel that the document being certified is a true and correct copy of the original.***"

16. Affiants declare that the titles Area Manager and Disclosure Manager are not in the list of individuals authorized to do certifications per Delegation Order 198.

17. Affiants declare that the Certification of Official Record Forms 2866 attached to 4340 labeled as DuffyExC-1, through DuffyExC-9 were all certified by Debbie Bybee Department Manager under the authority of W&I Delegation Order WI-11-5.

18. Affiants declare that the Certification of Official Record Forms 2866 attached to 4340 labeled as DuffyExD-1 through DuffyExD-10 were all certified by Debbie Bybee Department Manager under the authority of W&I Delegation Order WI-11-5.

19. Affiants declare that the titles Department Manager is not listed as an individual authorized to do certifications per W&I Delegation Order WI-11-5.

20. Affiants declare that the Certification of Official Record Forms 2866 attached to 4340 labeled as DuffyExA-1 through DuffyExA-4, although certified by a person listed as authorized by W&I Delegation Order WI-11-5, appears not to have been properly certified as mandated by the Delegation Order WI-11-5, Rule 44 and IRM 11.3.6.1 (04-30-2009), because it appears that the tax returns, assessments, and other documents were created and entered into the record by employees of the Small Business/Self Employee Division out of Ogden Utah and not Wage & Investment.

21. Affiants declare that the Certification of Official Record Forms 2866 attached to 4340 labeled as DuffyExB-1 through DuffyExB-2, although certified by a person listed as authorized by W&I Delegation Order WI-11-5, still may not be properly certified as mandated by the Delegation Order WI-11-5, Rule 44 and IRM 11.3.6.1 (04-30-2009), because it appears that the tax returns, assessments, and other documents were created and entered into the record by employees of the Small Business/Self Employee Division out of Ogden Utah and not Wage & Investment.

22. Affiants declare that the Certification of Official Record Forms 2866 attached to 4340 labeled as DuffyExC-10 and DuffyExD-11, although certified by a person listed as authorized by W&I Delegation Order WI-11-5, still may not be properly certified as mandated by the Delegation Order WI-11-5, Rule 44 and IRM 11.3.6.1 (04-30-2009), because it appears that these civil penalties, assessments, and other documents were created and entered into the record by employees of the Small Business/Self Employee Division out of Ogden Utah.

23. Affiant declares that IRM 11.3.6.1 (04-30-2009), Part 7 states;

    7. **Certifications may be issued only for records in the custody of the certifying officer.** **Note: The certifying officer cannot attest to something he/she has not observed.** Therefore, it is usually inappropriate to rely upon the oral "assurance" of other IRS personnel that the document being certified is a true and correct copy of the original.

24. Affiants declare that the Certifications of the exhibits presented by the Plaintiff are flawed and should not be allowed as admissible without testimony from a witness with firsthand knowledge of the information in them and subject to cross examination.

Jurat

We declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, 28 USC § 1746(1).

Reserving ALL Natural God-Given Unalienable Birthrights, Waiving None, Ever,

/s/ Clare L. Reading

Clare L. Reading

/s/ James L. Reading

James L. Reading

Arizona State)
) ss
Maricopa County)

The above named person, appeared before me, a Notary, subscribed, sworn under oath this 8th day of August 2012.

Notary Public

My Commission expires: 3/25/2016

KEVIN S KEPLINGER
Notary Public State of Arizona
MARICOPA COUNTY
My Commission Expires
March 25, 2016

Respectfully submitted this 8th day of August 2012

EXHIBIT N-1

11.3.6.1 (04-30-2009) Background

1. IRC §7514 authorizes seals of office.
2. 26 CFR section 301.7514-1 governs the use of seals and describes and illustrates the seals. Former Deputy Commissioner Wenzel's memorandum of May 25, 2001 contains further information.
3. The seals of office are used to issue certifications in authentication of originals or copies of Internal Revenue Service (IRS) records.
4. 26 CFR section 301.7622-1 authorizes the Commissioner to designate persons who may issue certifications as necessary to administer internal revenue laws and regulations.
5. Delegation Order 11-5 designates the persons who may issue certifications and provides for the redelegation of this authority.
6. Each seal of office will be in the custody of the officer for whose office it was established. It may be placed in any location convenient to its use.
7. **Certifications may be issued only for records in the custody of the certifying officer.**

   Note:

   The certifying officer cannot attest to something he/she has not observed. Therefore, it is usually inappropriate to rely upon the oral "assurance" of other IRS personnel that the document being certified is a true and correct copy of the original.

8. Seals of office may be affixed to certifications issued for any purpose, including 28 U.S.C. section 1733(b), Rule 44 of the Federal Rules of Civil Procedure and Rule 27 of the Federal Rules of Criminal Procedure.
9. Officers are not authorized to issue certifications of copies of records that may be furnished only by the Commissioner, pursuant to Executive Order, Treasury Decision, or the Statement of Procedural Rules.
10. No seal will be affixed to material to be published in the Federal Register.

http://www.irs.gov/irm/part11/irm_11-003-006.html#d0e10

EXHIBIT N-2

Delegation Order 198 (Rev. 5) 1.2.2.10.5 (09-07-2001)

1. **Seal of the Office of the Internal Revenue Service and Certification to the Authenticity of Official Documents**
2. **Authority:** To **affix the official seal of office** to any certificate, or attestation required to be made by the officer for whose office such seal is established in authentication of originals and copies of books, records, papers, writings, and documents of the Internal Revenue Service **in the custody of such officer**, for all purposes, including the purpose of 28 U.S.C. 1733(b), Rule 44 of the Federal Rules of Civil Procedure, and Rule 27 of the Federal Rules of Criminal Procedure. This authority does not extend to affixing the seal to material to be published in the Federal Register nor to certifying material in any case in which such copies may be furnished to applicants only by the Commissioner pursuant to Executive Order, Treasury Decision, or the Statement of Procedural Rules.
3. **Delegated to: Division Commissioners**; Chiefs (Agency-wide Shared Services, Appeals, Communications and Liaison, and Criminal Investigation); National Taxpayer Advocate; Directors and Chiefs who report directly to the Deputy Commissioner or Assistant Deputy Commissioner; Senior Counselor to the Commissioner; Deputy Commissioner for Modernization/Chief Information Officer; Supervisory Investigative Analysts; Field Directors, **Submission Processing in W&I and SBSE**; and Disclosure Officers.
4. **Redelegated:** This authority may be redelegated only to Disclosure Specialists and supervisory personnel to the extent necessary within the exercise of their official duties.
5. **Sources of Authority: Treasury Order 150-10**; 26 CFR 301.7701-9; 26 CFR 301.7514-1 and 26 CFR 301.7622-1.
6. To the extent that the authority previously exercised consistent with this order may require ratification, it is hereby affirmed and ratified. This order supersedes Delegation Order No.198 (Rev. 4), as amended.
7. Signed: Bob Wenzel, Deputy Commissioner

EXHIBIT N-3

Rule 44. Proof of Official Record

(a) AUTHENTICATION.

(1) Domestic. An official record kept within the United States, or any state, district, or commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or **by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody.** The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, **or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office.**

(2) Foreign. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The 59 FEDERAL RULES OF CIVIL PROCEDURE Rule 45 final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) LACK OF RECORD. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) OTHER PROOF. This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law. (As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991.)

EXHIBIT N-4

W&I Delegation Order WI-11-5

Effective: November 1, 2007

(1) Seal of the Office of the Internal Revenue Service and Certification to the Authenticity of Official Documents

(2) Authority: To affix the official seal of the Internal Revenue Service to any certificate, or attestation required to be made in authentication of originals and copies of books, records, papers, writings, and documents of the Internal Revenue Service **in the custody of** the Commissioner of Internal Revenue, as described in paragraph (2) of Servicewide Delegation Order 11-5

Delegated to:

- Accounting Operations Manager, Submission Processing
- Operations Managers, Field Compliance Services

(3) Redelegation: This authority may not be redelegated.

(4) Source of Authority: Servicewide Delegation of Authority 11-5 (formerly DO-198, Rev. 5)

(5) To the extent that authority previously exercised consistent with this order may require ratification, it is hereby affirmed and ratified.

Signed, Richard J. Morgante, Commissioner,

Wage and Investment Division

EXHIBIT O

AFFIDAVIT # 7

REGARDING

PLANTIFF'S NOTICE OF DEFICIENCY Years 1993, 1994, 1995, and 2008

I, James Leslie Reading, hereafter Affiant, hereinafter, Affiant am over the age of 18 and mentally competent. Affiant has personal knowledge of the statements being made hereafter in this document. I, James Leslie Reading, having been first duly sworn on my oath, state the following:

1. Plaintiff has provided DuffyExI claiming is it a copy of the Notice of Deficiency for 2008 that was mailed as mandated by statute and provided DuffyExK and VaheExL-2 as proof of mailing.
2. Plaintiff has provided DuffyExG claiming it is a copy of the Notice of Deficiency for 1993, 1994, and 1995 that was mailed as mandated by statute and provided DuffyExJ and VaheExL-1 as.
3. Affiant declares that both DuffyExI and DuffyExG Notices of Deficiencies were attached to a Form 2866 and was certified by Wage and Investment Division of the IRS.
4. Affiant declares that the Notice of Deficiency for 2008 was received, however the Notice of Deficiency for 1993, 1994, and 1995 was never received by Affiant.
5. Affiant declares that since this was never received, Affiant was denied a basic due process right to petition Tax Court.
6. Affiant declares that as additional evidence that no Notice of Deficiency was sent, there are no TC-494[1]s in Affiant's IMF records for the years 1993, 1994 or 1995. A TC 494 is the Transaction Code used in the IMF record to record that a Statutory Notice of Deficiency was sent.
7. Affiant declares that this Notice of Deficiency presented in DuffyExG does not have any Certified Mail Number affixed to it, which would positively prove that it was the letter indentified in DuffyExJ with the Certified Mail # Z096928394 as the one mailed on 11-15-2000.

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[1] 6209 Manual Year 2003 Page 8-27 states; TC 494 Indicates that a Statutory Notice of Deficiency (90-day) was issued. Issuing Organization Code two position numeric only (70. 71, 84). CC: STN 90

EXHIBIT O

8. Affiant declares that in reviewing DuffyExJ Notice of Mailing, the letter identified with Certified Mail # Z096928394 is not identified by title as a Notice of Deficiency.

9. Affiant declares that in reviewing DuffyExJ Notice of Mailing, the letter identified with Certified Mail # Z096928394 states it was for the tax years 9312, 9412, 9512, 9612.

10. Affiant declares that Notice of Deficiency presented in DuffyExG is not the document or letter that was claimed to be mailed and reported on the Form 3877 in DuffyExJ or in VaheExL-1, because that document was for tax years 9312, 9412, 9512, and 9612 and the Notice of Deficiency in DuffyExG is only for three years 9312, 9412, 9512. [*See* Exhibit M Defendant's Affidavit # 5 Regarding Plaintiff's NOD Mailing.]

11. Affiant declares there is no creatable evidence provided by the Plaintiff to support the fact that they did in fact mail a copy of the Notice of Deficiency to James L. Reading as falsely claimed or presumed.

12. Affiant declares that the Plaintiff has also provided DuffyExJ & VaheExL-1 as evidence that this document was mailed to me. However the evidence provided by Plaintiff appears to be signed by an IRS employee and not a third party postal employee. This raises the question if the alleged mailing even meets the requirement of common law mail rule. [*See* Exhibit M Defendant's Affidavit # 5 Regarding Plaintiff's NOD Mailing.]

13. Affiant declares that in DuffyExG on sheet Prod0001, the date in the upper left hand corner of the Notice of Deficiency is not legible.

14. Affiant declares that in DuffyExG on the page marked as "Prod0002", it shows Charles O. Rossotti Commissioner's name printed, BUT it is signed by Norman McDowell title Reviewer.

15. Affiant has no evidence and no testimony or evidence has been presented by the Plaintiff to the Court that would show that a "Reviewer" such as Norman McDowell can sign a letter only authorized by statute 26 U.S.C. § 6212 to be signed by the Secretary, or authorized by regulation 26 C.F.R. § 301.6212-1 to be signed by the District Director.

16. Affiant declares that Delegation Order 4-8 states that the following people are authorized within Wage & Investment Division to do Certifications; Wage & Investment (W&I) Directors, Accounts Management, Field Compliance Services and Submission Processing, W&I Territory Managers. As you can see "Reviewer" is not authorized to sign this letter. [*See* Exhibit O-1 Delegation Order 4-8]

EXHIBIT O

17. Affiant declares this authority can only be authorized via Delegation Orders, and the Plaintiff has presented no testimony or evidence to show that a proper unbroken chain of Delegation Orders from the Secretary to Norman McDowell, who signed this document.

18. Affiant declares that the Form 4549 found in DuffyExG is defective, is in error, and shows procedure violations of the IRM by the IRS who completed it, which by the way, is a mystery since it is unsigned.

19. Affiant declares the next few pages labeled as Prod0003 & Prod0004, which claim to be a Form 4549A, are not completed in compliance with IRM Exhibit 4.75.14-8 (08-16-2006) Form 4549 and 4549-A, Instructions for Completion. Specifically the following procedure violations can be seen on the form.

    a. Name and address are not entered in as they are instructed to per this IRM.
    b. In Part 4 **Filing Status,** the IRS has entered Married Filing Separate. The IRM only allowed the following choices "**Corporation, Trust, or Association**".
    c. The Box for Person with Whom Examination Changes Were Discussed is blank. The IRM requires this to be completed.
    d. The Summary section was altered and was not initialed by the person who changed it. This raises serious questions to the correctness and creditability of the document.
    e. There is no Examiner's Signature on the form as required.

20. Affiant declares that under Section 1 Part C - Capital Gaines, the IRS shows $85,889.00 gain for 1993 and $11,948.00 gain for 1994. These numbers are not correct. Both tax years the Affiant loss money in the stock sales, and the IRS knows this fact and still to this day refuses to correct it. As evidence of the loss, Revenue Officer Debra Vahe's provided input to the CIS report that she did a recalculations, and in fact the TP showed a loss for those years as we have claimed. There was NO GAIN, yet she remains silent about this fact.

21. Affiant declares that the amounts reported on the Form 4549 under Section 1 Adjustments to Income A, B, & I are reported amounts from third parties, which are in dispute. The information returns, Forms 1099, prepared and sent to the IRS are not certified nor sworn to and do not meet the rules of evidence to be allowed into evidence, so how can they possibly be used to support a claim by the IRS? The IRS is in effect using hearsay evidence and ignoring sworn testimony and US Supreme Court ruling to support the alleged amounts of gross income.

EXHIBIT O

22. Affiant declares that these third parties reported non-taxable income as taxable income, a mistake known as BAD PAYER DATA found in IRM 4.2.2.4 Identification of Bad Payer Data Part 4 –E.

23. Affiant hereby declares that the entities below fraudulently filed 3rd party information returns with the Secretary of the Treasury out of ignorance. They are fraudulent for the following reasons:

a. The income tax is an indirect tax in the form of an excise.[2, 3, 4, 5, 6]
b. An indirect excise is a tax levied on certain activities or privileges.[7, 8, 9]

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[2] "The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax: it is the basis for determining the amount of tax." House Congressional Record, March 27, 1943, page 2580

[3] "Moreover, in addition, the conclusion reached in the Pollock Case did not in any degree involve holding that income taxes generically and necessarily came within the class [240 U.S. 1, 17] of direct taxes on property, but, on the contrary, recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct taxation was adopted to prevent, in which case the duty would arise to disregard form and consider substance alone, and hence subject the tax to the regulation as to apportionment which otherwise as an excise would not apply to it. Nothing could serve to make this clearer than to recall that in the Pollock Case, in so far as the law taxed incomes from other classes of property than real estate and invested personal property, that is, income from 'professions, trades, employments, or vocations' (158 U.S. 637), its validity was recognized; indeed, it was expressly declared that no dispute was made upon that subject, and attention was called to the fact that taxes on such income had been sustained as excise taxes in the past. Id. p. 635." *Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1, 16-17 (1916)

[4] "It is unnecessary to enter upon an extended consideration of the technical meaning of the term "excise." It has been the subject-matter of considerable discussion — the terms duties, imposts and excises are generally treated as embracing the indirect forms of taxation contemplated by the Constitution." *Flint v. Stone Tracy Co.*, 220 US 107, 151 (1911)

[5] "Excise Taxes 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., page 680.)" *Flint v. Stone Tracy Co.*, 220 U.S. 107, 151 (1911)

[6] "We must therefore enter upon the inquiry as to implied limitations upon the exercise of the Federal authority to tax because of the sovereignty of the States over matters within their exclusive jurisdiction, having in view the nature and extent of the power specifically conferred upon Congress by the Constitution of the United States. We must remember, too, that the revenues of the United States must be obtained in the same territory, from the same people, and excise taxes must be collected from the same activities, as are also reached by the States in order to support their local government." *Flint v. Stone Tracy Co.*, 220 U.S. 107, 154 (1911)

[7] "A tax laid upon the happening of an event, as distinguished from its tangible fruits, is an indirect tax which Congress, in respect of some events not necessary now to be described more definitely, undoubtedly may impose." *Tyler v. U.S.*, 281 U.S. 497, 502 (1930)

[8] "It is contended, however, that the fact that the license tax can suppress or control this activity is unimportant if it does not do so. But that is to disregard the nature of this tax. It is a license tax — a flat tax imposed on the exercise of a privilege granted by the Bill of Rights. A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution." *Murdock v. Pennsylvania*, 319 U.S. 105, 113 (1943)

[9] "The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; but the individual's right to live and own property are natural rights for the enjoyment of which an excise cannot be imposed: 26 R.C.L., Taxation, § 209,

EXHIBIT O

Pilot & Associate	EIN # 63-0847253
Pilot Catastrophe	EIN # 63-1012513
Pilot Temp. Services	EIN # 63-1078154

24. Affiants declares the under Section 17 Penalties Part A of this Form 4549, the IRS has issued DELQ-IRC 6651(a)(1) penalties for and in the amount of $12,909.00 for Year 1993; $15,762.25 for Year 1994; and $10,484.50 for Year 1995.

25. Affiant declares that no 26 U.S.C. § 6020(b) Certification Form 13496 has been presented to the Court for any of the years 1993, 1994, or 1995.

26. Affiant declares that according to the Courts and Chief Counsel **Notice** – CC 2007-005, dated February 4, 2007, these penalties are not authorized because the allegedly created 26 U.S.C. § 6020(b) returns have not been properly placed into evidence.

27. Affiant declares that no return by the IRS has been submitted into evidence.

28. Affiant declares that with no return, there can be no "tax deficiency" by definition per 26 U.S.C. § 6211.

29. Affiant declares that with no proper "tax deficiency", there can be no "liability".

30. Affiant declares that without a "liability", there is nothing to assess per 26 U.S.C. § 6203.

31. Affiant declares that without a legal and proper assessment, there can be Federal Tax Assessments.

32. Affiant declares that without legal and proper Federal Tax Assessments, there can be no reduction to Judgment.

Affiant declares I am not an expert in the law; however, I do know right from wrong. If there is any human being damaged by any statements herein, if he will inform me by verifiable facts I will sincerely make every effort to make correction(s). I hereby and herein reserve the right to amend this document as necessary in order that the truth may be ascertained and proceedings justly determined. If the parties given notice by means of this document have information that would controvert and overcome this

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p. 236; Cooley, Taxation, (4th Ed.), § 1676; *Opinion of the Justices*, 195 Mass. 607 (84 N.E. 499)." *Redfield v. Fisher*, 135 Or. 180, 197-198 (1931)

EXHIBIT O

Affidavit, please advise me IN WRITTEN AFFIDAVIT FORM within thirty (30) days from receipt hereof providing me with your counter affidavit, proving with particularity by stating all requisite actual evidentiary fact and all requisite actual law, and not merely the ultimate facts or conclusions of law, signed under penalty of perjury, that this Affidavit is substantially and materially false sufficiently to change materially my status and factual declarations. Your silence stands as consent to, and tacit approval of, the factual declarations herein being established as fact as a matter of law.

Jurat

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, 28 USC § 1746(1).

Reserving ALL Natural God-Given Unalienable Birthrights, Waiving None,

/s/ James Leslie Reading

Arizona State)
) ss
Maricopa County)

The above named person, appeared before me, a Notary, subscribed, sworn under oath this 8th day of August, 2012.

Notary Public

My Commission expires: 3/25/2016

KEVIN S. KEPLINGER
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
March 25, 2016

EXHIBIT O-1

1.2.43.2 (02-10-2004) Delegation Order 4-8 (Formerly DO-77, Rev. 28)

1. **Authority to Issue Notices of Deficiency and/or Execute Agreements to Rescind Notices of Deficiency**
2. **Authority:** To sign and send to the taxpayer by registered or certified mail any notice of deficiency.
3. **Delegated to:** Appeals Team Managers and Appeals Team Case Leaders (as to their respective cases); Large and Mid-Size Business (LMSB) Territory Managers; Small Business/Self-Employed (SB/SE) Field Directors: Accounts Management and Submission Processing; Campus Department Managers in SB/SE Compliance Services; SB/SE Compliance Field Territory Managers; **SB/SE Technical Services Revenue Agent Reviewers GS-12 and Tax Compliance Officer Reviewers GS-09**; **Tax Exempt/Government Entities (TE/GE) Reviewers GS-12**; Wage & Investment (W&I) Directors: Accounts Management, Field Compliance Services and Submission Processing; W&I Territory Managers.
4. **Redelegation:** This authority may not be redelegated.

5. **Authority:** To sign a written form or document rescinding any notice of deficiency.
6. **Delegated to:** Appeals Team Managers and Appeals Team Case Leaders (as to their respective cases); SB/SE Field Directors: Accounts Management and Submission Processing; Campus Department Managers in SB/SE Compliance Services; W&I Directors: Accounts Management, Field Compliance Services and Submission Processing; TE/GE Area Managers; Government Entities Field Examinations Managers; Government Entities Field Operations Managers; SB/SE Compliance Field Territory Managers and Technical Services Revenue Agent Reviewers GS-13; W&I Territory Managers; and LMSB Territory Managers.
7. **Redelegation**: This authority may not be redelegated.
8. **Sources of Authority:** 26 U.S.C. 6212(a); 26 U.S.C. 6212(d); 26 CFR 301.7701–9; 26 CFR 301.6212–1; Treasury Order 150–10.
9. To the extent that any action previously exercised consistent with this order may require ratification, it is hereby approved and ratified. This order supersedes Delegation Order No. 77 (Rev. 28), effective May 17, 1996.
10. To the extent that any action previously exercised consistent with this order may require ratification, it is hereby approved and ratified. This order supersedes Delegation Order No. 77 (Rev. 28), effective May 17, 1996.
11. Signed by: Mark E. Matthews, Deputy Commissioner for Services and Enforcement

AFFIDAVIT # 8
BY CLARE LOUISE READING
REGARDING
PLANTIFF'S DUFFY EX-H NOTICE OF DEFICIENCY 1994 & 1995

I, Clare Louise Reading, hereafter Affiant, am a natural born citizen of the United States of America and of Arizona, am over the age of 18 and mentally competent. Affiant has personal knowledge of the statements being made hereafter in this document. I, Clare Louise Reading, having been first duly sworn on my oath, state the following:

1. Plaintiff has provided DuffyExH claiming is it a copy of the Notice of Deficiency that was mailed as mandated by statute.
2. Affiant declares that this document was never received by Affiant.
3. Affiant declares that since this was never received, Affiant was denied a basic due process right to petition Tax Court.
4. Affiant declares that as additional evidence that no Notice of Deficiency was sent, there are no TC-494[1]s in Affiant's IMF records for the years 1994 or 1995. A TC 494 is the Transaction Code used in the IMF record to record that a Statutory Notice of Deficiency was sent.
5. Affiant declares that this Notice of Deficiency presented in DuffyExH does not have the Certified Mail Number Z096928396 typed on it which would positively prove that it was the letter indentified in DuffyExJ with the Certified Mail # Z096928396 as the one mailed on 11-15-2000.
6. Affiant declares that in reviewing DuffyExJ Notice of Mailing, that mailing identified with Certified Mail # Z096928396 is not identified by title that it is a Notice of Deficiency.
7. Affiant declares that in DuffyExH on the front page marked as Prod 0034, the word DEFAULTED is stamped on it.

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[1] 6209 Manual Year 2003 Page 8-27 states; TC 494 Indicates that a Statutory Notice of Deficiency (90-day) was issued. Issuing Organization Code two position numeric only (70. 71, 84). CC: STN 90

8. Affiant declares that the document in DuffyExH could not be a copy of the NOD that was claimed to be mailed and reported on the Form 3877 in DuffyExJ or VaheExL-1, since such documents would have not been defaulted on at the time of mailing.

9. Affiant declares that the document in DuffyExG, which was mailed the same day, does not have the word DEFAULTED stamped upon it.

10. Affiant declares that the page marked PROD 0034 in the document DuffyExH has a Certified Form 3800, which appears to have been placed on a copy machine and the front page of the Notice of Deficiency on top so that a copy could be made.

11. Affiant declares that there is no indication that this was every attached to any document including this one.

12. Affiant declares that such "evidence" is worthless, since there is no sworn testimony that in fact this Notice of Deficiency was mailed using this Certified Mail number. As proof it is worthless, Affiant provides a document in which the same thing was done. [*See*: Exhibit MM Fake Certification Evidence]. No one can anyone prove or disprove that Affiant mailed that letter by certified mail.

13. Affiant declares there is no creatable evidence provided by the Plaintiff to support the fact that they did in fact mail a copy of the Notice of Deficiency to Clare L. Reading as claimed or presumed.

14. Affiant declares that the Plaintiff has also provided DuffyExJ & VaheExL-1 as evidence that this document was mailed to me. However the evidence provided by Plaintiff appears to be signed by an IRS employee and not a third party postal employee. This raises the question if the alleged mailing even meets the requirement of common law mail rule. [*See*: Affidavit # 4 Regarding Mailing of NOD].

15. Affiant declares that in DuffyExH on the page marked as Prod0035, it shows Charles O. Rossotti Commissioner's name printed and signed by Norman McDowell title Reviewer.

16. Affiant declares that no testimony or evidence has been presented by the Plaintiff to the Court that would show that a "Reviewer", such as Norman McDowell, can sign a letter only authorized by statute 26 U.S.C. § 6212 to be signed by the Secretary or authorized by regulation 26 C.F.R. § 301.6212-1 to be signed by the District Director.

17. Affiant declares this authority can only be authorized via Delegation Orders, and the Plaintiff has presented no testimony or evidence to show that a proper unbroken chain of Delegation Orders from the Secretary to Norman McDowell, who signed this document to show his authority.

18. Affiant declares that no testimony or evidence has been provided by the Plaintiff to show that the statutory requirements of 26 U.S.C. § 6212 have been meet.

19. Affiant declares the next few pages labeled as "Prod0039 & Prod0040", which claim to be a Form 4549A, are not completed in compliance with IRM Exhibit 4.75.14-8 (08-16-2006) Form 4549 and 4549-A, Instructions for Completion. Specifically the following procedure violations can be seen on the form.

    a. Name and Address are not entered in as they are instructed to be per this IRM.
    b. In Part 4 **Filing Status,** the IRS has entered Married Filing Separate. The IRM only allowed the following choices "**Corporation, Trust, or Association**".
    c. The Box for Person with Whom Examination Changes Were Discussed is blank. The IRM requires this to be completed.
    d. The Summary section was altered and was not initialed by the person who changed it. This raises serious questions to the correctness and creditability of the document.
    e. There is no Examiner's Signature on the form as required.

20. Affiant declares the under Section 1 Part C - Capital Gaines, the IRS shows $11,948.00 gain for 1994. These numbers are not correct, because Affiant lost money in the stock sales for that year and the IRS knows this fact and still to this day refuse to correct it. As evidence of the loss, Affiant obtained a copy of the ICS Log via the FOIA, which shows were Revenue Officer Debra Vahe provided her comments about the recalculations of stock sales and gains, and in fact agreed that the Defendants showed a loss for those years, as they have claimed. There was NO GAIN, yet she remains silent about this fact. [*See*: Exhibit JJ Vahe's ICS]

21. Affiant declares that the IRS has been presented this evidence many times and they know there was no gain for the year 1993 or 1994, as they have falsely claimed in their records.

22. Affiant declares that the IRS, rather than correct this error, continues to move forward and make false claims about the amount of capital gains received for this year.

23. Affiant declares that under Section 1 Part C - Capital Gaines, the IRS shows $11,948.00 gain for 1994 is incorrect **for a different reason**. Affiant declares that the IRS also reported this amount on the Notice of Deficiency (DuffyExG).for the year 1994 against James L Reading.

24. Affiant declares in effect the IRS is claiming that they both earned $11,948.00 in capital gains for the year 1994 for a total of $23,896.00 between the both of them. Affiant declares such a claim is *prima facie* evidence of demanding a sum greater than authorized by law, which is codified in 26 USC § 7214(a)(2).
25. Affiant declares that the amounts reported in DuffyExH on the Form 4549 under Section 1 Adjustments to Income A, B, are false and erroneous. Affiant did not work for these companies and did not receive any payment from them.[*See*: Exhibit RR Letter from Pilot]
26. Affiant declares that there is no testimony or evidence presented to the Court to show that these companies paid this amount to Affiant, as falsely claimed in this document.
27. Affiant declares that there is no explanation provided in this NOD explaining where the IRS came up with these numbers on the document. It appears that they just made them up out of thin air.
28. Affiant declares that it appears that the IRS took 50% of the amount paid by these third parties to Affiant's husband, and created this document claiming that these companies paid Affiant these amounts.
29. Affiant declares that in doing so, the IRS is now claiming that Defendants received 1.5 times more money than what was really received or paid to Affiant's husband by these companies.
30. Affiant declares that no testimony or evidence has been provided that would show that the IRS is authorized by statute to do this.
31. Affiant declares that the IRS did not decrease or adjust down Defendant James L. Reading's reported income by 50%, but instead continued to claim that he owes taxes and penalties on the full amount, with one hand, and with the other claims Defendant Clare Reading owes taxes and penalties on an additional 50% of compensation that was never received.
32. Affiant declares that under Section 17 Penalties Part A, the IRS has issued DELQ-IRC 6651(a)(1) penalties for 1994 in the amount of $5,810.75 and for 1995 in the amount of $3,122.25.
33. Affiant declares that according the Courts and **Chief Counsel Notice – CC 2007-005**, dated February 4, 2007, these penalties are not authorized because the allegedly created 26 U.S.C. § 6020(b) returns have not been properly placed into evidence.
34. Affiant declares that no 26 U.S.C. § 6020(b) Certification Form 13496 has been presented to the Court for the tax years 1994, 1995.

35. Affiant declares that there is no return created by the Secretary that has been submitted into evidence for the years 1994 and 1995.

36. Affiant declares that with no return, there can be no "tax deficiency" by definition per 26 U.S.C. § 6211.

37. Affiant declares that with no proper "tax deficiency", there can be no "liability".

38. Affiant declares that without a "liability", there is nothing to assess per 26 U.S.C. § 6203.

39. Affiant declares that without a legal and proper assessment, there can be no Federal Tax Assessments.

40. Affiant declares that without legal and proper Federal Tax Assessments, there can be no reduction to Judgment.

Affiant declare I am not an expert in the law; however, I do know right from wrong. If there is any human being damaged by any statements herein, if he will inform me by verifiable facts, I will sincerely make every effort to make correction(s). I hereby and herein reserve the right to amend this document as necessary in order that the truth may be ascertained and proceedings justly determined. If the parties given notice by means of this document have information that would controvert and overcome this Affidavit, please advise me IN WRITTEN AFFIDAVIT FORM within thirty (30) days from receipt hereof providing me with your counter affidavit, proving with particularity by stating all requisite actual evidentiary fact and all requisite actual law, and not merely the ultimate facts or conclusions of law, signed under penalty of perjury, that this Affidavit is substantially and materially false sufficiently to change materially my status and factual declarations. Your silence stands as consent to, and tacit approval of, the factual declarations herein being established as fact as a matter of law.

Jurat

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, 28 USC § 1746(1).

Reserving ALL Natural God-Given Unalienable Birthrights, Waiving None,

/s/ Clare Louise Reading

Clare Louise Reading

Arizona State)
) ss
Maricopa County)

The above named person, appeared before me, a Notary, subscribed, sworn under oath this 8th day of August, 2012.

Notary Public

My Commission expires: 3/25/2016

KEVIN S. KEPLINGER
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
March 25, 2016

EXHIBIT Q

AFFIDAVIT # 9

BY OF JAMES LESLIE READING REGARDING

ASSESSMENTS FOR CIVIL PENALTIES YEAR 1997 - 2008

PREFACE

The attached Memorandum **(Exhibit A)** was written to explain assessments. It should be read first, and referred to if needed as you read this Affidavit.

An "assessment" must be completed before there is any tax owing, according to the courts[1]. An "assessment" is NOT one step, but it is a sequence of steps that must be completed, and therefore this is often misunderstood. There are specific steps or tasks that must be completed by the Secretary, before any tax is properly and legally owed. The memorandum will explain these steps and tasks. Once these steps have been completed, the "tax liability" is considered assessed. An "assessment" is an administrative determination of a "tax liability". The statutory and regulatory requirements are codified in 26 U.S.C. § 6203 and 26 C.F.R. § 301.6203-1.

AFFIDAVIT

I, James Leslie Reading, being first duly sworn on oath, state that I am a natural born citizen of the United States of America and of Arizona, am over the age of 18 and have firsthand knowledge of the following facts and provide this Affidavit of my own free will.

1. I have used personal computers regularly since 1989, including word processing and work with databases and spreadsheets.

2. I have had and maintain close contact with people who have earned college degrees as

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[1] *United States of America v. Dixon*, **672 F.Supp. 503 USDC, Middle Dist. Ala., (1987)**. "The defendant correctly contends that the basis of tax liability is the assessment. For a **tax liability to be duly collected**, it **must be first properly assessed**. In order for a **tax deficiency to be assessed against a taxpayer, an assessment officer must sign and date a Form 23-C**." [Emphasis added]

computer programmers and who perform computer trouble shooting and repair.

3. These experts have shown me some of the many intricacies in the precise manner in which computers are programmed to work.

4. This affidavit is being provided to support what these programmers and experts have shown and taught me, in particular, about the computer systems of the Internal Revenue Service, coupled with my personal knowledge of decoding the IRS Internal Master Files together with my study of the Internal Revenue Code, Title 26 of the United States Code, the Code of Federal Regulations, the Statutes at Large, the Congressional Record, the Federal Register, and case law of the Arizona Tax Division of the Maricopa County Superior Court, tax cases from various U.S. District Courts, U.S. Tax Court and many U.S. Supreme Court rulings.

5. The information contained in this affidavit describes the authority relied upon in Title 26 of the Internal Revenue Code, and their supporting regulations, Internal Revenue Manual provisions, and supporting case law. In addition, the IRS Processing Codes and Information Manual (Formerly Titled: ADP and IDRS Information) Operating Manual 6209.

6. The duty imposed upon the IRS by the regulation, is to supply the required information upon request to taxpayers, who ask for verification of Assessment. This allows the taxpayer to see what evidence the IRS has to affirm the assessment, and to provide the taxpayer an opportunity to rebut that evidence.

7. The IRS has provided James Leslie Reading with a Certified Form 4340 created from the MFT 55 Tax Module for Civil Penalties issued for **1997 – 2008 (excluding 2001 & 2007)** each tax year. This, along with RACS 006 "Summary Record of Assessments" for each assessment date, was provided as evidence of a proper assessment for these penalties.

8. A review of Certified Form 4340 created from the MFT 55 Tax Module for the tax year **1997-2008 (excluding 2001 & 2007)**, shows the following penalties:

Year	Type	Description	Amount	Assessment Date(s)
1997	CIVPEN	Misc Penalty	$ 500.00	05/21/2007
1998	CIVPEN	Misc Penalty	$ 500.00	05/21/2007
1999	CIVPEN	Misc Penalty	$ 500.00	05/21/2007
2000	CIVPEN	Misc Penalty	$ 500.00	05/14/2007
2002	CIVPEN	Misc Penalty	$ 500.00	05/14/2007
2003	CIVPEN	Misc Penalty	$ 500.00	05/14/2007
2004	CIVPEN	Misc Penalty	$ 500.00	05/14/2007
2005	CIVPEN	Misc Penalty	$ 500.00	05/14/2007
2006	CIVPEN	Misc Penalty	$5,000.00	10/22/2007
2008	CIVPEN	Misc Penalty	$5,000.00	08/17/2009

9. Affiant declares that as reported in Certified Form 4340 for the Civil Penalties (Created from MFT 55 Tax Module), the penalties stated above in item 8 were assessed on the dated listed above.

10. Affiant declares that the "**Assessment Date(s)**" listed above is the "**23C Date**" or the "**Date of Assessment**" is in fact the "**Transaction Date(s)**" of the same entries found in the IMF records for those years.

11. Affiant declares that the "**Transaction Date**" is the date this entry was made into the computer to the Transaction File. See Exhibit F Memorandum Regarding Assessments Page 9 ¶2 - ¶5.

12. The IRS has provided Affiant with the RACS 006 Summary Record of Assessments dated and signed on the dates listed above, as proof of assessment, and these are the documents that I will address. See Exhibit Q-1 RACS 006 Report Date **05/21/2007,** Exhibit Q-2 RACS 006 Report Date **05/14/2007,** Exhibit R-3 RACS 006 Report Date **10/22/2007 and** Exhibit R-4 RACS 006 Report Date **08/17/2009.**

13. There is one entry, which I would like to call to your attention, and this is marked as Item # 1, on these RACS 006 Summary Record of Assessments. This is the date and time that these reports were run or created. It is a standard requirement in report generation programs, that the date and time the report was created or run, is printed. This requirement provides the person reviewing the document additional information regarding the period that the report covers. This is required by law, and is necessary to allow authentication, should it be

challenged in Court. In most report generating applications, the person must select the period of time that he wants the computer to collect and display the data within the database for the report. Since only one date is provided on this report, it is assumed to cover everything in the database, from the beginning of the database to the run date.

14. Affiant declares that the RACS 006 Summary Record of Assessments Exhibit Q-1 dated and signed on **05/14/2007,** was run on **05/08/2007 and 11:10:22** in the morning.

15. Affiant declares that the RACS 006 Summary Record of Assessments Exhibit Q-2 dated and signed on **05/21/2007,** was run on **05/18/2007 and 01:58:00** in the morning.

16. Affiant declares that the RACS 006 Summary Record of Assessments Exhibit R-3 dated and signed on **10/22/2007,** was run on **10/19/2007 at 08:31:01** in the morning.

17. Affiant declares that the RACS 006 Summary Record of Assessments Exhibit R-4 dated and signed on **08/17/2009,** was run on **08/14/2009 at 10:45:54** in the morning.

18. Affiant declares that any presumption or claim these Summary Record of Assessments contains James Leslie Reading's assessments for these Civil Penalties, is false. This is because the, "**Assessment Date**" on the Form 4340 is the, "**Transaction Date**" of the same entry in the IMF MFT 55 Tax Module, and these entries were not entered into the local area computer until that date. The computer cannot contain nor output data, which has not yet been entered into it.

19. Affiant declares that it is not possible for data or amounts which have not been entered into a computer yet to be in a report generated from the computer days before. No testimony or evidence has been presented by the Plaintiff to support the presumption that the amounts assessed are in fact in the RACS 006 Summary Record of Assessments, as mandated by law.

20. Affiant declares this is *prima facie* evidence that the amounts assessed on Assessment Date and reported on the Certified Forms 4340, could not be in the Summary Record of Assessments reports, which were ran days before the entry into the computer.

21. To demonstrate the significance and importance of this, compare this with Internet banking.

If you went on line to your bank account on Tuesday **05/08/2007** and **11:10:22** in the morning and printed out of all transactions (credits and debits) for the past 12 months from your account, the computer would print out a report with all transactions for the past 12 months. Would you expect to see a check you have not written yet to be in this report? Of course not! Now, if you wrote a check for $1,000 on Monday **05/14/2007** and the person you gave it to, ran down to your bank to cash it that very same day, would the $1,000 check you wrote on Monday **05/14/2007** be on the printout you received from the bank on Friday 3 days before? Of course not! Why? Because the check had not been written yet, and it also had not been presented to the bank for payment yet. The same is true here in this case. How can a check (assessment) not written yet until **05/14/2007** be in a report created on **05/08/2007** by the Bank (IRS)**?** It cannot!

22. The Summary Record of Assessments must be created **before** an assessment officer can sign it. His/her signature and date, becomes the legal, "**Assessment Date**" or "**23C Date**", but not unless the taxpayer's assessments are included in the signed Summary Record of Assessments, can there be a valid assessment against the taxpayer.

23. Therefore, the presumption or claim by the IRS that the RACS 006 Reports presented with the assessment date of **05/14/2007,05/21/2007, 10/22/2007 and 08/17/2009,** contains James Leslie Reading's assessment, is false.

24. Therefore, since the Summary Record of Assessments dated **05/14/2007,05/21/2007, 10/22/2007 and 08/17/2009,** do not contain James Leslie Reading's assessments, there is no proper or legal assessment, because James Leslie Reading's assessments were not recorded in the Summary Record of Assessments, as required by regulation 26 CFR § 301.6203-1, which is required to meet the Congressional mandate in 26 USC § 6203.

CONCLUSION

25. The RACS 006 Summary Record of Assessments dated **05/14/2007,05/21/2007, 10/22/2007 and 08/17/2009**, have failed to provide evidence that the amount claimed to be assessed in the Certified Form 4340 for the tax year **1997 – 2008 (excluding 2001 and 2007)** has in fact been assessed as mandated by statute 26 USC § 6203 and regulation 26 CFR § 301.6203-1 on **05/14/2007,05/21/2007, 10/22/2007 and 08/17/2009**, as claimed.

26. This declaration and analysis of the RACS 006 Summary of Record of Assessments dated **05/14/2007,05/21/2007, 10/22/2007 and 08/17/2009**, provides *prima facie* evidence that the assessment amounts claimed to be assessed on **05/14/2007,05/21/2007, 10/22/2007 and 08/17/2009**, in the IMF records, were in fact **not assessed** or contained in the RACS 006 Summary of Record of Assessments dated **05/14/2007,05/21/2007, 10/22/2007 and 08/17/2009.**

27. The Summary Record of Assessments must be created before an assessment officer can sign it. That date and signature becomes the legal, "Assessment Date" or "23C Date", **but not until a taxpayer's assessments are included** in a signed Summary Record of Assessments, can there be a valid assessment.

28. All evidence shows that there was no statutorily proper assessment, as required by law, performed by the IRS. Therefore, any reasonable person must conclude that there are no valid or enforceable assessments against James Leslie Reading for the tax years **1997 – 2008 (excluding 2001 and 2007) 1994**. All claims by the IRS, of a debt owed by James Leslie Reading for the year **1997 – 2008 (excluding 2001 and 2007)** are frivolous claims under the law, because they were not properly assessed as mandated by law, and must be removed or withdrawn.

Jurat

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, 28 USC § 1746(1).

Reserving ALL Natural God-Given unalienable birthrights, waiving none,

/s/ James Leslie Reading

James Leslie Reading

Arizona State)
) ss
Maricopa County)

The above named person, appeared before me, a Notary, subscribed, sworn under oath

this 8th day of August, 2012.

Notary Public

My Commission expires: 3/25/2016

SEAL

KEVIN S. KEPLINGER
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
March 25, 2016

Race Report - 006

Summary Record of Assessments

05/08/2007
11:10:12

OCD2N

Certificate Number 133200705080002

Assessment Type
Regular

Assessment Date
05142007

Current Assessments

Class of Tax	Items	Tax	Penalty	Interest
WITHHOLDING	169,544	$5,661,624,565.58	$123,892,460.79	$24,344,399.11
INDIVIDUAL	45,660	$183,409,090.46	$10,580,786.81	$14,759,585.61
CORPORATION	17,009	$1,446,034,873.40	$11,790,735.40	$11,807,611.62
EXCISE	4,070	$5,620,927.56	$8,796,376.85	$110,495.40
ESTATE & GIFT	10	$0.00	$16.00	$523,285.19
CTA	0	$0.00	$0.00	$10,000.00
FUTA	80,245	$93,700,473.54	$3,212,893.98	$1,175,424.73
EFTPS UNCLASSIFIED	0	$0.00	$0.00	$0.00
Total Current Assessments	316,538	$7,390,389,930.54	$158,273,371.83	$52,730,801.66

Deficiency Assessment

Class of Tax	Items	Tax	Penalty	Interest
WITHHOLDING	151	$1,696,133.12	$441,113.01	$95,022.84
INDIVIDUAL	3,274	$53,079,938.97	$14,560,848.95	$9,792,414.66
CORPORATION	111	$67,535,496.30	$783,300.31	$11,921,404.60
EXCISE	5	$0.00	$314.77	$0.00
ESTATE & GIFT	2	$610,142.00	$0.00	$1,622.91
CTA	0	$0.00	$0.00	$0.00
FUTA	7	$8,417.11	$7,618.03	$1,118.57
EFTPS UNCLASSIFIED	0	$0.00	$0.00	$0.00
Total Deficiency Assessment	3,550	$122,930,117.50	$15,793,195.07	$21,811,583.58
Total Assessments	330,088	$7,513,320,048.04	$174,066,466.90	$74,542,385.24

RACS Report-006 Summary Record of Assessments

OGDEN

Certificate Number 13320070508002 Assessment Type Regular Assessment Date 05142007

Tax Class Summary

Tax Class	Items	Amount
WITHHOLDING	169,695	$5,812,093,684.65
INDIVIDUAL	48,934	$286,182,665.46
CORPORATION	17,120	$1,549,873,421.63
EXCISE	4,075	$14,528,116.58
ESTATE & GIFT	12	$1,135,066.10
CTA	0	$10,000.00
FUTA	80,252	$98,105,945.96
EFTPS UNCLASSIFIED	0	$0.00
	0	$0.00

Principal Taxpayers And Amounts Related to Jeopardy Assessments	Number	Amount
	0	$0.00

Certification

I certify that the taxes, penalty, and interest of the above classifications, hereby assessed, are specified in supporting records, subject to such corrections subsequent inquiries and determinations in respect thereto may indicate to be proper.

Signature (For Service Center Directors of Internal Revenue Service)

Assessment Officer

Date 5/14/07

:S Report 006 Summary Record of Assessments Page: 3
05/08/2007
11:10:12

OGDEN

rtificate Number 13320070508002

Assessment Type	Assessment Date
Regular	05142007

Document Locator Number		Account Date
BRECP	200718	05142007
IRECP	200718	05142007

RACS and Manual
Summary Record of Assessments
Verification

Math	Initials
Assessment date	BZ
Verifying C & D	BZ
Summary Record [illegible]	BZ
Signature	
Signature date	
[illegible]	
[illegible]	BZ

OGDEN

Certificate Number 13320070518003 Assessment Type Regular Assessment Date 05212007

Current Assessments

Class of Tax	Items	Tax	Penalty	Interest
WITHHOLDING	269,686	$13,148,649,002.35	$75,839,899.69	$15,217,849.78
INDIVIDUAL	45,787	$278,822,640.24	$9,375,333.49	$16,149,344.93
CORPORATION	14,314	$954,378,372.29	$34,708,119.54	$9,772,851.41
EXCISE	4,050	$3,460,164.47	$11,798,881.14	$118,607.23
ESTATE & GIFT	11	$99,160.00	$3,234.82	$78,941.18
CTA	0	$0.00	$0.00	$0.00
FUTA	30,107	$54,247,173.75	$9,592,057.60	$3,984,034.81
EFTPS UNCLASSIFIED	0	$0.00	$0.00	$0.00
Total Current Assessments	363,957	$14,439,656,513.10	$141,313,526.28	$45,321,629.34

Deficiency Assessment

Class of Tax	Items	Tax	Penalty	Interest
WITHHOLDING	139	$3,219,769.87	$362,023.09	$54,596.63
INDIVIDUAL	2,602	$18,979,684.29	$2,692,983.36	$4,858,589.82
CORPORATION	99	$178,148,770.70	$634,323.72	$7,391,432.54
EXCISE	18	$56.40	$1,536.33	$0.00
ESTATE & GIFT	4	$36,796.00	$431.82	$8,862.00
CTA	0	$0.00	$0.00	$0.00
FUTA	26	$88,525.34	$30,953.69	$120.15
EFTPS UNCLASSIFIED	0	$0.00	$0.00	$0.00
Total Deficiency Assessment	2,888	$200,473,902.60	$3,912,252.01	$12,313,601.14
Total Assessments	366,845	$14,640,130,315.70	$145,225,778.29	$57,635,230.48

OGDEN

Certificate Number	Assessment Type	Assessment Date
133208070518003	Regular	05212007

Tax Class Summary

Tax Class	Items	Amount
WITHHOLDING	269,827	$13,243,343,141.41
INDIVIDUAL	48,309	$331,068,776.13
CORPORATION	14,413	$1,185,029,870.20
EXCISE	4,068	$15,379,245.57
ESTATE & GIFT	15	$227,425.82
CTA	0	$0.00
FUTA	30,135	$67,942,868.34
EFTPS UNCLASSIFIED	0	$0.00
	0	$0.00

Principal Taxpayers And Amounts Related to Jeopardy Assessments	Number	Amount
	0	$0.00

Certification

I certify that the taxes, penalty, and interest of the above classifications, hereby assessed, are specified in supporting records, subject to such corrections subsequent inquiries and determinations in respect thereto may indicate to be proper.

Signature (For Service Center Directors of Internal Revenue Service)

Amy Gardiner Date 5/21/07
Assessment-Officer

Summary Record of Assessments

Assessment Date
05212007

OGDEN

Assessment Type
Regular

Document Locator Number	Account Date
BRECP 200719	05212007
IRECP 200719	05212007

Certificate Number: 133200705180003

RACS Report: 006

OGDEN

Certificate Number 13320071019003 Assessment Type Regular Assessment Date 10222007

Current Assessments

Class of Tax	Items	Tax	Penalty	Interest
WITHHOLDING	41,183	$2,498,542,145.90	$85,739,363.96	$18,007,067.69
INDIVIDUAL	30,565	$58,197,309.10	$13,274,266.13	$7,473,208.70
CORPORATION	16,873	$9,807,344,980.08	$55,792,554.85	$20,408,801.96
EXCISE	4,198	$4,534,982.79	$10,212,737.73	$68,528.95
ESTATE & GIFT	3	$0.00	$8,574.60	$37,208.10
CTA	0	$0.00	$1,944.97	$0.00
FUTA	2,985	$3,454,636.87	$920,959.18	$337,491.48
EFTPS UNCLASSIFIED	0	$0.00	$0.00	$0.00
Total Current Assessments	95,808	$12,372,074,054.74	$165,950,301.42	$46,332,306.88

Deficiency Assessment

Class of Tax	Items	Tax	Penalty	Interest
WITHHOLDING	189	$1,330,845.38	$139,693.58	$22,567.63
INDIVIDUAL	2,607	$19,232,455.99	$4,205,708.69	$1,956,558.98
CORPORATION	114	$322,736,882.17	$1,270,330.62	$16,699,702.77
EXCISE	21	$6,489.43	$40,250.45	$133.99
ESTATE & GIFT	4	$67,224.00	$80,400.27	$21,630.00
CTA	0	$0.00	$0.00	$0.00
FUTA	38	$0.00	$5,421.62	$0.00
EFTPS UNCLASSIFIED	0	$0.00	$0.00	$0.00
Total Deficiency Assessment	2,973	$343,373,896.97	$5,741,805.23	$18,700,593.37
Total Assessments	98,781	$12,715,447,951.71	$171,692,106.65	$65,032,900.25

OGDEN

Certificate Number 13320071019003 Assessment Type Regular Assessment Date 10222007

Tax Class Summary

Tax Class	Items	Amount
WITHHOLDING	41,372	$2,603,781,684.14
INDIVIDUAL	33,172	$104,339,507.59
CORPORATION	16,987	$10,224,253,252.45
EXCISE	4,219	$14,863,123.34
ESTATE & GIFT	7	$215,036.97
CTA	0	$1,844.97
FUTA	3,024	$4,718,509.15
EFTPS UNCLASSIFIED	0	$0.00
	0	$0.00

Principal Taxpayers And Amounts Related to Jeopardy Assessments	Number	Amount
	0	$0.00

Certification

I certify that the taxes, penalty, and interest of the above classifications, hereby assessed, are specified in supporting records, subject to such corrections subsequent inquiries and determinations in respect thereto may indicate to be proper.

Signature (For Service Center Directors of Internal Revenue Service)

Assessment Officer Date 10/22/07

RACS Report 006 Summary Record of Assessments

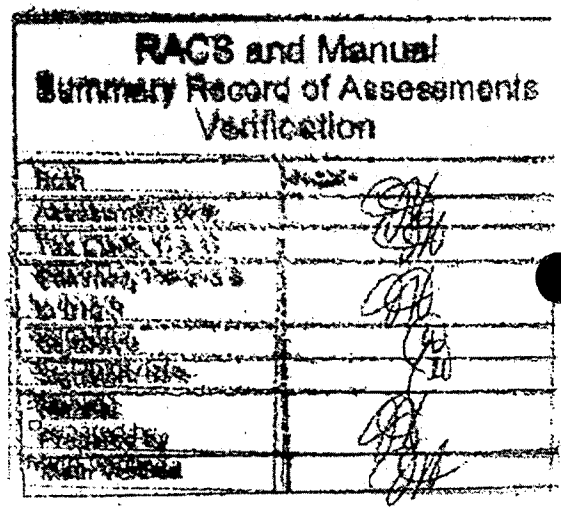
OGDEN

Certificate Number 133200710190003

Assessment Type
Regular

Assessment Date
10222007

Document Locator Number		Account Date
BRECP	200741	10222007
IRECP	200741	10222007



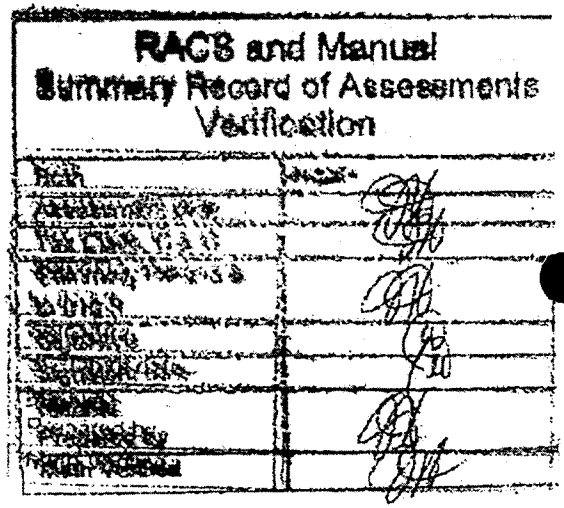
OGDEN

Certificate Number 13320071019003

Assessment Type
Regular

Assessment Date
10222007

Document Locator Number		Account Date
BRECP	200741	10222007
IRECP	200741	10222007



OGDEN

Certificate Number 13320090814002

Assessment Type
Regular

Assessment Date
08172009

Current Assessments

Class of Tax	Items	Tax	Penalty	Interest
WITHHOLDING	71,235	$3,697,979,578.18	$74,889,880.00	$6,921,724.56
INDIVIDUAL	31,923	$58,326,600.80	$10,361,387.83	$6,161,243.34
CORPORATION	15,193	$1,701,067,419.78	$15,360,213.11	$2,093,668.22
EXCISE	5,620	$3,569,954.22	$13,203,146.30	$354,691.25
ESTATE & GIFT	2	$0.00	$9,218.00	$2,603.17
CTA	0	$0.00	$0.00	$0.00
FUTA	6,918	$4,860,118.13	$859,923.19	$261,563.75
EFTPS UNCLASSIFIED	0	$0.00	$0.00	$0.00
Total Current Assessments	130,891	$5,465,803,671.11	$114,683,768.43	$15,795,494.29

Deficiency Assessment

Class of Tax	Items	Tax	Penalty	Interest
WITHHOLDING	228	$2,448,210.17	$2,023,348.66	$16,503.18
INDIVIDUAL	2,022	$10,931,322.42	$3,771,672.99	$2,062,796.57
CORPORATION	154	$39,686,566.58	$597,718.75	$5,214,048.67
EXCISE	3	$0.00	$405.33	$22.03
ESTATE & GIFT	3	$115,026.00	$22,149.91	$21,320.31
CTA	0	$0.00	$0.00	$0.00
FUTA	26	$50,846.78	$35,127.81	$734.61
EFTPS UNCLASSIFIED	0	$0.00	$0.00	$0.00

OGDEN

Certificate Number 13320090814002		Assessment Type Regular	Assessment Date 08172009	
Total Deficiency Assessment	2,436	$53,231,971.95	$6,450,423.45	$7,315,435.37
Total Assessments	133,327	$5,519,035,643.06	$121,134,191.08	$23,110,919.66

Tax Class Summary

Tax Class	Items	Amount
WITHHOLDING	71,463	$3,784,279,244.75
INDIVIDUAL	33,945	$91,615,023.95
CORPORATION	15,347	$1,764,019,635.13
EXCISE	5,623	$17,128,219.13
ESTATE & GIFT	5	$170,317.39
CTA	0	$0.00
FUTA	6,944	$6,068,314.27
EFTPS UNCLASSIFIED	0	$0.00
	0	$0.00

Principal Taxpayers And Amounts Related to Jeopardy Assessments	Number	Amount
	0	$0.00

Certification

I certify that the taxes, penalty, and interest of the above classifications, hereby assessed, are specified in supporting records, subject to such corrections subsequent inquiries and determinations in respect thereto may indicate to be proper.

RACS Report-006 | Summary Record of Assessments | Page: 3
08/14/2009
10:45:54

OGDEN

Certificate Number 13320090814002 | Assessment Type Regular | Assessment Date 08172009

Signature (For Service Center Directors of Internal Revenue Service)

Assessment Officer Date

BREQP	200931	08172009
IREQP	200931	08172009

RACS and Manual
Summary Record of Assessments
Verification

Doc.	Initials
Assessment date	
Tax Class, C.S.O.	
Summary Record #	
to RACS	
Signature	
Signature date	
Manual	
Prepared by	
Math Verified	

EXHIBIT R

AFFIDAVIT # 10

BY CLARE LOUISE READING REGARDING

ASSESSMENTS FOR CIVIL PENALTIES YEAR 1997 - 2008

PREFACE

The attached **Exhibit F Memorandum Regarding Assessments** was written to explain assessments. It should be read first, and referred to if needed as you read this Affidavit.

An "assessment" must be completed before there is any tax owing, according to the courts[1]. An "assessment" is NOT one step, but it is a sequence of steps that must be completed, and therefore this is often misunderstood. There are specific steps or tasks that must be completed by the Secretary, before any tax is properly and legally owed. The memorandum will explain these steps and tasks. Once these steps have been completed, the "tax liability" is considered assessed. An "assessment" is an administrative determination of a "tax liability". The statutory and regulatory requirements are codified in 26 U.S.C. § 6203 and 26 C.F.R. § 301.6203-1.

AFFIDAVIT

I, Clare Louise Reading, being first duly sworn on oath, state that I am over the age of 18 and have firsthand knowledge of the following facts and provide this Affidavit of my own free will.

1. I have been the clerical assistant for my husband since 1992. I have used personal computers regularly since 1989, including word processing and work with databases and spreadsheets.

2. I have had and maintain close contact with people who have earned college degrees as

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[1] *United States of America v. Dixon*, **672 F.Supp. 503 USDC, Middle Dist. Ala., (1987)**. "The defendant correctly contends that the basis of tax liability is the assessment. For a **tax liability to be duly collected**, it **must be first properly assessed**. In order for a **tax deficiency to be assessed against a taxpayer, an assessment officer must sign and date a Form 23-C**." [Emphasis added]

computer programmers and who perform computer trouble shooting and repair.

3. These experts have shown me some of the many intricacies in the precise manner in which computers are programmed to work.

4. This affidavit is being provided to support what these programmers and experts have shown and taught me, in particular, about the computer systems of the Internal Revenue Service, coupled with my personal knowledge of decoding the IRS Internal Master Files together with my study of the Internal Revenue Code, Title 26 of the United States Code, the Code of Federal Regulations, the Statutes at Large, the Congressional Record, the Federal Register, and case law of the Arizona Tax Division of the Maricopa County Superior Court, tax cases from various U.S. District Courts, U.S. Tax Court and many U.S. Supreme Court rulings.

5. The information contained in this affidavit describes the authority relied upon in Title 26 of the Internal Revenue Code, and their supporting regulations, Internal Revenue Manual provisions, and supporting case law. In addition, the IRS Processing Codes and Information Manual (Formerly Titled: ADP and IDRS Information) Operating Manual 6209.

6. The duty imposed upon the IRS by the regulation, is to supply the required information upon request to taxpayers, who ask for verification of Assessment. This allows the taxpayer to see what evidence the IRS has to affirm the assessment, and to provide the taxpayer an opportunity to rebut that evidence.

7. The IRS has provided **Clare Louise Reading** with a Certified Form 4340 created from the MFT 55 Tax Module for Civil Penalties issued for **1997 – 2008 (excluding 2007)** each tax year. This, along with RACS 006 "Summary Record of Assessments" for each assessment date**,** was provided as evidence of a proper assessment for these penalties.

8. A review of Certified Form 4340 created from the MFT 55 Tax Module for the tax year **1997-2008 (excluding 2007)**, shows the following penalties:

Year	Type	Description	Amount	Assessment Date(s)
1997	CIVPEN	Misc Penalty	$ 500.00	04/09/2007
1998	CIVPEN	Misc Penalty	$ 500.00	04/09/2007
1999	CIVPEN	Misc Penalty	$ 500.00	04/09/2007
2000	CIVPEN	Misc Penalty	$ 500.00	04/09/2007
2001	CIVPEN	Misc Penalty	$ 500.00	04/09/2007
2002	CIVPEN	Misc Penalty	$ 500.00	04/09/2007
2003	CIVPEN	Misc Penalty	$ 500.00	04/30/2007
2004	CIVPEN	Misc Penalty	$ 500.00	04/30/2007
2005	CIVPEN	Misc Penalty	$ 500.00	04/09/2007
2006	CIVPEN	Misc Penalty	$5,000.00	10/22/2007
2008	CIVPEN	Misc Penalty	$5,000.00	08/17/2009

9. Affiant declares that as reported in Certified Form 4340 for the Civil Penalties (Created from MFT 55 Tax Module), the penalties stated above in item 8 were assessed on the dated listed above.

10. Affiant declares that the "**Assessment Date(s)**" listed above is the "**23C Date**" or the "**Date of Assessment**" is in fact the "**Transaction Date(s)**" of the same entries found in the IMF records for those years.

11. Affiant declares that the "**Transaction Date**" is the date this entry was made into the computer to the Transaction File. [*See*: Exhibit F Memorandum Regarding Assessments Page 9 ¶2 - ¶5].

12. The IRS has provided Affiant with the RACS 006 Summary Record of Assessments dated and signed on the dates listed above, as proof of assessment, and these are the documents that I will address. See Exhibit R-1 RACS 006 Report Date **04/09/2007,** Exhibit R-2 **04/30/2007,** Exhibit R-3 **10/22/2007 and** Exhibit R-4 **08/17/2009.**

13. There is one entry, which I would like to call to your attention, and this is marked as Item # 1, on these RACS 006 Summary Record of Assessments. This is the date and time that these reports were run or created. It is a standard requirement in report generation programs, that the date and time the report was created or run, is printed. This requirement provides the person reviewing the document additional information regarding the period that the report covers. This is required by law, and is necessary to allow authentication, should it be challenged in Court. In most report generating applications, the person must select the period

of time that he wants the computer to collect and display the data within the database for the report. Since only one date is provided on this report, it is assumed to cover everything in the database, from the beginning of the database to the run date.

14. Affiant declares that the RACS 006 Summary Record of Assessments dated and signed on **04/09/2007,** Exhibit R-1 was run on **04/06/2007 and 06:26:48** in the morning.

15. Affiant declares that the RACS 006 Summary Record of Assessments dated and signed on **04/30/2007,** Exhibit R-2 was run on **04/27/2007 and 06:43:53** in the morning.

16. Affiant declares that the RACS 006 Summary Record of Assessments dated and signed on **10/22/2007,** Exhibit R-3 was run on **10/19/2007 at 08:31:01** in the morning.

17. Affiant declares that the RACS 006 Summary Record of Assessments dated and signed on **08/17/2009,** Exhibit R-4 was run on **08/14/2009 at 10:45:54** in the morning.

18. Affiant declares that any presumption or claim these Summary Record of Assessments contains Clare Louise Reading's assessments for these Civil Penalties is false. This is because the, "**Assessment Date**" on the Form 4340 is the, "**Transaction Date**" of the same entry in the IMF MFT 55 Tax Module, and these entries were not entered into the local area computer until that date. The computer cannot contain nor output data, which has not yet been entered into it.

19. Affiant declares that it is not possible for data or amounts which have not been entered into a computer yet to be in a report generated from the computer days before. No testimony or evidence has been presented by the Plaintiff to support the presumption that the amounts assessed are in fact in the RACS 006 Summary Record of Assessments as mandated by law.

20. Affiant declares this is *prima facie* evidence that the amounts assessed on Assessment Date and reported on the Certified Forms 4340, could not be in the Summary Record of Assessments reports, which were ran days before the entry into the computer.

21. To demonstrate the significance and importance of this, compare this with Internet banking.

If you went on line to your bank account on Friday **04/20/2001** and **07:45:18** in the morning and printed out of all transactions (credits and debits) for the past 12 months from your account, the computer would print out a report with all transactions for the past 12 months. Would you expect to see a check you have not written yet to be in this report? Of course not! Now, if you wrote a check for $1,000 on Monday **04/23/2001** and the person you gave it to, ran down to your bank to cash it that very same day, would the $1,000 check you wrote on Monday **04/23/2001** be on the printout you received from the bank on Friday 3 days before? Of course not! Why? Because the check had not been written yet, and it also had not been presented to the bank for payment yet. The same is true here in this case. How can a check (assessment) not written yet until **04/23/2001** be in a report created on **04/20/2001** by the Bank (IRS)**?** It cannot!

22. The Summary Record of Assessments must be created **before** an assessment officer can sign it. His/her signature and date, becomes the legal, "**Assessment Date**" or "**23C Date**", but not unless the taxpayer's assessments are included in the signed Summary Record of Assessments, can there be a valid assessment against the taxpayer.

23. Therefore, the presumption or claim by the IRS that the RACS 006 Reports presented with the assessment date of **04/09/2007, 04/30/2007, 10/22/2007 and 08/17/2009,** contains **Clare Louise Reading's** assessment, is false.

24. Therefore, since the Summary Record of Assessments dated **04/09/2007, 04/30/2007, 10/22/2007 and 08/17/2009 ,** do not contain **Clare Louise Reading's** assessments, there is no proper or legal assessment, because **Clare Louise Reading's** assessments were not recorded in the Summary Record of Assessments, as required by regulation 26 CFR § 301.6203-1, which is required to meet the Congressional mandate in 26 USC § 6203.

CONCLUSION

25. The RACS 006 Summary Record of Assessments dated **04/09/2007, 04/30/2007, 10/22/2007 and 08/17/2009**, have failed to provide evidence that the amount claimed to be assessed in the Certified Form 4340 for the tax year **1997 – 2008 (excluding 2007)** has in fact been assessed as mandated by statute 26 USC § 6203 and regulation 26 CFR § 301.6203-1 on **04/09/2007, 04/30/2007, 10/22/2007 and 08/17/2009**, as claimed.

26. This declaration and analysis of the RACS 006 Summary of Record of Assessments dated **04/09/2007, 04/30/2007, 10/22/2007 and 08/17/2009**, provides *prima facie* evidence that the assessment amounts claimed to be assessed on **04/09/2007, 04/30/2007, 10/22/2007 and 08/17/2009**, in the IMF records, were in fact **not assessed** or contained in the RACS 006 Summary of Record of Assessments dated **04/09/2007, 04/30/2007, 10/22/2007 and 08/17/2009,.**

27. The Summary Record of Assessments must be created before an assessment officer can sign it. That date and signature becomes the legal, "Assessment Date" or "23C Date", **but not until a taxpayer's assessments are included** in a signed Summary Record of Assessments, can there be a valid assessment.

28. All evidence shows that there was no statutorily proper assessment, as required by law, performed by the IRS. Therefore, any reasonable person must conclude that there are no valid or enforceable assessments against **Clare Louise Reading** for the tax years **1997 – 2008 (excluding 2007)**. All claims by the IRS, of a debt owed by **Clare Louise Reading** for the year **1997 – 2008 (excluding 2007)** are frivolous under the law, because they were not properly assessed as mandated by law, and must be removed or withdrawn.

Jurat

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, 28 USC § 1746(1).

Reserving ALL Natural God-Given unalienable birthrights, waiving none,

/s/ Clare Louise Reading

Clare Louise Reading

Arizona State)
) ss
Maricopa County)

The above named person, appeared before me, a Notary, subscribed, sworn under oath

this 9th day of August, 2012.

Notary Public

My Commission expires: 3/25/2016

SEAL

KEVIN S. KEPLINGER
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
March 25, 2016

CGDEN

Certificate Number 133200704060001 Assessment Type Regular Assessment Date 04092007

Current Assessments

Class of Tax	Items	Tax	Penalty	Interest
ITHHOLDING	187,703	$13,524,295,480.68	$138,146,456.26	$19,550,918.63
NDIVIDUAL	35,593	$126,760,453.50	$11,725,467.03	$20,471,817.58
RPORATION	27,316	$6,607,123,226.33	$34,454,623.13	$12,469,711.55
X	5,457	$9,657,875.54	$7,794,340.93	$94,051.62
TATE & GIFT	9	$0.00	$14.00	$30,579.84
A	0	$0.00	$0.00	$0.00
TA	214,286	$172,521,397.15	$8,568,354.17	$4,139,250.42
TPS UNCLASSIFIED	0	$0.00	$0.00	$0.00
otal Current Assessments	470,364	$20,440,358,433.20	$200,689,755.52	$56,756,329.64

Deficiency Assessment

Class of Tax	Items	Tax	Penalty	Interest
TTHHOLDING	163	$2,096,229.75	$771,201.52	$1,194,206.25
NDIVIDUAL	4,370	$73,797,189.55	$8,286,362.89	$17,955,495.09
ORPORATION	159	$125,573,672.13	$2,408,882.18	$3,430,557.61
CISE	1	$544.58	$0.00	$0.00
STATE & GIFT	5	$29,650.00	$14,039.33	$6,625.90
A	0	$0.00	$0.00	$0.00
	18	$6,488.92	$1,307.69	$39.34
TPS UNCLASSIFIED	0	$0.00	$0.00	$0.00
otal Deficiency Assessment	4,716	$201,503,774.93	$11,481,793.63	$22,586,924.19
otal Assessments	475,080	$20,641,862,208.13	$212,171,549.15	$79,343,253.83

OGDEN

Certificate Number	Assessment Type	Assessment Date
13320070406001	Regular	04092007

Tax Class Summary

Tax Class	Items	Amount
WITHHOLDING	187,866	$13,686,054,493.09
INDIVIDUAL	39,963	$258,996,765.64
CORPORATION	27,475	$6,785,460,672.93
EXCISE	5,458	$17,547,312.67
ESTATE & GIFT	14	$80,909.09
CTA	0	$0.00
FUTA	214,304	$185,236,837.69
EFTPS UNCLASSIFIED	0	$0.00
	0	$0.00

Principal Taxpayers And Amounts Related to Jeopardy Assessments	Number	Amount
	0	$0.00

Certification

I certify that the taxes, penalty, and interest of the above classifications, hereby assessed, are specified in supporting records, subject to such corrections subsequent inquiries and determinations in respect thereto may indicate to be proper.

Signature (For Service Center Directors of Internal Revenue Service)

Assessment Officer

Date 4/9/07

Summary Record of Assessments

Certificate Number 13320070406001

OGDEN

Assessment Type
Regular

Assessment Date
04092007

Document Locator Number		Account Date
BRECP	200713	04092007
IRECP	200713	04092007

RACS and Manual
Summary Record of Assessments
Verification

Item	Initials
Assessment date	
Tier Class, C & D	
Summary Record & 813 &	
Signature	
Signature date	
Manual Preparer	
Math Verifier	

OGDEN

Certificate Number 13320070427004

Assessment Type
Regular

Assessment Date
04302007

Current Assessments

Class of Tax	Items	Tax	Penalty	Interest
WITHHOLDING	61,131	$4,516,689,653.56	$56,997,191.45	$10,948,951.59
INDIVIDUAL	90,688	$498,566,257.43	$64,219,065.33	$17,425,630.36
CORPORATION	22,033	$950,424,491.36	$9,602,448.86	$3,358,903.50
EXCISE	3,993	$5,039,549.21	$9,464,811.04	$196,583.13
ESTATE & GIFT	6	$285,903.00	$16,261.01	$17,707.51
CTA	0	$0.00	$0.00	$0.00
FUTA	360,783	$269,515,290.95	$6,357,280.61	$3,900,896.76
EFTPS UNCLASSIFIED	0	$0.00	$0.00	$0.00
Total Current Assessments	538,634	$6,240,521,145.53	$146,656,988.30	$34,848,672.85

Deficiency Assessment

Class of Tax	Items	Tax	Penalty	Interest
WITHHOLDING	232	$803,532.90	$192,674.30	$12,706.52
INDIVIDUAL	2,960	$21,562,720.10	$4,828,143.86	$4,865,622.37
CORPORATION	81	$67,799,491.85	$879,790.39	$25,001,924.70
EXCISE	7	$6,494.00	$79.30	$88.17
ESTATE & GIFT	1	$70,701.00	$0.00	$20,313.53
CTA	0	$0.00	$0.00	$0.00
FUTA	42	$7,885.93	$6,445.24	$821.78
EFTPS UNCLASSIFIED	0	$0.00	$0.00	$0.00
Total Deficiency Assessment	3,323	$90,258,825.78	$5,407,133.09	$29,901,477.07
Total Assessments	541,957	$6,330,779,971.31	$152,064,121.39	$64,750,149.92

OGDEN

Certificate Number 13320070427004

Assessment Type
Regular

Assessment Date
04302007

Tax Class Summary

Tax Class	Items	Amount
WITHHOLDING	61,363	$4,585,644,700.32
INDIVIDUAL	93,648	$611,467,439.45
CORPORATION	22,114	$1,056,567,050.60
EXCISE	4,000	$14,707,604.85
ESTATE & GIFT	7	$418,886.05
CTA	0	$0.00
FUTA	360,825	$278,788,561.27
EFTPS UNCLASSIFIED	0	$0.00
	0	$0.00

Principal Taxpayers And Amounts Related to Jeopardy Assessments	Number	Amount
	0	$0.00

Certification

I certify that the taxes, penalty, and interest of the above classifications, hereby assessed, are specified in supporting records, subject to such corrections subsequent inquiries and determinations in respect thereto may indicate to be proper.

Signature (For Service Center Directors of Internal Revenue Service)

Assessment-Officer

Date 4-30-07

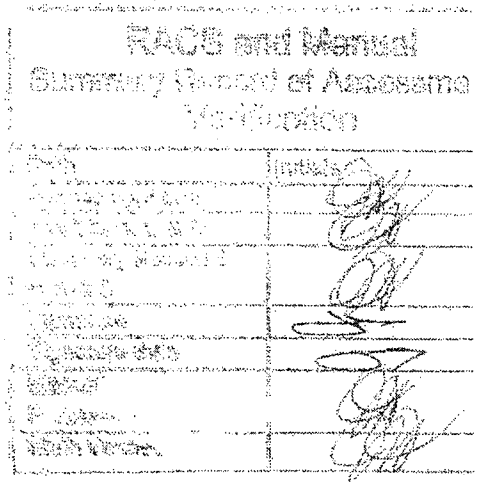
OGDEN

Certificate Number 13320070427004

Assessment Type
Regular

Assessment Date
04302007

Document Locator Number		Account Date
BRECP	200716	04302007
IRECP	200716	04302007



OGDEN

Certificate Number 13320071019003

Assessment Type
Regular

Assessment Date
10222007

Current Assessments

Class of Tax	Items	Tax	Penalty	Interest
WITHHOLDING	41,183	$2,498,542,145.90	$85,739,363.96	$18,007,067.69
INDIVIDUAL	30,565	$58,197,309.10	$13,274,266.13	$7,473,208.70
CORPORATION	16,873	$9,807,344,980.08	$55,792,554.85	$20,408,801.96
EXCISE	4,198	$4,534,982.79	$10,212,737.73	$68,528.95
ESTATE & GIFT	3	$0.00	$8,574.60	$37,208.10
CTA	0	$0.00	$1,944.97	$0.00
FUTA	2,986	$3,454,636.87	$920,959.18	$337,491.48
EFTPS UNCLASSIFIED	0	$0.00	$0.00	$0.00
Total Current Assessments	95,808	$12,372,074,054.74	$165,950,301.42	$46,332,306.88

Deficiency Assessment

Class of Tax	Items	Tax	Penalty	Interest
WITHHOLDING	189	$1,330,845.38	$139,693.58	$22,567.63
INDIVIDUAL	2,607	$19,232,455.99	$4,205,708.69	$1,956,558.98
CORPORATION	114	$322,736,882.17	$1,270,330.62	$16,699,702.77
EXCISE	21	$6,489.43	$40,250.45	$133.99
ESTATE & GIFT	4	$67,224.00	$80,400.27	$21,630.30
CTA	0	$0.00	$0.00	$0.00
FUTA	38	$0.00	$5,421.62	$0.00
EFTPS UNCLASSIFIED	0	$0.00	$0.00	$0.00
Total Deficiency Assessment	2,973	$343,373,896.97	$5,741,805.23	$18,700,593.37
Total Assessments	98,781	$12,715,447,951.71	$171,692,106.65	$65,032,900.25

OGDEN

Certificate Number 13320071019003 | Assessment Type: Regular | Assessment Date: 10222007

Tax Class Summary

Tax Class	Items	Amount
WITHHOLDING	41,372	$2,603,781,684.14
INDIVIDUAL	33,172	$104,339,507.59
CORPORATION	16,987	$10,224,253,252.45
EXCISE	4,219	$14,863,123.34
ESTATE & GIFT	7	$215,036.97
CTA	0	$1,844.97
FUTA	3,024	$4,718,509.15
EFTPS UNCLASSIFIED	0	$0.00
	0	$0.00

Principal Taxpayers And Amounts Related to Jeopardy Assessments	Number	Amount
	0	$0.00

Certification

I certify that the taxes, penalty, and interest of the above classifications, hereby assessed, are specified in supporting records, subject to such corrections subsequent inquiries and determinations in respect thereto may indicate to be proper.

Signature (For Service Center Directors of Internal Revenue Service)

Assessment Officer

Date 10/22/07

RACS Report 006

Summary Record of Assessments

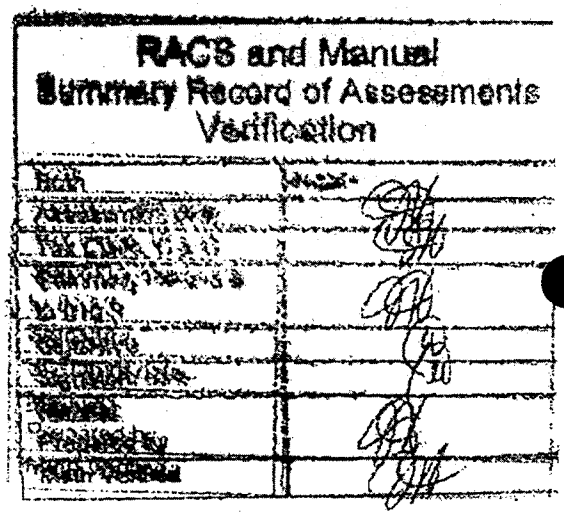
OGDEN

Certificate Number 13320071019003

Assessment Type
Regular

Assessment Date
10222007

Document Locator Number		Account Date
BRECP	200741	10222007
IRECP	200741	10222007

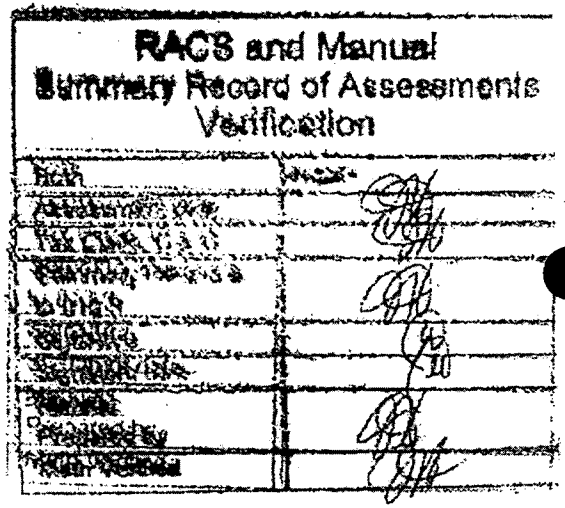


OGDEN

Certificate Number 13320071019003

Assessment Type	Assessment Date
Regular	10222007

Document Locator Number	Account Date
BRECP 200741	10222007
IRECP 200741	10222007



Summary Record of Assessments

OGDEN

Certificate Number 13320090814002

Assessment Type
Regular

Assessment Date
08172009

Current Assessments

Class of Tax	Items	Tax	Penalty	Interest
WITHHOLDING	71,235	$3,697,979,578.18	$74,889,880.00	$6,921,724.56
INDIVIDUAL	31,923	$58,326,600.80	$10,361,387.83	$6,161,343.34
CORPORATION	15,193	$1,701,067,419.78	$15,360,213.11	$2,093,668.22
EXCISE	5,620	$3,569,954.22	$13,203,146.30	$354,691.25
ESTATE & GIFT	2	$0.00	$9,218.00	$2,603.17
CTA	0	$0.00	$0.00	$0.00
FUTA	6,918	$4,860,118.13	$859,923.19	$263,563.75
EFTPS UNCLASSIFIED	0	$0.00	$0.00	$0.00
Total Current Assessments	130,891	$5,465,803,671.11	$114,683,768.43	$15,795,494.29

Deficiency Assessment

Class of Tax	Items	Tax	Penalty	Interest
WITHHOLDING	228	$2,448,210.17	$2,023,348.66	$16,503.18
INDIVIDUAL	2,022	$10,931,322.42	$3,771,672.99	$2,062,796.57
CORPORATION	154	$39,686,566.58	$597,718.75	$5,214,048.67
EXCISE	3	$0.00	$405.33	$22.03
ESTATE & GIFT	3	$115,026.00	$22,149.91	$21,320.31
CTA	0	$0.00	$0.00	$0.00
FUTA	26	$50,846.78	$35,127.81	$734.61
EFTPS UNCLASSIFIED	0	$0.00	$0.00	$0.00

OGDEN

Certificate Number 13220090814002 Assessment Type Regular Assessment Date 08172009

Total Deficiency Assessment	2,436	$53,231,971.95	$6,450,423.45	$7,315,435.27
Total Assessments	133,327	$5,519,035,643.06	$121,134,191.88	$23,110,919.66

Tax Class Summary

Tax Class	Items	Amount
WITHHOLDING	71,463	$3,784,279,244.75
INDIVIDUAL	33,945	$91,615,023.95
CORPORATION	15,347	$1,764,019,635.11
EXCISE	5,623	$17,138,219.13
ESTATE & GIFT	5	$170,317.39
CPA	0	$0.00
FUTA	6,944	$6,068,314.27
MFTPS UNCLASSIFIED	0	$0.00
	0	$0.00

Principal Taxpayers And Amounts Related to Jeopardy Assessments	Number	Amount
	0	$0.00

Certification

I certify that the taxes, penalty, and interest of the above classifications, hereby assessed, are specified in supporting records, subject to such corrections subsequent inquiries and determinations in respect thereto may indicate to be proper.

OGDEN

Certificate Number 13320090814002 Assessment Type Regular Assessment Date 08172009

Signature (For Service Center Directors of Internal Revenue Service)

Assessment Officer Date

BRECP	200931	08172009
TRECP	200931	08172009

RACS and Manual Summary Record of Assessments Verification

Role	Initials
Assessment date	
Tax Class, C & D	
Summary Record #	
is 813 &	
Signature	
Signature date	
Manual:	
Prepared by	
Self-Verified	

EXHIBIT S

AFFIDAVIT # 11 REGARDING
DECLARATION OF ELIZABETH MARRIAGA

I, Clare Reading, hereafter Affiant, and I, James Leslie Reading, hereinafter, Affiant, am over the age of 18 and mentally competent. Affiant has personal knowledge of the statements being made hereafter in this document. I, Clare Reading, and I, James Leslie Reading, having been first duly sworn on my oath, state the following:

1. Affiants declare that we are natural born citizens of the United States of America and citizens of Arizona.
2. Affiants declare that the declaration made under penalty of perjury by IRS File Examiner, Elizabeth Marriaga (hereinafter, Marriaga), at #4 are untrue, as there were no stock transactions for Affiants in 2003 or 2004.

3. Affiants declare that the figures used by Marriaga on Form 4549 in Exhibit A or C are based on presumed facts not in evidence, as the total net loss for 1994 was <$83.94>.

4. Affiants declare that Marriaga did not rely on the original Form 1099 submitted to the IRS by Financial Advisor, Robert Adelmann, which showed every transaction in 3 accounts: AMCAP Fund, Fundamental Investors and The Cash Management Trust of America. [*See Defendants' Exhibit II*, Pages 3, 4, 6 - 8, 10 - 12, 14, 15, 17,18].

5. Affiants declare that they invested $18,000.00 on April 30, 1993, which resulted in a net loss of $1,474.41.00 on 8/04/1993. [*See Defendants' Exhibit II*, Page 2].

6. Affiants declare that $17,587.45 of their original $18,000.00 was exchanged from AmCap Fund to Fundamental Investors, which on 8/30/1993, which resulted in a net loss of <$696.59> as of 12/14/1993. [*See Defendants' Exhibit II*, Page 5].

7. Affiants declare that on 4/16/1993, their original $18,000.00 investment was exchanged into The

Cash Management Trust of America, which resulted in a net gain of $0.00. [*See Defendants' Exhibit II*, Page 9].

8. Affiants declare that File Examiner Marriaga based her calculations on incorrect figures and that the calculations themselves are incorrect, as the Financial Advisor had been instructed via contract to reinvest all dividends which were included in the ultimate total net loss for 1993, of <$2.171.00>. Revenue Officer Debra Vahe could have shared this information with Marriaga, but chose to remain silent. See Vahe's 12/16/2009 entry in the ICS History Log [*See Defendants' Exhibit II,* Pages 2 and 5, Defendants' Exhibit JJ].

9. Affiants declare that on 12/17/1993, $7,783.65 was exchanged in to Fundamental Investors, which resulted in a net loss of <$83.94>. [*See Defendants' Exhibit II*, page 13].

10. Affiants declare that after losing $10,339.07 of their original $18,000.00, they took the $7,660.93 that was left and ended the investment on 3/03/1994. [*See Defendants' Exhibit II*, Page 14].

11. Affiants declare that if they had realized $84,167 in 1993 and $11,948 in 1994, as reported by IRS File Examiner, Rebecca Sexton, they would not have quit the otherwise failed investment.

12. Affiants declare that the adjustment made based on the 'corrected 4549' prepared by Marriaga of a decrease in Clare Reading's tax liability of $2,916.00 has no foundation and is based on presumed facts not in evidence. [Exhibit MarriagaExC, P. 2].

13. Affiants declare that since 1994, the erroneous 'tax liability' for Clare Reading plus interest, plus penalties, listed for the last ***11 years*** was based on $11,948.00, until the adjustments were incorrectly made by Marriaga in 2012, of a mere reduction of $2,916.00. [*See* Marriaga Declaration #5].

14. Marriaga's Declaration #6 is untrue, as there were no stock transactions in which Affiants were involved in 2003 or 2004.

15. Affiants declare that since 1993, the erroneous 'tax liability' for James Reading plus interest, plus

penalties, was listed for the last **12 *years*** was based on the incorrect figures of IRS File Examiner, Rebecca Sexton, as $86,103.59.00, until the adjustment was incorrectly made by Marriaga in 2012, for a mere reduction of $32,866.00, because the adjustment was also based on erroneous figures. [*See* Marriaga Declaration #5].

16. Affiants declare that there is no basis for the calculations testified to by Marriaga, as they are based on presumed facts not in evidence. [*See* Marriaga Declaration #5].

17. Affiants declare that Marriaga states in Exhibit MarriagaExD, Document 53-4, page 2 of 2 "Capital Gains Lead Sheet" that "upon collection enforcement, Clare Reading provided support for basis in her stock sales from American Services Company [*sic*, American Funds Service Company]. 1994 STCG is adjusted per Attachment B. 1993 was considered; however, since there is no tax assessed or collected due to CSED, no adjustment is being pursued for that module." With Clare Reading being clerical assistant for James Reading for all of 1993, it is incongruent that liability for Clare Reading would be assessed on 5/20/1996, while for the same year, the liability for James Reading would be assessed on 4/23/2001.

18. Affiants state that at the top of the Capital Gains Lead sheet described in #16 above, Marriaga lists, as File Examiner Rebecca Sexton did on 3/28/200, the erroneous "Capital Gains" for 1994: $11,948.00 and "adjusts the erroneous figure by 65.345%, which has no basis in law and presumes facts not in evidence; Affiants again state that for 1994, their attempted stock investment suffered a total net loss. [*See Defendants' Exhibit II*, Pages 2, 5 and 13].

19. Affiants declare that Marriaga cites sections of the United States Code that have nothing to do with them: 26 USC 1202 Qualified Small Business Stock, 26 USC 1211, having to do with Corporate losses and 26 USC § 1212 - Capital loss carrybacks and carryovers, also involving businesses, none of which Affiants are involved; however, the IRS has mis-classified them as a "business" and the Small Business Self Employed (SBSE) Division has been in pursuit all along.

20. Affiants declare that Marriaga states on the Capital Gains Lead Sheet, MarriagaExE, that for 1993 and 1994, James L. Reading owes no tax because under the final column labeled "Adjustment",

Marriaga lists (86,103.59) for 1993 and (7,807.47) for 1994 which equals a tax liability on this issue as: "0".

21. Marriaga again cites 26 USC 1202, 1211 and 1212, which have nothing to do with James L. Reading, as he is not a "business". [*See* Affiants' declaration in ¶ 18, above].

22. Affiants declare that Marriaga is presuming facts not in evidence when she reconstructs the 1099 and supporting documents sent to the IRS by the Financial Advisor and attempts to fill in her own 'chart' in her Exhibit F, which presumes facts not in evidence.

23. Affiants declare that not only are Marriaga's assumptions incorrect regarding the Readings' failed stock investment, her attempt at the rest of Document 53-6 Page 3 of 3 is also in error. i.e.,

Attachment B 1994 Capital gain (Loss) Computation:

- Marriaga incorrectly titles her chart, "American Cap Funds.
- Marriaga selects Trade #19 and Trade #20 in the Fundamental Investors account dated 12/17/1993 and 12/20/1993, respectively [*See Defendants' Exhibit II*, Page 7]
- Marriaga takes Trade #1 and Trade #2 in the Fundamental Investors account dated 02/14/1994 and 02/18/1994, respectively, though the transactions are not related, as one is "shares redeemed", which the Financial Advisor had been instructed to reinvest, and one was a portion of the original $18,000.00 investment that was exchanged from the Fundamental Investors account to The Cash Management Trust of America account [*See Defendants' Exhibit II*, Page 14]
- Marriaga then takes Trade #4 on 02/22/1994 labeled as a "SHORTTERM CG" at a price of $6.00 [*See Defendants' Exhibit II*, Page 14]
- Marriaga adds to her chart Trade #6 on 02/23/1994, which was an exchange of a portion of the original $18,000.00 investment from Fundamental Investors to The Cash Management Trust of America and putting Trade #5 dated 02/22/1994 in the amount of $28.31 in the "sell" column of 02/**23**/1994, [*See Defendants' Exhibit II*, Page 14] finally,
- Marriaga shows the difference between the 2/23/1994 exchange from The Cash Management Trust of America and the $7,660.93 the Readings rescued from this failed investment as a loss of $149.05 [*See Defendants' Exhibit II*, Page 14].

24. Affiants declare that normally, an accountant attempting to determine any bottom line gain or loss

would begin with the original investment at the starting date at Transaction #1 and follow the activity through to its conclusion at the last numbered transaction.

25. Affiants declare that Marriaga chose, instead, to combine transactions for both 1993 and 1994 in her reconstructed chart, only selecting for scrutiny 7 of the 65 transactions / Trades that occurred over the period of time from April 30, 1993 through March 3, 1994. [*See Defendants' Exhibit II*, Pages 1 – 18].

26. Affiants declare that in calculating the "Per Prior Adjustment $11,948.00 each for James R and Clare R", File Examiner, Elizabeth Marriaga used much the same technique as File Examiner, Rebecca Sexton ("Sexton"), had, taking random transactions, not even in chronological, order and coming to a final conclusion that included a $5,000.00 error in the transaction dated 05-21-93, totaling $81,228.00 in Column C "amount Reported to IRS" and $86,228.00, a $5,000.00 difference (not $500.00, as originally noted), in the column labeled "Difference". Affiants also declare that the 5 transactions selected were all exchanges between the accounts, not individual sales, as erroneously presumed and reported by Sexton [*See* Exhibit PP].

- Sexton added the dividend amounts shown throughout the 18 pages shown in Defendants' Exhibit II,
  even though the Financial Advisor had been instructed to reinvest any and all dividends.
  - Sexton listed 5 of the 65 transactions in her "Listing of Information Returns" in the following order:
    11-22-93
    12-14-93
    09-07-93
    10-14-93
    05-21-93

27. Affiants declare that the IRS computer printout [Exhibit PP, Page 2] incorrectly reports "Capital Gain of $1,722.00, Ordinary Income of $338.00, dividends of $2,061.00 and Stock&Bond $84,167.00." These figures that do not match the 1099 and transaction transcript sent to the IRS by the Financial Advisor [*See Defendants' Exhibit II*, 18 Pages]. The Plaintiff was in possession of this report at the time of calculating the Income Tax Examination and did not use this information. This is another demonstration of the incompetence and ill intent of the IRS employees.

28. Affiants declare that the calculations for the "Explanation of the Estimated Tax Penalty" states:

Clare Reading, 1994

4. 90% of line 1	20,918.70	
5. Prior year tax liability . . .	0.00	[*correct*!]
6. The smaller of line 4 or 5 (as adjusted)	20,918.70	

The calculation is an obviously wrong since 0 is less than 20.918.70.

This is another demonstration of the incompetence and ill intent of the IRS employees.

[*See*: Defendants' Exhibit NN, Page 1]

29. Affiants declare that this method is no mistake, and constitutes a pattern, as it is used for:

Clare Reading, 1995:

4. 90% of line 1	11,240.10	
5. Prior year tax liability . . .	0.00	[*correct*!]
6. The smaller of line 4 or 5 (as adjusted)	11,240.00	

The calculation is obviously wrong since 0 is less than 11,240.00.

This is another demonstration of the incompetence and ill intent of the IRS employee.

[*See*: Defendants' Exhibit NN, Page 2]

30. Affiants declare that this method is no mistake, and constitutes a pattern, as it is used for:

James Reading, 1993:

4. 90% of line 1	49,135.50	
5. Prior year tax liability . . .	0.00	[*correct*!]
6. The smaller of line 4 or 5 (as adjusted)	49,135.50	

The calculation is obviously wrong since 0 is less than 49,135.50. This is another demonstration of the incompetence and ill intent of the IRS employee.

[*See*: Defendants' Exhibit NN, Page 3]

31. Affiants declare that this method is no mistake, and constitutes a pattern, as it is used for:

James Reading, 1994:

4. 90% of line 1	56,744.10	
5. Prior year tax liability . . .	0.00	[*correct*!]
6. The smaller of line 4 or 5 (as adjusted)	56,744.10	

The calculation is obviously wrong since 0 is less than 56,744.10. This is another demonstration of the incompetence and ill intent of the IRS employee. [*See*: Defendants' Exhibit NN, Page 4]

32. Affiants declare that this method is no mistake, and constitutes a pattern, as it is used for:

James Reading, 1995:

4. 90% of line 1 37,744.20
5. Prior year tax liability . . . 0.00 [*correct*!]
6. The smaller of line 4 or 5 (as adjusted) 37,744.20

The calculation is obviously wrong since 0 is less than 37,744.20.

This is another demonstration of the incompetence and ill intent of the IRS employee.

[*See*: Defendants' Exhibit NN, Page 5]

33. Affiants declare that although not a part of the 1993 – 1994 Audit Reconsideration by File Examiner Marriaga, this method is no mistake, and constitutes a pattern, as it is used for:

James Reading, 2008:

5. 90% of the sum of line 1 less line 2 4,545.90
6. Prior year tax liability . . . 0.00 [*correct*!]
7. The smaller of line 5 or 6 (as adjusted) 4,545.90

The calculation is obviously wrong since 0 is less than 4,545.90. This is another demonstration of incompetence and the ill intent of the IRS employees. Note that this calculation was by File Examiner, Ms. White, which demonstrates that IRS File Examiners are trained that 0.00 is the greater number. [*See*: Defendants' Exhibit Z]

34. Affiants declare that these fraudulent calculations are the basis for $32, 159.70 in "Estimated Tax Penalties" against Clare Reading and $148,169.30, against James Reading, and that additional interest has been compounding against them in the total amount (excluding the year 2008) of $175,782.10 for **12 years**!

35. Affiants declare that based on the erroneous figures the IRS File Examiners used regarding the Affiants' failed stock investment, according to "CP71D Reminders" received by James Reading dated October 12, 2009, the totals including the compounded interest had grown to:

1993 $218,715.95 [Defendants' Exhibit O JRCI93].
1994 $248,775.79 [Defendants' Exhibit O JRCI94].
1995 $152,758.41 [Defendants' Exhibit O JRCI95].

a total of $620,250.15, as of over 2 years ago.

36. Affiants declare that Marriaga also erred on Attachment B [Doc. 53-6 Page 3 of 3] of her Declaration in her miscalculation of "Merrill Lynch Pierce Fenner & Smith and American Services Company" and entered figures for calculation of Capital Gain based on facts not in evidence.

37. Affiants declare that the facts are evidenced in their 1993 1040 which clearly shows a gain of $373.13, as confirmed by James Cripe of GM Computershare, referred to Clare Reading by Merrill Lynch Pierce Fenner & Smith on August 2, 2006. [Defendants' Exhibit FF].

38. Affiants declare that in her Attachment B [Doc. 53-6 Page 3 of 3] of her Declaration Marriaga uses figures for calculation based on facts not in evidence in attributing 15,537.00 to "American Services Company" (*sic*) American Funds Service Company and adjusting it to (77.94).

39. Affiants declare that Marriaga's reduction of (11,948.00) to (4,140.53) is in error because her "adjustment" is based on the erroneous (11,948.00) originally invented by IRS File Examiner, Rebecca Sexton. [*See* Attachment B (Doc. 53-6 Page 3 of 3) of Marriaga Declaration]

40. Affiants declare: I am not an expert in the law however, I do know right from wrong. If there is any human being damaged by any statements herein, if he will inform me by verifiable facts I will sincerely make every effort to make correction(s). I hereby and herein reserve the right to amend this document as necessary in order that the truth may be ascertained and proceedings justly determined. If the parties given notice by means of this document have information that would controvert and overcome this Affidavit, please advise me IN WRITTEN AFFIDAVIT FORM within thirty (30) days from receipt hereof providing me with your counter affidavit, proving with particularity by stating all requisite actual evidentiary fact and all requisite actual law, and not merely the ultimate facts or conclusions of law, under penalty of perjury, that this Affidavit is substantially and materially false sufficiently to change materially my status and factual declarations. Your silence stands as consent to, and tacit approval of, the factual declarations herein being established as fact as a matter of law.

Jurat

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, 28 USC § 1746(1).

Reserving ALL Natural God-Given Unalienable Birthrights, Waiving None,

/s/ Clare Louise Reading

Clare Louise Reading

/s/ James Leslie Reading

James Leslie Reading

Arizona State)
) ss
Maricopa County)

The above named person, appeared before me, a Notary, subscribed, sworn under oath

this 8th day of August, 2012.

Notary Public

My Commission expires: 3/25/2016

seal

KEVIN S. KEPLINGER
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
March 25, 2016

James Leslie Reading, *Pro Se*
Clare Louise Reading, *Pro Se*
2425 East Fox Street
Mesa, Arizona 85213

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

UNITED STATES OF AMERICA *Plaintiff*, v. JAMES LESLIE READIG, CLARE L. READING, FOX GROUP TRUST, MIDFIRST BANK, CHASE, FINANCIAL LEGAL SERVICES, STATE OF ARIZONA *Defendants*	2:11-cv-00698-FJM **DECLARATION OF CLARE L. READING and JAMES LESLIE READING REGARDING DEPOSITION OF FOX GROUP TRUST TRUSTEE**

DECLARATION OF CLARE L READING and JAMES LESLIE READING REGARDING DEPOSITION OF FOX GROUP TRUST TURSTEE

I, Clare Reading, hereinafter Affiant, and I, James Leslie Reading, hereinafter, Affiant, am over the age of 18 and mentally competent. Affiant has personal knowledge of the statements being made hereafter in this document. I, Clare Reading, and I, James Leslie Reading, having been first duly sworn on our oath, state the following:

1. **AFFIANTS DECLARE** - that The Fox Group Trust is "a contract in the nature of a trust".

2. **AFFIANTS DECLARE** – that a private contract is protected by the Constitution for the United States of America at Article 1, Section 10:

"No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, . . . "

3. **AFFIANTS DECLARE** – that a private contract is protected by the Constitution for the

United States of America at Article 3, Section 2::

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; . . . "

4. **AFFIANTS DECLARE** – that "The Treaty of Guadalupe Hidalgo ended the U.S.-Mexican War. Signed on February 2, 1848, it is the oldest treaty still in force between the United States and Mexico. As a result of the treaty, the United States acquired more than 500,000 square miles of valuable territory and emerged as a world power in the late nineteenth century." http://www.pbs.org/kera/usmexicanwar/war/wars_end_guadalupe.html, "Treaty of Guadalupe Hidalgo" by Richard Griswold del Castillo.

5. **AFFIANTS DECLARE** – that regarding Duffy Exhibit DuffyExP, the former Trustees of the Fox Group Trust, directed the Administrative Trustees to further protect the Trust property by acknowledging the Land Patent which had encompassed the land since 1919, supported by the Treaty of Guadalupe Hidalgo of 1848. This task was completed on 6/19/2008, Miscellaneous recording, "Corrected Property Description". [*See*: excerpts from *Summa Corp. v. California Ex Rel. Lands Comm'n*, 446 U.S. 198 (1984) below and in Exhibit F-1:]

> "The interest claimed by California is one of such substantial magnitude that regardless of the fact that the claim is asserted by the State in its sovereign capacity, this interest must have been presented in the patent proceedings or be barred.."

6. **AFFIANTS DECLARE** – that similarly, the interest claimed by the United States of America is one of such substantial magnitude that regardless of the fact that the claim is asserted by the federal government in its sovereign capacity, this interest must have been presented in the patent proceedings or be barred – particularly when it can point to no Statute At Large promulgated by Congress creating a liability for Affiants to pay a tax on the fruits of their labor and tying it to equity in property they no longer own.

7. **AFFIANTS DECLARE** – that it was agreed by both Trustees that due to health and economic reasons, that each was in a state of incapacitation and no longer able to adequately or timely handle responsibilities as Trustees and asked Administrative Trustee, Clare Reading to send Notices of Resignation for them to sign. Upon receipt of the completed Resignations, Clare and James Reading sought the assistance of Terry Major and Sylvia Boutlier to replace the former Trustees.

8. **AFFIANTS DECLARE** – that Dr. Charles Frentheway was a Trauma Surgeon in the hospital in Globe, Arizona. He let the Readings know that he wanted to be a Trustee and they agreed to let him join Charles Baird and David Pastorkey, because their situations were deteriorating. After just a few months, however, Dr. Frentheway died suddenly.

9. **AFFIANTS DECLARE** – that they witnessed first hand the Trust Department for the National Bank of Detroit and attorney, Kenneth Afton, destroy the value of the Josephine L. Swayze Trust by approximately 75 percent in their refusal to distribute Trust assets immediately upon the demise of Josephine L. Swayze, their mother, according to the terms of the Trust.

10. **AFFIANTS DECLARE** – that to avoid the scenario in ¶ 9 above happening again, they inquired about creating a private contract through Aage Nost.

11. **AFFIANTS DECLARE** – that they had been adjusting catastrophe insurance claims on the road together since August of 2004, and being together most of the time increasing the chances of meeting their demise together, to preserve their property for the benefit of their nephew and heir, the Fox Group Trust was created.

12. **AFFIANTS DECLARE** – that they discussed the benefits of protecting the property from Probate, as the property would be held by the trust and managed by the trustees, while increasing the value of the property for the benefit of their selected beneficiary and they entered the agreement for the creation of the Fox Group Trust.

13. **AFFIANTS DECLARE** – that when it was realized that the proper notaryacknowledgement was not obtained at the time of signing, an "Affidavit of Truth" was signed and added as an addendum to make sure proper procedure had been followed.

14. **AFFIANTS DECLARE** – that the Creator recorded the trust in the office of the Loul Foundation, as stated in the Trust documents, and had explained that the number on the front of the Trust Document Book is the Trust Identification Number.

Affiants separately declare: I am not an expert in the law however, I do know right from wrong. If there is any human being damaged by any statements herein, if he will inform me by verifiable facts, I will sincerely make every effort to make correction(s). I hereby and herein reserve the right to amend this document as necessary in order that the truth may be ascertained and proceedings justly determined. If the parties given notice by means of this document have information that would controvert and overcome this Affidavit, please advise me IN WRITTEN AFFIDAVIT FORM within thirty (30) days from receipt hereof providing me with your counter affidavit, proving with particularity by stating all requisite actual evidentiary fact and all requisite actual law, and not merely the ultimate facts or conclusions of law, signed under penalty of perjury, that this Affidavit is substantially and materially false sufficiently to materially change my status and factual declarations. Your silence stands as consent to, and tacit approval of, the factual declarations herein being established as fact as a matter of law.

Jurat

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, 28 USC § 1746(1).

Reserving ALL Natural God-given unalienable birthrights, waiving none,

/s/ Clare Louise Reading

Clare Louise Reading

/s/ James Leslie Reading

James Leslie Reading

Arizona State)
) ss
Maricopa County)

Clare Louise Reading and James Leslie Reading appeared before me, a Notary, subscribed and sworn under oath this 8th day of August, 2012.

Notary Public My Commission expires: 3/25/2016

seal

KEVIN S. KEPLINGER
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
March 25, 2016

EXHIBIT U

WHAT THE COURTS SAY ABOUT INCOME

1. "**Income**" is not defined in Title 26, making it hard to calculate Gross Income without understanding what "income" is.

U.S. v. Ballard, 400 F2d 404 (1976):
"The general term **'income' is not defined in the Internal Revenue Code**." (Bold emphasis)

2. Congress may not define "income" because it is used within the Constitution.

Eisner v. Macomber, 252 U.S. 189 (1920), 40 S. Ct. at 193:
"It becomes essential to distinguish between what is and what is not 'income' . . . **Congress may not, 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.**" (Bold emphasis)

Goodrich v. Edwards, 255 U.S. 527, 535 (1921):
" ... the definition of 'income' approved by this Court is: **"The gain derived from capital, from labor, or from both combined,' provided it be understood to include profits gained through sale or conversion of capital assets.'** ... It is thus very plain that **the statute imposes the income tax on the proceeds of the sale of personal property to the extent only that gains are derived there from by the vendor** ..." (Bold and underline emphasis)

Regal Drug Co v. Wardell, 260 US 386 (1922):
"Congress may not, under the taxing power, assert a power not delegated to it by the Constitution." (Bold emphasis)

Helvering v. Edison Brothers' Stores, 8 Cir. 133 F2d 575 17 (1943):
"The Treasury **cannot by interpretive regulations, make income of that which is not income** within the meaning of the revenue acts of Congress**, nor can Congress, without apportionment, tax as income that which is not income within the meaning of the 16th Amendment**." (Bold emphasis)

3. See what the Supreme Court have to say about the Sixteenth Amendment, and how the Court has defined Income as "profit or gain" not salary or compensation for labor.

Evans V. Gore, 253 U.S. 245 (1920):
"The 16th Amendment **does not justify the taxation** of **persons or things previously immune**. It was intended only to remove all occasions for any apportionment of income taxes among the states**. It does not authorize a tax on a salary**" (Bold emphasis)

Staples v. U.S., 21 F.Supp. AT 737 (1937):
"Income within the meaning of the Sixteenth Amendment and the Revenue Act, means 'gain'... and in such connection 'gain' means profit...proceeding from property, severed from capital, however invested or employed, and coming in, received, or drawn by the taxpayer, for his separate use, benefit and disposal.**."** (Bold emphasis)

EXHIBIT ____

Bowers v. Kerbaugh-Empire Co., 271 U.S. 170, 173, 174 (1926):
"The Sixteenth Amendment ... **It was not the purpose or effect of that amendment to bring any new subject within the taxing power. Congress already had power to tax all incomes ... 'Income' has been taken to mean the same thing as used in the Corporation Excise Tax Act of 1909 (36 Stat. 112), in the Sixteenth Amendment, and in the various revenue acts subsequently passed ... income may be defined as gain derived from** capital, from labor, or from both combined, including profit gained through sale or conversion of capital ... And **that definition has been adhered to and applied repeatedly** ..."

Helvering v. Edison Brothers' Stores, 8 Cir. 133 F2d 575 17 (1943):
"The Treasury cannot by interpretive regulations, make income of that which is not income within the meaning of the revenue acts of Congress**, nor can Congress, without apportionment, tax as income that which is not income within the meaning of the 16th Amendment.**" (Bold emphasis)

Merchants' Loan & Trust Co. v. Smietanka, 255 U.S. 509, 517-519 (1921):
"**The Corporation Excise Tax Act of August 5, 1909** (36 Stat. 11, 112), was not an income tax law, but a definition of the word 'income' was so necessary in its administration that in an early case it was formulated as 'A **gain derived from capital**, from labor, or from both combined' ... **This definition, frequently approved by this court**, received an addition, in its latest income tax decision ... so that it **now reads:**

'Income may be defined as a gain derived from capital, from labor, or from both combined, **provided it be understood to include profit gained through sale or conversion of capital assets** ... The use made of **this definition of 'income'** in the decision of cases arising **under the Corporation Excise Tax Act of August 5, 1909, and under the Income Tax Acts**, is, we think, decisive of the case before us ... **'there would seem to be no room to doubt that the word 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 that what that meaning is has now become definitely settled by decisions of this Court ... the commonly understood meaning of the term which must have been in the minds of the people when they adopted the Sixteenth Amendment to the Constitution**.'"

McCutchin v. Commissioner of IRS, 159 F2d 472 5th Cir. (1947):
"The 16th Amendment does not authorize laying of an income tax upon one person for the income derived solely from another." (Bold emphasis)

Conner v. U.S., 303 F.Supp. 1187 (1969):
"... whatever may constitute income, therefore, must have the essential feature of gain to the recipient. This was true when the 16th Amendment became effective, it was true at the time of Eisner v. Macomber Supra, it was true under Section 22(a) of the Internal Revenue Code of 1938, and it is likewise true under Section 61(a) of the I.R.S. Code of 1954. **If there is not gain, there is not income ... Congress has taxed income not compensation**." (Bold emphasis)

EXHIBIT ____

4. The Supreme Court goes on to tell us that "Income or Profit" does not include compensation for our labor. The exchange of labor for pay of equal value has never been income.

Commercial League Assoc. v. The People, 90 Ill. 166 (1878):
"The object of the statute, no doubt, was to prevent the corporation from making dividends of profits among the members, as do corporations organized for pecuniary profit; and while the statute might subserve a useful purpose if construed in this manner, we fail to perceive any benefit which would result if a member of the association, who happened to fill an office, should be deprived of receiving compensation for his labor as an officer. . **Compensation for labor cannot be regarded as profit within the meaning of the law.** The word 'profit' as ordinarily used, means the gain made upon business or investment - **a different thing altogether from mere compensation for labor**." (Bold emphasis)

Stratton's Independence v. Howbert, 231 US 309 (1913):
"**Income ... may be defined as the gain derived from capital or from labor or from both combined.**" (Bold emphasis)

Edwards v. Keith, 231 F 110, 113 (1916):
"... **one does not derive income by rendering services and charging for them.**" (Bold emphasis)

Evans v. Gore, 253 U.S. 245 (1920):
"The 16th Amendment does not justify the taxation of persons or things previously immune. It was intended only to remove all occasions for any apportionment of income taxes among the states**. It does not authorize a tax on a salary**" (Bold emphasis)

Staples v. United States, 21 F.Supp 737 at 739 (1937):
"Income means gains/profit from property severed from capitol, however invested or employed. **Income is not a wage or compensation for any type of labor**" (Bold emphasis)

Lauderdale Cemetery Assoc. v. Mathews, 345 PA 239, 47 A. 2d 277, 280 (1946):
"... **reasonable compensation for labor or services rendered is not profit.**" (Bold emphasis)

McCutchin v. Commissioner of IRS, 159 F2d 472 5th Cir. (1947):
"**The 16th Amendment does not authorize laying of an income tax upon one person for the income derived solely from another.**" (Bold emphasis)

So. Pacific v. Lowe, 238 F. Supp. 736, 247 US 330 (1918):
"**'income' as used in the statute should be given a meaning so as not to include everything that comes in. The true function of the words 'gains' and 'profits' is to limit the meaning of the word 'income'**. (Bold emphasis)

EXHIBIT ____

Oliver v. Halstead, 86 S.E. Rep 2nd 85e9 (1955):
"There is a clear distinction between `profit' and 'wages', or a compensation for labor. **Compensation for labor (wages) cannot be regarded as profit within the meaning of the law.** The word `profit', as ordinarily used, means the **gain made upon any business or investment- - - a different thing altogether from the mere compensation for labor.**"

Penn Mutual Indemnity Co. v. Commissioner, 32 Tax Court page 681 (1959):
"The rule of Eisner v. Macomber has been reaffirmed on so many occasions that citation of the cases to this effect would be unnecessarily burdensome. To depart from the rule at this late date would ignore the sound principles upon which that case was decided and would throw into confusion the fundamental income tax structure and law as it has developed in the almost half century which has elapsed since adoption of the 16th amendment. **That there cannot be 'income' without a 'gain' accords with the common understanding of the term, a test of construction which is particularly appropriate in our system of self-assessed Federal income tax ...** Moreover, **that which is not income in fact manifestly cannot be made such by the legislative expedient of calling it income ....**"

Commissioner of IRS v. Duberstein, 80 S. Ct. 1190 (1960):
"**Property acquired by gift is excluded from gross income.**" (Bold emphasis)

Tennessee Supreme Court in Jack Cole v. Commissioner MacFarland, 337 SW2d 453 (1960):
"**The right to receive income or earnings is a right belonging to every person, and realization and receipt of income is therefore not a "privilege that can be taxed.**"

Conner v. U.S., 303 F.Supp. 1187 (1969):
"... whatever may constitute income, therefore, must have the essential feature of gain to the recipient. This was true when the 16th Amendment became effective, it was true at the time of Eisner v. Macomber Supra, it was true under Section 22(a) of the Internal Revenue Code of 1938, and it is likewise true under Section 61(a) of the I.R.S. Code of 1954. **If there is not gain, there is not income ... Congress has taxed income not compensation.**" (Bold emphasis)

5. The Courts state that "income" is not everything that comes in as the IRS claims, and does not include what you were paid for your labor.

Lucas v. Earl, 281 U.S. 111 (1930):
"**The claim that salaries, wages, and compensation for personal services are to be taxed as an entirety** and therefore must be returned by the individual who has performed the services which produce the **gain is without support, either in the language of the Act or in the decisions of the courts construing it...** It is to be noted that, by the language of the Act, **it is not salaries, wages, or compensation for personal services that are to be included in gains, profits, and income derived from** salaries, wages, or compensation for personal services."
(Bold emphasis)

EXHIBIT ____

So. Pacific v. Lowe, 238 F. Supp. 736, 247 US 330 (1918):
"'income' as used in the statute should be given a meaning so as not to include everything that comes in. The true function of the words 'gains' and 'profits' is to limit the meaning of the word 'income'. (Bold emphasis)

6. The Courts have adjudicated that our right to work is protected and cannot be taxed. They say that congress can tax any privilege it wants, but not a common or basic right.

Coppage v. State of Kansas, 236 US 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." (Bold emphasis)

Sims v. Ahrens, 271 SW 720 31 (1925):
"An income tax is neither a property tax nor a tax on occupations of common right, but is an EXCISE tax...The legislature may declare as 'privileged' and tax as such for state revenue, those pursuits not matters of common right, **but it has no power to declare as a 'privilege' and tax for revenue purposes, occupations that are of common right."** (Bold emphasis)

Oregon Supreme Court in Redfield v. Fisher, 292 P. 813, at 819 (1930):
"The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; **but the individuals' rights to live and own property are natural rights for the enjoyment of which an excise cannot be imposed."** (Bold emphasis)

Jerome H. Sheip Co. v. Amos, 100 Fla. 863, 130 So. 699, 705 (1930):
"A man is free to lay hand upon his own property. **To acquire and possess property is a right, not a privilege ... The right to acquire and possess property cannot alone be made the subject of an excise** .... (Bold emphasis)

U.S. Supreme Court in *Magnano Co. v. Hamilton*, 292 US 40 (1934):
"***The power to tax the exercise of a [right] ... is the power to control or suppress its enjoyment.***"
(Bold emphasis)

U.S. Supreme Court in *Murdock v. Pennsylvania*, 319 US 105, at 113 (1943):
"A state may not ... impose a charge for the enjoyment of a right granted by the Federal Constitution." (Bold emphasis)

Jack Cole Company v. Alfred T. MacFarland, Commissioner, 206 Tenn, 694, 337 S.W.2d 453 Supreme Court of Tennessee (1960):
"Since the right to receive income or earnings is a right belonging to every person, this right cannot be taxed as privilege." (Bold emphasis)

EXHIBIT ____

Wilby v. State, 93 Miss. 767, 772-73, 47 So. 465, 466-67 (1908):
"It certainly was not the intention of the legislature to levy a tax upon honest toil and labor."

. . .

"**[l]iberty, in its broad sense, must consist of the right to follow any of the ordinary callings of life without being trammelled . . . The right to follow any of the common occupations of life is an inalienable right. . . . It was formulated as such under the phrase `pursuit of happiness' in the [D]eclaration of [I]ndependence . . . This right is a large ingredient in the civil liberty of the citizen.**" (Bold emphasis)

Butcher's Union v. Crescent City, 111 US 746 (1884):
"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. ... 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." (Bold emphasis)

7. The Courts tell us that Income Tax is an EXCISE Tax. This means it is a tax on the exercise of some federally privileged or taxable activity.

Sims v. Ahrens, 271 SW 720 31 (1925):
"An income tax is neither a property tax <u>nor a tax on occupations of common right</u>, but is an excise tax ...The legislature may declare as 'privileged' and tax as such for state revenue, those pursuits not matters of common right, but it has no power to declare as a 'privilege' and tax for revenue purposes, occupations that are of common right." (Bold emphasis)

Oregon Supreme Court in *Redfield v. Fisher*, 292 P. 813, at 819 (1930):
"The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; **but the individuals' rights to live and own property are natural rights for the enjoyment of which an excise cannot be imposed."** (Bold emphasis)

White Packing Co. v. Robertson, 89 F 2d 775, 779 the 4th Circuit Court (1937):
"The tax is, of course an excise tax, as are all taxes on income . . ." (Bold emphasis)

8. The Courts have protected the rights of all Americans from becoming crimes including any penalty fall upon them for the exercise thereof.

Miller v. U.S., 230 F 489 (1956):
"The claim and exercise of a Constitutional right cannot be converted into a crime." (Bold emphasis)

U.S. Supreme Court in *Hurtado v. California*, 110 US 516 (1884):
"The state cannot diminish the rights of the people." (Bold emphasis)

EXHIBIT ____

Sherar v. Cullen, 481 F2d 946 (1973):
*"... **there can be no sanction or penalty imposed upon one because of his exercise of constitutional rights**."* (Bold emphasis)

EXHIBIT V

AFFIDAVIT # 13 REGARDING THE MISAPPLICATION OF 26 U.S.C. § 6020(B)

I, Clare L. Reading and James L. Reading hereafter Affiants are mentally competent and over the age of 18, and have personal knowledge of the matters and facts stated herein:

1. Affiants declares that an Affidavit is a person's written declaration or statement of facts voluntarily made and confirmed by oath or affirmation, before a person with authority for administering the oath. It is taken or given by any person having knowledge of facts and circumstances relating to a truth, including violation of laws and wrong doings. The IRS uses Affidavits to support investigations, as evidenced per IRM 20.1.6.1.7 (02-08-2008) Affidavits. This Affidavit is written by Affiant to present the truth and facts regarding the erroneously created SFR's against Affiant.

2. Affiants is in receipt of evidence which confirms that the Substitution For Return's (SFR's) for Federal Individual Income Tax that were created by IRS employees for the tax years 1993, 1994, 1995, and 2008 for James Reading and 1994, 1995 and 2008 for Clare L. Reading, were not in compliance with the law, but instead were done under *color of law*[1].

3. Affiants are in receipt of several documents provided by the IRS, in which they claim that 26 U.S.C. § 6020(b), provides them the authority to create a return for Affiants for these years. Affiant rebuts these false claims, and provides this Affidavit as sworn testimony, along with exhibits that show that they do not have the authority as they claim, and that they are operating under *color of law,* and beyond their authority.

4. Affiant presents as evidence, the exact wording of § 6020(b);

> 6020(b) **Execution of return by Secretary**
> (1) **Authority of Secretary to execute return**
> If any person **fails to make any return required by any internal revenue law or regulation made** thereunder at the time prescribed therefor, or makes, willfully or otherwise, **a false** or

[1] **COLOR OF LAW- The appearance, semblance, without the substance of legal right.** Misuse of power, possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state in action taken under "color of state law" *Atkins v. Lanning* D.C. Okl. 415 F Supp 186, 188. Black Law 6th Edition Page 265.

fraudulent return, th[redacted]ecretary shall make such return from [redacted] own knowledge and from such information as he can obtain through testimony or otherwise.

5. Affiant declares that this is a conditional statute that authorizes the **Secretary** to execute a return under certain conditions. The statute does not specifically state the exact types of returns that are authorized to be executed by the **Secretary**, but it does provide restrictions and conditions.

6. Affiant declares that the wording of 26 U.S.C. § 6020, only authorizes a return to be created by the **Secretary** **NOT** the IRS under three conditions. 1) A person fails to make any return required by any internal revenue law or regulation. 2) A person makes, willfully or otherwise, a false return. 3) A person makes, willfully or otherwise, a fraudulent return.

7. Affiant has no evidence, and no testimony or evidence has been provided by the IRS, that any of these conditions have been met. Therefore, the IRS was operating beyond their authority and under *color of law*, when they created the SFR's for the years 1993, 1994, 1995, and 2008. The IRS may not use this statute for any other conditions other than those stated by Congress in the statute.

8. Affiant has no evidence, and no testimony or evidence has been provided by the IRS that a return was required to be filed unless again a condition is met that the amount of "income" exceeds the exemption amount per 26 U.S.C. 6012. Affiants declare that their "income" as defined by the US Supreme Court did exceed the amount which would require them to file. The IRS presumed differently and has ignored the proper and legal definition of "income".

9. Affiants declare they have never received any document from the IRS which stated the return false or fraudulent therefore the second and third contention was not met. It should be clear that the IRS operated beyond their authority and the intent of the statute 6020(b).

10. Affiant declares that by definition and under the law, the word **FALSE** means; Untrue; erroneous; deceitful; contrived or calculated to deceive and injure. **Unlawful. In law, this word means something, more than untrue; it means something designedly untrue and deceitful, and implies an intention to perpetrate some treachery or fraud**. *Hatcher v. Dunn*, 102 Iowa, 411, 71 N. W. 343, 36 L. R, A. 689; *Mason v. Association*, 18 U. C. C. P. 19; *Ratterman v. Ingalls*, 48 Ohio St 468, 28 N. E. 168. Blacks Law 2nd Edition page 480

11. Affiants are in possession of Exhibit 20.1.1-8 (02-22-2008) Dictionary of Key Terms, which defines;

> SUBSTITUTE FOR RETURN (SFR) - A return prepared on behalf of a taxpayer by the Service, pursuant to IRC section 6020(b). The return is prepared **when it has been determined that a taxpayer is liable for filing the tax return,** but has failed to do so upon due notice from the Service.

12. Affiants declare this is not the same wording of the statute 6020(b). It appears that the IRS has created their own law.

> (1) **Authority of Secretary to execute return**
> If any person **fails to make any return required by any internal revenue law or regulation made** thereunder at the time prescribed therefor, or makes, willfully or otherwise, **a false** or **fraudulent return**, the **Secretary** shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

13. Affiants declare that the statute states; **"**If any person **fails to make any return only required by any internal revenue law or regulation made…".** Yet the IRS have made up their own policy and applying it as if it is law, saying "**when it has been determined that a taxpayer is liable for filing the tax return."**

14. Affiants is not in receipt of any evidence from the IRS that shows that return was required by **internal revenue law or regulation to be filed under the current circumstances.** Affiants declare that they are also not in receipt of any evidence from the IRS that shows that they are liable for filing a tax return. No testimony or evidence has been presented by the Plaintiff to show that Defendants is liable to file a tax return if they have no "income" as they have sworn to and as the IRS has failed to rebut.

15. Affiants declare that the IRS has wrongful presumed, that what was paid to Affiants is "income", under the law. Affiants have rebutted under sworn testimony, when Affiants corrected the erroneous Information Returns sent by third parties to the IRS.

16. Affiants declare there is no statute that allows the IRS to ignore Affiant's sworn testimony, or to ignore US Supreme Court rulings, which clearly address, that what is received in exchange for labor is not "income", under the law. Therefore, the IRS was operating under *color of law* when they created these SFR's.

17. Affiant declares that each of the Tax Examiners who created these [illegible]R's for the tax years, all failed to comply with 26 C.F.R.§ 601.105(2) (i). These tax examiners' all failed to honor my **request for an interview to discuss the proposed adjustments, the case was not transferred to the taxpayer's district office,** therefore, by violating this regulation, they denied me my due process rights guaranteed under the Constitution.

18. Affiant declares that the US Supreme Court, and others Courts, have ruled that the IRS does not have this authority to expand or add something not in the statute, and such regulations are void under the law. .". See Defendants' Exhibit – Y, US Supreme Court cases regarding regulations

- *United States v. Calamaro*, 354 U.S. 351 (1957), 1 L. Ed. 2d 1394, 77 S. Ct. 1138 (1957) **"In construing federal revenue statutes, the Supreme Court gives no weight to Treasury regulations which attempt to add to statutes something which is not there.**"
- *Gould v. Gould*, 245 U.S. 151 at 153, which the US Supreme Court concluded, "In 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 [enacted federal laws] are construed most strongly against the government and in favor of the citizen."
- *United States v. Calamaro*, 354 U.S. 351 (1957), 1 L. Ed. 2d 1394, 77 S. Ct. 1138 (1957) "In construing federal revenue statute, **Supreme Court gives no weight to Treasury regulation which attempts to add to statute something which is not there.**"
- *National Life and Accident Insurance Company v. United States of America* 524F.2d 559 (1975) **"Finding as we do that this regulation is an attempt to extend the meaning of the statute, we hold that it is invalid**. This brings us then to an **interpretation of the statutes unaided by the Regulation**."

19. Affiant declares that § 6020(b), does NOT authorize the IRS to do anything. It only authorizes the **Secretary** to perform the tasks outlined in this statute. The **Secretary** refers to the Secretary of the Treasury, not the IRS. Why is the IRS again misrepresenting the law? Are they claiming or presuming that they have the authority to operate on behalf of the Secretary?

20. Affiant declares that the Secretary can delegate authority to others, but that has to be done by a duly issued Delegation Order (DO). Affiant declares that he has no evidence and believes that none exists, that the Secretary has delegated this authority to the IRS, to make and execute income tax returns. Affiant declares that a check of the Federal Register, where all rules and regulations directly affecting the public must be published, fails to disclose any such delegation order. Since the Treasury Department is a law abiding agency of the federal government, if such a delegation order had been issued, surely, it would have complied with the law, and published it in the Federal

Register. Therefore, unless and until otherwise demonstrated and disclosed, it must be presumed that only the Secretary has the authority to sign returns pursuant to Section 6020(b).

21. Affiant states, that the IRS falsely claims that Delegation Order 182 authorizes them to act on behalf of the Secretary, and perform the duties outlined in 26 U.S.C. § 6020(b). Although this Delegation Order does provide authority, it is not from the Secretary. Therefore, this Delegation Order 182 appears to be void of authority, without a proper unbroken chain of Delegation Orders, from the Secretary to the IRS employee who created the return.

22. Affiant has serious doubts of the existence of properly and legally executed Delegation Orders that would support their claim of authority. Affiants are not in receipt of any Delegation Orders which show a complete unbroken chain of authority from the Secretary to the specific IRS employee who created the SFR's. Without such evidence, there is nothing to support the claim that Delegation Order 182 has the authority it claims. It must get its authority for somewhere. The reluctance of the IRS to provide these documents when asked for, could be considered fraud according to the Courts.

23. Affiants are not in receipt of any version of Delegation Order 182 which specifically lists the 1040 return as authorized to be created. However, Affiants are in receipt of several older versions of Delegation Order 182, which do provide a limited number of returns authorized under 6020(b), and the 1040 is not listed.

24. Affiants are in receipt of a copy of Delegation Order DD OKC-150 (Rev. 5) Dated Nov. 27. 1987, which provides a list of the types of tax returns authorized per 26 U.S.C. § 6020(b), and the 1040 Return is not listed. This Delegation Order 182 refers to Treasury Regulations § 301.6020-1(b), Commissioner Delegation Order No. 182, (Rev: 1) and IRM 5292.

25. Affiants declare that the copy of Delegation Order DD OKC-150 (Rev. 5) only lists the following 9 tax returns as authorized to be created under the authority of § 6020(b) and that the 1040 Income Tax is not listed. See **Exhibit V-1** D.O. OKC-150 Rev 5

    Form 940, Employer's Annual Federal Unemployment Tax Return

    Form 941, Employer's Quarterly Federal Tax Return
    Form 942, Employer's Quarterly Tax Return for Household Employees
    Form 943, Employer's Annual Tax Return for Agricultural Employees
    Form 11—B, Special Tax Return—Gaming Devices
    Form 720, Quarterly Federal Excise Tax Return

Form 2290, Federal U[redacted]Tax Return on Highway Motor Vehicl[redacted]
Form CT-1, Employer's Annual Railroad Retirement Tax Return
Form 1065, U.S. Partnership Return of Income.

26. Affiants are in receipt of a copy of IRS 5200 Delinquent Return Procedure Manual, and in section 5290 Refusal to File – IRC 6020(b) Assessment Procedure, it states under 5292; (1) The procedure applies **to employment, excise, and partnership tax returns**. Generally the following returns will be involved, and once again the Individual Income Tax return1040 again is not listed. See **Exhibit V-2** IRM 5292

27. Affiants are in receipt of a copy of IRM 5292, which only authorizes the following 9 returns as authorized to be created under the authority of § 6020(b), and the 1040 Income Tax is not listed.

Form 940, Employer's Annual Federal Unemployment Tax Return;
Form 941, Employer's Quarterly Federal Tax Return;
Form 942, Employer's Quarterly Tax Return for Household Employees;
Form 943, Employer's Annual Tax Return for Agricultural Employees;
Form 11—B, Special Tax Return—Gaming Devices;
Form 720, Quarterly Federal Excise Tax Return
Form 2290, Federal Use Tax Return on Highway Motor Vehicles;
Form CT-1, Employer's Annual Railroad Retirement Tax Return.
Form 1065, U.S. Partnership Return of Income.

28. Affiants are in receipt of a copy of Delegation Order 182 Rev 3, which was reprinted in an IRS Revenue Officer's Training Manual on Page 23-3 and 23-4, and this document provides a list of 7 tax returns authorized per 26 U.S.C. § 6020(b), and the 1040 Income Tax is not listed. See **Exhibit V-3** - R.O. Training Manual 23-3 & 23-4

Form 940, Employer's Annual Federal Unemployment Tax Return;
Form 941, Employer's Quarterly Federal Tax Return;
Form 942, Employer's Quarterly Tax Return for Household Employees;
Form 943, Employer's Annual Tax Return for Agricultural Employees;
Form 2290, Federal Use Tax Return on Highway Motor Vehicles;
Form CT-1, Employer's Annual Railroad Retirement Tax Return.
Form 1065, U.S. Partnership Return of Income.

29. Affiants are in receipt of a copy of Delegation Order 182 Rev 7, which no longer references any specific returns authorized to be created under the authority of 26 U.S.C. § 6020(b). This appears to be by design, in order to deceive the reader into believing that any return is authorized.

30. Affiants are not in receipt of any version of Delegation Order 182, which **specifically lists the 1040 return as authorized to be created.** Therefore, the creation of a tax return 1040 is prima *facie evidence* that the IRS is operating beyond the authority of Delegation Order 182, by illegally creating a tax return that is never listed in any revision of Delegation Order 182.

31. Affiants are in receipt of a copy of IRS Revenue Officer Training Manual Page 25-1 and 25-2, in which it is clearly stated: "**preparation of employment, excise, or partnership tax return according to the provisions of IRC 6020(b).**" There is no mention of preparing a 1040 Individual Income Tax Return. See Exhibit V-4 - R.O. Training Manual 25-1 & 25-2.

32. Affiants are in receipt of a copy of IRS Revenue Officer Training Manual Page 25-10, which states: **Remember: Refusal to file cases involving Forms 940, 941, 942, 943, 720, 1065, 2290, or CT-1 will not be referred to Exam. These returns should be prepared under authority of IRC Section 6020(b)**. There is no mention of preparing a 1040 Individual Income Tax Return. See Exhibit V-5 - R.O. Training Manual 25-10.

33. Affiants are in receipt of a copy of IRS Revenue Officer Training Manual Page 23-3, which states; "The **IRM restricts the broad delegation shown in figure 23-2, for revenue officers**, to employment, excise, and partnership tax returns **because of constitutional issues.**" See **Exhibit V-6** - R.O Training Manual Page 23-3

34. Affiants are in receipt of a copy of IRM 5.1.11.9 (05-27-1999) IRC 6020(b) Authority, which lists 8 tax returns that are authorized to be created, and the 1040 Income Tax return is not listed. See **Exhibit V-7** – IRM 5.1.11.9 (05-27-1999)

    Form 940, Employer's Annual Federal Unemployment Tax Return
    Form 941, Employer's Quarterly Federal Tax Return
    Form 942, Employer's Quarterly Tax Return for Household Employees
    Form 943, Employer's Annual Tax Return for Agricultural Employees
    Form 720, Quarterly Federal Excise Tax Return
    Form 2290, Heavy Vehicle Use Tax Return
    Form CT-1, Employer's Annual Railroad Retirement Tax Return
    Form 1065, U.S. Return of Partnership Income.

35. Affiants are in receipt of a copy of IRM 5.1.11.6.8 (03-01-2007) IRC 6020(b) Authority, which restricts the broad presumption of Delegation Order 182 Rev 7, to only these 8 tax returns. However, again the 1040 Individual Income Tax Return is not listed. See V-8 - IRM 5.1.11.6.8

(1) "The following returns may be prepared, signed and executed by revenue officers under the authority of IRC 6020(b):

A. Form 940, Employer's Annual Federal Unemployment Tax Return;
B. Form 941, Employer's Quarterly Federal Tax Return;
C. Form 943, Employer's Annual Tax Return for Agricultural Employees;
D. Form 944, Employer's Annual Federal Tax Return;
E. Form 720, Quarterly Federal Excise Tax Return;
F. Form 2290, Heavy Vehicle Use Tax Return;
G. Form CT–1, Employer's Annual Railroad Retirement Tax Return;
H. Form 1065, U.S. Return of Partnership Income.

(2) "Pursuant to IRM 1.2.44.5, **Delegations of Authority, Order Number 182 (rev. 7)**, dated 5/5/1997, **revenue officers GS-09** and above, and **Collection Support Function managers GS-09** and above, have the authority to prepare and execute returns under IRC 6020(b)."

36. Affiants are not in receipt of any statute and corresponding implementing regulation, or Delegation Order that together authorizes the IRS to create a SFR for the years 2004, 2005 and 2006 for Affiant.

37. Affiants are in receipt of a copy of a Disclosure Letter which refers to the question about SFR for 1040 tax returns. The response was; "**Delegation Orders which authorize Internal Revenue Service employees to create substitution for returns do not exist. This is part of a processing procedure located in an Internal Revenue Manual.**" See **Exhibit V-9** - Disclosure Letter

38. Affiant declares that in support of the statement made by the Disclosure Officer in Exhibit V-9, Affiant's IMF records clearly show that the IRS used IRM 4.19.17.1.3.1 (11-10-206), Substitute For Return Procedures, to create the SFR's for the years 2004, 2005, and 2006. Yet this IRM never states or claims that this is for a 6020(b) return. In fact, the text "6020", is not used anyplace in this IRM provision. See **Exhibit V-10** IRM 4.19.17.1.3.1 (11-10-206) Substitute For Return Procedures.

39. Affiant declares that this IRM 4.19.17.1.3.1 Part 10 states; "**Returns submitted must have the taxpayer's signature.**" Therefore if the IRS used this procedure, why can they not provide a copy of the return with my signature on it? Failure to provide this return with my signature is prima facie evidence of violation of this IRM provision. Affiant declares that this appears to be the procedure for creating a 6020(a) tax return not a 6020(b) tax return because of the signature required.

40. Affiant declares that it appears that the IRS is using IRM 4.19.17.1.3.1 (11-10-206), likely written for the creation of returns under 6020(a), and claiming that they were done under the authority of

6020(b), per Delegation Order 182, which, has been shown not to authorized a 1040 Tax Return to be created. This appears to be nothing less than FRAUD by the IRS.

41. Affiants are in receipt of a copy of a letter from the National Archives, which answers the question whether Internal Revenue Service provisions codified at 26 U.S.C. §6020; §6201; §6203; §6301; §6303; §6321; §6331 through §6343; §6601, §6602; §6651; §6701 and §7207, have been processed, or included in 26 CFR part 1. It goes on to say: "**regulations for the sections cited above have been published in various parts of title 27 of the Code of Federal Regulations CFR. There are no corresponding entries for title 26.**" See **Exhibit V-11** National Archives

42. Affiant declares that it appears that the IRS issued the SFR's because they claimed that Affiant's returns were frivolous, and believes, that because they are frivolous they may create a return. I have no evidence that any statute or IRM allows this rouge action by the IRS. In fact, the IRM 4.10.12.4.4 (02-23-2012), Valid, Frivolous Returns, clearly says that a return may be frivolous and valid at the same time. In addition, the SFR's created for Affiant, under such circumstances are in violation of IRM 3.0.273.38.3. See **Exhibit V-12** Returns Prepared under 6020(b).

43. Affiants are not in receipt of any evidence, that the statute 26 U.S.C. § 6020(b) is written or applies to the creation of a SFR for Individual Income Tax Return such as the 1040. Affiant declares that the IRS has failed to provide Affiant with any evidence that this statute was written for, or authorizes them to create a 1040 tax return for Affiant. Instead, they have remained silent, and operated under *color of law*.

44. Affiant declares that the Notice of Deficiencies created by the IRS for the tax years 2004, 2005 and 2006, are all based on *fraudulent*[2] Substitutions For Return (SFR), created under alleged authority of 26 U.S.C. § 6020(b). Therefore, they are void under the law.

45. Affiant has provided sworn testimony via this Affidavit, that the claim, that 26 U.S.C. § 6020(b) gives the IRS the authority to create a SFR for Affiant, is misplaced and *frivolous*[3] under the law.

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[2] **FRAUDULENT - Based on fraud**; proceeding from or characterized by fraud; **tainted by fraud**; **done, made, or effected with a purpose or design to carry out a fraud**. A statement or claim or document is "fraudulent" if it was falsely made, or caused to be made, with the intent to deceive. To Act with "intent to defraud" means to act willfully and with specific intent to deceive or cheat; ordinarily for the purpose of either causing some financial loss to another, or bring about some financial gain to oneself. Black's Law Dictionary 6th Edition page 662

[3] **FRIVOLOUS** – Of little weight or importance. A pleading is "frivolous" when it is clearly insufficient on its face, and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purpose of delay or to

46. Affiant has no doubt that the IRS was operating under *color of law* and *ultra virus* when it created these SFRs.

47. Affiants are in receipt of evidence provided by the IRS, that shows entries within Affiant's IMF records, and the Certified Form 4340, which deal with SFR's (TC 150) and Assessment of Additional Taxes, Interests (TC 196), Misc Penalties (TC 240 or TC 170), all show evidence of the IRS by-passing the computer's statutory compliance check on these entries.

48. Affiants are not in receipt of any evidence, and believes that none exists that would prove that the IRS complied with IRM Provision 5.1.11.9.2 (05-27-1999) **Preparation and Approval of Returns Part 1**[4], in the creation of a return under § 6020(b). Therefore, a violation of both process and procedure exists.

49. Affiants are not in receipt of any evidence, and believes that none exists that would prove that the IRS followed IRM Provision 5.1.11.9.1 (05-27-1999) **Taxpayer Contact Part 7**[5], in the creation of a return under § 6020(b). Could this be prima facie evidence that the IRS knows that Affiants are not a ***taxpayer***[6], or just prima facie evidence that the IRS failed to comply with yet another proper procedure in the collection process?

50. Affiants are not in receipt of any evidence, and believes that none exists that would prove that the IRS Tax Examiners followed or complied with the requirements set forth in IRM Provision 4.10.7.2 (01-01-2006) Researching Law Part 1, in the creation of a Notice of Deficiency or the return under § 6020(b) for the tax years 2004, 2005 and 2006. Therefore, a violation exists of both process and procedure.

51. Affiants are not in receipt of evidence and believes that none exists, which proves that there is a regulation 26 CFR § 1.6020, written for Subtitle A Income Tax, authorizing the implementing of this statute for Income Tax. Therefore, the IRS is operating under *color of law*. See **Exhibit V-13** CFR Index Authority for Statutes

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embarrass the opponent. **A claim** or defense **is "frivolous" if a proponent can present no rational argument based upon the evidence or law in support of that claim or defense.** Black's Law Dictionary 6th Edition page 668

[4] 1. Use Form 5604, Section IRC 6020(b) Action Sheet to prepare returns under the authority of IRC 6020(b).

[5] 7. A field call is required before using IRC 6020(b) authority.

[6] 26 USC 7701(a)(14) **Taxpayer -** The term "taxpayer" means any person subject to any internal revenue tax.

52. Affiants are in receipt of evidence in a copy of 44 U.S.C. § 1505(a)(1) and 5 U.S.C. §553(a)(2), where Congress mandates and requires documents (including regulations) to be published in the Federal Registry, in order to make them effective and legally binding.

53. Affiants are in receipt of a copy of 26 CFR § 301.6020, and understands that part 301 regulations are **internal,** and are **not** substantive, and only apply to federal and state employees. It is a well-established fact, ruled on by the Courts, that these part 301 regulations do not apply to the public, and, therefore, it do not apply to Affiant. Even though it does not apply, I have showed that the IRS failed to follow this regulation.

54. Affiant declares that the IRS simply is operating on presumptions, and not what the statutes, regulations, IRM provisions, Delegation Orders, and Training Manuals clearly state.

55. Affiant declares that each SFR created by the IRS is FRAUDULENT, and designed to deceive.

I am not an expert in the law, however, I do know right from wrong. If there is any human being damaged by any statements herein, and if he will inform me by facts, I will sincerely make every effort to amend my ways. I hereby and herein reserve the right to amend and make amendment to this document as necessary, in order that the truth may be ascertained and proceedings justly determined. If the parties given notice by means of this document have information that would controvert and overcome this Affidavit, please advise me IN WRITTEN AFFIDAVIT FORM within thirty (30) days from receipt hereof, providing me with your counter affidavit, proving with particularity by stating all requisite actual evidentiary fact and all requisite actual law, and not merely the ultimate facts or conclusions of law, that this Affidavit Statement is substantially and materially false, sufficiently to change materially my status and factual declarations. Your silence stands as consent to, and tacit approval of, the factual declarations herein being established as fact, as a matter of law. May the will of our Heavenly Father YAHWEH, through the power and authority of the blood of his Son YESHUA be done on Earth as it is in Heaven.

Jurat

I declare under penalty of perjury under the laws of the United States of America that the fore going is true and correct. 28 USC § 1746(1)

Reserving ALL Natural God-Given Unalienable Birthrights, Waiving None, Ever,

/s/ James L. Reading
James L. Reading

/s/ Clare L. Reading
Clare L. Reading

Arizona State)
) ss
Maricopa County)

The above named person, appeared before me, a Notary, subscribed, sworn under oath this 8th day of August, 2012.

Notary Public

KEVIN S. KEPLINGER
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
March 25, 2016

INTERNAL REVENUE SERVICE SOUTHWEST REGION OKLAHOMA CITY DISTRICT	Order No. DD-OKC-150, Rev. 5 CR: SD-61	
DELEGATION ORDER	DATE OF ISSUE NOV 27 1987	EFFECTIVE DATE NOV 27 1987

SUBJECT

AUTHORITY TO EXECUTE RETURNS

Authority is redelegated to Revenue Officers, GS-9 and above to prepare and execute the following returns on behalf of the District Director under Section 6020(b) of the Internal Revenue Code:

Form 940, Employer's Annual Federal Unemployment Tax Return;
Form 941, Employer's Quarterly Federal Tax Return;
Form 942, Employer's Quarterly Tax Return for Household Employees;
Form 943, Employer's Annual Tax Return for Agricultural Employees;
Form 11-B, Special Tax Return - Gaming Services;
Form 720, Quarterly Federal Excise Tax Return;
Form 2290, Federal Use Tax Return on Highway Motor Vehicles;
Form CT-1, Employer's Annual Railroad Retirement Tax Return; and
Form 1065, U.S. Partnership Return of Income

This Authority may not be redelegated.

This order supersedes Delegation Order DD-OKC-150 (Rev. 4) dated December 13, 1984.

Reference: Treasury Regulations 301.6020-1(b)
Commissioner Delegation Order No. 182, (Rev. 1)
IRM 5292

K. J. Sawyer
District Director

DISTRIBUTION:
Delegatees:
District Director
Chief, Collection & TPS Division
Chief, Special Procedures Staff
Chief, Collection Support Function
Chief, Field Branch I
Chief, Field Branch II
Group Managers, Collection
ARC-Collection, Southwest Region
Regional Management Staff: Regional Office Library

U. S. TREASURY DEPARTMENT - Internal Revenue Service

refusal to file under the provisions of the Internal Revenue Code.

(4) In instances where the delinquent taxpayer has turned the records over to a tax practitioner for preparation and completion of the return(s), the Collection employee will continue to look to the taxpayer for filing compliance except where power of attorney has been given to the practitioner.

5282 *(6-12-87)*
Subsequent Activity

(1) Generally, IMF cases where no return has been secured and Policy Statement P-5-133 does not apply, the Collection function employee have the following alternatives:

(a) Referral to the Criminal Investigation Division, see IRM 52(10)1;

(b) Summons, see IRM 5283;

(c) Referral to Examination, see IRM 52(10)2; or,

(d) Referral to Substitute for Return Unit, see IRM 52(10)5

(2) Refusal to file employment and excise tax return(s) should be processed by Collection under IRC 6020(b) procedures.

5283 *(11-15-85)*
Summons Procedures

5283.1 *(11-15-85)*
Procedures

Revenue Officers should review the summons procedures provided in IRM 52(12)0 and Chapter 600 of IRM 57(16)0, Legal Reference Guide for Revenue Officers.

5283.2 *(11-15-85)*
Taxpayer Response to Summons

(1) Accept the return(s) when a taxpayer presents the return(s) completed and signed.

(2) If the return(s) has not been prepared, the Revenue Officer will prepare the return(s) if the taxpayer's records are such that the skills of a Revenue Agent or Tax Auditor are not required.

(3) If the records presented by the taxpayer are such that the skills of a Revenue Agent or Tax Auditor are required, the Examination person designated to be on standby should be contacted.

5283.3 *(8-18-86)*
Summons Follow-up Action

If the taxpayer does not comply with the summons, the Revenue Officer should prepare a Form 4443, Summons Referral. See IRM 52(12)(14).21.

5290 *(11-15-85)*
Refusal to File—IRC 6020(b) Assessment Procedure

5291 *(11-15-85)*
Scope

(1) The procedure applies to employment, excise and partnership tax returns. Generally, the following returns will be involved.

(a) Form 940, Employer's Annual Federal Unemployment Tax Return;

(b) Form 941, Employer's Quarterly Federal Tax Return;

(c) Form 942, Employer's Quarterly Tax Return for Household Employees;

(d) Form 943, Employer's Annual Tax Return for Agricultural Employees;

(e) Form 11-B, Special Tax Return—Gaming Devices; (The Revenue Act of 1978, P.L. 95-600 repealed the coin-operated gaming device tax effective June 30, 1980. Therefore, Form 11-B is not required for gaming devices after June 30, 1980. These procedures are provided to cover delinquent situations prior to June 30, 1980.)

(f) Form 720, Quarterly Federal Excise Tax Return

(g) Form 2290, Federal Use Tax Return on Highway Motor Vehicles;

(h) Form CT-1, Employer's Annual Railroad Retirement Tax Return.

(i) Form 1065, U.S. Partnership Return of Income.

5292 *(6-12-87)*
General

(1) Revenue officers, ACS and CSF managers, GS-9 and above, are authorized to execute returns under IRC 6020(b).

(2) When the taxpayer is contacted, the Collection employee will set a specific date for filing and secure sufficient information so that an accurate return can be prepared if the taxpayer fails to file by the specified date.

Figure 23-2

Order No. 182 (Rev. 3)

Effective date: 12-14-83 Authority to Execute Returns

The authority granted to the Commissioner of Internal Revenue by 26 CFR 301.6020-1(b) and 26 CFR 301.7701-9 to execute returns required by any internal revenue law or regulation made thereunder when the person required to file such return fails to do so, is delegated to:

1. Revenue agents;

2. Tax auditors;

3. Revenue officers, GS-9 and above;

4. Collection Office function managers, GS-9 and above;

5. Automated Collection Branch Managers, GS-9 and above; and

6. Service Center Collection Branch managers, GS-9 and above.

The authority delegated herein may not be redelegated. Delegation Order No. 182 (Rev. 2), effective March 7, 1983, is superseded.

/s/ James I. Owens
Deputy Commissioner

The IRM restricts the broad delegation shown in figure 23-2, for revenue officers, to employment, excise, and partnership tax returns because of constitutional issues. (You have already studied audit referrals as a means to enforce compliance on income tax returns).

Generally you can file the following returns, using the authority granted by IRC section 6020(b):

1. Form 940, Employer's Annual Federal Unemployment Tax Return

2. Form 941, Employer's Quarterly Federal Tax Return

3. Form 942, Employer's Quarterly Tax Return for Household Employees

4. Form 943, Employer's Annual Tax Return for Agricultural Employees

5. Form 720, Quarterly Federal Excise Tax Return

6. Form 2290, Federal Use Tax Return on Highway Motor Vehicles

7. Form CT-1, Employer's Annual Railroad Retirement Tax Return

8. Form 1065, U.S. Partnership Return of Income.

When you recommend an assessment under IRC section 6020(b), you will prepare all the necessary returns for compliance. If a return will be due during the IRC section 6020(b) processing time, prepare it as well.

THE FIRST CONTACT

In a future lesson you will learn about interviewing taxpayers. One of the things you will discover is that the more information you obtain in your initial interview, the easier your job will be.

When you first contact the taxpayer to secure delinquent returns and if the taxpayer does not file the returns at once, establish a specific deadline for filing the returns. Try to secure sufficient information at that time so that you can prepare the returns if the taxpayer does not meet your deadline. During that visit, inform the taxpayer that if he or she does not file the return(s) by the specified deadline, IRS will consider that failure as a refusal to file. Also inform the taxpayer that if the returns aren't filed voluntarily, they may be prepared and filed for them by IRS under the authority of IRC section 6020(b).

PREPARATION OF THE RETURNS

Before preparing and processing returns under IRC 6020(b), the following actions must have been taken:

1. A field call, if required, must have been made within 30 days prior to the recommendation for assessment.

2. Sufficient information must have been obtained from the taxpayer or other sources to provide a complete explanation of the basis for the assessment.

EXHIBIT

Page 1 of 2

Lesson 25

REFERRALS

INTRODUCTION TO THIS LESSON

WHY THIS LESSON IS IMPORTANT

In the course of working your cases you will encounter situations where taxpayers neglect or refuse to file, despite your efforts to secure the tax returns. These non-filer cases can be resolved by you in one of several ways: preparation of employment, excise, or partnership tax returns according to the provisions of IRC 6020(b); referral to the Examination Division (Exam) for income taxes (1040 and 1120 taxes); or referral to the Criminal Investigation Division (CID) for any non-filer case involving possible fraud on the part of the taxpayer.

This lesson will focus on the referral process. You must be able to identify possible fraud situations in your cases and know whether to refer cases of failure to file to Exam or CID. On the job your coach and group manager will help you make these determinations.

LESSON OBJECTIVES

At the end of this lesson you will be able to:

25-1. Select those cases which should be referred to the Examination Division.

25-2. Prepare Form 3449, Referral Report.

25-3. Select those cases which should be referred to the Criminal Investigation Division.

25-4. Prepare Form 3212, Referral Report.

25-5. Identify actions to take in situations involving forcible rescue of seized property.

SYMBOLS

Certain symbols are used to guide you through this lesson. These symbols are listed here along with their meaning:

- Exercise. Complete the exercise or exercises that follow.

- Answers to Exercises. The answers to the exercises in this lesson follow this symbol.

EXHIBIT

MATERIALS REQUIRED

Form 3449, Referral Report
Form 3212, Referral Report of Potential Fraud Case

REFERENCES

IRM 52(10)0

ESTIMATED COMPLETION TIME

2 hours

EXHIBIT

Page 1 of 1

Form 3449 can also be used to refer the following types of cases to Examination Division:

RECOMMENDATION OF CIVIL PENALTIES

1. Recommendation of Civil Fraud Penalty

This can be used in cases where CID has withdrawn from a case.

Review IRM 5172.34.

2. Referrals Concerning Underreported Tax

If there appears to be a material difference between the tax listed on the return and the correct liability, and there are no indications of fraud, use Form 3449.

See IRM 52(10)2.3.

Remember: Refusal to file cases involving Forms 940, 941, 942, 943, 720, 1065, 2290, or CT-1 will not be referred to Exam. These returns should be prepared under authority of IRC Section 6020(b).

SUMMARY

If after all administrative measures, including consideration of a summons, have been taken, and the taxpayer fails to file, a referral to the Examination Division is appropriate. The referral is submitted to your group manager on Form 3449, Referral Report.

OBJECTIVES

You should now be able to:

25-1. Select those cases which should be referred to Examination Division.

25-2. Prepare Form 3449, Referral Report.

Figure 23-2

Order No. 182 (Rev. 3)

Effective date: 12-14-83 Authority to Execute Returns

The authority granted to the Commissioner of Internal Revenue by 26 CFR 301.6020-1(b) and 26 CFR 301.7701-9 to execute returns required by any internal revenue law or regulation made thereunder when the person required to file such return fails to do so, is delegated to:

1. Revenue agents;

2. Tax auditors;

3. Revenue officers, GS-9 and above;

4. Collection Office function managers, GS-9 and above;

5. Automated Collection Branch Managers, GS-9 and above; and

6. Service Center Collection Branch managers, GS-9 and above.

The authority delegated herein may not be redelegated. Delegation Order No. 182 (Rev. 2), effective March 7, 1983, is superseded.

/s/ James I. Owens
Deputy Commissioner

The IRM restricts the broad delegation shown in figure 23-2, for revenue officers, to employment, excise, and partnership tax returns because of constitutional issues. (You have already studied audit referrals as a means to enforce compliance on income tax returns).

Generally you can file the following returns, using the authority granted by IRC section 6020(b):

1. Form 940, Employer's Annual Federal Unemployment Tax Return

2. Form 941, Employer's Quarterly Federal Tax Return

G. the taxpayer address has been verified.

4. Prior to sending the Del Ret to ASFR complete the following:
   A. Resolve all open Bal Dues.
   B. Request on Form 4844, Request for Terminal Action, that the number DOAO8000, be input to reassign the case to ASFR.
   C. Attach Form 4844 to the Del Ret and process the Del Ret as a closed case using routine local procedures.
   NOTE:
   Terminal input operators will input directly on IDRS terminals the reassignment to ASFR.
5. Since installment agreement cannot be made if there are unfiled returns, Del Rets with proposed installment agreements or in Collection status 60 cannot be processed through ASFR.
6. If Bal Dues are resolved by continuous levy (status 60 with the agreement locator number of XX08), refer a Del Ret to ASFR. Prepare Form 4844 to request that the service center open a control base for the delinquent years using CC ACTON , category code "SFR" , status code "B" . Do not assign the Del Ret to DOAO8000.
7. Infrequently, the revenue officer may receive a Bal Due after the related Del Ret is sent for ASFR processing. The Del Ret status will be identified by the literal "SFR" as the category code in the Case Control and History section of CC TXMOD .

If...	Then...
the 30 or 90 day letter has been sent to the taxpayer	the Del Ret will be T-signed to DOAO8000.
the 30 or 90 day letter has not been sent to the taxpayer	both the Bal Due and Del Ret will be reassigned to a revenue officer

- If contact has been made with a taxpayer whose return is being prepared by ASFR, attempt to secure the return(s). Do not issue a summons if the taxpayer refuses to file.
- If a return is secured for a period being ASFR'd, attach Form 1725, Routing Slip, to the face of the return(s). Annotate Form 1725 with the following: "Route return(s) to the service center, Attn: ASFR Unit" . Submit through normal area channels.
- If the Bal Due is resolved and the Del Ret is still assigned to ASFR, change the assignment number to DOAO8000 via Form 4844.
- Use Form 3210, Document Transmittal to notify the service center ASFR Unit of any change in address, DTRs, correspondence or other information affecting the Del Ret in ASFR.

5.1.11.9 (05-27-1999)
IRC 6020(b) Authority

1. The following returns may be prepared, signed and assessed under the authority of IRC 6020(b):
   A. Form 940, Employer's Annual Federal Unemployment Tax Return
   B. Form 941, Employer's Quarterly Federal Tax Return
   C. Form 942, Employer's Quarterly Tax Return for Household Employees
   D. Form 943, Employer's Annual Tax Return for Agricultural Employees
   E. Form 720, Quarterly Federal Excise Tax Return
   F. Form 2290, Heavy Vehicle Use Tax Return
   G. Form CT-1, Employer's Annual Railroad Retirement Tax Return
   H. Form 1065, U.S. Partnership Return of Income
2. The following are authorized to execute returns under IRC 6020(b):
   A. Revenue officers.
   B. Automated Collection System (ACS) and Collection Support function (CSf) managers GS-9 and above.

5.1.11.9.1 (05-27-1999)
Taxpayer Contact

1. When the taxpayer is contacted, set a specific date for filing. Secure sufficient information so that an accurate return can be prepared if the taxpayer fails to file by the specified date.
   Example:
   A. Total wages, number of employees, and tax withheld for each delinquent return (Forms 941, 942 and 943).
   B. Name of states in which wages were paid (Form 940).
   C. Number of partners in the partnership, their names, addresses and social security numbers (Form 1065).
   D. Type of truck, number of axles, gross weight of vehicle and tax due (Form 2290).
2. Advise taxpayers who are personally contacted that failure to file by the specified date will be considered a refusal to file. This could subject the taxpayer to a fine, criminal penalties, or both, under IRC 7203.
3. Explain the trust fund recovery penalty, if applicable.

EXHIBIT

Page 1 of 1

5.1.11.6.8 (03-01-2007) IRC 6020(b) Authority

1. The following returns may be prepared, signed and executed by revenue officers under the authority of IRC 6020(b):
   A. Form 940, Employer's Annual Federal Unemployment Tax Return;
   B. Form 941, Employer's Quarterly Federal Tax Return;
   C. Form 943, Employer's Annual Tax Return for Agricultural Employees;
   D. Form 944, Employer's Annual Federal Tax Return;
   E. Form 720, Quarterly Federal Excise Tax Return;
   F. Form 2290, Heavy Vehicle Use Tax Return;
   G. Form CT–1, Employer's Annual Railroad Retirement Tax Return;
   H. Form 1065, U.S. Return of Partnership Income.

2. **Pursuant to IRM 1.2.44.5, Delegations of Authority, Order Number 182 (rev. 7)**, dated 5/5/1997, revenue officers GS-09 and above, and Collection Support Function managers GS-09 and above, have the authority to prepare and execute returns under IRC 6020(b).

Special Note: Delegation Order 182 Rev 1 calls out Revenue Officer GS-9 and above only, and notes no re-delegation. So any other Rev which includes other people is a re-delegation and not authorized per the Rev 1 of DO 182

EXHIBIT

Page 1 of 1

Internal Revenue Service

Department of the Treasury

801-629-1754 NOT TOLL FREE

Director
Internal Revenue
Service Center

Southwest Region

P.O. Box 9941, Ogden, Utah 84409
M/S 7000

November 2, 1993

Dear Mr.

This is in response to your Privacy Act request dated October 15, 1993.

The document locator numbers identified in your request are for Substitute for Returns, Form 1040. As stated in our prior response, these documents are available through routine processing procedures. Please refer to the enclosed page from Internal Revenue Manual 1372.

Delegation orders which authorize Internal Revenue Service employees to create substitutes for returns do not exist. This is part of a processing procedure located in an Internal Revenue Manual. If you wish to obtain a copy of the appropriate manual, you should address your inquiry to:

Internal Revenue Service
Attn: FOI Reading Room
P.O. Box 388
Ben Franklin Station
Washington, DC 20044

Sincerely,

for Jay Hammer
Disclosure Officer

Enclosure

EXHIBIT V-10

Substitute For Return Procedures

IRM 4.19.17.1.3.1) (11-10-2006) Substitute For Return Procedures

1. The examination begins when compliance check reveals filing delinquencies with potential for tax assessment.
2. Cases selected for SFR procedures should be controlled on IDRS with appropriate activity codes
3. Initial case folder will contain:
   A. Form 3198 stapled to inside left of case file folder.
   B. Compliance check information on fact of filing stapled to inside left under Form 3198.
   C. Labels (cross through any labels showing an incorrect address).
   D. Letters and information to be sent to the taxpayer (copy of 30/90 day letter.)
   E. Form 5600, Statutory Notice Worksheet, if case is going 90 days (include reports, current ENMOD and AMDIS prints).
   F. Form 5564, Notice of Deficiency Waiver.
   G. History sheet of actions.
   H. File copies of taxpayer letters and correspondence/telephone communications in date order with most current date on top.
   I. Examination workpapers.
   J. IDRS transcripts, research, IRP transcripts, any pertinent information.
   K. Form 6754, Classification Checklist.
   L. RTVUE, original return, amended return, or photocopy of return. Form 5546, Examination Return Charge out, or AMDIS print.
   M. Current TXMOD or IMFOLT
   N. AMDISA and ENMOD prints
   O. Copy of dummy SFR 1040. If push code 036 was used to establish TC 150, a dummy 1040 SFR is not required.
4. Substitutes for Returns (SFR) are established as follows:
   A. Prepare a dummy/SFR for each tax period.
   B. Use a current year tax form for each dummy/SFR.
   C. Cross out the tax period and write the SFR tax period in red using YYYYMM format.
   D. Using the non-filers name from Master File, enter a bracket in front of the last name in red.
   E. Use the non-filers correct social security number.
   F. Use either single or married filing separate filing Status for each dummy/SFR. For married filing separate, show the spouses name and SSN (if available). DO NOT use joint filing Status.

EXHIBIT V-10

Substitute For Return Procedures

G. Use the current date as the received date in MMDDYYYY format.
H. Code the entity with a "P" code (partial entity) in red above the first name area. **No address will be entered on dummy SFRs.** (Forms 2363, Master File Entity Change, must be used to update addresses to Master File.)
I. Allow exemptions for 65 or over, if applicable.
J. Enter Return Processing Codes L (dummy return) and K (delinquent return statute cleared) to the right of line 23 on form 1040 in red.
K. Write "Exam/SFR" across the top margin of the return in red.
L. Enter Computer Condition Code (CCC) 3 in the filing Status block of the return. **This generates a TC 570 to prevent prepaid credits from being refunded erroneously.**

5. **If push code 036 was used**, the TC 150 DLN will establish automatically, and the above steps, in (4) above are not required. Use the following procedures to post an IMF SFR using **AM 424 Push Code 036**:
   A. Check master file using INOLES or IMFOLE to verify that the name line is for a period equal to or earlier than the tax period being input and that the name line is for a non-joint filing status
   B. If all name lines are for a subsequent tax period, prepare Form 2363 to change the name line to the earliest tax period and filing status being established.
   C. If the name line relating to the year being processed reflects filing status married filing joint, prepare Form 2363 to change the name line to married filing separate or single. Make sure the filing status is equal to or prior to the earliest tax period being established.
   D. If the case is not on AIMS, establish the tax period by using Push Code 036 and CC AM424.
   E. If case is on AIMS, correct the Push code to 036 via CC AM424.
   F. There is no "Dummy SFR" to submit to Submission Processing when Push code 36 is used, in the top margin of Form 5344, write " Original Return - SFR."
   G. Place an IMFOLT in the case file in lieu of a tax return and notate "EXAM SFR" across the top margin of the IMFOLT.
6. Issue 30-day letter including report of Individual Income Tax Examination Changes.
7. **Complete Form 13496 with a live signature or computer facsimile signature when the 30 day letter is sent to the taxpayer. See IRM 20.1.2.1.4**
8. Compute proposed tax as single or married filing separate status based on last return taxpayer filed.

EXHIBIT V-10

Substitute For Return Procedures

9. **Prepare Form 3198, Special Handling Notice, to advise AIMS/closing of any changes to the Master File name, address or filing status.**
10. **Returns submitted must have the taxpayer's signature.**
11. All years for the same non-filer are kept together.
12. Hand-carry the returns to the Receipt and Control Unit at the Campus.
13. The Receipt and Control Unit process the returns within six days of receipt (12 days during peak periods) **using the correct Document Locator Number (DLN) for dummy/SFRs.**

National Archives

Washington, DC 20408

May 16, 1994

Richard Durjak
5506 West 22nd Place
Cicero, IL 60650

Dear Mr. Durjak:

The Director of the Federal Register has asked me to respond to your inquiry. You have asked whether Internal Revenue Service provisions codified at 26 U.S.C 6020, 6201, 6203, 6301, 6303, 6321, 6331 through 6343, 6601, 6602, 6651, 6701, and 7207 have been processed or included in 26 CFR part 1.

The parallel Table of Authorities and Rules, a finding aid Compiled and published by the Office of the Federal Register (OFR) as a part of the CFR Index, indicates that implementing regulations for the sections cited above have been published in various parts of title 27 of the **Code of Federal Regulations** (CFR). **There are no corresponding entries for title 26.**

However, the Parallel Table is only an extract of authority citations from the CFR data base and cannot be considered a comprehensive key to the statutory basis for all regulations. An agency may have additional authority for regulations that are not listed separately in authority citations, or is carried within the text of CFR sections. Citations in regulatory text generally do not appear as entries in the Parallel Table.

Since there are 12 volumes that make up part 1 of title 26 of the CFR, it would require extensive research to answer your question with certainty. Commercial computer based services are better equipped to perform this type of research. In any case, the OFR has neither the resources nor the authority to perform the research requested, since to do so would require us to make substantive interpretations as to whether certain tax statutes have any association with the specified set of regulations (see 1 CFR 3.1 enclosed).

Your second question refers to IRS procedures for incorporating material by reference in the **Federal Register.** The incorporation by reference process is narrowly defined by the provisions of 5 U.S.C 552 (a) and 1 CFR Part 51. Our records indicate that the Internal Revenue Service has not incorporated by reference in the Federal Register (as that term is defined in the Federal Register system) a requirement to make an income tax return.

I hope this information will be useful to you.

Sincerely,

Michael L. White

Michael L. White
Attorney
Office of the Federal Register

Enclosure

EXHIBIT V-12

3.0.273.38.3 Return Prepared under IRC 6020(b) False or Fraudulent

3.0.273.38.3 (01-01-2009) Return Prepared Under Internal Revenue Code 6020(b) (False or Fraudulent)

1. The Service has the authority to prepare returns for any person **who fails to submit a return** required by Internal Revenue law or regulation at the time prescribed, or makes (willfully or otherwise), a **false** or **fraudulent** return. The return is prepared from the personal knowledge of the Service's employee or from information which can be obtained through testimony or otherwise.
2. These returns are identified by a statement from the revenue officer or other employee that the return was prepared under the authority of section 6020(b). Administratively the return is processed as an original return.
3. IRC § 6020(b) provides that the return is prime facie good and sufficient for all legal purposes, however despite this language, for most purposes of the IRC, the section 6020(b) return is not treated as a return filed by the taxpayer. For example be aware of the following:
   A. The amount shown as due on a section 6020(b) return must be assessed under the deficiency procedures.
   B. The section 6020(b) return does not start the statute of limitations on assessment.
   C. The section 6020(b) return does not stop the failure to file penalty.
   D. The section 6020(b) return prepared using the Married Filing Separate (MFS) will not prevent taxpayers from electing joint filing status under IRC § 6013(b).
4. **The section 6020(b) return is treated as a return filed by the taxpayer** for purposes of determining the failure to pay the tax shown on the return (IRC § 6651(a)(2)) and the failure to pay on notice and on demand penalty (IRC § 6651(a)(3). This treatment is provided by IRC § 6651(g) with the result that the IRC § 6651(a)(3) penalty does not apply.
5. Requirements for a section 6020(b) return in general. The documents processed as a section 6020(b) return must:
   - Identify the taxpayer by name and Taxpayer Identification Number (TIN)
   - Provide a basis for the taxpayer's tax liability purport to be a return, and
   - Contain a signature made by a Service employee delegated the authority to sign section 6020(b) returns

   The IRC § 6651(a)(2) penalty may not be asserted without such information.

EXHIBIT W

IRM 4.2.2.4 (10-01-2003) Identification of Bad Payer Data

1. During the examination of Information Returns Selection System (IRSS) cases, examiners may determine that information provided by the payer is incorrect.
2. Bad payer data is defined as any situation where the payer made an error on the information return of a type that could occur on other information returns.
3. Where errors have occurred on ten or more of these documents filed by one payer or transmitter, bad payer data exists.
4. **Examples of bad payer data include but are not limited to**:
   A. Duplicate filing of Forms W-2 or 1099;
   B. Corrected Forms W-2 or 1099 not identified as a corrected, thus appearing to duplicate the original filing;
   C. Misplaced decimals;
   D. Additional digits added to amounts;
   E. Nontaxable income reported as taxable; and
   F. Income reported on the wrong form.
5. When examiners determine that bad payer data exists, they will briefly explain the identified reason on a copy of the IRSS transcript and route this copy to the Territory Manager or designate. The Territory Manager or designate will ensure the reasons are clear and will forward all copies to the Campus on a weekly basis. The copies will be directed to the attention of the IRP Magnetic Media Coordinator.

4.2.2.4.4.E (10-01-2003) Identification of Bad Payer Data

EXHIBIT X

AFFIDAVIT REGARDING THE MISINTERPRETATION AND MISAPPLICATION OF 26 U.S.C. § 61

I, Clare Reading, hereafter Affiant, and I, James Leslie Reading, hereinafter, Affiant, am a natural born citizen of the United States of America and a citizen of Arizona, am over the age of 18 and mentally competent. Affiant has personal knowledge of the statements being made hereafter in this document. I, Clare Reading, and I, James Leslie Reading, having been first duly sworn on my oath, state the following:

1. Section 61 of Title 26, the Internal Revenue Code, is often cited as "the statute of liability".

2. James Leslie Reading and Clare Louise Reading heard Juan F. Vasquez and Clare Louise Reading heard David G. Campbell state that Section 61 of the Internal Revenue Code is the "Statute of Liability" that so many have been ardently searching for.

3. Section 61 of 26 USC is not a universal "Statute of Liability".

4. Section 61 of 26 USC is actually a statute that could impose an income tax liability on civilians who pass the Civil Service Examination and go to work for the federal government.

5. No one who is living an working in the Private Sector in any one of the 50 republics united is mentioned in Title 26.

6. [*See*: Exhibits X 1 – X 4 to follow the thread from the 1939 Internal Revenue Code to Title 5, Organization of Government of 1966, through the regulations for the Internal Revenue Code and the Classification Acts of 1823 and 1949, for this interesting story of how the Civil Service was born and operates today.

7. The research contained in Exhibits X 1 – X4 show unequivocally the difference between

EXHIBIT X

"compensation for labor", "Non-employee Compensation" and "compensation for Services".

Affiants declare: I am not an expert in the law however, I do know right from wrong. If there is any human being damaged by any statements herein, if he will inform me by verifiable facts I will sincerely make every effort to make correction(s). I hereby and herein reserve the right to amend this document as necessary in order that the truth may be ascertained and proceedings justly determined. If the parties given notice by means of this document have information that would controvert and overcome this Affidavit, please advise me IN WRITTEN AFFIDAVIT FORM within thirty (30) days from receipt hereof providing me with your counter affidavit, proving with particularity by stating all requisite actual evidentiary fact and all requisite actual law, and not merely the ultimate facts or conclusions of law, under penalty of perjury, that this Affidavit is substantially and materially false sufficiently to materially change my status and factual declarations. Your silence stands as consent to, and tacit approval of, the factual declarations herein being established as fact as a matter of law.

Jurat

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, 28 USC § 1746(1).

Reserving ALL Natural God-given unalienable birthrights, waiving none,

/s/ Clare Louise Reading

Clare Louise Reading

/s/ James Leslie Reading

James Leslie Reading

Arizona State)
) ss
Maricopa County)

Clare Louise Reading and James Leslie Reading appeared before me, a Notary, subscribed and sworn under oath this 8th day of August, 2012.

Notary Public My Commission expires: 3/25/2016

seal

KEVIN S. KEPLINGER
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
March 25, 2016

26-61 Study - Notes:

Title 26 is the volume of the United States Code that contains the Internal Revenue Laws, the US Tax Code.

The IRS relies on 26 USC § 61 as the section of the Internal Revenue Code that creates or establishes the average American's "liability" for filing and paying federal income tax.

On May 7, 2009, U.S. Tax Court Judge, Juan F. Vasquez said the same thing.

To follow the development of 26 USC § 61, the first place to look is in the Derivation Tables found in the Appendix of the various volumes of the Internal Revenue Code.

Table I in the Appendix of the 1954 Internal Revenue Code shows that section 61 of 1954 corresponds to section 22(a) of the 1939 IRC.

The Statutes at Large are a chronological arrangement of the laws exactly as they have been enacted. The laws are not arranged according to subject matter and do not reflect the present status of an earlier law that has been amended. The laws are organized in that manner in the code of laws. Under the provisions of title 1, section 112 of the U.S. Code, the Statutes at Large volumes are legal evidence of the laws contained in them and will be accepted as proof of those laws in any court in the United States.

The U.S. Code is the official compilation of the current Federal statutes of a general and permanent nature. The Code is arranged according to subject matter under 50 subject headings ("titles"). The Code sets out the current status of the laws, as amended, without repeating all the language of the amendatory acts except where necessary. The Code is prima facie evidence of those laws. Its purpose is to present the laws in a concise and usable form without requiring recourse to each original act and each subsequent amendment.

If the Code section differs from the Statute at Large, the Statute at Large takes priority because it was the original Congressional enactment and the Code is a compilation by various legal publishers.

Section 22(a) of the Internal Revenue Code of 1939 ***
The regulations are written by the agency that is to implement the statute. The regulations explain or provide instruction but they are not allowed to broaden or add to the meaning of Congress in its enactment of the statute.

The U.S. Supreme Court had this to say on the subject:

"It is elementary law that every statute is to be read in the light of the Constitution. However broad and general its language it cannot be interpreted as extending beyond those matters which it was within the constitutional power of the legislature to reach." *McCullough v. Virginia*, 172 U.S. 102 (1898)

EXH X-1 Page 1 of 13

41 years later in 1939, the regulations for section 22(a) were in strict observance of the U.S. Supreme Court's admonition to interpret statutes with the Constitution in mind.

"It is elementary law that every statute is to be read in the light of the Constitution. However broad and general its language it cannot be interpreted as extending beyond those matters which it was within the constitutional power of the legislature to reach." [*McCullough v. Virginia*, 172 U.S. 102 (1898)] *

Under the above-stated principle (which the Supreme Court called "elementary law"), Congress can enact very broadly worded statutes, but they still must be read and understood with the Constitutional limits in mind. In the above-cited case, the Court went on to say that the general language of a particular taxing statute was "*not to be read as reaching to matters in respect to which the legislature had no constitutional power*", but instead, if the broad wording would seem to cover matters beyond the control of the legislature, "*the statute is to be read as though it in terms excluded them from its operation.*" Put into more modern vernacular, that simply means that every law must be read as though it specifically exempts any matters which are beyond the constitutional power of whichever government enacted the law. *

This is a crucial point to understand: CPAs, attorneys and IRS agents—even federal judges—*do not know* that such a principle of law even exists, and so *do not take it into account* when determining the correct application of the federal income tax. Instead, they accept the broadly-worded definitions at face value, unaware that Constitutional limits might apply to that law.

The statement "ignorance of the law is no excuse" is an ancient legal doctrine:

> Ignorance of the law excuses no man; not that all men know the law; but because 'tis an excuse every man will plead, and no man can tell how to confute him.
>
> John Selden (1584-1654), posthumously published in *Table Talk*, 1689.

If a defendant were allowed to escape legal responsibility for his acts, merely by saying "I didn't know it was wrong/illegal", the system of using law to regulate human conduct would collapse. So the doctrine is a practical necessity.

This doctrine still has vitality and validity today. See, for example, *Ratzlaf v. U.S.*, 510 U.S. 135, 149 (1994); *U.S. v. Freed*, 401 U.S. 601, 612 (1971) (Brennan, J., concurring); *Minnesota v. King*, 257 N.W.2d 693, 697 (1977).

However, the law in the USA has swelled to a size that is *un*knowable even by experts. In Oct 1998, the annotated edition of the U.S. Code (i.e., federal statutes) occupied 990 cm of library shelf space. In Oct 1998, the annotated edition of the New York state statutes occupied 675 cm [22.8 ft.] of library shelf space. Who can know *all* that is within these pages? A criminal law class in law school contains only about 40 hours of lectures, mostly about homicides, with a little about larceny and rape. The only solution seems to be a detailed search of statutes and cases in a database on a computer (e.g., WESTLAW),

plus the avoidance of any behavior that harms people, either through physical, financial, or emotional injury, or by deceit.

A related concept in law is "willful blindness": the criminal defendant who should have known, and could have asked, but deliberately chose *not* to ask. The law regards "willful blindness" as equivalent to knowledge. *U.S. v. Jewell*, 532 F.2d 697, 700-701 (9th Cir. 1976), *cert. denied*, 426 U.S. 951 (1976). Cited with approval in *U.S. v. Lara-Velasquez*, 919 F.2d. 946, 950-951 (5th Cir. 1990). (from - http://www.rbs2.com/cc.htm)

When a judge takes office, he swears and subscribes to an oath to "protect and defend the Constitution". It is, therefore, treasonous for a judge to apply law that is contrary to the Constitution.

If the judge does not know and understand what the Constitution says, he has a duty to find out prior to taking the oath and sitting in judgment of his fellow man.

1939 income tax regulations defining "gross income" and "net income" said that income is not subject to the tax if exempted by either statute or "fundamental law" (§ 39.21-1 (1956)), and said that in addition to those types of income exempted by *statute*, other types of income were also exempt because they were, "*under the Constitution, not taxable by the Federal Government*" (§ 39.22(b)-1 (1956)). (See also 26 CFR § 1.312-6(b).).

The Appendix of the 1986 Internal Revenue Code Table I compares the 1939 IRC with the IRC of 1986. As in the 1954 IRC Appendix, Section 61 also relates to section 22(a) of the 1939 IRC.

The federal income tax has always applied to federal employees, or those with a federal privilege or nexus, hence the name: *internal* revenue. As we recall from 8th grade history and high school civics classes, the only laws the United States Congress can enact that directly affect Americans living and working out here in one of the 50 republics united are enumerated in Article 1, section 8, clauses 1 - 17 in the federal Constitution and any Amendments properly ratified (not "deemed" so).

Taxation was such an important topic to the framers of the Constitution that taxation is the only subject mentioned twice - Article I, Section 2, Clause 3: "Representatives and direct Taxes shall be apportioned among the several States ..." and Article I, Section 9, Clause 4: "No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration hereinbefore directed to be taken."

In spite of approximately 50 U.S. Supreme Court cases spanning 200 years that have never been overturned and are still "controlling", the IRS and many lower court and administrative court judges insist on adopting a misinterpretation that allows a "direct tax (on labor) without apportionment". Many Congressmen have fallen into this erroneous practice, as well. Of course, this would cause the Constitution to be in conflict with itself - an impossible situation -

[Justice White in *Brushaber v. Union Pac. R.R.*, 240 U.S. 1, 36 S.Ct. 236 (1916): The Supreme Court, in *Brushaber*, did not uphold the constitutionality of the income tax in all respects, but only in that presented to the Court. The Court left the door open for challenges in other situations where the tax would operate to tax a property (as is a fundamental right) or fall into the class of direct taxes:
"Moreover in addition the conclusion reached in the *Pollock Case* did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, but on the contrary recognized the fact that **taxation on income was in its nature an excise** *entitled to be enforced as such* **unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct taxation was adopted to prevent, in which case the duty would arise to disregard form and consider substance alone and hence subject the tax to the regulation as to apportionment which otherwise as an excise would not apply to it.**" *Brushaber, supra*, at 16-17.
(emphasis added)

Chief Justice White, obviously, could see that not all income was taxable by the federal government and anticipated that if the income tax were applied to such income that is outside the taxing authority or would in effect require the taxing of person, property or possession, the effect, or substance, not the name, or form, of the tax would be considered and that apportionment would be required, the Sixteenth Amendment notwithstanding.]

- and is even in conflict with Article XIII because slavery was abolished in America in 1865. The IRS ignores this, although there is no basis in the law, treating pay received for labor in the *Private Sector* as if it were "gains, profit, or income" that is somehow *federally* connected.

The regulations for Title 26 are very precise, explaining that some types of income are specifically exempted by the tax code, and adding that "*no other items are exempt from gross income*" *except* for those types of income which are, "*under the Constitution, not taxable by the Federal Government*": 26 CFR § 39.22(b)-1 (1956).

Older income tax regulations defining "gross income" and "net income" said that income is not subject to the tax if exempted by either statute or "fundamental law" (§ 39.21-1 (1956)), and said that in addition to those types of income exempted by *statute*, other types of income were also exempt because they were, "*under the Constitution, not taxable by the Federal Government*" (§ 39.22(b)-1 (1956)). (See also 26 CFR § 1.312-6(b).).

(Interestingly, in a dissenting opinion regarding another issue entirely, one Supreme Court justice explained the point that "*a literal reading of a provision of the Constitution which defeats a purpose evident when the instrument is read as a whole, is not to be favored,*" and gave several examples, including this: "'*From whatever source derived,' as it is written in the Sixteenth Amendment, does not mean from whatever source derived*'[**]. Clearly he was acknowledging that the very broad, apparently all-encompassing terminology of the 16th Amendment is, when taken by itself, misleading.)
[**] Wright v. United States, 302 U.S. 583 (1938) (dissenting opinion)

Despite all of those clear and unequivocal statements by the Supreme Court, numerous lower court judges and other supposed legal experts continue to parrot the popular myth that the 16th Amendment *did* increase or expand Congress' taxing power, when it did no such thing. [Not all inclusive, by any means] 18 U.S. Supreme Court decisions that are illustrative, never overturned and still controlling are:

Butcher's Union Co. v. Crescent City Co., 111 U.S. 746, 4 S.Ct. 652 (1884)
Pollock v. Farmers' Loan and T. Co., 157 U.S. 429 (1895)
Pollock v. Farmers' Loan and Tr. Co., 157 U.S. 537, 15 S.Ct. 673 (1895)
Flint v. Stone Tracy Co., 220 U,S. 107, 31 S.Ct. 342, 359 (1911)
Stratton's Independence v. Howbert, 231 U.S. 399, 415 (1913)
Coppage v. Kansas, 236 U.S. 1, 14 (1915)
Brushaber v. Union Pac. R.R. Co., 240 U.S. 1, 36 S.Ct. 236 (1916)
Stanton v. Baltic Mining, 240 U.S. 103 (1916)
Gould v. Gould, 245 U.S. 151, 38 S.Ct. 53, 153 (1917)
Peck v. Lowe, 247 U.S. 165 (1918)
Southern Pacific Co. v. Lowe, 247 U.S. 330 (1918)
Eisner v. Macomber, 252 U.S. 159, 40 S.Ct. 189 (1920)
Evans v. Gore, 253 U.S. 245 (1920)
Merchants' L. & T. Co. v. Smietanka, 255 U.S. 509, 219, 41 S.Ct. 386, 15 A.L.R. 1305 (1921)
Lucas v. Earl, 281 U,S. 111 (1930)
Steward Mach. Co. v. Davis, 301 U.S. 548 (1937)
Wright v. United States, 302 U.S. 583 (1938) (dissenting opinion)
South Carolina v. Baker, 485 U.S. 505 (1988)

The term "gross income" (in the last 90+ years of statutes) is erroneously believed, in turn, to mean just about every type of income imaginable [i.e., "money" "payment", etc., in commonly used words - *not* the **lawful definition** declared by the U.S. Supreme Court].

For example, Section 61 of the current tax code defines "gross income" to mean "*all income from whatever source derived,*" including items such as compensation for services, interest, rents, business income, and so on. While the exact wording of the definition has varied over the years, the apparently all-encompassing scope of the term has not. In fact, the Supreme Court has stated that the very broad wording of the

definition of "gross income" used in the statutes was intended by Congress to exert "*the full measure of its taxing power*"[7]. Put another way, the legislature used such sweeping language in order to tax everything it had the power to tax. The Congress did not create a tax on receipts from labor that had been exempt from taxation from the beginning, because the intent of our Founding Fathers and the Constitution did not allow it. They would have, if they could, but they were unable, so they did not -- and a direct tax must still be apportioned among the several states.

(Re-stated from page 1):
As in *McCullough v. Virginia*, 172 U.S. 102 (1898), supra, under the above-stated principle (which the Supreme Court called "elementary law"), Congress can enact very broadly worded statutes, but they still must be read and understood with the Constitutional limits in mind. In the above-cited case, the Court went on to say that the general language of a particular taxing statute was "*not to be read as reaching to matters in respect to which the legislature had no constitutional power*," but instead, if the broad wording would seem to cover matters beyond the control of the legislature, "*the statute is to be read as though it in terms excluded them from its operation.*" Put into more modern vernacular, that simply means that every law must be read as though it specifically exempts any matters which are beyond the constitutional power of whichever government enacted the law.

The declaration of the U.S. Supreme Court in *McCullough v. Maryland*, 17 U.S. 316 (1819), when Maryland was trying to collect taxes from a national bank, was that 'if the government did not create it or control or regulate it, it cannot tax it'.

The federal government has nothing to do with the creation, control or regulation of the occupations in the private sector. The agreement between the boss and the man or woman he hires to do the job is by contract which is fully protected by the Constitution in Article I, Section 10.

26 USC § 61 lists the different forms that "gross income" could take or the different ways that "gross income" might be accumulated.

The Classification Act of 1923 and then of 1949 that finally became Title V listed all the types of occupations, called "positions" in which the various types of "gross income" could come from.

The only "gross income" that Congress has any authority to tax that comes from any jobs resembling those held in the *Private Sector* are Civil Service positions.

The final report of the 1984 Grace Commission, convened under President Ronald Reagan, quietly admitted that none of the funds collected from federal income taxes goes to pay for any federal government services. The Grace Commission found that those funds were being used to pay for interest on the federal debt, and income transfer

payments to beneficiaries of entitlement programs like the "welfare" of Social Security & Medicare and federal pension plans.

"100% of what is collected is absorbed solely by interest on the Federal Debt ... all individual income tax revenues are gone before one nickel is spent on the services taxpayers expect from government."
-Grace Commission report submitted to President Ronald Reagan - January 15, 1984

The U.S. Supreme Court is called "the court of last resort". The high court's rulings are not subject to further review by another court. The Supreme Court of the United States is the highest Federal court in the country, with powers of judicial review first asserted in *Calder v. Bull* (1798) in Justice Iredell's dissenting opinion. The power was later given binding authority over the lower and administrative courts by Justice Marshall in *Marbury v. Madison* (1803). Incredibly, U.S. Tax Court judge, Juan Vasquez, said in open court on May 7, 2009 that one of his published rulings, as well as one from the 9th Circuit Court of Appeals, take precedence over U.S. Supreme Court definitions of "income" and the Petitioner was not allowed to enter his U.S. Supreme Court rulings as evidence into the Record because those definitions are "frivolous"!

Next, Judge Vasquez told the Tax Court Petitioner that Section 61 of Title 26 of the United States Code was what created his federal income tax liability!

Luckily for the average Citizen-researcher, in the Appendix of the published volumes of the Internal Revenue Code (IRC) there is a "Derivation Table". This allows a section of the Code to be traced to its origin. Then, the version as enacted by Congress can be found in the Statutes at Large.

A comparison of the modern list of occupations in Section 61 of Title 26 of the Code with the earliest in the first "Classification Act of 1923" is virtually identical. It is obvious that Section 61 refers only to federally-connected, "privileged" occupations. Proof that the jobs in the *Private Sector* are wholly excluded follows.

In 1923, the Classification Act, classifying "positions" of people "employed" in "government service" did not have to draw a line of demarcation between "public"/ government" and private sector workers - - "officers" and "employees" being those defined as working for the government. The distinction between the Federal Government ("Public Sector") and the "Private Sector" in the various individual state republics was crystal clear to all Americans.

The original Classification Act of 1923 was only 12 pages long: 42 Stat. 1488 - 1499, approved March 4, 1923; H.R. 8928, P.L. No. 516.

These were people who had "ordinary" jobs - but who had contracted to work for the Federal Government. Therefore, they had been granted a "privilege" and were subject to the "excise tax" discussed in early never overturned and still controlling U.S. Supreme Court decisions such as *Brushaber v. Union Pac. R.R. Co.*, 240 U.S. 1, 36 S.Ct. 236

(1916), *Stanton v. Baltic Mining Co.*, 240 U.S. 103 (1916), and many others covering the 210 years from 1796 to 2006. [These cases never considered anything regarding the *Private Sector*].

Excerpts from *The Classification Act of 1949*, H.R. 5931 October 28, 1949, Public Law 429 follow:

"To establish a standard schedule of rates of basic compensation for certain ***employees of the Federal Government***; to provide an equitable system for fixing and adjusting the rates of basic ***compensation*** of individual ***employees***; to repeal the Classification Act of 1923, as amended; and for other purposes."

P. 954
Sec. 202. This Act (except title XII) shall ***not*** apply to:

P. 955
(11) aliens or persons not citizens of the United States who occupy *positions* outside the several States and the District of Columbia;

P. 956
(29) persons employed on a fee, contract, or piece work basis;
(30) persons who may lawfully perform their duties ***concurrently with their private profession, business, or other employment***, and whose duties require only a portion of their time, where it is impracticable to ascertain or anticipate the proportion of time devoted ***to the service of the Federal Government***.

P. 957
Americans working in the *Private Sector* do not have a "position, class or classes of position, or grade". The pay they receive is in exchange for work as agreed upon between the boss / owner and the worker via contract, protected by the Constitution at Article I, Section 10 with no government involvement:

"No State shall enter any . . . Law impairing the Obligation of Contracts, , , , "

Because the Federal Government has no "money" of its own, the funds it uses must be appropriated by the House of Representatives, Article I, section 7, clause 1, Constitution for the United States of America.

The reason that anyone being paid by the Federal Government for work must be classified and reported is because the Congress is to be held accountable to the People for all expenditures from their Public Purse.

Naturally, owners of companies in the *Private Sector*, and the people they hire to work for them, have no such requirement to report to or be accountable to anyone.

The *Classification Act of 1923* that became the *Classification Act of 1949* became the basis for Title V in 1996. [And see the Statutes at Large to United States Code Derivation Tables that follow].

Public Law 89-544 - Sept. 6, 1996 (80 Stat. 378 - 497)
Title 5 - **Government** Organization and **Employees**
Administrative Procedure

§ 552. Publication of information, rules, opinions, orders, and public records
Requirements of each agency to publish information for the public all aspects of the agency that may have an affect upon the American people. The place designated for publication of this information is § 552(b) the *Federal Register*.

§ 553. Rule Making - P. 383
(b) General notice of proposed rule making shall be published in the *Federal Register*,
(c) . . . after notice, the people will have an opportunity to participate through writing or oral presentation.

§ 554. Adjudications - P. 384
All parties have opportunity for judicial review after agency hearing.

§ 555. Ancillary matters. - P. 385
(b) . . . A party is entitled to appear in person or by or with counsel or other duly qualified representative in any agency proceeding. . . .
(c) Process, requirement of a report, inspection, or other investigative act or demand may not be issued, made, or enforced except as authorized by law. A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.
(d) Agency subpenas authorized by law shall be issued to a party on request and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the evidence sought. On contest, the court shall sustain the subpena or similar process or demand to the extent that it is found to be in accordance with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.
(e) Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.

Chapter 7 - Judicial Review - P. 392

§ 702. Right of Review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.

Definition of **Employee § 2105** - P. 409

(a) For the purpose of this title, "employee", except as otherwise provided by this section or when specifically modified, means an officer **and** an individual who is -

(1) **appointed** in the civil service by one of the following acting in an official capacity-

(A) the President;

(B) a Member or Members of Congress, or the Congress;

(C) a member of a uniformed service;

(D) an individual who is an employee under this section; or

(E) the head of a **Government controlled corporation**;

(2) **engaged in the performance of a Federal function** under authority of law or an Executive act; **and**

(3) subject to the supervision of an individual named by paragraph (1) of this subsection while engaged in the performance of the duties of his **position**.

Subchapter II - Oath of Office - P. 424

People who work in the "*Private Sector*" do not swear an "Oath of Office" as a condition prior to commencing their work - - but "employees" of the Government - even in the [civilian] Civil Service - ***do***. (It is *required by law* to keep subversives out - *this needs refining*!). At best, *Private Sector* hirelings may be required to sign a "Non-Compete Agreement" to protect private company secrets from their competition – but no government at any level is a party to the contract.

P. 444

80 Stat. 444 / Public Law 89-554- Sept. 6, 1966

§ 5102 Definitions; application

(a) for purposes of this chapter -

(2) **"employee" means an individual employed in or under an agency**;

(3) "position" means the work, consisting of all the duties and responsibilities, assignable to an employee;

(4) "class" or "class of positions"

(5) "grade" (re rates of basic pay in the General Schedule)

(c) This chapter does not apply to -

P. 446

(15) employees who(*sic* se) pay is fixed under a cooperative agreement between the United States and -

(A) a State or territory or possession of the United States, or political subdivision thereof; **or**

(B) **an individual or organization outside the service of the Government of the**

United States

(18) experts or consultants, when employed temporarily or intermittently in accordance with section 3109 of this title;
(19) emergency or seasonal employees whose employment is of uncertain or purely temporary duration, or whose employment is of brief periods at intervals;
(20) employees employed on a fee, contract, or piece work basis;
(21) **employees who may lawfully perform their duties concurrently with their private profession, business, or other employment, and whose duties require only a portion of their time, when it is impracticable to ascertain or anticipate the proportion of time devoted to the service of the Government of the United States**;

P. 458
SUBCHAPTER I - PAY COMPARABILITY SYSTEM

§ 5301. Policy.
It is the policy of Congress that Federal pay fixing be based on the principles that -
(2) **Federal pay rates be comparable with private enterprise pay rates for the same levels of work.**

§ 5302. Annual reports on pay comparability
In order to carry out the policy stated by section 5301 of this title, the President shall-
(1) direct such agency as he considers appropriate, to prepare and submit to him annually a report which **compares the rates of pay fixed by statute for employees with the rates of pay paid for the same levels of work in private enterprise** as determined on the basis of appropriate annual surveys conducted by the Bureau of Labor Statistics; and
(2) after seeking the views of such employee organizations as he considers appropriate and in such manner as he may provide, report annually to Congress -
(A) **this comparison of Federal and private enterprise pay rates**; . . .

P. 467
Subchapter III - General Schedule Pay Rates
§ 5331. Definitions; application
(a) For the purposes of this subchapter. "agency". "employee", "position". "class", and "grade" have the meanings given them by section 5102 of this title.

P. 444
§ 5102 Definitions; application
(a) for purposes of this chapter -
(2) **"employee" means an individual employed in or under an agency**;

§ 5332. The General Schedule
(a) The General Schedule, the symbol for which is "GS", is the basic pay schedule for positions to which this subchapter applies. Each employee to whom this

subchapter applies is entitled to basic pay in accordance with the General Schedule.
(See chart)

§ 5517. Withholding State income taxes

(a) When a State statute -

(1) provides for the collection of a tax by imposing on **employers** generally the duty of withholding sums from the pay of **employees** and making returns of the sums to the State; and

(2) imposes the duty to withhold generally with respect to the pay of **employees** *who are residents of the State*;

the Secretary of the Treasury, **under regulations prescribed by the President**, shall enter into an agreement with the State within 120 days of a request for agreement from the proper State official. The States shall comply with the requirements of the State withholding statute in the case of **employees of the agency who are subject to the tax and whose regular place of Federal employment is within the State with which the agreement is made**. The agreement may not apply to pay for service as a member of the armed forces.

Classification Act of 1923 to Classification Act of 1949 to Title 5

Classification Act of 1949

CODIFICATION

In subsec. (c), provisions that specified compensation of $10,000 per year for the executive secretary to the Council are omitted as obsolete and superseded. Sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other law or parts of laws inconsistent with the *1949* Act. The Classification Act of 1949 was repealed by Pub. L. 89-554, Sept. 6, 1966, [[section]] 8(a), 80 Stat. 632, and reenacted as chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees. Section 5102 of Title 5 now contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Civil Service Commission to determine the applicability to specific positions and employees.

Classification Act of 1966

Public Law 89-554, 89 Congress, Session 2, An Act: To enact title 5, United States Code "Government Organization and Employees", codifying the general and permanent laws relating to the organization of the Government of the United States and

to its civilian officers and employees. - *Sep. 6, 1966*
-- Page 378

1939 IRC Sec. 61 =

Current section
Public Law 89-554, 89 Congress, Session 2, An Act: To enact title 5, United States Code "Government Organization and Employees", codifying the general and permanent laws relating to the organization of the Government of the United States and to its civilian officers and employees., 286 pages beginning at 80 Stat. 378 (1966)

Researched and Compiled by Clare Louise Reading 8/22/2011

Classification Act of 1923

Classification Act of 1949

CODIFICATION

In subsec. (c), provisions that specified compensation of $10,000 per year for the executive secretary to the Council are omitted as obsolete and superseded. Sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other law or parts of laws inconsistent with the 1949 Act. The Classification Act of 1949 was repealed by Pub. L. 89-554, Sept. 6, 1966, [[section]] 8(a), 80 Stat. 632, and reenacted as chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees. Section 5102 of Title 5 now contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Civil Service Commission to determine the applicability to specific positions and employees.

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1939 IRC Sec. 22(a) = 1954 / 1986 Sec. 61

\- - - - - - - - -

1939 IRC

§ 39.22 (a) -23 INCOME TAX REGULATIONS

EXEMPTIONS; EXCLUSIONS FROM GROSS INCOME

"§ 39.22 (b) [Comprises Code section 22 (b), see 26 U.S.C.A. § 22 (b)]
§ 39.22 (b)—1 Exemptions; exclusions from gross income
Certain items of income specified in section 22(b) are exempt from tax and may be excluded from gross income.
These items, however, are exempt only to the extent and in the amount specified.
→ No other items may be excluded from gross income **except**
(a) those items of income which are, **under the Constitution, not taxable by the Federal Government**;
(b) those items of income which are exempt from tax on income under the provisions of any act of Congress still in effect; and
(c) the income excluded under the provisions of the Internal Revenue Code (see particularly

Exhibit X-2

section 116). Since the tax is imposed on net income, the exemption referred to above is not to be confused with the deductions allowed by section 23 and other provisions of the Internal Revenue Code to be made from gross income in computing net income.
As to other items not to be included in gross income, see sections 22(k), 112, 119, 127 (c), 165, and 171 and Supplements G, H, I, and J (sections 201 to 252, inclusive).
Section 607(h) of the Merchant Marine Act, 1936, as amended, [46 U.S.C.A. § 1177(h)] reads as follows:
(h) The earnings of any contractor receiving an operating-differential subsidy under authority of this act, which are deposited in the contrac- . . ."
Kept to date by U.S. Code Congressional and Administrative News Pamphlets

[58 Appendix A, page 3 of 3
FROM: *"Taxable Income" rev. 2007* by Larken Rose]

- - - - - - - - - -

Current section
Public Law 89-554, 89 Congress, Session 2, An Act: To enact title 5, United States Code "**Government** Organization and **Employees**", codifying the general and permanent laws relating to the organization of the **Government** of the United States and to its civilian officers and **employees**., 286 pages beginning at 80 Stat. 378 (1966)

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IRC 1986 - Appendix

[shows comparison: 1939 section to 1986 section and 1986 section to 1939 section]

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-CITE-
    26 USC TITLE 26 - INTERNAL REVENUE CODE
01/02/01

-EXPCITE-
    TITLE 26 - INTERNAL REVENUE CODE
    .

-HEAD-
    TITLE 26 - INTERNAL REVENUE CODE

-MISC1-
                ACT AUG. 16, 1954, CH. 736, 68A STAT. 3
      The following tables have been prepared as aids in comparing
    provisions of the Internal Revenue Code of 1954 (redesignated the
    Internal Revenue Code of 1986 by Pub. L. 99-514, Sec. 2, Oct. 22,
    1986, 100 Stat. 2095) with provisions of the Internal Revenue Code
    of 1939. No inferences, implications, or presumptions of
    legislative construction or intent are to be drawn or made by
    reason of such tables.
      Citations to ''R.A.'' refer to the sections of earlier Revenue
    Acts.

                          Table I
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1939 Code section number	**1986** Code section number
21	63
22(a)	**61**
22(f)	1001
22(g)	861, 862, 863, 864
25(b)(1)	151
47	443, 6011(a)
48	441, 7701
51	6001, 6011(a)
51(a)	6001, 6012(a), 6065(b)
51(b)	6012(b)(1), 6013(a), 6014(b)
51(c)	6012(b)
51(g)	6012(b), 6013(b), 6653(a), 6659
52	6012(a), (b), 6062
53	6072, 6081, 6091
54(a)-(b)	6001
58	6012(b), 6015, 6064, 6065, 6073(a), (c), 6081(a), 6091(b), 6103, 6161(a)
215	874, 6011(a), 6065(b)
216	874
217	6011(a), 6012(a), 6072(c)
235(a)	882, 6011(a), 6072(c)
235(b)	6012(a)
251	931, 6011(a)
821(d)	6001
1007	6001
1420(c)	6011(a), 6071, 6081(a), 6091(a), 6302(b)
1530(b)	6011(a), 6071, 6081(a), 6091(a), 6151(a)
1604(a)	6011(a), 6065, 6071, 6091(b)(1), (2)
1607(k)	7701(a)(1)
1621	3401
1622(a), (b)	3402(a), (b)

1622(c)(1)(A)	Omitted
1622(c)(1)(B), (2)-(5)	3402(c)
1622(d)	3402(d)
1622(g)-(k)	3402(e)-(i)
1716(a)	6011(a), 6065(a)
1720	6001
1805	4891, 4892, 4894, 4895, 4896, 7701(a)(1)
1835	6001
1852(a)	6011(a), 6065(a), 6071
1902(a)(1)	6011(a), 6065(a), 6071
2403(a)	6011(a), 6065(a), 6071, 6081(a), 6091(b)(1), (2)
2451(a)	6011(a), 6071, 6081(a), 6091(b)(1), (2), 6151(a)
2471	6011(a), 6065(a), 6071, 6081(a), 6091(b)(1), (2)
2569(d)	6001
2594(a)	6001
2653(b)	6001, 7641
2701	6011(a), 6065(a), 6071, 6081(a), 6091(b)(1), (2)
2709	6001
2733(a)	7701(a)(1)
3310(a)	6011(a), 6071, 6601(c)(4), 6659
3310(b)	6011(a), 6601(c)(4), 6659
3310(f)(1)	6011(a), 6071, 6081(a)
3448(a)	6011(a), 6065(a), 6071, 6081(a), 6091(b), 6151(a)
3461	6011(a), 6065(a), 6071, 6081, 6091(b), 6151(a)
3467	4291, 6011(a), 6065(a), 6071, 6081(a), 6091(b), 6151(a), 6161(a)
3469(d)	4291, 6011(a), 6065(a), 6071,

	6091(b), 6151(a)
3475(c)	4271, 4291, 6011(a), 6065(a), 6071, 6091(b), 6151(a)
3491	4501, 6011(a), 6071, 6091(b), 6151(a)
3603	6001
3611(a)(1)	6011(a), 6065(a), 6081(a), 6091(a), (b)(1), (2)
3612(a), (c)	6020(b)
3660	6331(a)
3670	6321
690	6331(a), (b)
3691	6334
3692	6331(a), (b), 6334(c)
3700	6331(a), (b)
3715	6331(c)

Table II

1986 Code section number	**1939** Code section number
61	**22(a)**
62	22(n)
63	21
151	25(b)(1)
861	119(a), (b), (e)
1001	111
3401	1621
6001	51, 54(a), (b); 821(d), 1007(a), (b); 1720, 1835, 1928(b), 2302,

2555,	2303, 2322(c), 2324, 2352,
2709,	2569(d), 2594(a), 2653(b),
6011(a)	2724, 3220(c), 3233(a), 3603 47(a), 51, 143(c), 215(a), 217, 235, 251(g), 1420(c), 1530(b), 1604(a), 1624, 1700 (c)(2), (d)(2), (e)(2); 1716(a), 1852(a), 1902(a)(1), 2403(a), 2451(a), 2471, 2701, 3272(a), 3310(a), (b), (f)(1), 3448(a), 3461, 3467(b), 3469(d),
3475(c),	3491(a), 3611(a)(1)
6011(b)	
6012(a)	51(a), 52(a), 142(a)(2), (3), (4); 217(b), 235(b)
6012(b)(1)	51(b)(4), (c), (g)(5); 142(a)(1)
6012(b)(2)	51(c), 58(f), 142(a)
6012(b)(3)	52(a)
6012(b)(4)	142(a)
6012(b)(5)	142(b)
6020(a)	3611(a)(2)
6020(b)	3612(a), (c)
6020(c)	
6331(a)	3310, 3660, 3690, 3692, 3700
6331(b)	3690, 3692, 3700
6331(c)	3715
6331(d)	
7701(a)(1)	1426(f), 1532(i), 1607(k), 1805, 1931(b), 2733(i), 3228(a), 3238(a), 3507(a), 3797(a)(1)
7701(a)(2)	3797(a)(2)
7701(a)(3)	3797(a)(3)
7701(a)(4)	3797(a)(4)
7701(a)(5)	3797(a)(5)
7701(a)(6)	3797(a)(6)
7701(a)(7)	3797(a)(7)
7701(a)(8)	3797(a)(8)
7701(a)(9)	3797(a)(9)
7701(a)(10)	3797(a)(10)
7701(a)(11)	3797(a)(11)
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7701(a)(13)	3797(a)(12)
7701(a)(14)	3797(a)(14)
7701(a)(15)	3797(a)(15)
7701(a)(16)	3797(a)(16)
7701(a)(17)	3797(a)(17)
7701(a)(18)	3797(a)(18)
7701(a)(19)	3797(a)(19)
7701(a)(20)	3797(a)(20)
7701(a)(21)	
7701(a)(22)	

7701(a)(23)	48(a)
7701(a)(24)	48(b)
7701(a)(25)	48(c)
7701(a)(26)	48(d)
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7801(b)	3930(a), 3931
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7804(a)	616 R.A. 1951
7804(b)	3, P.L. 567 (82d Cong.)
7806(a)	2
7806(b)	Ch. 1, Sec. 6, P.L. 1
7807(a)	
7807(b)	
7851(a)	See 26 U.S.C. 3, 4
7851(b)	See 26 U.S.C. 4(b)
7851(c)	See 26 U.S.C. 4(c)
7851(d)	See 26 U.S.C. 4(d)

An Act to revise the internal revenue laws of the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

(a) Citation

(1) The provisions of this Act set forth under the heading ''Internal Revenue Title'' may be cited as the ''Internal Revenue Code of 1986 (formerly I.R.C. 1954)''.

(2) The Internal Revenue Code enacted on February 10, 1939, as amended, may be cited as the ''Internal Revenue Code of 1939''.

(b) Publication

This Act shall be published as volume 68A of the United States Statutes at Large, with a comprehensive table of contents and an appendix; but without an index or marginal references. The date of enactment, bill number, public law number, and chapter number, shall be printed as a headnote.

(c) Cross reference

For saving provisions, effective date provisions, and other related provisions, see chapter 80 (sec. 7801 and following) of the Internal Revenue Code of 1986.

(d) Enactment of Internal Revenue Title into law

The Internal Revenue Title referred to in subsection (a)(1) is as follows: * * *.

(Aug. 16, 1954, ch. 736, 68A Stat. 3; Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986 - Subsecs. (a)(1), (c). Pub. L. 99-514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

REDESIGNATION OF INTERNAL REVENUE CODE OF 1954; REFERENCES

Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) Redesignation of 1954 Code. - The Internal Revenue Title enacted August 16, 1954, as heretofore, hereby, or hereafter amended, may be cited as the 'Internal Revenue Code of 1986'.

''(b) References in Laws, Etc. - Except when inappropriate, any reference in any law, Executive order, or other document -

''(1) to the Internal Revenue Code of 1954 shall include a reference to the Internal Revenue Code of 1986, and

''(2) to the Internal Revenue Code of 1986 shall include a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.''

INTERNAL REVENUE TITLE

Subtitle

A. Income taxes.
B. Estate and gift taxes.
C. Employment taxes.
D. Miscellaneous excise taxes.
E. Alcohol, tobacco, and certain other excise taxes.
F. Procedure and administration.
G. The Joint Committee on Taxation.
H. Financing of Presidential election campaigns.
I. Trust Fund Code.
J. Coal industry health benefits. (FOOTNOTE 1)

(FOOTNOTE 1) Editorially supplied. Subtitle J added by Pub. L. 102-486 without corresponding amendment of title analysis.

K. Group health plan requirements.

AMENDMENTS

1997 - Pub. L. 105-34, title XV, Sec. 1531(b)(3), Aug. 5, 1997, 111 Stat. 1085, added subtitle K heading ''Group health plan requirements'' and struck out former subtitle K heading ''Group health plan portability, access, and renewability requirements''.

1996 - Pub. L. 104-191, title IV, Sec. 401(b), Aug. 21, 1996, 110 Stat. 2082, added subtitle K heading ''Group health plan portability, access, and renewability requirements''.

1982 - Pub. L. 97-248, title III, Sec. 307(b)(2), 308(a), Sept. 3, 1982, 96 Stat. 590, 591, provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, subtitle C heading is amended to read ''Employment taxes and collection of income tax at source''. Section 102(a), (b) of Pub. L. 98-67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (Sec. 301-308) of title III of Pub. L. 97-248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 (now 1986) (this title) shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1981 - Pub. L. 97-119, title I, Sec. 103(c)(2), Dec. 29, 1981, 95 Stat. 1638, added subtitle I heading ''Trust Fund Code''.

1976 - Pub. L. 94-455, title XIX, Sec. 1907(b)(2), Oct. 4, 1976, 90 Stat. 1836, substituted in subtitle G heading ''The Joint Committee on Taxation'' for ''The Joint Committee on Internal Revenue Taxation''.

1974 - Pub. L. 93-443, title IV, Sec. 408(a), Oct. 15, 1974, 88 Stat. 1297, added subtitle H heading ''Financing of Presidential election campaigns''.

-SECREF-

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 2 sections 31a-2, 31a-3, 31a-4, 60c-1, 65c, 632, 651, 691e, 691f, 1610; title 5 sections 5514, 8432, 8440, 8440e; title 10 section 2401; title 11 sections 346, 745; title 12 sections 1825, 3413; title 15 sections 78c, 78kkk, 80a-3, 80b-3, 631b; title 16 sections 460lll-47, 470b, 1855; title 18 sections 983, 4043; title 20 sections 1087-1, 1087-2, 1087ee, 1087ss, 1087vv; title 22 sections 3307, 3968, 4071i, 4071j, 5401; title 25 sections 983f, 1716, 2719; title 29 sections 1002, 1061, 1083, 1146, 1301, 1453, 2897; title 30 section 1473; title 31 sections 1324, 3105, 3106, 3124, 3332, 3701, 3711, 3716, 3718, 3720B, 3729, 3801; title 33 section 2717; title 36 sections 20208, 20708, 20909, 21008, 21108, 22908, 40108, 50108, 60108, 70108, 70308, 80508, 100108, 110108, 140708, 150109, 151508, 152108, 152708, 152909, 154508, 154709, 170309, 170508, 190309, 210309, 220708, 230509, 240108; title 38 sections 7361, 7363; title 40 sections 207c-2, 270a; title 42 sections 401, 405, 408, 416, 604, 1007, 1395b-5, 1395y, 1471, 4636, 5055, 8217, 10702; title 45 sections 231m, 1347; title 46 App. section 1177; title 49 section 326; title 50 section 2154.

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Subtitle A - Income Taxes

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Chapter

1. Normal taxes and surtaxes.
2. Tax on self-employment income.
3. Withholding of tax on nonresident aliens and foreign corporations.
(4, 5. Repealed.)
6. Consolidated returns.

AMENDMENTS

1997 - Pub. L. 105-34, title XI, Sec. 1131(c)(4), Aug. 5, 1997, 111 Stat. 980, struck out item for chapter 5 ''Tax on transfers to avoid income tax''.

1990 - Pub. L. 101-508, title XI, Sec. 11801(b)(11), Nov. 5, 1990, 104 Stat. 1388-522, struck out item for chapter 4 ''Rules applicable to recovery of excessive profits on government contracts''.

1984 - Pub. L. 98-369, div. A, title IV, Sec. 474(r)(29)(D), July 18, 1984, 98 Stat. 844, struck out ''and tax-free covenant bonds'' at end of item for chapter 3.

-SECREF-

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 810, 2056A, 2107, 3402, 3502, 3507, 3508, 4911, 4980, 4999, 5041, 5881, 6011, 6012, 6013, 6038A, 6075, 6111, 6159, 6164, 6201, 6211, 6212, 6213, 6214, 6229, 6231, 6234, 6242, 6311, 6315, 6401, 6404, 6420, 6421, 6427, 6501, 6601, 6621, 6672, 6682, 6694, 6695, 6696, 6702, 6871, 6901, 6905, 7001, 7463, 7491, 7701, 7851, 7852, 7872, 7873 of this title; title 22 sections 1627, 5510; title 25 sections 1729, 1754; title 31 section 3105; title 42 sections 411, 11371; title 45 section 231m; title 48 section 1421i; title 50 App. section 2017e.

-CITE-

Income Tax Regulations 1939

§ 29.22 (b)-1 *Exemptions exclusions from gross income.* Certain items of income specified in section 22 (b) are exempt from tax and may be excluded from gross income. These items, however, are exempt only to the extent and in the amount specified. **No other items are exempt from gross income except (a) those items of income which are, under the Constitution, not taxable by the Federal Government;** . . . (Bold emphasis added)

Photocopy of Regulation from book:

ing extent of application of Treasury Decision 5567, relating to taxability of income of certain trusts:

1. Section 29.22 (a)-21, dealing with the taxation of trust income to the grantor within the principles of Helvering v. Clifford, 309 U. S. 331, was added to Regulations 111 by Treasury Decision 5488, approved December 29, 1945. Section 29.22 (a)-21 was amended by Treasury Decision 5567, approved June 30, 1947. Such section, as amended, is applicable only to taxable years beginning after December 31, 1945. However, it will be the policy of the Bureau, where no inconsistent claims prejudicial to the Government are asserted by trustees or beneficiaries, not to assert liability of the grantor for any prior taxable year under the general provisions of section 22 (a) of the Internal Revenue Code if the trust income would not be taxable to the grantor under the regulations as amended.

2. IT-Mimeograph, Coll. No. 6071, R. A. No. 1644 (11 F.R. 12044), approved October 10, 1946, provided that where the grantor's control over a trust created prior to January 1, 1946 was terminated at any time during the calendar year 1946, with the result that the trust income on the last day of such calendar year was no longer taxable to the grantor under the provisions of § 29.22 (a)-21 of Regulations 111, it would be the policy of the Bureau not to assert liability of the grantor under such provisions for any part of the calendar year 1946. In view of the amendments made by Treasury Decision 5567 grantors who have not heretofore terminated their substantial ownership of the trust income under IT-Mimeograph 6071 may now desire to terminate such controls over the trusts as subject them to tax under the provisions of § 29.22 (a)-21 as amended by Treasury Decision 5567.

It will, therefore, be the policy of the Bureau where the grantor's control over a trust created prior to January 1, 1946 is terminated at any time prior to January 1, 1948 with the result that the trust income on the last day of the calendar year 1947 is no longer taxable to the grantor under the provisions of § 29.22 (a)-21 as amended by Treasury Decision 5567 not to assert liability of the grantor under these regulations for any part of the calendar years 1946 and 1947. The Bureau may, however, assert liability of the grantor in such a case under section 22 (a) of the Internal Revenue Code without reference to § 29.22 (a)-21 for any part of the calendar year 1946 or the calendar year 1947 preceding the termination of the grantor's control over the trust. The complete repayment by the grantor prior to January 1, 1948 of a loan of trust corpus or income made to him directly or indirectly prior to January 1, 1946, shall be considered, for the purposes of the applicability of this mimeograph, a termination (with respect to such loan) of the controls defined in paragraph (e) (3) of § 29.22 (a)-21, as amended.

Correspondence in regard to this mimeograph should refer to Coll. No. 6156, R. A. No. 1595, and the symbols IT:KIM.

§ 29.22 (a)-22 *Trust income taxable to person other than grantor.* (a) Where a person other than the grantor of property transferred in trust has a power exercisable solely by himself to vest the corpus or the income therefrom in himself, the income therefrom shall be included in computing the net income of such person. Even though such a power has been partially released or otherwise modified so that the person holding it can no longer vest the corpus or the income of the trust in himself, the income shall continue to be taxable to such person if, after such release or modification, he has retained such control of the trust as would, within the principles of § 29.22 (a)-21, subject a grantor of such a trust to tax on the income thereof. This section shall not apply with respect to a power over income, as originally granted or thereafter modified, if the grantor is otherwise taxable under § 29.22 (a)-21. See also § 29.166-2.

(b) Section 22 (a) shall be applied in the determination of the taxability of trust income for taxable years beginning prior to January 1, 1946 without reference to this section.

[T. D. 5488, 11 F. R. 68]

CROSS REFERENCE: For statement of policy regarding extent of application of this section, relating to taxability of income of certain trusts, see note to § 29.22 (a)-21.

§ 29.22 (b)-1 *Exemptions; exclusions from gross income.* Certain items of income specified in section 22 (b) are exempt from tax and may be excluded from gross income. These items, however, are exempt only to the extent and in the amount specified. No other items are exempt from gross income except (a) those items of income which are, under the Constitution, not taxable by the Federal Government; (b) those items of income which are exempt from tax on income under the provisions of any act of Congress still in effect; and (c) the income exempted under the provisions of section 116. Since the tax is imposed on net income, the exemption referred to above is not to be confused with the deductions allowed by section 23 and other provisions of the Internal Revenue Code to be made from gross income in computing net income. As to other items not to be included in gross income, see sections 22 (k), 112, 119, 127 (c), and

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of which was deductible by the patron under section 23, shall be included in the computation of the gross income of such patron to the following extent:

(i) If the allocation is in cash, in the amount of cash received.

(ii) If the allocation is in merchandise, to the extent of the fair market value of such merchandise at the time of receipt by the patron.

(iii) If the allocation is in the form of capital stock, revolving fund certificates, certificates of indebtedness, letters of advice, retain certificates or similar documents

(a) To the extent of the face amount of such documents, if the allocation was made in fulfillment and satisfaction of a valid obligation of such association to the patron, which obligation was in existence prior to the receipt by the co-operative association of the amount allocated. For this purpose, it is immaterial whether such allocation was made within the time required by § 39.101 (12)' (a) (2).

(b) To the extent of the face amount of such documents, if the allocation was made with respect to patronage of a year preceding the taxable year from amounts retained as "reasonable reserves under § 39.1 01–4(a).

(c) To the extent of the cash or merchandise received in redemption or satisfaction of such documents (except

information of such documents (except

equipment, or services the cost of which was not deductible by the patron under section 23, are not includible in the computation of the gross income of such patron; however, in the case of such amounts which are allocated with respect to capital assets (as defined in section 117(a) (1)) or property used in the trade or business within the meaning of section 117(j), shall, to-the extent set forth in subdivisions (i), (ii), and (iii) of subparagraph (1) of this paragraph, be taken into account in determining under section 113 the cost or other basis of the assets or property - purchased for the patron.

§ 39.22 (b) [Comprises Code section 22 (b), see 26 U.S.C.A. § 22 (b)]

§ 39.22 (b)[1] Exemptions; exclusions from gross income

Certain items of income specified in section 22(b) are exempt from tax and may be excluded from gross income. These items, however, are exempt only to the extent and in the amount specified.

No other items may be excluded from gross income except (a) those items of income which are, under the Constitution, not taxable by the Federal Government; (b) those items of income which are exempt from tax on income under the provisions of any act of Congress still in effect; and (c) the

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those which are negotiable instruments at the time of receipt of such cash or merchandise by the patron, where such allocation was not made in pursuance of the valid obligation referred to in subdivision (a) of this subparagraph, or from amounts retained as "reasonable reserves" under § 39.101 (12)-4 (a), referred to in subdivision (b) of this subparagraph. Where, in such case, the documents allocated are negotiable instruments, such documents shall be includible in the income of the patron to the extent of their fair market value at the time of their receipt.

(2) Amounts which are allocated on a patronage basis by a cooperative association with respect to supplies,

income excluded under the provisions of the Internal Revenue Code (see particularly section 116). Since the tax is imposed on net income, the exemption referred to above is not to be confused with the deductions allowed by section 23 and other provisions of the Internal Revenue Code to be made from gross income in computing net income. As to other items not to be included in gross income, see sections 22(k), 112, 119, 127 (c), 165, and 171 and Supplements G, H, I, and J (sections 201 to 252, inclusive).

Section 607(h) of the Merchant Marine Act, 1936, as amended, [46 U.S.C.A. § 1177(h)] reads as follows:

(h) The earnings of any contractor receiving an operating-differential subsidy under authority of this act, which are deposited in the contrac-

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Switch p952

APPENDIX

The following tables have been prepared as aids in comparing provisions of the Internal Revenue Code of 1954 with provisions of the Internal Revenue Code of 1939. No inference, implication, or presumption of legislative construction or intent shall be drawn or made by reason of such tables.

TABLE I

1939 Code section number	1954 Code section number
1	
2	7806(a).
3	
4	
11	1.
12(a)	
12(b)(1), (2)	
12(b)(3)	1.
12(c)	1.
12(d)	2.
12(e)	
12(f)	1.
12(g)	
13(a)	
13(b)	11.
13(c)–(f)	
14	
15(a), (b)	11.
15(c)	1551.
21	63.
22(a)	61.
22(b)(1)	101.
22(b)(2)(A)	72.
22(b)(2)(B)	72, 403.
22(b)(2)(C)	72.
22(b)(3)	102.
22(b)(4)	103.
22(b)(5)	104.
22(b)(6)	107.
22(b)(7)	894.
22(b)(8)	115, 526, 892, 893, 911, 912, 933, 943.
22(b)(9)	108.
22(b)(10)	108.
22(b)(11)	109.
22(b)(12)	111.
22(b)(13)	112.
22(b)(14)	113.
22(b)(15)	621.
22(b)(16)	114.
22(b)(17)	121.
22(c)	471.
22(d)(1)–(5)	472.
22(d)(6)	1321, 6155(a).
22(e)	301(a).
22(f)	1001.
22(g)	861, 862, 863, 864.
22(h)	Chapter 1, Subchapter G, Part III.
22(i)	
22(j)	76.
22(k)	71.
22(l)	691.
22(m)	73, 6201(c).
22(n)	62.
22(o)	75.
23	161, 211.
23(a)(1)(A)	162.
23(a)(1)(B)	162.
23(a)(1)(C)	263.
23(a)(2)	212.
23(b)	163, 265.
23(c)(1)	164.
23(c)(2)	
23(c)(3)	164.
23(d)	164.
23(e)	165.
23(f)	165.
23(g)	165.
23(h)	165.
23(i)	165.
23(j)	1091.
23(k)(1)	166, 593.
23(k)(2)	165(g)(1), 166(c), 582.
23(k)(3)	165(g)(2).
23(k)(4)	166.
23(k)(5)	166.
23(k)(6)	271, 166.
23(l)	167.
23(m)	611.
23(n)	167.
23(o)	170.
23(p)	404.
23(q)	170.
23(r)	591.
23(s)	172.
23(t)	168, 169.
23(u)	215.
23(v)	171.
23(w)	691.
23(x)	213.
23(y)	

TABLE II

1954 Code section number	1939 Code section number
1	11, 12(b)(3), (c), (f).
2	12(d).
3	400.
4	23(aa)(4), 401, 402, 404.
5	
11	13, 15, 104(b), 261.
12	
21	108.
31	35, 322(a)(4).
32	32.
33	31.
34	
35	25.
36	23(aa)(2).
37	
38	
61	22(a).
62	22(n).
63	21.
71	22(k).
72	22(b)(2).
73	22(m).
74	
75	22(o).
76	22(j), 3799.
77	128.
101	22(b)(1).
102	22(b)(3).
103	22(b)(4).
104	22(b)(5).
105	
106	
107	22(b)(6).
108	22(b)(9), (10).
109	22(b)(11).
110	
111	22(b)(12).
112	22(b)(13).
113	22(b)(14).
114	22(b)(16).
115	22(b)(8), 116(d), (e).
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121	22(b)(17), 116(f).
141	23(aa)(1).
142	23(aa)(4), (5), 213(d).
143	23(aa)(6).
144	23(aa)(3), (7).
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151	25(b)(1).
152	25(b)(3).
153	25(b)(2).
154	
161	23.
162	23(a)(1).
163	23(b).
164	23(c), (d).
165	23(e), (f), (g)(1), (2), (3), (4), (h), (i), (k)(2).
166	23(k).
167	23(l), 23(n), 114(a).
168	23(t), 124A.
169	23(t), 124B.
170	23(o), (q), 120.
171	23(v), 125.
172	23(s), 122.
173	23(bb).
174	
175	
211	23.
212	23(a)(2).
213	23(x).
214	
215	23(u).
216	23(z).
217	
241	26.
242	26(a).
243	26(b)(1).
244	26(b)(2).
245	26(b)(3).
246	26(b).
247	26(h).
248	
261	24(a).
262	24(a)(1).
263	23(a)(1)(C), 24(a)(2), (3).
264	24(a)(4), (6).
265	23(b), 24(a)(5).
266	24(a)(7).
267	24(b), (c).
268	24(f).
269	129.
270	130.
271	23(k)(6).
272	
273	24(d).
301	22(c), 115(a), (b), (d), (e), (j).
302	115(c), (g)(1), (i).
303	115(g)(3).
304	115(g)(2).
305	115(f).
306	
307	113(a)(19).

TABLE II—Continued

1954 Code section number	1939 Code section number
311	
312	115(c), (h), (l), (m), 394(d).
316	115(a), (b).
317	
318	
331	115(c).
332	112(b)(6).
333	112(b)(7).
334	113(a)(15), (18).
336	
337	
338	
341	117(m).
342	115(c).
346	115(l).
351	112(b)(5), (c), (e).
354	112(b)(3).
355	112(b)(3), (11).
356	112(c), (e).
357	112(k).
358	113(a)(6), (23).
361	112(b)(4), (d), (e).
362	113(a)(7), (8).
368	
367	112(i).
368	112(g)(1), (2), (h).
371	112(b)(10), (c), (d), (e), (k), (l).
372	113(a)(22).
373	112(b)(9), 113(a)(20), (21).
381	
382	
391	
392	
393	
394	
395	
401	165(a).
402	165(b), (c), (d).
408	22(b)(2)(B).
404	23(p).
421	130A.
441	41, 48(a), (b).
442	46.
443	47(a), (c), (e), (g); 146(a).
446	41.
451	42(a).
452	
453	44.
454	42(b), (c), (d).
461	43.
462	
471	22(c).
472	22(d)(1)–(5).
481	
482	45.
501	101 except (12) and last par.; 165(a), 421.
502	Last par. 101.
511	421.
512	421(c), (d); 422.
513	422(b).
514	423.
515	424.
521	101(12)(A).
522	101(12)(B).
526	116(g).
531	102(a).
532	102(a).
533	102(b), (c).
534	
535	26(d), 27(b)(2), 102(d).
536	102(f).
537	
541	500.
542	501.
543	502, 507(b).
544	503.
545	26(c), (d); 504, 505.
546	505(e).
547	506.
551	337.
552	331.
553	332.
554	333.
555	334.
556	26(c), 335, 336.
557	336(d).
561	26(f), 27(a).
562	26(f), 27(b)–(i).
563	504(c).
564	26(f), 27(c)–(i).
565	26(g), 28.
581	104(a).
582	23(k)(2), 117(j)
583	121.
584	169, second sentence of 170.
591	23(r).
592	23(dd).
593	23(k).
594	110.
601	26(d).
611	23(m).
612	114(b)(1).
613	114(b)(3), (4).
614	
615	23(ff).
616	23(oo).
621	22(b)(15).
631	117(k).
632	105.
641	161.
642	162(a), (e), (f); 163, 168, 170, 172.
643	162(d).
651	162(b).
652	162(b), 164.
661	162(b), (c).
662	162(b), (c), 164.

1954 before 33 Δ p28

TITLE 26--INTERNAL REVENUE CODE

after 33 1986

Act Aug. 16, 1954, ch. 736, 68A Stat. 3

The following tables have been prepared as aids in comparing provisions of the Internal Revenue Code of 1954 (redesignated the Internal Revenue Code of 1986 by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095) with provisions of the Internal Revenue Code of 1939. No inferences, implications, or presumptions of legislative construction or intent are to be drawn or made by reason of such tables.

Citations to ``R.A.'' refer to the sections of earlier Revenue Acts.

Table I

1939 Code section number	1986 Code section number
1	Omitted
2	7806(a)
3, 4	Omitted
11	1
12(a), (b)(1), (2)	Omitted
12(b)(3), (c)	1
12(d)	2
(e)	Omitted
12(f)	1
12(g), 13(a)	Omitted
13(b)	11
13(c)-(f), 14	Omitted
15(a), (b)	11
15(c)	1551
21	63
22(a)	61
22(b)(1)	101
22(b)(2)(A)	72
22(b)(2)(B)	72, 403
22(b)(2)(C)	72
22(b)(3)-(5)	102-104
22(b)(6)	107
22(b)(7)	894
22(b)(8)	115, 526, 892, 893, 911, 912, 933, 943
22(b)(9), (10)	108
22(b)(11)-(14)	109, 111-113
22(b)(15)	621
22(b)(16), (17)	114, 121
22(c)	471
22(d)(1)-(5)	472
22(d)(6)	1321, 6155(a)
22(e)	301(a)
22(f)	1001
22(g)	861, 862, 863, 864
(h)	Chapter 1, Subchapter G, Part III
22(i)	Omitted
22(j)	76
22(k)	71
22(l)	691
22(m)	73, 6201(c)

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3971(a), (b)	7809(a), (b)
3971(b)(1)-(3)	7809(b)(1)-(3)
3975-3978	7803(d)
3990, 3991	Omitted
3992	7101, 7402(d), 7803(c)
3993, 3994	Omitted
3995(c)	7402(d)
3996, 3997	Omitted
4000	7803(a)
4001-4003	Omitted
4010	7101, 7803(c)
4011, 4012	Omitted
4013(a)	5241
4013(b)-(d)	Omitted
4014-4022, 4030-4033	Omitted
4040	7803(b)(1)
4041(a)	7803(a)
4041(b)	Omitted
4042	7402(c)
4043-4046	Omitted
4047(a)(1)	7213(b)
4047(b)	7214(b)
4047(c), (d)	Omitted
4047(e)	7214(a)
4048	7344
5000-5004	8001-8005
5010-5012	8021-8023

Table II

1986 Code section number	1939 Code section number
1	11, 12(b)(3), (c), (f)
2	12(d)
3	400
4	23(aa)(4), 401, 402, 404
5	
11	13, 15, 104(b), 261
12	
21	108
31	35, 322(a)(4)
32	32
33	31
34	
35	25
36	23(aa)(2)
37	
38	
61	22(a)
62	22(n)
63	21
71	22(k)
72	22(b)(2)
73	22(m)
74	
75	22(o)
76	22(j), 3799
77	123
101	22(b)(1)
102	22(b)(3)
103	22(b)(4)
104	22(b)(5)
105	

X-3 707

26 USC § 61 and "The Classification Act of 1923" (and 1949 and 1966) Traceable to 5 USC - Government organization and Employees

Research shows that 26 USC Section 61 "Gross Income Defined" is traceable to "*The Classification Act of 1923*". The entire list in Section 61 are *positions* for *Government Employees* privileged by virtue of being performed under federal government contract and designated with *GS* or *Government Service Ratings*. The list in Section 61 does not apply to Americans in the same types of jobs, and only working in the ***Private Sector*** for a boss, company, manager or owner - and with **no** *GS* or *Government Service Ratings*.

[see below **:
"The Classification Acts of 1923, 1949 and 1966", all traceable to Title 5 USC / Chapter 61, do not apply to the "Private Sector" for the reasoning in the proceeding U.S. Supreme Court cases in Exhibit 2: the American Citizen has a *fundamental, God-given, inalienable right* to earn a living by his own labor.]

TITLE 26 > Subtitle F > CHAPTER 68 > Subchapter A > PART I > § **6651**

§ **6651**. Failure to file tax return or to pay tax

(a) Addition to the tax
In case of failure—
(1) to file any return required under authority of subchapter A of chapter 61 **

(other than part III thereof), subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), or of subchapter A of chapter 52 (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), or of subchapter A of chapter 53 (relating to machine guns and certain other firearms), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate;
(2) to pay the amount shown on tax on any return specified in paragraph (1) on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or

fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate;
. . .

** The Classification Act of 1923

42 Stat. 1488

March 4, 1923
[H.R. 8928]
[Public, No. 516]

CHAP. 265.--An Act To provide for the classification of **civilian positions within the District of Columbia and in the field services**.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Classification Act of 1923."

SEC. 2. That the term "compensation schedules" means the schedules of positions, grades, and salaries, as contained in section 13 of the Act.

The term "department" means an executive department of the United States Government, a governmental establishment in the executive branch of the United States Government which is not a part of an executive department, the municipal government of the District of Columbia, the Botanic Garden, Library of Congress, Library Building and Grounds, Government Printing Office, and the Smithsonian Institution.

The term "the head of the department" means the officer of group of officers in the department who are not subordinate or responsible to any other officer of the department.

The term "board" means the Personal Classification Board established by section 3 hereof.

The term "**position**" means a specific civilian office or employment, whether occupied or vacant, in a department other than the following: Offices or employments in the Postal Service; teachers, librarians, school attendance officers, and employees of the community center department under the Board of Education of the District of Columbia; officers and members of the Metropolitan police, the fire department of the District of Columbia, and the United States park police; and the commissioned personnel of the Coast Guard, the Public Health Service, and the Coast and Geodetic Survey.

The term "**employee**" means any person temporarily or permanently in a position.

The term "**service**" means the broadest division of related offices and employments.

The term "grade" means a subdivision of a service, including one or more positions for which approximately the same basic qualifications and compensation are prescribed, the distinction between grades being based upon differences in the importance, difficulty, responsibility, and value of the work.

The term "class" means a group of positions to be established under this Act sufficiently similar in respect to the duties and responsibilities thereof that the same requirements as to education, experience, knowledge, and ability are demanded of

incumbents, and the same schedule of compensation is made to apply with equity.

The term "**compensation**" means any salary, wage, fee, allowance, or other emolument **paid to an employee for service in a position**.

[Remainder of Act omitted here and actual copy of the Statute at Large follows]

Notes:
This Act is referenced in the history for 5 USC 662 (1946). Acts also listed in the history are: June 20, 1929, ch. 33 ¤ 3, 46 Stat. 38; June 30, 1932, ch. 314, ¤ 505, 47 Stat. 416; Aug. 1, 1941, ch. 346, ¤ 6, 55 Stat. 615.
This act was repealed by the act of Oct. 28, 1949, ch. 782, title XII, ¤ 1202 (1), (4), (5), (9), 63 Stat. 972, 973. See history for 5 USC ¤¤ 661-663 (1952).

EXHIBIT Y

Court Cases Which Prohibit Expansion of Statutes

Here are some US Supreme Court Decision regarding explaining regulations as the Secretary has done in 26 CFR 301.6020(b)-1. Since the IRS is required to comply with US Supreme Court rulings they must ignore the addition made in the regulation because it clearly explain beyond the clear working of the statute and therefore is invalid. This may be why this regulation is a temporary and never finalized.

Gould v. Gould, 245 U.S. 151 at 153, which the US Supreme Court concluded, *"In 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 [enacted federal laws] are construed most strongly against the government and in favor of the citizen."*

United States v. Calamaro, 354 U.S. 351 (1957), 1 L. Ed. 2d 1394, 77 S. Ct. 1138 (1957) "*In construing federal revenue statute, Supreme Court gives no weight to Treasury regulation which attempts to add to statute something which is not there.*"

National Life and Accident Insurance Company v. United States of America 524F.2d 559 (1975) "*Finding as we do that this regulation is an attempt to extend the meaning of the statute, we hold that it is invalid. This brings us then to an interpretation of the statutes unaided by the Regulation.*"

An income tax regulation cannot take away a benefit conferred by the Internal Revenue Code. Brooks v. Commissioner, 473 F.2d 829 6th Cir. 1973 aff'g 339 F.Supp. 1031 (M.D.Tenn.1971); Dorfman v. Commissioner, 394 F.2d 651 (2nd Cir. 1968). "Nor may the Commissioner add a restriction to the statute, which is not contained in the statute." Smith v. Commissioner, 332 F.2d 671 (9th Cir. 1964)."

Name of Taxpayer: JAMES L READING
Identification Number: 367-54-8531

Total

10/05/2009
10.40.00

2008 - EXPLANATION OF THE ESTIMATED TAX PENALTY

Since you did not pay sufficient estimated tax, addition to the tax is charged as shown below, in accordance with Section 6654(a) of the Internal Revenue Code.

1. Total corrected tax liability, Form 4549, line 11 (Tax Per Return, if a return was filed)	5,051.00
2. Refundable Credits	0.00
3. Withholding taxes	0.00
4. Line 1 less sum of lines 2 & 3 (if less than $1000, estimated penalty does not apply)	5,051.00
5. 90% of the sum of line 1 less line 2	4,545.90
6. Prior year tax liability (110% of tax if AGI was more than $150,000. or if MFS more than $75,000.)	0.00
7. The smaller of line 5 or 6 (as adjusted)	4,545.90

8. Payment Due Date	Apr 15, 2008	Jun 15, 2008	Sep 15, 2008	Jan 15, 2009
9. Payment Required	1,136.47	1,136.47	1,136.47	1,136.47
10. Payments & Credits	0.00	0.00	0.00	0.00
11. Overpayment from line 17		0.00	0.00	0.00
12. Total of lines 10 & 11		0.00	0.00	0.00
13. Previous Qtr Underpayment		1,136.47	2,272.94	3,409.41
14. Line 12 less line 13	0.00	0.00	0.00	0.00
15. Remaining Underpayment		1,136.47	2,272.94	
16. Underpayment	1,136.47	1,136.47	1,136.47	1,136.47
17. Overpayment	0.00	0.00	0.00	0.00
18. Penalty	61.93	50.56	35.82	14.01

19. Previously Assessed/Previously Agreed Estimated Tax Penalty	0.00
20. Estimated Tax Penalty	162.32

Prod0101

Exhibit / Page / Of
Z / /

BOOK 1 TAB 3

Department of the Treasury - Internal Revenue Service
Income Tax Examination Changes

Name and Address of Taxpayer	SS or EI Number:	Return Form No.
CLARK READING	[redacted]4550	1040

	Person with whom examination changes were discussed	Name and Title	

1. Adjustments to Income	Period End 12/31/1994	Period End 12/31/1995	Period End
A. 1099MISC-PILOT & ASSOC	$ 22,287.00	$ 58,824.00	$
B. 1099MISC-PILOT CATASTROPH	56,888.00		
C. CAPITAL GAIN OR LOSS	11,948.00		
D. DIVIDEND INCOME	59.00		
E. EXEMPTIONS	(2,156.00)	(2,580.00)	
F. STANDARD DEDUCTION	(3,175.00)	(3,275.00)	
G.			
H.			
I.			
J.			
K.			
L.			
M.			
N.			
O.			
P.			
Q.			
R.			
S.			
2. Total Adjustments	84,971.00	53,049.00	
3. Taxable Income Per Return or as Previously Adjusted	0.00	0.00	
4. Corrected Taxable Income	84,971.00	53,049.00	
Tax Method	TAX TABLE	TAX TABLE	
Filing Status	MARRIED SEPARATE	MARRIED SEPARATE	
5. Tax	23,243.00	12,489.00	
Additional Taxes			
7. Corrected Tax Liability	23,243.00	12,489.00	
8. Less Credits A.			
B.			
C.			
D.			
9. Balance (Line 7 less total of lines 8A through 8D)	23,243.00	12,489.00	
10. Plus Other Taxes A.			
B.			
C.			
D.			
11. Total Corrected Tax Liability (Line 9 + lines 10A to 10D)	23,243.00	12,489.00	
12. Total Tax Shown on Return or as Previously Adjusted	0.00	0.00	
13. Adjustments to A. Special Fuels Credit			
B.			
14. Deficiency - Increase in Tax or (Overassessment - Decrease in tax) (Line 11 less Line 12 adjusted by Line 13)	23,243.00	12,489.00	
15. Adjustments to Prepayment Credits			
16. Balance Due or Overpayment (Line 14 Adjusted by Line 15) (Excluding Interest and penalties)	$ 23,243.00	$ 12,489.00	$

The Internal Revenue Service has agreements with State tax agencies under which information about Federal tax, including increases or decreases, is exchanged with the States. If this change affects the amount of your State income tax, you should file the State form.

You may be subject to backup withholding if you underreport your interest, dividend, or patronage dividend income and do not pay the required tax. The IRS may order backup withholding at 31 percent after four notices have been issued to you over a 120-day period and the tax has been assessed and remains unpaid.

Form 886-A	Department of the Treasury - Internal Revenue Service	Schedule No. or
	Explanation of Items	Exhibit
Name of Taxpayer		Year/Period Ended
READING, CLARE		DEC. 31, 1994
EIN: 384-54-4550		DEC. 31, 1995

1A. 1099MISC-PILOT & ASSOC.

Since you were married and domiciled in a community property state, we have adjusted your gross receipts in accordance with community property laws. Accordingly, your income from Pilot & Associates, Inc. is increased $22,287 for the taxable period ended December 31, 1994.

Pilot & Assoc. Income	$44,574.00
Less: 50% allocation to Spouse	22,287.00
Adjustment	$22,287.00

1B. 1099MISC-PILOT CATASTROPH

Since you were married and domiciled in a community property state, we have adjusted your gross receipts in accordance with community property laws. Accordingly, your income from Pilot Catastrophe Services, Inc. is increased $56,008 for the taxable period period ended December 31, 1994 and $58,824 for ended December 31, 1995. Accordingly, your taxable income from Pilot Catastrophe Services, Inc is increased $56,008 and $58,008 for the taxable periods ended December 31, 1994 and 1995, respectively.

	1994	1995
Pilot Catastrophic Services Income	$112,015.00	$117,648.00
Less: 50% allocated to Spouse	$56,007.50	$58,824.00
Adjustment	$56,007.50	$58,824.00

1C. CAPITAL GAIN AND LOSS

Since you were married and domiciled in a community property state, we have adjusted your gross receipts in accordance with community property laws. Accordingly, your income as listed below is increased $11,948 for the taxable period ended December 31, 1994. Accordingly, your taxable income is increased $11,948 for the taxable period ended December 31, 1994.

	SOURCE	AMOUNT
1	Merrill Lynch Pierce Fenner & Smith	$8,359.00
2	American services Company	$15,537.00
	Total	$23,896.00
	Less: Allocation to Spouse	$11,948.00
	Adjustment	$11,948.00

1D. DIVIDEND INCOME

Since you were married and domiciled in a community property state, we have adjusted your gross receipts in accordance with community property laws. Accordingly, your income as listed below is increased $59 for the taxable period ended December 31, 1994. Accordingly, your taxable income is increased $59 for the taxable period ended December 31, 1994.

	SOURCE	AMOUNT
1	General Motors	$66.00
2	American Funds Service Co.	$50.00
	Total	$118.00
	Less: Allocation to Spouse	$59.00
	Adjustment	$59.00

1E. EXEMPTIONS

It is determined that you are entitled to one exemption for the taxable periods ended December 31, 1994 and 1995.

1F. STANDARD DEDUCTION

It is determined that you are entitle to a standard deduction for the taxable periods ended December 31, 1994 and 1995.

5 TAX

Your tax is computed by use of married-separate tax rates, since you have not established that you meet the requirements for any other filing status for the taxable periods December 31, 1994 and December 31, 1995.

Name Of Taxpayer: CLARE READING
Identification Number: [redacted]4550 TOTAL 03/28/2000 4.60.00

199412 PERSONAL EXEMPTION WORKSHEET

1.	Multiply $2,450.00 by the total number of exemptions claimed on Form 1040, line 6e	2,450.00
2.	Adjusted Gross Income (Form 1040, line 32)	90,302.00
3.	Limitation based on Filing Status	83,850.00
4.	Subtract line 3 from line 2	6,452.00
5.	Divide line 4 by $2,500 ($1,250 if married filing separate)	6.00
6.	Multiply line 5 by 2% and enter the result as a decimal	0.12
7.	Multiply line 1 by line 6	294.00
8.	Deduction for exemptions (Subtract line 7 from line 1)	2,156.00

Name of Taxpayer: CARE READING
Identification Number: [redacted]-4550 TOTAL 03/28/2000 4.60.00

199412 - EXPLANATION OF THE ESTIMATED TAX PENALTY

Since you did not pay sufficient estimated tax, addition to the tax is charged as shown below, in accordance with Section 6654(a) of the Internal Revenue Code.

1.	Total corrected tax liability, Form 4549, line 11 (Tax Per Return, if a return was filed)				23,243.00
2.	Withholding taxes				0.00
3.	Line 1 less line 2 (if less than $500, estimated penalty does not apply)				23,243.00
4.	90% of line 1				20,918.70
5.	Prior year tax liability (110% of tax if AGI was more than $150,000. or if MFS more than $75,000.)				0.00
6.	The smaller of line 4 or 5 (as adjusted)				20,918.70
7.	Payment Due Date	Apr 15, 1994	Jun 15, 1994	Sep 15, 1994	Jan 15, 1995
8.	Payment Required	5,229.68	5,229.68	5,229.68	5,229.68
9.	Payments & Credits	0.00	0.00	0.00	0.00
10.	Overpayment from Line 16		0.00	0.00	0.00
11.	Total of Lines 9 & 10		0.00	0.00	0.00
12.	Previous Qtr Underpayment		5,229.68	10,459.36	15,689.04
13.	11 minus 12	0.00	0.00	0.00	0.00
14.	Remaining Underpayment		5,229.68	10,459.36	
15.	Underpayment	5,229.68	5,229.68	5,229.68	5,229.68
16.	Overpayment	0.00	0.00	0.00	0.00

CALCULATION OF QUARTERLY PENALTIES ATTACHED

17.	Penalty	437.85	376.67	273.37	118.20
18.	Previously Assessed Penalty				0.00
19.	Estimated Tax Penalty				1,206.09

28 USC § 1654 - Appearance personally or by counsel

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

EXHIBIT AA

James Leslie Reading, *Pro Se*
Clare Louise Reading, *Pro Se*
2425 East Fox Street
Mesa, Arizona 85213

AFFIDAVIT REGARDING
THE ERRATIC LIABILITY CLAIMS BY THE IRS

I, Clare Louise Reading, hereafter Affiant, and James Leslie Reading, Affiant, am a natural born citizen of the United States and a citizen of Arizona, am over the age of 18 and mentally competent. Affiant has personal knowledge of the statements being made hereafter in this document. I, Clare Reading, and I, James Leslie Reading, having been first duly sworn on my oath, state the following:

1. Prior to the sale of their wrongfully seized property in the name of Clare Reading, Steven Massel, Property Appraisal and Liquidation Specialist, personally delivered a "Minimum Bid Worksheet" that listed:

   Liability for Clare Reading (including unassessed accrued amounts) **$2,336.833.95**.

2. In the span of 16 months, the "liability" to pay an "income tax" for Clare Reading, who has not had a job other than clerical assistant for her husband since November, 1992, is listed as $138,296.10 to $2,336,833.95 in 4 months, sustained for 4 months and in 4 weeks, drops to $78,985,94 to increase to $138,296.10 in 6 months and drop back down to $107,383.47 30 days later.
   [*See*: Exhibit I]

3. The 5 IRS employees who signed this document in support of these wildly varying "liabilities" have proven that they are inept and incompetent or deliberately inventing figures, proving that their calculation are not ones to be trusted or relied upon.

Affiants declare: I am not an expert in the law however, I do know right from wrong. If there is any human being damaged by any statements herein, if he will inform me by verifiable facts I will sincerely make every effort to make correction(s). I hereby and herein reserve the right to amend this document as necessary in order that the truth may be ascertained and proceedings justly determined. If the parties

EXHIBIT AA

given notice by means of this document have information that would controvert and overcome this Affidavit, please advise me IN WRITTEN AFFIDAVIT FORM within thirty (30) days from receipt hereof providing me with your counter affidavit, proving with particularity by stating all requisite actual evidentiary fact and all requisite actual law, and not merely the ultimate facts or conclusions of law, under penalty of perjury, that this Affidavit is substantially and materially false sufficiently to materially change my status and factual declarations. Your silence stands as consent to, and tacit approval of, the factual declarations herein being established as fact as a matter of law.

Jurat

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, 28 USC § 1746(1).

Reserving ALL Natural God-given unalienable birthrights, waiving none,

/s/ Clare Louise Reading

Clare Louise Reading

/s/ James Leslie Reading

James Leslie Reading

Arizona State)
) ss
Maricopa County)

Clare Louise Reading and James Leslie Reading appeared before me, a Notary, subscribed and sworn under oath this 8th day of August, 2012.

Notary Public My Commission expires: 3/25/2016

seal

KEVIN S. KEPLINGER
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
March 25, 2016

Form **4585** (Rev June 2002)

Department of the Treasury — Internal Revenue Service

Minimum Bid Worksheet

[X] Initial [ ] Revised

1. Taxpayer name *(from Balance Due)*: Clare Reading

2. Seizure number: 06-06-10-061

3. Liability *(including unassessed accrued amounts)*	$ 2,336,833.95	
4. Estimated expenses of sale *(from Form 2433)*	$ 800.00	Amount
5. Property value *(from Form 2433)*		$ 19,975.00
6. Property value reduction *(not to exceed 25%)*	25 %	$ 4,993.75
7. Forced sale value *(Line 5 minus Line 6)*		$ 14,981.25
8. Percentage of forced sale value *(normally 20%)*	20 %	$ 2,996.25
9. Reduced forced sale value *(Line 7 minus Line 8)*		$ 11,985.00

10 **Prior Claims**
(from Form 2434-B; get Counsel opinion when necessary)

Name and Address of Claimant	Type of Claim	Date Recorded	Balance Due / Date Verified
			$

11. Total of prior claims	▶	0.00
12. MINIMUM BID PRICE *(Line 9 minus Line 11)*		$ 11,985.00

13. Explain how the fair market value was determined.

FMV determined by current market value of vehicle researched on Kelly Blue Book, autotrader.com and trucktrader.com.

14. Remarks *(Explain the basis for the percentage reductions used. For revised minimum bids, explain the reason for the revision.)*

Full reductions of 25% and 20% used because IRS sales are conducted on cash basis; and the IRS cannot guarantee condition or fitness for use.

$11,985 ÷ $32,500 = 37%
(Brand New Nissan Titan w/ CAB + Extras)

15. Signature of Service employee: Steven Massel — Digitally signed by Steven Massel, DN: cn=Steven Massel, ou=PALS Area 4, email=Steven.R.Massel@irs.gov, Reason: I am the author of this document, Date: 2006.08.23 11:28:37 -07'00' — Date: 10/13/2006

16. Approval signature — Title: PALS 4 Acting Group Manager — Date: 10/20/06

(Remove carbon before completing letter on back of Part 3)

IRS "Liability" for Clare L Reading 3/30/2006 - 10/16/2007

Reconciliation after auction of truck:

Date	Liability		
3/30/2006	$ 182,091.40	(James: $494,627.37)	"2039"
6/23/2006	$ 138,296.10		
10/13/2006 10/20/2006	$2,336,833.95		
3/09/2007	$ 78,985.94		
9/17/2007	$ 138,276.10		
10/16/2007	$ 107,383.47		
2/07/2007	$2,336,833.95		

7 "amounts" ranging from $78,985.94 - $2,336,833.95 in the span of 12 months!

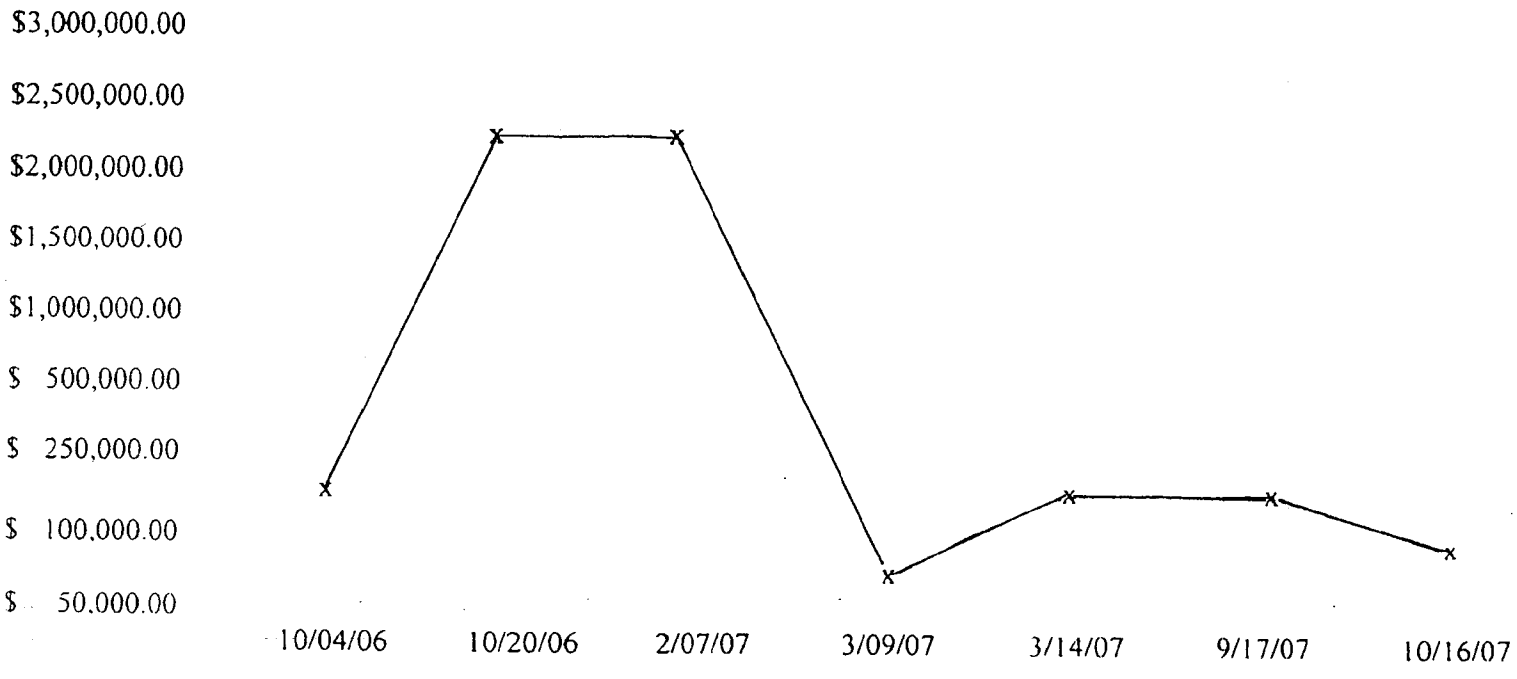

Exhibit / Page / Of

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The Next 6 pages were stapled together in this letter. These are not "Random collections" by Clare Reading.

Internal Revenue Service

Department of the Treasury

Date October 16, 2007

Clare Reading
2425 E. Fox
Mesa, Arizona 85213-5320

Person to Contact:
Sandra Davaz
Telephone Number:
(602) 207-8525
Fax Number:
(602) 207-8007
Employee Number:
86-17040
Refer Reply to:
Sandra Davaz

Dear Ms. Reading

Enclosed is a copy of the Forms 2436, Seized *Property Sale Report,* showing how we applied the sale proceeds to your unpaid taxes. Also enclosed are Record 21, *Record of Seizure and Sale, if applicable* and Form 2434-B, *Notice of Encumbrances Against or Interests in Property Offered for Sale.* These documents provide a complete record of the seizure and sale as required by Section 6340 of the Internal Revenue Code.

On Form 2436, Item 5 shows the kind of tax, the tax period(s), the amount of tax and expenses of the sale where we applied the sale proceeds. The gross proceeds of the sale are shown in Item 6b. We applied these first to the expenses of sale in Item 5d; second, to any intervening claims in Item 6c; and then to your total tax liability shown in Item 6a. This distribution was made in accordance with Section 6342 of the Internal Revenue Code.

The amounts provided below represent the current balance still remaining on your account after the proceeds of the sale were applied. These figures are calculated through October 31, 2007.

Tax Period	Type of Tax	Unpaid Balance of Assessment	Accrued Penalties and Interest	Total Due
199412	1040	$50,540.34	$11,330.59	$61,870.93
199512	1040	$34,658.14	$6,152.40	$40,810.54
199712	CIVPEN	$500.00	$22.98	$522.98
199812	CIVPEN	$500.00	$22.98	$522.98
199912	CIVPEN	$500.00	$22.98	$522.98
200012	CIVPEN	$500.00	$22.98	$522.98
200112	CIVPEN	$500.00	$22.98	$522.98
200212	CIVPEN	$500.00	$22.98	$522.98
200312	CIVPEN	$500.00	$20.57	$520.57
200412	CIVPEN	$500.00	$20.57	$520.57
200512	CIVPEN	$500.00	$22.98	$522.98

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AA-3 1 of 6

The remaining balance on your account as of the date above is $107,383.47. If you have any question, please contact me at the numbers shown above, or by mail at Internal Revenue Service, 210 E. Earll drive, MS 5021PHX, Phoenix, Arizona 85012

Sincerely,

Sandra Davaz
Technical Services Advisor
Area Cal-West

Enclosure(s):
Form 2436, Part 5
Form 2434-B
Record 21, if Applicable

Letter 3074 (8-2005)
Catalog Number 25502R

Form 2436
Rev. August 2005)

Department of the Treasury — Internal Revenue Service

Seized Property Sale Report

(Including property purchased by the United States)

SECTION I

1. Name and address of taxpayer
Sudder Group LLC, as nominee and/or alter ego of Clare Reading; Superior Claims Mgt; Darrell Hill EX; PO Box 40475; Mesa, AZ 85274-0475

2. Area Office / Territory Office
Area 6/ Territory 10

3. Serial number Form 2433
06-06-10-061

Social security or employer ID number *(SSN or EIN)*: 384-54-4550

4a. Place of sale
IRS; 210 E. Earll Drive; Phoenix, AZ 85012

4b. Date of sale *(mmddyyyy)*
03/09/2007

5 **Application of Proceeds** ***(See "Additional Instructions" below.)***

a. Kind of tax *(Tax Form number)*	TC	1040	TC		TC		TC	
b. Period		199412						
c. Date of payment		03/09/2007						
d. Expenses of sale	360	$953.13						
e. Sale expense credit	694	$953.13						
f. Assessed amount		$19,246.87						
g. Accrued penalty								
h. Accrued interest								
Total *(Lines f, g, and h)*	670	$19,246.87	670	$0.00	670	$0.00	670	$0.00
Designated Payment Code *(Line i)*	DPC	6	DPC	6	DPC	6	DPC	6
k. Total proceeds applied *(See instructions)*		$20,200.00		$0.00		$0.00		$0.00

5 **Application of Proceeds *(Continued)***

a. Kind of tax *(Tax Form number)*	TC		TC		TC		TC	
b. Period								
c. Date of payment								
d. Expenses of sale								
e. Sale expense credit								
f. Assessed amount								
g. Accrued penalty								
h. Accrued interest								
Total *(Lines f, g, and h)*	670	$0.00	670	$0.00	670	$0.00	670	$0.00
Designated Payment Code *(Line i)*	DPC	6	DPC	6	DPC	6	DPC	6
k. Total proceeds applied *(See instructions)*		$0.00		$0.00		$0.00		$0.00

ADDITIONAL INSTRUCTIONS

c. **Date of payment** — This is generally the date of sale, except in situations involving deferred payment sales.

d. **Expenses of *(seizure and)* sale** — These should be debited to the first account listed.

e. **Sale expense credit** — Enter the proceeds to be applied against the expenses. The total of the TC 694 should be equal to or less than line d.

f. **Assessed amount** — Enter the proceeds to be applied to the assessed amount of each account listed on Form 668-B, Levy.

g. **Accrued penalty** — Enter the amount to be applied to accrued penalty. **NOTE:** If the account has an unreversed TC 270 *(manually assessed)*, insert "270" in the TC column. Leave the TC column blank if the account does not have a prior TC 270.

h. **Accrued interest** — Enter the amount to be applied to accrued interest. **NOTE:** If the account has an unreversed TC 340 *(restricted interest)*, insert "340" in the TC column. Leave the TC column blank if the account does not have a prior TC 340.

i. **Total *(Lines f, g, and h)*** — Enter the total proceeds from Lines f, g, & h.

k. **Total proceeds applied** — Enter the total proceeds to be applied to each tax period *(for first module Line e plus Line i, for all others enter the amount from Line i only)*.

6 **Sale Proceeds**

a. Taxpayer's total liability *(including all accruals and costs)*	$ 78,985.94	b. Gross proceeds of sale *(If purchased by U.S. use "Min. Bid Price")*	$ 20,200.00
c. Intervening claims	0.00	d. Net proceeds of sale *(Line b minus Line c)*	20,200.00
e. Surplus proceeds, if any *(Line d minus Line a)*	0.00		

Record of Seizure and Sale

☐ Real Property
☒ Personal Property

1. [redacted] and address of taxpayer *(as shown on assessment list)*: Sudder Group LLC, as nominee and/or alter ego of Clare Reading; Superior Claims Mgt; Darrell Hill EX; PO Box 40475; Mesa, AZ 85274-0475

2. Serial number: 06-06-10-061

3. Record 21 number:

4. Area Office / Territory Office: Area 6/ Territory 10

Assessment(s) under which Seizure was made *(Continue on reverse if necessary)*

5. Tax class *(Tax return form number)*	6. Period ended	7. Assessment date	8. Taxpayer identification number *(TIN)*	9a. 1st Notice date	9b. Intent to Levy/ CDP Date	10. Amount of assessment
1040	12/31/1993	05/20/1996	384-54-4550	05/20/1996	03/02/2006	$33,830.75
1040	12/31/1994	04/23/2001	384-54-4550	04/23/2001	03/02/2006.	$69,787.21
1040	12/31/1995	04/23/2001	384-54-4550	04/23/2001	03/02/2006	$34,658.14
						TOTAL: $138,276.10

11. Date(s) Notice of Lien filed	12. Where filed	13. Date property seized	14. Notice of Seizure to owner	15. Notice of Sale to owner
05/02/2006	Maricopa County Recorder Phoenix, AZ 85003	09/22/2006	☒ Given ☐ Mailed Date: 09/22/2006	☒ Given ☒ Mailed Date: 02/16/2007

16. Advertisement of Sale
- a. Name of publication: The Record Reporter
- b. Place of publication: Phoenix, AZ
- c. Date published: 10-19-2006 A.) 02-14-2007

17. Notice of Sale Posted
- a. At Post Office *(Place and date)*: N/A
- b. And *(Place and date)*: www.ustreas.gov/auctions/irs 02/07/2007
- c. And *(Place and date)*: www.craigslist.com 02/07/2007

18. Description of property *(Continue on reverse if necessary.)*

2005 White Nissan Titan pickup truck; SE King Cab Short Bed; V8 5.6 Liter engine; Automatic transmission with optional 4x4 off road package and pickup shell/Cap; VIN 1N6AA06B75N511819.

19. Name of record owner of property	20. Total amount of prior liens *(If any)*	21. Min. Bid Price	22. Manner of sale
Sudder Group LLC, as nominee and/or alter ego of Clar	0.00	a. Not announced b. Announced 11,985.00	☒ Public Auction ☐ Sealed Bids

23. Date of sale	24. Place of sale	25. Postponements/Adjournments of sales *(Dates)*
03/09/2007	IRS; 210 E. Earll Drive; Phoenix, AZ 85012	11/09/2006

26. Detailed statement of expenses of levy and sale *(Use separate sheet if necessary)*

Vehicle Tow & Storage:Valley Towing 2617 N 16th Street Phoenix $394.48. Vehicle Maintenance: ABC Nissan 1300 E Camelback Road Phoenix $363.03; Virginia Auto Service 386 E Virginia Avenue Phoenix $75.62. Legal advertisement: Daily Journal Corp PO Box 54026 Los Angeles $120.00

27 Sale Proceeds	a. Gross proceeds	b. Expenses	c. Total amount paid intervening creditors *(See reverse)*	d. Net proceeds
	20,200.00	953.13	0.00	20,200.00

28. Amount applied to tax liability	29. Surplus *(If any)*	30. Date certificate of sale issued	31. Issued to *(Name and address) (Real Property Only)*
20,200.00	0.00	03/09/2007	

32. Remarks *(Continue on reverse if necessary. If leased, state date of lease, to whom, rate per month, date of payment and any additional necessary information.)*

33. Date	34. Signature of Property Appraisal and Liquidation Specialist	35. Date	36. Signature of Manager
03/14/2007	Steven Massel	03/14/2007	Gary A Smith

37 Redeemed Property *(Real Property Only)*	a. Redeemed by *(Name and address)*	b. Date redeemed	c. Nature of interest	d. Amount paid
		e. Paid to		

38 Deed Issued *(Real Property Only)*	a. Grantor *(Name and date)*	39. If U.S. is Grantee *(Real Property Only)*	a. Date recorded	b. Book	c. Page
	b. Grantee *(Name and date)*		d. Place of record		

I certify that the above is a true record of seizure and sale as described herein and that statutory notice requirements have been met.

40. Signature of Technical Services Manager

41. Date: 9/17/2007

Assessment(s) under which Seizure was made— *Continued*

5. Tax class *(Tax return form number)*	6. Period ended	7. Assessment date	8. Taxpayer identification number *(TIN)*	9a. 1st Notice date	9b. Intent to Levy/ CDP Date	10. Amount of assessment
1040	12/31/1993	05/20/1996	384-54-4550	05/20/1996	03/02/2006	$33,830.75
1040	12/31/1994	04/23/2001	384-54-4550	04/23/2001	03/02/2006	$69,787.21
1040	12/31/1995	04/23/2001	384-54-4550	04/23/2001	03/02/2006	$34,658.14

18. Description of property *(continued)*

27c. **Intervening Creditors Paid**

Amount	Name	Address
Total $ $0.00	*(Transfer total to face of form.)*	

32. Remarks *(continued)*

Rec'd V.A. 2nd

Form 2434-B
(Rev. October 2003)

Department of the Treasury -- Internal Revenue Service

10/13/06

Notice of Encumbrances Against or Interests in Property Offered for Sale

NOTE: The Internal Revenue Service does not warrant the correctness or completeness of the information listed and provides it solely to help the prospective bidder determine the value of the interest being sold. Bidders should, therefore, verify for themselves the validity, priority, and amount of the encumbrances against the property offered for sale. Each party listed below was mailed a notice of sale on or before *(Date)* November 09, 2006.

As of this date, the following are the encumbrances against or interests in the property (*as described in the Notice of Public Auction or Notice of Sealed Bid Sale*) that was seized for nonpayment of Internal Revenue taxes due from: *(Name)* Clare Reading
Some of these encumbrances or interests may be superior to the lien of the United States.

Type of Encumbrance or Interest	Amount of Encumbrance or Interest	Date of Instrument Creating Encumbrance or Interest	Date and Place Recorded	Name and Address of Party Holding Encumbrance or Interest	Date of Information
Nominee Federal Tax Lien	$138,296.10	05/01/2006	05/02/2006 Maricopa County	Internal Revenue Service; 210 East Earll Drive; Mail Stop 5023 PHX; Phoenix, AZ 85012	10/04/2006

There are no other known encumbrances other than the Nominee Federal Tax Lien

Name	Steven Massel	Signature	Date 06/23/2006
Title	Property Appraisal & Liquidation Sp		

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Form 2434-B (Rev. 10-2003)

proper corporation, company, or association, to record the same on the books or records, in the same manner as if transferred or assigned by the person or party holding the same, to issue new certificates of stock therefor in lieu of any original or prior certificates, which shall be void whether cancelled or not; and said certificates of sale of the collector or deputy collector, where the subject of sale shall be securities or other evidences of debt, shall be good and valid receipts to the person or party holding the same, as against any person or persons, or other party holding, or claiming to hold, possession of such securities or other evidences of debt.

Certificates of sales.

SEC. 93. *And be it further enacted*, That it shall be the duty of all persons of lawful age, and all guardians and trustees, whether such trustees are so by virtue of their office as executors, administrators, or other fiduciary capacity, to make return in the list or schedule, as provided in this act, to the proper officer of internal revenue, of the amount of his or her income, or the income of such minors or persons as may be held in trust as aforesaid, according to the requirements hereinbefore stated, and in case of neglect or refusal to make such return, the assessor or assistant assessor shall assess the amount of his or her income, and proceed thereafter to collect the duty thereon in the same manner as is provided for in other cases of neglect and refusal to furnish lists or schedules in the general provisions of this act, where not otherwise incompatible, and the assistant assessor may increase the amount of the list or return of any party making such return, if he shall be satisfied that the same is understated: *Provided*, That any party, in his or her own behalf, or as guardian or trustee, as aforesaid, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue, that he or she was not possessed of an income of six hundred dollars, liable to be assessed according to the provisions of this act, or that he or she has been assessed elsewhere and the same year for an income duty, under authority of the United States, and shall thereupon be exempt from an income duty; or, if the list or return of any party shall have been increased by the assistant assessor, in manner as aforesaid, he or she may be permitted to declare, as aforesaid, the amount of his or her annual income, or the amount held in trust, as aforesaid, liable to be assessed, as aforesaid, and the same so declared shall be received as the sum upon which duties are to be assessed and collected.

Each person to make return of income.

Post, p. 718.

Provision in cases of neglect or refusal.

Proviso.

STAMP DUTIES.

SEC. 94. *And be it further enacted*, That on and after the first day of October, eighteen hundred and sixty-two, there shall be levied, collected, and paid, for and in respect of the several instruments, matters, and things mentioned, and described in the schedule (marked B) hereunto annexed, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, shall be written or printed, by any person or persons, or party who shall make, sign, or issue the same, or for whose use or benefit the same shall be made, signed, or issued, the several duties or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule.

Stamp duties on articles in Schedule B.

Post, p. 861.

SEC. 95. *And be it further enacted*, That if any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, any instrument, document, or paper of any kind, or description whatsoever, without the same being duly stamped for denoting the duty hereby imposed thereon, or without having thereupon an adhesive stamp to denote said duty, such person or persons shall incur a penalty of fifty dollars, and such instrument, document, or paper, as aforesaid, shall be deemed invalid and of no effect.

Penalty for making, &c., instrument without using stamp.

1862, ch. 183, § 24. Post, p. 880.

Post, pp. 734, 735.

SIXTY-FIFTH CONGRESS. SESS. III. CH. 18. 1919. Statute at Large

UNDERSTATEMENT IN RETURNS.

SEC. 228. That if the collector or deputy collector has reason to believe that the amount of any income returned is understated, he shall give due notice to the taxpayer making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated, may increase the same accordingly. **Such taxpayer may furnish sworn testimony to prove any relevant facts** and if dissatisfied with the decision of the collector may **appeal to the Commissioner for his decision**, under such rules of procedure as may be prescribed by the Commissioner with the approval of the Secretary.

"Carr also failed to present any evidence contesting the affidavits of the Estates' attorneys and the **circuit court could properly accept the unrebutted affidavits of the Estates' attorneys.** *Heritage Pullman Bank & Trust Co. v. Carr.* Also see *Aroonsakul v. Flanagan*, 155 Ill. App. 3d 223, 229, 507 N.E.2d 1 (1987)."

Treasury Decision - Internal Revenue
T22.8

In all cases, therefore, where an assessed tax remains unpaid after it becomes due a notice on Form 17 should be at once issued, to be followed, when necessary, by Forms 21 and 69, in their order. The fact that a claim for abatement is pending or the tax is in litigation does not relieve the collector from issuing the notices, demands, etc., required by law.

A misunderstanding on the part of certain collectors as to these requirements has occasioned a considerable loss to the Government of penalty and interest, especially where claims for abatement were pending.

W. H. OSBORN,
Commissioner of Internal Revenue.

(T. D. 1996.)

Income tax.

Cooperative dairies and like organizations do not fall within the classes of organizations enumerated in subsection G, section 2, act of October 3, 1913, as exempt, and are required to make returns of annual net income.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 15, 1914.

To collectors of internal revenue:

Attention is called to article 92 of Regulations No. 33, approved January 5, 1914, in which it is provided that cooperative dairies not issuing stock and allowing patrons dividends based on the percentage of butter fat in milk furnished are not liable to the requirements of section 2, act of October 3, 1913.

This article is amended to the effect that cooperative dairy associations, whether issuing capital stock or not, are required to make returns of annual net income pursuant to the requirements of this act.

The only corporations, joint-stock companies or associations, or insurance companies, exempt from the requirements of this act are those which fall within one or another of the classes specifically enumerated in the first proviso of subsection G of the act cited as exempt.

Cooperative dairies, no matter how organized, do not appear to fall within any of these exempted classes, and will, therefore, be required to make returns.

In the preparation of their returns, cooperative dairies may include in their deductions from gross income the amount actually paid to members and patrons for milk, but any amount retained at the end of the year over and above expenditures will be returned as net income, upon which the tax will be computed and assessed.

In so far as article 92, hereinbefore referred to, is in conflict with this ruling, it is hereby revoked, and collectors will require all organizations of this character to make returns of annual net income and

List of alcoholic medicinal preparations—Continued.

Name.	Manufacturer.
Webb's A No. 1 Tonic	Webb's Cooperative Co., Sacramento, Cal.
Westphalia Stomach Bitters	E. R. Behlers, St. Louis, Mo.
White Cross Bitters	V. Gautier, New York City.
White's Dyspepsia Remedy	W. L. White & Co., Louisville, Ky.
Will Do	The Will Do Co., Detroit, Mich.
Williams Kidney Relief	Parker, Blake & Co., New Orleans, La.
Wine of Chenstohow	Skarzynski & Co., Buffalo, N. Y.
Wine of Pomelo, with Beef and Iron	Irondequoit Wine Co., Rochester, N. Y.
*Wine Tonic	Wladyslaw Kryszewski, Jersey City, N. J.
*Wine Zdrowia	American Bitter Wine Co., Chicago, Ill.
Woodbury Brand Bitters	Steinhart Bros. & Co., New York City.
Zeman's Medicinal Bitter Wine	B. Zeman, Chicago, Ill.
Zien Stomach Bitters	Zien Bros., Milwaukee, Wis.
Zig-Zag	Walker's Tonic Co., Paducah, Ky.

W. H. OSBORN,
Commissioner of Internal Revenue.

(T. D. 1995.)

Assessed taxes—Notice and demand, Form 17.

Notice of and demand for assessed taxes to be issued promptly to secure tax lien, penalty, and interest in case of nonpayment.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 12, 1914.

To collectors of internal revenue:

It appears that certain collectors hold that notice of assessment and demand, Form 17, is not necessary to create a liability to 5 per cent penalty and interest at 1 per cent per month in the case of income tax remaining unpaid after June 30 or other due date. This view as to the requirements of the law is clearly wrong and contrary to the instructions (art. 197, Regs., 33) issued on the subject.

The necessity of issuing Form 17 is twofold—first, to determine the date when 5 per cent penalty accrues and interest at 1 per cent per month begins to run, and, second, to complete the Government's lien on property belonging to the taxpayer.

In special excise and income-tax assessments a notice on Form 647 is required to be given in all cases where the required return is filed in due time. This, however, is simply a preliminary notice of assessment, to be followed, in case of nonpayment, by a formal notice and demand which the law clearly contemplates and which the courts hold to be necessary before the delinquent taxpayer becomes chargeable with penalty and interest.

Treasury Decision - Internal Revenue
T.D. 1995
from Researcher @ National Archives & Records Administration

List of alcoholic medicinal preparations—Continued.

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W. H. OSBORN,
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(T. D. 1995.)

Assessed taxes—Notice and demand, Form 17.

Notice of and demand for assessed taxes to be issued promptly to secure tax lien, penalty, and interest in case of nonpayment.

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OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 12, 1914.

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CC 3 10

VIOLATION: IRM 5.1.9.3.9 (04-06-2010) Appeal Process (Part 6) which authorizes the taxpayer to challenge **the existence or amount of the underlying tax liability.**
(Part 6) During the appeal process, the taxpayer or his or her representative may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including:
• *appropriate spousal defenses,*
• ***challenges to the appropriateness of collection actions,***
• *offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an IA, or an offer-in-compromise,*
• ***issues related to an economic hardship determination**, and*
• ***challenges to the existence or amount of the underlying tax liability including a liability reported on a self-filed return for any tax period specified on the CDP notice if he or she did not receive a statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.***

26 C.F.R. § 601.106 (f) Conference and practice requirements. Practice and conference procedure before Appeals is governed by Treasury Department Circular 230 as amended (31 CFR Part 10), and the requirements of Subpart E of this part. In addition to such rules but not in modification of them, the following rules are also applicable to practice before Appeals:
*(1) Rule I. 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 Fifth Amendment to the U.S. Constitution. Accordingly, an **Appeals representative in his or her conclusions of fact or application of the law shall hew to the law and the recognized standards of legal construction.** It shall be his or her duty to determine the correct amount of the tax, with **strict impartiality** as between the taxpayer and the*

The US Supreme Court has also ruled on this in *Morton v. Ruiz*, 415 U.S. 199, 94 S.Ct. 1055, 39 L.Ed.2d 270 (1974), "... **agencies must follow all internal procedures if the agency action will affect a person' s Constitutional rights**". Defendant claims that erroneously or illegally creating a "tax deficiency" and collection on it is a violation of Defendants Constitutional rights.

In addition, in *Service v. Dulles*, 354 U.S. 363, 388 (1957); *Vitarelli v .Seaton*, 359 U.S. 535, 539-540 (1959). "**Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required**".

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from Research @ National Archives & Records Administration

List of alcoholic medicinal preparations -Continued.

Name.	Manufacturer.
Webb's A No. 1 Tonic	Webb's Cooperative Co., Sacramento, Cal.
Westphalia Stomach Bitters	E. R. Behlers, St. Louis, Mo.
White Cross Bitters	V. Gantier, New York City.
White's Dyspepsia Remedy	W. L. White & Co., Louisville, Ky.
Will Do	The Will Do Co., Detroit, Mich.
Williams Kidney Relief	Parker, Blake & Co., New Orleans, La.
Wine of Chenstohow	Skarzynski & Co., Buffalo, N. Y.
Wine of Pomelo, with Beef and Iron	Irondequoit Wine Co., Rochester, N. Y.
*Wine Tonic	Wladyslaw Kryszewski, Jersey City, N. J.
*Wine Zdrowia	American Bitter Wine Co., Chicago, Ill.
Woodbury Brand Bitters	Steinhart Bros. & Co., New York City.
Zeman's Medicinal Bitter Wine	B. Zeman, Chicago, Ill.
Zien Stomach Bitters	Zien Bros., Milwaukee, Wis.
Zig-Zag	Walker's Tonic Co., Paducah, Ky.

W. H. OSBORN,
Commissioner of Internal Revenue.

(T. D. 1995.)

Assessed taxes---Notice and demand, Form 17.

Notice of and demand for assessed taxes to be issued promptly to secure tax lien, penalty, and interest in case of nonpayment.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 12, 1914.

To collectors of internal revenue:

It appears that certain collectors hold that notice of assessment and demand, Form 17, is not necessary to create a liability to 5 per cent penalty and interest at 1 per cent per month in the case of income tax remaining unpaid after June 30 or other due date. This view as to the requirements of the law is clearly wrong and contrary to the instructions (art. 197, Regs., 33) issued on the subject.

The necessity of issuing Form 17 is twofold---first, to determine the date when 5 per cent penalty accrues and interest at 1 per cent per month begins to run, and, second, to complete the Government's lien on property belonging to the taxpayer.

In special excise and income-tax assessments a notice on Form 647 is required to be given in all cases where the required return is filed in due time. This, however, is simply a preliminary notice of assessment, to be followed, in case of nonpayment, by a formal notice and demand which the law clearly contemplates and which the courts hold to be necessary before the delinquent taxpayer becomes chargeable with penalty and interest.

Treasury Decision - Internal Revenue
T22.8

In all cases, therefore, where an assessed tax remains unpaid after it becomes due a notice on Form 17 should be at once issued, to be followed, when necessary, by Forms 21 and 69, in their order. The fact that a claim for abatement is pending or the tax is in litigation does not relieve the collector from issuing the notices, demands, etc., required by law.

A misunderstanding on the part of certain collectors as to these requirements has occasioned a considerable loss to the Government of penalty and interest, especially where claims for abatement were pending.

W. H. OSBORN,
Commissioner of Internal Revenue.

(T. D. 1996.)

Income tax.

Cooperative dairies and like organizations do not fall within the classes of organizations enumerated in subsection G, section 2, act of October 3, 1913, as exempt, and are required to make returns of annual net income.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 15, 1914.

To collectors of internal revenue:

Attention is called to article 92 of Regulations No. 33, approved January 5, 1914, in which it is provided that cooperative dairies not issuing stock and allowing patrons dividends based on the percentage of butter fat in milk furnished are not liable to the requirements of section 2, act of October 3, 1913.

This article is amended to the effect that cooperative dairy associations, whether issuing capital stock or not, are required to make returns of annual net income pursuant to the requirements of this act.

The only corporations, joint-stock companies or associations, or insurance companies, exempt from the requirements of this act are those which fall within one or another of the classes specifically enumerated in the first proviso of subsection G of the act cited as exempt.

Cooperative dairies, no matter how organized, do not appear to fall within any of these exempted classes, and will, therefore, be required to make returns.

In the preparation of their returns, cooperative dairies may include in their deductions from gross income the amount actually paid to members and patrons for milk, but any amount retained at the end of the year over and above expenditures will be returned as net income, upon which the tax will be computed and assessed.

In so far as article 92, hereinbefore referred to, is in conflict with this ruling, it is hereby revoked, and collectors will require all organizations of this character to make returns of annual net income and

Form 17A
[illegible]

Statement of Income Tax Due

[illegible]
AUG 15, 510100 55
1955 553
ON 22753
INT TO 8/15/55
JEOPARDY ASSESSMENT SEC 273(A)
IRC OF 1939 SEC 3001 IRC 1954

55	247012.86
55	24996.10
55	14315.97
55	21,100.38

304,225.70

22.88

Dated— Aug 15 1955

This bill for the amount shown as "Balance Due" is being sent to you in accordance with law. The law also requires that interest at 6 percent per year until date of payment be added unless this amount is paid within 10 days from date of this notice. Amounts shown in "Assessment" column are for tax unless identified as penalty by letter "P" or interest by letter "I."

Please return this notice with remittance to District Director of Internal Revenue at

[illegible], Arkansas

INTERNAL REVENUE.

(T. D. 1965.)

Assessed taxes—Notice and demand, Form 17.

Notice of and demand for assessed taxes to be issued promptly to secure tax lien, penalty, and interest in case of nonpayment.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 12, 1914.

To collectors of internal revenue:

It appears that certain collectors hold that notice of assessment and demand, Form 17, is not necessary to create a liability to 5 per cent penalty and interest at 1 per cent per month in the case of income tax remaining unpaid after June 30 or other due date. This view as to the requirements of the law is clearly wrong and contrary to the instructions (art. 197, Regs., 33) issued on the subject.

The necessity of issuing Form 17 is twofold—first, to determine the date when 5 per cent penalty accrues and interest at 1 per cent per month begins to run, and, second, to complete the Government's lien on property belonging to the taxpayer.

In special excise and income-tax assessments a notice on Form 647 is required to be given in all cases where the required return is filed in due time. This, however, is simply a preliminary notice of assessment, to be followed, in case of nonpayment, by a formal notice and demand which the law clearly contemplates and which the courts hold to be necessary before the delinquent taxpayer becomes chargeable with penalty and interest.

In all cases, therefore, where an assessed tax remains unpaid after it becomes due a notice on Form 17 should be at once issued, to be followed, when necessary, by Forms 21 and 69, in their order. The fact that a claim for abatement is pending or the tax is in litigation does not relieve the collector from issuing the notices, demands, etc., required by law.

A misunderstanding on the part of certain collectors as to these requirements has occasioned a considerable loss to the Government of penalty and interest, especially where claims for abatement were pending.

W. H. OSBORN,
Commissioner of Internal Revenue.

Your Rights AS A TAXPAYER

Start here

- First notice and demand for unpaid tax
- 10 days later
- Enforcement authority arises (a notice of a lien may be filed)
- Up to 3 more notices sent over a period of time asking for payment
- Notice of intent to levy is sent by certified mail (final notice)
- 30 days later
- Enforcement action to collect the tax begins (levy, seizure, etc.)

Department of the Treasury
Internal Revenue Service
Publication 1 (Rev. 10-90)

Cat. No. 64731W

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Treasury Decisions

This finding list for Treasury Decisions ("T.D.'s") consists of a numerical tabulation of the T.D. numbers with references to the full texts in the Cumulative Bulletin and to the paragraphs (¶) at which they are reported in the Index Volume and Volumes 1 through 15 of this Reporter. Citation, modification or revocation by subsequent rulings is appropriately noted.

EXAMPLE

NEVER REVOKED *

T.D. Par. (¶)

20, 649, February 7, 1899
Cited in:
Crown Cork & Seal Co., Inc., DC, 50-2 USTC ¶ 9508, 94 FSupp 117
21, 856, Dec. 18, 1899
Revoked by:
T.D. 6683
56, approved Oct. 10, 1956. (Excise Tax)
59, I.R.B. 1961-20, 14. (Excise Tax)
62, I.R.B. 1961-39, 13. (Excise Tax)
64, I.R.B. 1961-47, 12. (Excise Tax)
66, I.R.B. 1962-13, 14. (Excise Tax)
68, I.R.B. 1962-32, 27. (Excise Tax)
71, I.R.B. 1963-19, 34 ..... EX
72, I.R.B. 1964-5, 14.. (Excise Tax)
73, I.R.B. 1964-18, 9.. (Excise Tax)
383, 8 T.D., I.R. 39..... (1905) Unreported
Cited in:
Austin, Nichols & Co., DC, 50-1 USTC ¶ 9127, 87 FSupp 766
1675, Feb. 14, 1911
Zauss v. Minneapolis Syndicate
1755, Jan. 22, 1912
1941
Park View Bldg. & Loan Ass'n v. Herold
Cited in:
S.M. 1140
1946, Feb. 10, 1914
Cited in:
S.M. 2670
1992, June 4, 1914
1995, June 12, 1914 ... ¶ 40,315.90; 40,460.90
2003, June 26, 1914 ... ¶ 40,315.90; 40,460.90
2005, July 8, 1914
Cited in:
Monte, CA, 1 USTC ¶ 34, 266 Fed 161
I.T. 1818
I.T. 1517
I.T. 1338
2011, July 28, 1914 ... ¶ 21,005.406
2015, August 13, 1914
2028, Oct. 30, 1914 .... ¶ 40,315.90; 40,460.90
Cited in:
Rev. Proc. 70-20
2051, March 9, 1914.. (Excise Tax)
2079, Nov. 24, 1914 ..... ¶ 7222.99
2090, Dec. 14, 1914 ... ¶ 5507.1401; 5507.297; 5800.15; 8471.1357; 15,604.395; 34,767.91; 36,968.04; 37,812.09; 41,720.04
Cited in:
Monte, CA, 1 USTC ¶ 34, 266 Fed 161
Rogers, CA, 41 F2d 865
First Trust & Savings Bank, CA, 268 Fed 230
Farmers Un ion State Exchange, BTA, Dec. 8620, 30 BTA 1051
G.C.M. 12420
I.T. 4027
I.T. 1838
I.T. 1499
L.O. 1062
L.O. 1082
Sol. Op. 136
TBR 64
2135, Jan. 23, 1915 ..... ¶ 6662.94; 7022.90; 21,009.2007; 40,375.90
Cited in:
S.M. 2723
I.T. 1818
L.O. 858
A.R.R. 1082
A.R.M. 41
2137, Jan. 30, 1915 ..... ¶ 6140.99; 14,054.90; 26,571.03; 37,812.09; 37,894.90
Cited in:
Textile Mills Securities Corp., SCt, 41-2 USTC ¶ 9784, 314 US 326
Ostheimer, CA, 59-1 USTC ¶ 9300, 264 F2d 789
Christine Oil & Gas Co., CA, 269 Fed 458
Ostheimer, DC, 58-1 USTC ¶ 9358, 160 FSupp 669
Mixner, TC, Dec. 23,493, 31 TC 1130
Gray, BTA, Dec. 771, 2 BTA 672
Southwestern Electric Power Co., Ct. Cls., 63-1 USTC ¶ 9190
G.C.M. 10486
G.C.M. 9954
L.O. 1062
2152, Feb. 12, 1915
Cited in:
Gray, BTA, Dec. 771, 2 BTA 672
2153, Feb. 4, 1915 ..... ¶ 13,709.21
2161, Feb. 19, 1915..... ¶ 5810.13
2210
Grand Rapids & Ind. Ry. Co. v. Doyle
2262
Jacobs v. Anderson
2267, Nov. 15, 1915..... ¶ 11,049.90
Cited in:
Swanson, DC, 56-2 USTC ¶ 9606, 144 FSupp 620
Chambers, BTA, Dec. 5491, 17 BTA 820
Penna. Co. for Ins. etc., BTA, Dec. 3484, 10 BTA 428
2290
Cited in:
Baker, TC, Dec. 38,107(M), 42 TCM 563, TC Memo. 1981-400
Sartillan, TC, Dec. 36,194(M), 38 TCM 1097, TC Memo. 1979-251
T.D. 3788
T.D. 3442
Brushaber v. Union Pac. R.R. Co., Brushaber v. Union Pac. R.R. Co.
2301
Dodge v. Osborn
Cited in:
T.D. 3579
Followed by:
T.D. 3820
2313, March 21, 1916 .. ¶ 26,965.13
2394, 5 CB 248
Roberts v. Lowe
2433, Jan. 8, 1917 ..... ¶ 21,817.71
Cited in:
American Automobile Ass'n, SCt, 61-2 USTC ¶ 9517, 367 US 687
Aluminum Castings Co., SCt, 2 USTC ¶ 615, 282 US 92
Niles Bement Pond Co., SCt, 2 USTC ¶ 518, 281 US 357
American National Co., SCt, 1 USTC ¶ 226, 274 US 99
Anderson, SCt, 1 USTC ¶ 155, 269 US 422
Coleman Hotel Co., CA, 42-1 USTC ¶ 9395, 127 F2d 229
Wood & Bro., CA, 5 USTC ¶ 1417, 38 F2d 935
Miller & Vidor Lumber Co., CA, 2 USTC ¶ 523, 39 F2d 859
Virginia-Lincoln Furn. Corp., CA, 56 F2d 1028
Columbus Plate & Window Glass Co., CA, 38 F2d 509
American Can Co., CA, 33 F2d 187
American Can Co., CA, 20 F2d 970
S.M. 4499A
S.M. 4236
T.D. 3829
I.T. 1797
S.M. 1621
I.T. 1272
L.O. 1086
L.O. 1089
A.R.M. 173
A.R.M. 136
A.R.R. 1082
American Code Co., CA-2, 1929 CCH D-9066, 30 F2d 222
2450 ..... (Not published)
Cited in:
Rempel, DC, 45-1 USTC ¶ 10,183, 59 FSupp 483
2475 ..... ¶ 22,604.17
Union Hollywood Water Co. v. Carter, 238 Fed. 329

Exhibit H

PLEASE NOTE:
As per information received from The Department of Treasury dated January 29, 1998, indicates that TD 1995 (FORM 17 NOTICE AND DEMAND) was never modified or revoked. Therefore, to our knowledge, it is still in force.

[redacted]

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Form 17A

[redacted]

AUG 15, 510100 55
1955 253

ON 22753
INT TO 8/15/55
JEOPARDY ASSESSMENT — SEC 273(A)

Statement of Income Tax Due

[illegible]	[illegible]	247012.96		
[illegible]	[illegible]	26994.10		
[illegible]	[illegible]	14315.97		
		32400.78		304223.70

This bill for the amount shown as "Balance Due" is being sent to you in accordance with law. The law also requires that interest at 6 percent per year until date of payment be added unless this amount is paid within 10 days from date of this notice. Amounts shown in "Assessment" above are for tax unless identified as penalty by letter "P" or interest by letter "I."

17.88

Dated — Aug 16 1955

Please return this notice with remittance to District Director of Internal Revenue at

[redacted]

Your Rights AS A TAXPAYER

Start here

- First notice and demand for unpaid tax
- 10 days later
- Enforcement authority arises (a notice of a lien may be filed)
- Up to 3 more notices sent over a period of time asking for payment
- Notice of intent to levy is sent by certified mail (final notice)
- 30 days later
- Enforcement action to collect the tax begins (levy, seizure, etc.)

Department of the Treasury
Internal Revenue Service
Publication 1 (Rev. 10-90)

Cat. No. 64731W

INTERNAL REVENUE.

(T. D. 1995.)

Assessed taxes—Notice and demand, Form 17.

Notice of and demand for assessed taxes to be issued promptly to secure tax lien, penalty, and interest in case of nonpayment.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 12, 1914.

To collectors of internal revenue:

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W. H. OSBORN,
Commissioner of Internal Revenue.

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Treasury Decisions

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T.D. Par. (¶)

20, 649, February 7, 1899
Cited in:
Crown Cork & Seal Co., Inc., DC, 50-2 USTC ¶9503, 94 FSupp 117

EXAMPLE ▷ 21, 856, Dec. 18, 1899
Revoked by:
T.D. 4663

56, approved Oct. 10, 1956. (Excise Tax)
59, I.R.B. 1961-28, 14. (Excise Tax)
62, I.R.B. 1961-39, 13. (Excise Tax)
64, I.R.B. 1961-47, 12. (Excise Tax)
66, I.R.B. 1962-13, 14. (Excise Tax)
68, I.R.B. 1962-32, 17. (Excise Tax)
71, I.R.B. 1963-19, 24 ..... EX
72, I.R.B. 1964-5, 14.. (Excise Tax)
73, I.R.B. 1964-18, 9.. (Excise Tax)
883, 8 T.D., I.R. 39..... (1905) Unreported
Cited in:
Austin, Nichols & Co., DC, 50-1 USTC ¶9127, 87 FSupp 766

1675, Feb. 14, 1911
Zinser v. Minneapolis Syndicate

1755, Jan. 22, 1912

1941
Park View Bldg. & Loan Ass'n v. Herald
Cited in:
S.M. 1148

1946, Feb. 10, 1914
Cited in:
S.M. 2670

1992, June 4, 1914

NEVER REVOKED ✱ 1995, June 12, 1914 ... ¶40,315.90; 40,460.90

2003, June 26, 1914 ... ¶40,315.90; 40,460.90

2005, July 8, 1914
Cited in:
Monte, CA, 1 USTC ¶34, 266 Fed 161
I.T. 1818
I.T. 1517
I.T. 1238

2013, July 28, 1914 ... ¶21,005.406

2015, August 13, 1914

2028, Oct. 30, 1914 .... ¶40,315.90; 40,460.90
Cited in:
Rev. Proc. 70-20

2051, March 9, 1914.. (Excise Tax)
2079, Nov. 24, 1914 ..... ¶7222.99
2098, Dec. 14, 1914 ... ¶5507.1401; 5507.297; $800.15; 8471.1357; 15,694.395; 24,767.91; 26,969.04; 37,812.09; 41,720.04
Cited in:
Monte, CA, 1 USTC ¶34, 266 Fed 161
Rogers, CA, 41 F2d 865
First Trust & Savings Bank, CA, 268 Fed 320

Farmers Un an State Exchange, BTA, Dec. 8620, 30 BTA 1051
G.C.M. 12420
I.T. 4027
I.T. 1818
I.T. 1499
L.O. 1042
L.O. 1002
Sol. Op. 136
TBR 64

2125, Jan. 23, 1915 ..... ¶662.94; 7022.90; 21,009.2007; 40,375.90
Cited in:
S.M. 2721
I.T. 1818
L.O. 858
A.R.R. 1082
A.R.M. 41

2137, Jan. 30, 1915 ..... ¶6140.99; 14,854.90; 26,571.033; 37,812.09; 37,894.90
Cited in:
Textile Mills Securities Corp., SCt, 41-2 USTC ¶9784, 314 US 326
Gutheimer, CA, 53-1 USTC ¶9308, 204 F2d 780
Christine Oil & Gas Co., CA, 260 Fed 458
Gutheimer, DC, 58-1 USTC ¶9350, 160 FSupp 669
Misner, TC, Dec. 21,493, 31 TC 1130
Gray, BTA, Dec. 771, 2 BTA 672
Southwestern Electric Power Co., Ct. Cls., 63-1 USTC ¶9190
G.C.M. 10486
G.C.M. 9154
L.O. 1062

2152, Feb. 12, 1915
Cited in:
Gray, BTA, Dec. 771, 2 BTA 672

2153, Feb. 4, 1915 ..... ¶13,709.21
2161, Feb. 19, 1915..... ¶5810.13

2210
Grand Rapids & Ind. Ry. Co. v. Doyle

2262
Jarvis v. Anderson

2267, Nov. 15, 1915.... ¶11,049.90
Cited in:
Swenson, DC, 56-2 USTC ¶9606, 144 FSupp 620
Chambers, BTA, Dec. 5491, 17 BTA 820
Penna. Co. for Ins. etc., BTA, Dec. 3484, 10 BTA 428

2290
Cited in:
Baker, TC, Dec. 38,107(M), 42 TCM 563, TC Memo. 1981-400

Sartilon, TC, Dec. 36,194(M), 38 TCM 1097, TC Memo. 1979-281
T.D. 3788
T.D. 3443
Brushaber v. Union Pac. R.R. Co., Brushaber v. Union Pac. R.R. Co.

2301
Dodge v. Osborn
Cited in:
T.D. 3579
Followed by:
T.D. 3820

2313, March 21, 1916 .. ¶26,965.13

2394, 5 CB 248
Roberts v. Lowe

2433, Jan. 8, 1917 ..... ¶21,817.71
Cited in:
American Automobile Ass'n, SCt, 61-2 USTC ¶9517, 367 US 687
Aluminum Castings Co., SCt, 2 USTC ¶615, 282 US 92
Nim Bennett Pond Co., SCt, 2 USTC ¶568, 281 US 357
American National Co., SCt, 3 USTC ¶226, 274 US 99
Anderson, SCt, 1 USTC ¶155, 269 US 422
Citizens Hotel Co., CA, 42-1 USTC ¶9385, 127 F2d 229
Wood & Son, CA, 5 USTC ¶1417, 38 F2d 935
Miller & Vidor Lumber Co., CA, 2 USTC ¶521, 39 F2d 880
Virginia-Lincoln Furn. Corp., CA, 56 F2d 1028
Columbus Plate & Window Glass Co., CA, 38 F2d 509
American Can Co., CA, 33 F2d 187
American Can Co., CA, 20 F2d 970
S.M. 4499A
S.M. 4236
T.D. 3839
I.T. 1797
S.M. 1621
I.T. 1272
L.O. 1086
L.O. 1039
A.R.M. 173
A.R.M. 136
A.R.R. 1082
American Code Co., CA-2, 1929 CCH D-9066, 30 F2d 222

2450 ..... (Not published)
Cited in:
Rempel, DC, 45-1 USTC ¶10,183, 59 FSupp 483

2475 ..... ¶23,604.17
Union Hollywood Water Co. v. Carter, 238 Fed. 329

Exhibit H

PLEASE NOTE:
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[redacted]

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RELIANCE UPON GOVERNMENTAL REPRESENTATIONS

Those who are interested in the federal income tax issue and act upon their beliefs occasionally get into trouble, typically by being indicted for some tax crime. Of course when they are required to put forward a defense, they must not only have the ability to testify but they also need to be prepared to offer documentary evidence which supports their beliefs. However too often when I enter the picture, I find that many people simply have not documented everything upon which they relied. Frequently, these people have not kept the most important documents they studied and relied upon, which thus requires work in locating those particular items. This short memo explains how important it is to keep the books, documents, cases and other "reliance" materials you have studied, especially if that material constitutes an admission made by the government.

I have represented numerous parties who believed that compliance with the federal income tax laws is voluntary. Why do these people have such beliefs? The basis for those beliefs is not the rantings of some lunatic but the government itself. There are a few cases which make statements that compliance is voluntary, and there are published documents from the Internal Revenue Service which declare the same thing. However, I am surprised by the utter lack of concern by those who might and eventually do fall within the crosshairs of some government prosecutor. I always interview my client to learn what his particular beliefs are and sometimes my client claims the "voluntary" belief. Do you know how saddening it is to have my client then show to me a single page document which he obtained at some patriot pep rally that contains a couple of quotes from other sources that assert that compliance with the tax laws is voluntary? Do you really think that a typical American jury will give much credence to such a document? From experience, I know that any document which you want to rely upon must have the appearance of being a copy of an actual government document. Quotes contained in some newsletter or book from government publications are simply no substitute for the actual government publications themselves. Why don't you do yourself a favor and obtain the actual government documents which contain the statements of importance to you? The legal reason for doing so is explained in the following portion of a trial brief that I use:

A criminal defendant may offer evidence during trial regarding certain statements and representations made by government if those statements relate to his intent and understanding of the law, and many of such statements may qualify as admissions made by the government; see United States v. Van Griffin, 874 F.2d 634, 638 (9th Cir. 1989)(government manuals admissible as party admissions under Fed.R.Evid. 801(d)(2)(D)); and United States v. GAF Corp., 928 F.2d 1253 (2nd Cir. 1991). In Arizona Grocery Co. v. Atchison, T. & S.F. Ry. Co., 284 U.S. 370, 52 S.Ct. 183 (1932), it was held that a party could rely upon the representations made by a government agency, and in Moser v. United States, 341 U.S. 41, 71 S.Ct. 553 (1951), the Court held that such reliance could constitute a defense to actions taken by the government. These decisions are buttressed by others such as Raley v. Ohio, 360 U.S. 423, 79 S.Ct. 1257 (1959), Cox v. Louisiana, 379 U.S. 559, 85 S.Ct. 476 (1965), United States v. Laub, 385 U.S. 475, 487, 87 S.Ct. 574 (1967), and United States v. Penn. Industrial Chemical Corp., 411 U.S. 655, 674, 93 S.Ct. 1804, 1816 (1973). In Penn. Industrial, supra, a company

being criminally prosecuted for water pollution sought to assert a defense of reliance upon certain applicable agency regulations, but the trial court precluded the admission of that evidence. In reversing, the Supreme Court held that this reliance did constitute a defense and that the agency representations, the subject regulations, should be given as jury instructions.

The federal appellate courts do recognize the "reliance" defense. One of the earliest cases granting verdict for a defendant on this ground was United States v. Mancuso, 139 F.2d 90, 92 (3rd Cir. 1943). Here, the defendant filed suit to enjoin being drafted and the district court erroneously granted an injunction. Mancuso later used the injunction order as justification for refusing induction. His conviction for refusing enlistment was vacated because of his reliance upon the erroneous order. See also United States v. Albertini, 830 F.2d 985 (9th Cir. 1987).

Other courts have addressed this issue. In United States v. Tallmadge, 829 F.2d 767, 775 (9th Cir. 1987), the defendant was being prosecuted for possessing firearms after conviction for a felony. In defense, Tallmadge demonstrated that a licensed arms dealer, held to be a government agent, represented to him that it was lawful for him to acquire firearms. Because Tallmadge relied upon the word of this government agent, that court held that it would violate due process to convict him:
The prosecution and conviction of Tallmadge for the receipt and possession of firearms, after he was misled by the government agent who sold him the weapons into believing that his conduct would not be contrary to federal law, violated due process.
In United States v. Clegg, 846 F.2d 1221 (9th Cir. 1988), the defendant was charged with arms smuggling in Pakistan and sought to defend himself with the factual defense that high government officials approved his activities; that court held such to be a valid defense. In United States v. Heller, 830 F.2d 150, 154 (11th Cir. 1987), the defendant, a lawyer, was convicted of tax crimes and sought to defend on the basis that his accounting methods conformed with the dictates of a tax court decision. In reversing the convictions, that court held that a jury instruction covering the substance of the tax court decision upon which Heller had relied should have been given. In United States v. Hedges, 912 F.2d 1397 (11th Cir. 1990), the defendant had acted upon the advice given to him by a Standards of Conduct officer regarding a conflict of interest matter. Hedges was prosecuted for conflicts violations, defended himself with the factual argument that he had relied upon the advice of the Standards officer, and tendered a corresponding requested jury instruction which was not given. On appeal, the court acknowledged the validity of this defense and held it was error to refuse the giving of a jury instruction on this point. In United States v. Brady, 710 F.Supp. 290 (D.Colo. 1989), a defendant charged with illegal possession of firearms ("coyote getters") was acquitted when he showed that he directly relied upon the word of a state judge. The most recent case on this issue, United States v. Levin, 973 F.2d 463 (6th Cir. 1992), was one where the trial court dismissed an indictment because of reliance upon a government representation.

Several state courts also acknowledge this defense. In Schiff v. People, 111 Colo. 333, 141 P.2d 892 (1943), the defendant had received stolen property and informed the police about such, who instructed him to simply retain possession; his conviction for possessing

stolen property was reversed. In People v. Markowitz, 18 N.Y.2d 953, 223 N.E.2d 572 (1966), a defendant who was told by certain public officials that he did not need a license to sell merchandise at Yankee Stadium had his conviction vacated through use of this defense. In State v. Ragland, 4 Conn. Cir. 424, 233 A.2d 698 (1967), a defendant's conviction for driving without a license was vacated based upon the fact that he drove the car on the occasion in question at the order of police officers. In Connelly v. State, 181 Ga.App. 261, 351 S.E.2d 702 (1987), a defendant who had relied upon a misleading driver's license form had his conviction for driving offenses reversed. In State v. Chiles, 569 So.2d 45 (La.App. 4 Cir. 1990), a pawn shop owner who relied upon the practices of the local sheriff's office had her conviction for failure to abide by record keeping laws *reversed. See also Commonwealth v. Twitchell, 617* N.E.2d *609, 616-620* (Mass. 1993), and State v. McKown, 475 N.W.2d 63, 68 (Minn. 1991). The refined essence of these cases is that a criminal defendant does have available to him the defense of reliance upon representations made to him by government officials, whether judges or executive department officers and agents.

The following are decisions of the United States Supreme Court, never overturned and still controlling, upon which Clare Louise Reading and James Leslie Reading have relied since their study of the law in general, and tax matters specifically, began in 1984.

Court Cases

ADAMS v. TANNER, 244 U.S. 590 (1917)
ALLGEYER v. LOUISIANA, 165 U.S. 578 (1897)
BRUSHABER v. UNION PAC. R.R., 240 U.S. 1 (1916) 36 S.Ct. 236
BUTCHERS' UNION CO. v. CRESCENT CITY CO., 111 U.S. 746 (1884) 4 S.Ct. 652
CHEEK v. UNITED STATES, 498 U.S. 192 (1991) 111 S.Ct. 604
CHRYSLER CORP. v. BROWN, 441 U.S. 281 (1979) 99 S.Ct. 1705
COMMISSIONER v. GLENSHAW GLASS CO., 348 U.S. 426 (1955) 75 S.Ct. 473
COMMISSIONER v. KOWALSKI, 434 U.S. 77 (1977) 98 S.Ct. 315
DOYLE v. MITCHELL BROTHERS CO., 247 U.S. 179 (1918) 38 S.Ct. 467
EISNER v. MACOMBER, 252 U.S. 189 (1920) 40 S.Ct. 189
FARRINGTON v. TENNESSEE, *95 U.S. 679 (1877)*
FLINT v. STONE TRACY CO., 220 U.S. 107 (1911) 31 S.Ct. 342
FOLLETT v. McCORMICK, 321 U.S. 573 (1944) 64 S.Ct. 717
GOULD v. GOULD, 245 U.S. 151 (1917) 38 S.Ct. 53
GROSJEAN v. AMERICAN PRESS CO., 297 U.S. 233 (1936) 56 S.Ct. 444
HARPER v. VIRGINIA BD. OF ELECTIONS, 383 U.S. 663 (1966) 86 S.Ct. 1079
HILL v. WALLACE, 259 U.S. 44 (1922) 42 S.Ct. 453
HYLTON v. UNITED STATES, 3 U.S. 171 (1796)
JACK COLE CO. v. MacFARLAND, 206 Tenn. 694 (1960) 337 S.W.2d 453
MASSACHUSETTS BD. OF RETIREMENT v. MURGIA, 427 U.S. 307 (1976) 96 S.Ct. 2562
McCULLOCH v. MARYLAND, 17 U.S. 316 (1819)
MEYER v. NEBRASKA, 262 U.S. 390 (1923) 43 S.Ct. 625
MURDOCK v. PENNSYLVANIA, 319 U.S. 105 (1943) 63 S.Ct. 870

PECK & CO. v. LOWE, 247 U.S. 165 (1918) 38 S.Ct. 432
POLLOCK v. FARMERS' LOAN & TRUST CO., 157 U.S. 429 (1895) 15 S.Ct. 673
SMITH v. TEXAS, 233 U.S. 630 (1914) 34 S.Ct. 681
SOUTHERN PACIFIC CO. v. LOWE, 247 U.S. 330 (1918) 38 S.Ct. 540
STANTON v. BALTIC MINING CO., 240 U.S. 103 (1916) 36 S.Ct. 278
STRATTON'S INDEPENDENCE v. HOWBERT, 231 U.S. 399 (1913) 34 S.Ct. 136
TOWNE v. EISNER, 245 U.S. 418 (1918) 38 S.Ct. 158
TRUAX v. RAICH, 239 U.S. 33 (1915) 36 S.Ct. 7
UNITED STATES v. MERRIAM, 263 U.S. 179 (1923) 44 S.Ct. 69
UNITED STATES v. CALAMARO, 354 U.S. 351 (1957) 77 S.Ct. 1138
WATER QUALITY ASS'N *v. UNITED STATES, 795 F.2d 1303 (7th Cir. 1986)*
YICK WO v. HOPKINS, 118 U.S. 356 (1886) 6 S.Ct. 1064

SYNOPSIS OF "ARE, TOO!" CASES

CASE	HOLDING	NOT HOLDING	BASIS
U.S. v. SIMKANIN, *420 F.3d 397* (5th Cir. 2005)	Upheld conviction for failure to withhold and file withholding returns based upon propriety of instructions. Simkanin's claims re wages and definition of "employee" were dismissed as frivolous without reasons given.	Taxability of wages was not an issue considered by the court, nor were any statutory constructions considered nor were any taxing authority scope issues considered	In footnote, cited *Otte v. U.S. 419 U.S. 43, 50-51,* as holding that Simkanin's 4201 definition of "employee" was an "incorrect view of the law". *[Otte dealt with trustee's requirement to withhold against wage claims against the bankrupt former employer, but did not rule on the definition of an employee. The issue of "employee" definition was neither raised nor ruled on. In fact, the SC tiptoed around the definition of "employee", even going to the SS act to borrow a definition of "employer" to avoid having to mention it.]*
UNITED STATES v. WHITESIDE, *810 F.2d 1306* (5th Cir. 1987)	Issues were limited to admission or exclusion of evidence and instructions	Taxability of wages was not an issue considered by the court, nor were any statutory constructions considered nor were any taxing authority scope issues considered	None
STELLY v. C.I.R.,	Held contention that wages aren't	No consideration of any statutory	Based upon Granzow case and

804 F.2d 868 (5th Cir. 1986)	**taxable** income is frivolous because wages are **gross** income ???	constructions or constitutional issues nor how being "gross" translates to "taxable"	eleven cases there cited as "holding that wages are gross income"
GRANZOW v. C.I.R., *739 F.2d 265* (7th Cir. 1984)	Upheld civil penalties for making "frivolous" appeal of determination of deficiency based on cases and § 61 alone. Held "exemption is an act of legislative grace"	No consideration of what is taxable, no consideration of constitutional issues nor how being "gross" translates to "taxable"	Basis was cases, infra, and § 61 alone
UNITED STATES v. KOLIBOSKI, *732 F.2d 1328* (7th Cir. 1984)	Upheld evidentiary exclusions and instructions. ONLY In a **FOOTNOTE,** acknowledged that issue of wages being taxable was not raised, but stated that "Nonetheless, the defendant still insists that no case holds that wages are income. Let us now put that to rest: WAGES ARE INCOME. Any reading of tax cases by would-be tax protesters now should preclude a claim of good-faith belief that wages — or salaries — are not taxable." !!!!!!!??????? So There! (I guess)	No holding on wages, which were not before the court, Nor any consideration of statutory construction or constitutional issues	No basis whatsoever given for the footnote "holding".
LONSDALE v. C. I. R., *661 F.2d 71* (5th Cir. 1981)	Held that contention that there is no element of profit in wages (basis?) is wrong and that wages are taxable income under the 16th.	No consideration of any statutory construction, no authoritative discussion of Constitutional issues, no consideration of merits of issue on wages as "income"	"Congress has defined income as including compensation for services. 26 U.S.C. § 61(a)(1). [*Congress has **NEVER** defined "income"*] Broadly speaking, that definition covers all

			"accessions to wealth." *See Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431, 75 S.Ct. 473, 477, 99 L.Ed. 483 (1955). This definition is clearly within the power to tax "incomes" granted by the sixteenth amendment. ***[WHAT power granted by the 16th?]***
KNIGHTEN v. C.I.R., *702 F.2d 59* (5th Cir. 1983)	Upheld Tax Court ruling on deficiency. Held burden was on app. to show wages were not income and that no legal authority or evidence was adduced to support that claim. *[CORRECT: but the same thing applies to the "findings" above that wages are income and taxable.]*	Did not hold wages were income, but only that appellant had failed to show that they were not income. No consideration of statutory or constitutional issues or authorities.	Knighten filed his own brief and failed to support any of his contentions with any authority. *[But he isn't a federal appellate court, so can't do that.]* No authorities for claim that wages are income or taxable income were given.
READING v. COMMISSIONER OF INTERNAL REVENUE, *70 T.C. 730* (1978) Cited as authoritative?? Upheld in READING v. C. I. R., *614 F.2d 159* (8th Cir. 1980)	App. from TC ruling based on deductions for living expenses as recovery of "investment" or "cost of doing labor" Court rejected deduction of living expenses. App. offered no constitutional authority for base/gain claim although they did cite *Eisner* and other cases [*CORRECT: but the same thing applies to the "findings" above that wages are income and taxable.*]	No discussion of statutes or constitutional authorities, no specific holding or basis for finding that wages are income and taxable.	"One's gain, ergo his 'income,' from the sale of his labor is the entire amount received therefore without any reduction for what he spends to satisfy his human needs. No authority provided for conclusion. In footnote, Court referred to *Glenshaw* as qualifying *Eisner*. *[NOTE: Tax Court seemed to understand the distinction between returns on investment and wages for labor, but did not seem to understand the importance of the distinction]*

FUNK v. C. I. R., *687 F.2d 264* (8th Cir. 1982)	Rejected appeal from TC on basis labor was not taxable as income. Held gross income definition (§ 61) defined income and the 16th allowed income to be taxed.	No discussion of statutory or constitutional issues, brushed off on basis of two **TC rulings.**	"We reject Taxpayers' sixteenth amendment claim **because the constitutionality of the sixteenth amendment was upheld by the Supreme Court in *Brushaber v. Union Pacific R. R.*, 240 U.S. 1, 18, 36 S.Ct. 236, 241, 60 L.Ed. 493 (1916). *See generally Eisner v. Macomber*, 252 U.S. 189, 205-06,40 S.Ct. 189, 192-193, 64 L.Ed. 521 (1920)."** *[What???? He's got to be kidding!!!]*
LIVELY v. C.I.R., *705 F.2d 1017* (8th Cir. 1983)	Upheld TC ruling on deduction of living expenses, objection based on no liability basis and claim of unconstitutionality. Listed objections and simply declared "This appeal is frivolous."	No discussion of any of the issues, no discussion of statutory content, much less construction, nor constitutional issues.	**NO AUTHORITY OF ANY KIND IS PROVIDED!!**
UNITED STATES v. BURAS, *633 F.2d 1356* (9th Cir. 1980)	Upheld conviction for failure to file. Def contended his wages were not income, but held that wages are "commonly treated as income"	No discussion of constitutional or statutory issues other than reference to S. Ct. case on corporate excise tax on a mining company.	Wages equal income based on Stratton's Independence, quoting the case (partly) as saying that earnings are income. *[Stratton's Ind. was a **CORPORATION TAX** case wherein Stratton, a mining concern, raised depletion of ores as an issue. The actual quote at p. 415: "But the same is true of the earnings of the human brain and hand when unaided by capital, yet*

			such earnings are commonly dealt with in legislation as income." Wages were not at issue in Stratton. The only way the court could get past the depletion/due process argument was to hold that power to tax Stratton was under general excise powers (corporate privilege) and not an income tax. Stratton actually supports wage basis and jurisdiction argument by holding that a tax on gross receipts is not an income tax.]
UNITED STATES v. ROMERO, *640 F.2d 1014* (9th Cir. 1981)	Upheld conviction for failure to file. Defendant contended his wages were not income.	No discussion of statutory or constitutional issues, no holding that wages were all gain.	Holding that claim wages are not income is frivolous cited *Lucas v. Earl,* 281 U.S. 111, 114-15, 50 S.Ct. 241, 74 L.Ed. 731 (1930). *[Lucas dealt only with issue over whether agreement with wife that any earnings would be half hers reduced his income by half. Court held "no" in a two page opinion by Holmes. Whether his wages or attorney's fees earned constituted income was not an issue and was not ruled on by the court.]*

Internal Revenue Districts from http://www.originalintent.org

The US government has decided to play a little trick on you. But don't worry, it only allows them to scour the country for so-called "tax evaders" (who aren't actually evading anything), summons people for books and records the IRS has no right to see, assess taxes that aren't really owed, create liens they have no legal right to exist, and levy upon your property without any legitimate right to do so.

All of the activities listed above begin with "canvassing" and "examination", which requires you or your business to be within an internal revenue district. Of course that would lead us to ask where such revenue districts are located. Although that's a reasonable question, the first question we need to ask should actually be, "Who is authorized by law to establish internal revenue districts and has that person actually established any"?

There are several legal documents that speak to this subject, but one should start with the tax code. Section 7621 authorizes the President to establish internal revenue districts:

> *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.*

Has the President actually done that? Well, sort of. While the President hasn't actually created any internal revenue districts, he delegated that particular job to another member of the government. The note at the bottom of 7621 states:

> *For delegation to Secretary of the Treasury of authority vested in President by this section, see section 1(g) of Executive Order No. 10289*

So we know that the President delegated this task to one of his cabinet officers – the Secretary of the Treasury. The next prudent question is; has the Secretary actually established internal revenue districts, and if so, where?
The answer to that question is "yes", the Secretary has established internal revenue districts. He has done so in Treasury Order 150-01. In T.O. 150-01 we find that the Secretary has created 33 internal revenue districts that span the nation and cover every state in the Union. O.K., so what's the problem?
Although many Americans are aware of it, all written authorities (except Acts of Congress) that purport to have "general applicability" upon any person or group of persons, must have corresponding "regulations", and these regulations must be published in the Federal Register. There are however a few exceptions.

Section 7621 does not require regulations for two reasons. First, the statute is so short and clear that no regulations are required; additionally it has no impact on the public generally because it simply "authorizes" the President to do something and does not lay any duty upon the public.

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However, once the President delegated that authority to the Secretary, the Secretary needed to create regulations to let the public know exactly what he was doing and how it would (or might) affect the public. Accordingly, the Secretary created regulations associated with the authority delegated to him by the President in Executive Order 10289.

The regulations the Secretary created for EO 10289 are found in Title 19 of the Code of Federal Regulations (CFR), Part 101. We know this because the nice folks at the National Archive and Records Administration (NARA) have very kindly provided us with a cross-reference index that shows us which regulations correspond to which statues or Executive Orders (EO). This index is known as the "Parallel Table of Authority and Rules". *Here is the entry for EO 10289:*
E.O. 10289 .....19 Part 101

So, what does 19 CFR, Part 101, say? Here is the opening statement that defines the scope of the Part 101:

> ***Scope.*** *This part sets forth general regulations governing the authority of Customs officers, and the location of Customs ports of entry, service ports and of Customs stations. It further sets forth regulations concerning the entry and clearance of vessels at Customs stations and a listing of Customs pre-clearance offices in foreign countries. In addition, this part contains provisions concerning the hours of business of Customs offices, the Customs seal, and the identification cards issued to Customs officers and employees.*

As you can see, the Secretary has not chosen to create internal revenue districts for general tax purposes, but has created said districts ***only*** for certain matters pertaining to the customs laws of the United States – including the collection of customs duties (taxes).

This dovetails perfectly with the CFR's Parallel Table of Authority and Rules entries for "canvassing" and "examinations". According to the National Archive and Records Administration (the nice folks who compile and publish the CFR and the Federal Register) the only "implementing regulations" for 26 USC 7601 and 7602 are for issues pertaining to alcohol importation:

7601—7606 .....27 Part 70
7602 .....27 Parts 170, 296

The Secretary's regulations designate only certain "places" as internal revenue districts that the Secretary has established as U.S. internal revenue districts.

In short, the internal revenue districts named in T.O 150-01 do not cover the entire area of a county, or part of a state, named as a district. These revenue districts are limited to the boundaries of "Customs ports of entry", "service ports" and "Customs stations".

As an example: the internal revenue district referred to in T.O. 150-01 as the "Los Angeles district" only embraces the Long Beach and Los Angeles harbors and the Los Angeles International Airport. A complete list of ports designated by the

Secretary of the Treasury for customs purposes can be found in the 19 CFR, Part 101, pages 314 through 323 (1998 Ed.) Airports so designated can be found in regulations promulgated by the Secretary of Commerce.

In other words, while most IRS officers blindly believe that when they are assigned to the Los Angeles District Office they have authority to "canvass", and conduct "examinations", ***anywhere*** in the Los Angeles area, the law says something entirely different. The law says that such activities may only take place within "internal revenue districts" and that those "internal revenue districts" are specifically designated locations within the broad area known as the Los Angeles district.

Now that we know what the law actually says, lets look at the impact.
Internal Revenue Code, section 7601 –

The Secretary shall... cause officers or employees of the Treasury Department to proceed... through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax...

If you only read T.O. 150-01, you'd think that is a blanket authority to canvass the entire country for people who may owe a tax. Having read the regulations for EO 10289 (which authorizes T.O. 150-01) we now know that such canvassing (and its associated "examinations") can only take place in a designated customs area, because those designated customs areas ***are*** the internal revenue districts, as established by the Secretary of the Treasury on behalf of the President.

An argument might be possible in which, because 19 CFR, Part 101, also establishes the general authority of customs officers, internal revenue districts exist wherever a customs officer is executing his official duties. However, even if that is so, the significance is still evident – places that might be considered an internal revenue district would be such place as where a customs officer is conducting his official duty. That still means that there are no internal revenue districts established for any other tax purpose.

Within the last few years it appears that Executive Order 10289 has been cancelled, as was Treasury Order 150-01 in March of 2001. This information is provided solely to educate people concerning the limited jurisdiction of the IRS in most matters. Researchers are currently attempting to determine where these "authorities" can be found now. Interestingly, the statutes that rely on these important authorities have not been amended since the underlying E.O. and T.O. disappeared.

Internal revenue districts have not been established in States of the Union, as required by 26 U.S.C. 7621 and Executive Order #10289, as amended. Therefore, Internal Revenue Service incursion into States of the Union for purposes authorized by Chapter 78 of the Internal Revenue Code are beyond venue prescribed by law. See also, 4 U.S.C. 72. See 26 CFR 601.101 for verification that IRS personnel may investigate income tax liabilities only within revenue districts. [the late Dan Meador, 2001]

Code of Federal Regulations
Title 26 - Internal Revenue
Volume: 20
Date: 2009-04-01
Original Date: 2009-04-01
Title: Section 601.101 - Introduction.
Context: Title 26 - Internal Revenue. CHAPTER I - INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY (CONTINUED). SUBCHAPTER H - INTERNAL REVENUE PRACTICE. PART 601 - **STATEMENT OF PROCEDURAL RULES**. Subpart A - General Procedural Rules.
§ 601.101
Introduction.
(a) General. The Internal Revenue Service is a bureau of the Department of the Treasury under the immediate direction of the Commissioner of Internal Revenue. The Commissioner has general superintendence of the assessment and collection of all taxes imposed by any law providing internal revenue. The Internal Revenue Service is the agency by which these functions are performed. Within an **internal revenue district** the internal revenue laws are administered by a **district** director of internal revenue. The Director, Foreign Operations **District**, administers the internal revenue laws applicable to taxpayers residing or doing business abroad, foreign taxpayers deriving income from sources within the United States, and taxpayers who are required to withhold tax on certain payments to nonresident aliens and foreign corporations, provided the books and records of those taxpayers are located outside the United States. For purposes of these procedural rules any reference to a **district** director or a **district** office includes the Director, Foreign Operations **District**, or the **District** Office, Foreign Operations **District**, if appropriate. Generally, the procedural rules of the Service are based on the Internal Revenue Code of 1939 and the Internal Revenue Code of 1954, and the procedural rules in this part apply to the taxes imposed by both Codes except to the extent specifically stated or where the procedure under one Code is incompatible with the procedure under the other Code. Reference to sections of the Code are references to the Internal Revenue Code of 1954, unless otherwise expressly indicated.
(b) Scope. This part sets forth the procedural rules of the Internal Revenue Service respecting all taxes administered by the Service, and supersedes the previously published statement (26 CFR (1949 ed., Part 300-End) Parts 600 and 601) with respect to such procedural rules. Subpart A provides a descriptive statement of the general course and method by which the Service's functions are channeled and determined, insofar as such functions relate generally to the assessment, collection, and enforcement of internal revenue taxes. Certain provisions special to particular taxes are separately described in Subpart D of this part. Conference and practice requirements of the Internal Revenue Service are contained in Subpart E of this part. Specific matters not generally involved in the assessment, collection, and enforcement functions are separately described in Subpart B of this part. A description of the rule making functions of the Department of the Treasury with respect to internal revenue tax matters is contained in Subpart F of this part. Subpart G of this part relates to matters of official record in the Internal Revenue Service and the extent to which records and documents are subject to publication or open to public inspection. This part does not contain a detailed discussion of the substantive

provisions pertaining to any particular tax or the procedures relating thereto, and for such information it is necessary that reference be made to the applicable provisions of law and the regulations promulgated thereunder. The regulations relating to the taxes administered by the Service are contained in Title 26 of the Code of Federal Regulations.[38 FR 4955, Feb. 23, 1973 and 41 FR 20880, May 21, 1976, as amended at 45 FR 7251, Feb. 1, 1980; 49 FR 36498, Sept. 18, 1984; T.D. 8685, 61 FR 58008, Nov. 12, 1996]

68A STAT. 904 STATUTE AT LARGE
PROMULGATED by CONGRESS

Subchapter B—General Powers and Duties

SEC. 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, Territory, or the District of Columbia, or may unite two or more States or Territories into one district.

SEC. 7622. AUTHORITY TO ADMINISTER OATHS AND CERTIFY.

(a) INTERNAL REVENUE PERSONNEL.—Every officer or employee of the Treasury Department designated by the Secretary or his delegate for that purpose is authorized to administer such oaths or affirmations and to certify to such papers as may be necessary under the internal revenue laws or regulations made thereunder.

(b) OTHERS.—Any oath or affirmation required or authorized under any internal revenue law or under any regulations made thereunder may be administered by any person authorized to administer oaths for general purposes by the law of the United States, or of any State, Territory, or possession of the United States, or of the District of Columbia, wherein such oath or affirmation is administered. This subsection shall not be construed as an exclusive enumeration of the persons who may administer such oaths or affirmations.

SEC. 7623. EXPENSES OF DETECTION AND PUNISHMENT OF FRAUDS.

The Secretary or his delegate, under regulations prescribed by the Secretary or his delegate, is authorized to pay such sums, not exceeding in the aggregate the sum appropriated therefor, as he may deem necessary for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws, or conniving at the same, in cases where such expenses are not otherwise provided for by law.

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http://www.law.cornell.edu/uscode/text/26/762

USC › Title 26 › Subtitle F › Chapter 78 › Subchapter B › § 7621
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.

~

During 1998, Congress held congressional hearings on the wrongdoings committed by the IRS and passed the IRS Restructuring and Reform Act of 1998 as a result of those hearings (RRA98.) RRA98 was supposed to rein in the lawlessness of the IRS but instead the law has been perverted from its original intent by the IRS and has enabled the IRS to unleash its illegal fury on the American People.

Although the 1995 version of Treasury Order (TO) 150-01 was not the TO that originally implemented the internal revenue district structure, it did direct that the *internal revenue district structure be organized into 33 Districts and 4 Regional* offices under the Commissioner of Internal Revenue. It was implemented by Robert Rubin on Sept. 28th 1995.

As a result of RRA98, in 2001 Secretary O'Neill implemented Treasury Order 150-02 which, at paragraph 18, cancelled 150-01. T.O. 150-02 closed all 33 districts and 4 regions created by TO 150-01 and implemented a new structure for the IRS. This is what set the stage for multiple violations of Section 3445 of P.L.105-206 and of violations of Title 26 of the United States Code (26 U.S.C.) and Title 26 of the Code of Federal Regulations (26 CFR).

Internal revenue districts are required by law!

Approximately 150 million Americans violate the law every April 15th and cannot follow it because they cannot file their return in the internal revenue district where they live, work, or the service center for the internal revenue district referred to in clause (i) pursuant to 26 USC 6091.

The federal government has created a condition, intentionally, where it is impossible to obey this law, and this law can only be broken.

Here is the pertinent part of 6091(b)(1)(A)(i) and (ii), PLACE FOR FILING RETURNS AND OTHER DOCUMENTS.

http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00006091---000-.html

Section 6091

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.
.

(b) Tax returns
In the case of returns of tax required under authority of part II of this subchapter—
(1) Persons other than corporations
(A) General rule
Except as provided in subparagraph (B), a return (other than a corporation return) shall be made to the Secretary—
(i) in the **internal revenue district** in which is located the legal residence or principal place of business of the person making the return, or
(ii) at a service center serving the **internal revenue district** referred to in clause (i), as the Secretary may by regulations designate.

With the elimination of the internal revenue districts, the IRS cannot administer the internal revenue laws through internal revenue districts as required by law.
http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007621----000-.html

§ 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.

Other sections of law requiring the internal revenue districts: Title 26 U.S.C. §§4412,
4662, 4903, 4905, 5065, 5733, 5802, 6021, 6335, 6340, 7325, 7503, 7601, 7621 and 7851.

http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00004412----000-.html
http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00004662----000-.html
http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00004903----000-.html
http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00004905----000-.html
http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00005065----000-.html
http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00005733----000-.html
http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00005802----000-.html
http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00006021----000-.html
http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00006335----000-.html
http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00006340----000-.html
http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007325----000-.html
http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007503----000-.html
http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007601----000-.html
http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007621----000-.html
http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007851----000-.html

With the elimination of the internal revenue districts, the Secretary cannot possibly conform to this law. Herein is another example of our federal government not following the law.

http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007601----000-.html

District Directors are required by law!
Internal revenue districts are required by law!

§ 7601. Canvass of districts for taxable persons and objects

(a) General rule

The Secretary shall, to the extent he deems it practicable, cause officers or employees of the Treasury Department to proceed, from time to time, through each **internal revenue district** and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed.

http://famguardian.org/TaxFreedom/Forms/PolAction/NoticeOfFraudAttmts.pdf

1. Treasury Order (T.O.) 150-01 altered the IRS structure to 33 Districts and 4 Regional offices under the Commissioner of Internal Revenue.

2. Treasury Order 150-02 at paragraph 18 (below) cancelled T.O. 150-01 closing all 37 offices created by T.O. 150-01 and establishing the current divisions of today, i.e. the SMALL BUSINESS/SELF-EMPLOYED division and others.

18. Cancellations Treasury Order 150-01. "Regional and District Offices of the Internal Revenue Service," dated September 28, 1995, is canceled. Treasury Order 150-02, "Establishment of Certain Offices in the National Office of the Internal Revenue Service," dated January 11, 1994, is superseded.

But yet T.O. 150-02 also says this at paragraph 3: "...The authority of the Commissioner to create, abolish, or modify offices under this delegation is subject only to limitations **that exist by law.**" The statutory requirements for internal revenue districts and the district director positions to be maintained by existing law still exists today!

Treasury Order 150-02 issued in 2001 to conform to RRA98 was itself cancelled in 2006 http://www.treasury.gov/about/role-of-treasury/ordersdirectives/Pages/to150-02.aspx. It certainly appears that the IRS operates with the present structure created by a Treasury Order that itself has been cancelled and the 'entity' currently operates with NO AUTHORITY AT ALL!

The law requires IRS to administer the internal revenue laws through internal revenue district structure and since they can no longer do so they are operating outside the law.

Not only do they operate outside the law, the IRS breaks the law every day when they illegally administer the laws in violation of section 7621 and illegally seize property by levy without a district director's approval as required by Public Law 105-206, §3445 and 26 U.S.C §6334.

The designation, 'Internal Revenue Service' was cancelled in 2005! Isn't every piece of mail they send out mail fraud then? Verify for yourself here:

http://www.treasury.gov/about/role-of-treasury/orders-directives/Pages/to150-06.aspx

It also appears to be a violation of Title 31 §333. All of this is a violation of our DUE PROCESS right guaranteed by the constitution!
Treasury orders 150-01 and old 150-02 issued in 2001 can be found here http://famguardian.org/TaxFreedom/Forms/PolAction/NoticeOfFraudAttmts.pdf

The Code of Federal Regulations has many sections that require the district director position for the proper administration of the regulations.

§ 301.6201–1 Assessment authority.

Exhibit / Page / Of
EE 10 18

(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. The ***district director*** is further authorized and required, and the director of the regional service center is authorized, to make the determinations and the assessments of such taxes.

http://edocket.access.gpo.gov/cfr_2008/aprqtr/pdf/26cfr301.6201-1.pdf

26CFR 6203 requires that district directors must appoint the assessment officers.

26CFR 6203
§ 301.6203–1 Method of assessment.
The ***district director*** and the director of the regional service center shall appoint one or more assessment officers . The ***district director*** shall also appoint assessment officers in a Service Center servicing his ***district***.
The assessment shall be made by an assessment officer signing the summary record of assessment.

http://edocket.access.gpo.gov/cfr_2008/aprqtr/pdf/26cfr301.6203-1.pdf

26CFR §6301 requires that district directors must collect taxes imposed.

301.6301–1 Collection authority.
The taxes imposed by the internal revenue laws shall be collected by ***district directors*** of internal revenue. See, however, section 6304, relating to the collection of certain taxes under the provisions of the Tariff Act of 1930 (19 U.S.C. ch. 4).

http://edocket.access.gpo.gov/cfr_2008/aprqtr/pdf/26cfr301.6301-1.pdf

The internal revenue bulletins below claim the district director positions and internal revenue districts were eliminated by RRA98. You now know this is false. The evidence of these false claims are in the bulletins below. The entity formerly known as the IRS even admits as much. The paragraphs below are from bulletin **2003-41 I.R.B.** page 826. The first paragraph admits that the district director is required by law. The second paragraph admits that the district director position was eliminated. This is a violation of the very law the IRS claims gave them authority to eliminate the position of district director.

The Secretary has violated congressional mandate of RRA98!

Prior Approval of Levies of Certain Business Assets

In enacting RRA 98, Congress created new approval requirements for levies of certain business assets. Specifically, Congress enacted new section 6334(a)(13)(B)(ii), which provides that, except to the extent provided in section 6334(e), tangible personal property or real property (other than real property that is rented) used in the trade or business of an individual taxpayer shall be exempt from levy. Section 6334(e) was amended to provide that such property shall not be exempt from levy if a district director or assistant district director of the IRS personally approves (in writing) the levy of such property, or the Secretary finds that the collection of tax is in jeopardy.

IRS Reorganization

Pursuant to the reorganization of the IRS after RRA 98, the titles of district director and assistant district director cited in section 6334(e)(2)(A) **no longer exist.** *The proposed regulations replace these titles with the current title, which is Area Director.*

http://www.irs.gov/irb/

Also see: Internal Revenue Bulletins: 2008-14 T.D. 9378, 2006-6 T.D. 9239, 2007-9 REG-159444-04, 2004-42 T.D. 9156, 2007-36 T.D. 9344

26 CFR part 601 section 6215 states that tax court decisions of re-determination shall be assessed by the district director.

§ 301.6215-1 Assessment of deficiency found by Tax Court.
Where a petition has been filed with the Tax Court, the entire amount redetermined as the deficiency by the decision of the Tax Court which has become final shall be assessed by the ***district director*** *or the director of the regional service center and the unpaid portion of the amount so assessed shall be paid by the taxpayer upon notice and demand therefor.*

26CFR 6203 requires that district directors must appoint the assessment officers.

26CFR 6203
§ 301.6203–1 Method of assessment.
The ***district director*** and the directorof the regional service center shall appoint one or more assessment officers . The ***district director*** shall also appoint assessment officers in a Service Center servicing his ***district***.
The assessment shall be made by an assessment officer signing the summary record of assessment.

http://edocket.access.gpo.gov/cfr_2008/aprqtr/pdf/26cfr301.6203-1.pdf

Code of Federal Regulations

interest to comply with prescribed procedures for obtaining any required supervision. [T.D. 77–241, 42 FR 54937, Oct. 12, 1977, as amended by T.D. 98–22, 63 FR 11825, Mar. 11, 1998]

§ 101.3 Customs service ports and ports of entry.

(a) *Designation of Customs field organization.*
The Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement), pursuant to authority delegated by the Secretary of the Treasury, is authorized to establish, rearrange or consolidate, and to discontinue Customs ports of entry as the needs of the Customs Service may require.

(b) *List of Ports of Entry and Service Ports.*
The following is a list of Customs Ports of Entry and Service Ports. Many of the ports listed were created by the President's message of March 3, 1913, concerning a reorganization of the Customs Service pursuant to the Act of August 24, 1912 (37 Stat. 434; 19 U.S.C.

1). Subsequent orders of the President or of the Secretary of the Treasury which affected these ports, or which created (or subsequently affected) additional ports, are cited following the name of the ports.

(1) *Customs ports of entry.* A list of Customs ports of entry by State and the limits of each port are set forth below:

Ports of entry	Limits of port
Alabama	
Birmingham	
Huntsville	T.D. 83–196.
Mobile	Including territory described in T.D. 76–259.
Alaska	
Alcan	T.D. 71–210.
Anchorage	T.D.s 55295 and 68–50.
Dalton Cache	T.D. 79–74.
Fairbanks	E.O. 8064, Mar. 9, 1939 (4 FR 1191).
Juneau	
Ketchikan	Including territory described in T.D. 74–100.
Kodiak	T.D. 98–65.
Sitka	*Including territory described in T.D. 55609.*
Skagway	
Valdez	Including territory described in T.D. 79–201.

Wrangell ..... Including territory described in T.D. 56420.
Arizona
Douglas ..... Including territory described in E.O. 9382, Sept. 25, 1943 (8 FR 13083).
Lukeville ..... E.O. 10088, Dec. 3, 1949 (14 FR 7287).
Naco
Nogales ..... Including territory described in T.D. 77–285.
Phoenix ..... T.D. 71–103.
San Luis ..... E.O. 5322, Apr. 9, 1930.
Sasabe ..... E.O. 5608, Apr. 22, 1931.
Tucson ..... Including territory described in T.D. 89–102.
Arkansas
Little Rock-North Little Rock ..... T.D. 70–146. (Restated in T.D. 84–126).
California
Andrade ..... E.O. 4780, Dec. 13, 1927.
Calexico
Eureka
Fresno ..... Including territory described in T.D. 74–18.
+ Los Angeles-Long Beach ..... Including territory described in T.D. 78–130.
Port Hueneme ..... T.D. 92–10.
Port San Luis T.D. 35546.
San Diego ..... T.D. 85–163.
+ San Francisco-Oakland ..... Including Benicia, Martinez, Richard, Sacramento, San Jose, and Stockton, T.D. 82–9.
San Jose 95–80
Tecate ..... E.O. 4780, Dec. 13, 1927.

Ports of entry Limits of port
Colorado
Denver ..... T.D. 80–180.
Connecticut
Bridgeport ..... Including territory described in T.D. 68–224.
Hartford ..... Including territory described in T.D. 68–224.
New Haven ..... Including territory described in T.D. 68–224.
New London ..... Including territory described in T.D. 68–224.
Delaware
Wilmington ..... Included in the Consolidated Port of the Delaware River and Bay described in T.D. 96–4.
District of Columbia
Washington ..... Including territory described in T.D. 68–67.
Florida
Fernandina Beach ..... Including St. Mary's, GA; T.D. 53033.
Fort Myers ..... T.D. 99–9
Jacksonville ..... T.D. 69–45.
Key West ..... Including territory described in T.D. 53994.
Miami ..... Including territory described in T.D. 53514.

Orlando ..... T.D. 76–306.
http://www.law.cornell.edu/cfr/text/19/101.3

CFR › Title 19 › Chapter I › Part 101 › Section 101.3

19 CFR 101.3 - Customs service ports and ports of entry.
There is 1 rule appearing in the Federal Register for 19 CFR 101. Select the tab below to view.

CFR
Currency
Authorities (U.S. Code)
Rulemaking

§ 101.3
Customs service ports and ports of entry.
(a) Designation of Customs field organization. The Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement), pursuant to authority delegated by the Secretary of the Treasury, is authorized to establish, rearrange or consolidate, and to discontinue Customs ports of entry as the needs of the Customs Service may require.
(b) List of Ports of Entry and Service Ports. The following is a list of Customs Ports of Entry and Service Ports. Many of the ports listed were created by the President's message of March 3, 1913, concerning a reorganization of the Customs Service pursuant to the Act of August 24, 1912 (37 Stat. 434; 19 U.S.C. 1). Subsequent orders of the President or of the Secretary of the Treasury which affected these ports, or which created (or subsequently affected) additional ports, are cited following the name of the ports.
(1) Customs ports of entry. A list of Customs ports of entry by State and the limits of each port are set forth below: Ports of entry Limits of port

Arizona

Douglas	Including territory described in E.O. 9382, Sept. 25, 1943 (8 FR 13083).
Lukeville	E.O. 10088, Dec. 3, 1949 (14 FR 7287).
Naco	
Nogales	Including territory described in T.D. 77-285.
Phoenix	T.D. 71-103.
San Luis	E.O. 5322, Apr. 9, 1930.
Sasabe	E.O. 5608, Apr. 22, 1931.
Tucson	Including territory described in T.D. 89-102.
Arkansas	
Little Rock-North Little Rock	T.D. 70-146. (Restated in T.D. 84-126).
California	

Andrade	E.O. 4780, Dec. 13, 1927.
Calexico	
Eureka	
Fresno	Including territory described in T.D. 74-18.
Los Angeles-Long Beach	Including territory described in T.D. 78-130.
Port Hueneme	T.D. 92-10.
Port San Luis	T.D. 35546.
Sacramento	CBP Dec. 06-23.
San Diego	T.D. 85-163.
San Francisco-Oakland	CBP Dec. 06-23.
San Jose	95-80
Tecate	E.O. 4780, Dec. 13, 1927.

Alabama	Mobile.
Alaska	Anchorage.
Arizona	Nogales.
California	Los Angeles.
	LAX.
	San Diego.
	San Francisco.
Colorado	Denver.

[T.D. 95-77, 60 FR 50011, Sept. 27, 1995]

Editorial Note: For Federal Register citations affecting § 101.3 , see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

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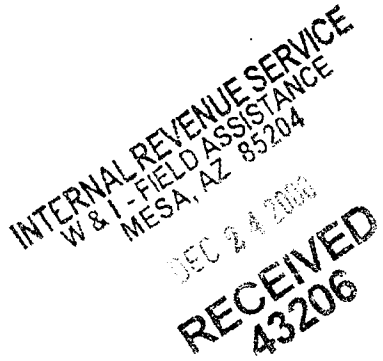
Code of Federal Regulations
Title 26 - Internal Revenue
Volume: 20
Date: 2009-04-01
Original Date: 2009-04-01
Title: Section 601.101 - Introduction.
Context: Title 26 - Internal Revenue. CHAPTER I - INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY (CONTINUED). SUBCHAPTER H - INTERNAL REVENUE PRACTICE. PART 601 - **STATEMENT OF PROCEDURAL RULES**. Subpart A - General Procedural Rules.
§ 601.101
Introduction.
(a) General. The Internal Revenue Service is a bureau of the Department of the Treasury under the immediate direction of the Commissioner of Internal Revenue. The Commissioner has general superintendence of the assessment and collection of all taxes imposed by any law providing internal revenue. The Internal Revenue Service is the agency by which these functions are performed. Within an **internal revenue district** the internal revenue laws are administered by a **district** director of internal revenue. The Director, Foreign Operations **District**, administers the internal revenue laws applicable to taxpayers residing or doing business abroad, foreign taxpayers deriving income from sources within the United States, and taxpayers who are required to withhold tax on certain payments to nonresident aliens and foreign corporations, provided the books and records of those taxpayers are located outside the United States. For purposes of these procedural rules any reference to a **district** director or a **district** office includes the Director, Foreign Operations **District**, or the **District** Office, Foreign Operations **District**, if appropriate. Generally, the procedural rules of the Service are based on the Internal Revenue Code of 1939 and the Internal Revenue Code of 1954, and the procedural rules in this part apply to the taxes imposed by both Codes except to the extent specifically stated or where the procedure under one Code is incompatible with the procedure under the other Code. Reference to sections of the Code are references to the Internal Revenue Code of 1954, unless otherwise expressly indicated.
(b) Scope. This part sets forth the procedural rules of the Internal Revenue Service respecting all taxes administered by the Service, and supersedes the previously published statement (26 CFR (1949 ed., Part 300-End) Parts 600 and 601) with respect to such procedural rules. Subpart A provides a descriptive statement of the general course and method by which the Service's functions are channeled and determined, insofar as such functions relate generally to the assessment, collection, and enforcement of internal revenue taxes. Certain provisions special to particular taxes are separately described in Subpart D of this part. Conference and practice requirements of the Internal Revenue Service are contained in Subpart E of this part. Specific matters not generally involved in the assessment, collection, and enforcement functions are separately described in Subpart B of this part. A description of the rule making functions of the Department of the Treasury with respect to internal revenue tax matters is contained in Subpart F of this part. Subpart G of this part relates to matters of official record in the Internal Revenue Service and the extent to which records and documents are subject to publication or open to public inspection. This part does not contain a detailed discussion of the substantive

provisions pertaining to any particular tax or the procedures relating thereto, and for such information it is necessary that reference be made to the applicable provisions of law and the regulations promulgated thereunder. The regulations relating to the taxes administered by the Service are contained in Title 26 of the Code of Federal Regulations.[38 FR 4955, Feb. 23, 1973 and 41 FR 20880, May 21, 1976, as amended at 45 FR 7251, Feb. 1, 1980; 49 FR 36498, Sept. 18, 1984; T.D. 8685, 61 FR 58008, Nov. 12, 1996]

From:
James Leslie Reading
Clare Louise Reading
2425 East Fox Street
Mesa, Arizona 85213-5320



To:
Department of the Treasury
Internal Revenue Service
Fresno, CA 93888-0002

Enclosures:

1993 1040 2 pages
1993 Corrected 1099-MISC Pilot Catastrophe Services, Inc. 1 page
1993 Corrected 1099-MISC Pilot Temporary Services, Inc. 1 page
1993 Corrected 1099-MISC *Pilot & Associates, Inc.* 1 page
AMCAP Fund & Fundamental Investors report 1993 showing loss 5 pages

Exhibit FF P. 1 of 10

Form **1040** Department of the Treasury—Internal Revenue Service **U.S. Individual Income Tax Return** **1993**

IRS Use Only—Do not write or staple in this space.

For the year Jan. 1–Dec. 31, 1993, or other tax year beginning , 1993, ending , 19 OMB No. 1545-0074

Label (See instructions on page 12.) **Use the IRS label.** Otherwise, please print or type.

	First name and initial	Last name	Your social security number
	JAMES L	READING	367 54 8531
	If a joint return, spouse's first name and initial	Last name	Spouse's social security number
	CLARE L.	READING	384 54 4550
	Home address (number and street). If you have a P.O. box, see page 12.	Apt. no.	
	2425 E FOX	—	
	City, town or post office, state, and ZIP code. If you have a foreign address, see page 12.		
	MESA, ARIZONA		

For Privacy Act and Paperwork Reduction Act Notice, see page 4.

Presidential Election Campaign (See page 12.)

	Yes	No	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?		✓	

Filing Status (See page 12.) Check only one box.

1 [ ] Single
2 [X] 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 13.) 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 13.)

Exemptions (See page 13.)

6a [X] **Yourself.** If your parent (or someone else) can claim you as a dependent on his or her tax return, **do not** check box 6a. But be sure to check the box on line 33b on page 2
b [X] **Spouse**

No. of boxes checked on 6a and 6b: 2

c **Dependents:**

(1) Name (first, initial, and last name)	(2) Check if under age 1	(3) If age 1 or older, dependent's social security number	(4) Dependent's relationship to you	(5) No. of months lived in your home in 1993
NONE				

If more than six dependents, see page 14.

No. of your children on 6c who:
- lived with you: 0
- didn't live with you due to divorce or separation (see page 15): 0

Dependents on 6c not entered above: 0

d If your child didn't live with you but is claimed as your dependent under a pre-1985 agreement, check here ▶ [ ]

Add numbers entered on lines above ▶: 2

e Total number of exemptions claimed: 2

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 10.

If you are attaching a check or money order, put it on top of any Forms W-2, W-2G, or 1099-R.

7	Wages, salaries, tips, etc. Attach Form(s) W-2	7	0 —
8a	**Taxable** interest income (see page 16). Attach Schedule B if over $400	8a	
b	**Tax-exempt** interest (see page 17). DON'T include on line 8a [8b]		
9	Dividend income. Attach Schedule B if over $400	9	
10	Taxable refunds, credits, or offsets of state and local income taxes (see page 17)	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	0 —
14	Capital gain distributions not reported on line 13 (see page 17)	14	
15	Other gains or (losses). Attach Form 4797	15	
16a	Total IRA distributions [16a] b Taxable amount (see page 18)	16b	
17a	Total pensions and annuities [17a] b Taxable amount (see page 18)	17b	
18	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	18	
19	Farm income or (loss). Attach Schedule F	19	
20	Unemployment compensation (see page 19)	20	
21a	Social security benefits [21a] b Taxable amount (see page 19)	21b	
22	Other income. List type and amount—see page 20	22	
23	Add the amounts in the far right column for lines 7 through 22. This is your **total income** ▶	23	0 —

Adjustments to Income (See page 20.)

24a	Your IRA deduction (see page 20)	24a	
b	Spouse's IRA deduction (see page 20)	24b	
25	One-half of self-employment tax (see page 21)	25	
26	Self-employed health insurance deduction (see page 22)	26	
27	Keogh retirement plan and self-employed SEP deduction	27	
28	Penalty on early withdrawal of savings	28	
29	Alimony paid. Recipient's SSN ▶	29	
30	Add lines 24a through 29. These are your **total adjustments** ▶	30	

Adjusted Gross Income

31	Subtract line 30 from line 23. This is your **adjusted gross income.** *If this amount is less than $23,050 and a child lived with you, see page EIC-1 to find out if you can claim the "Earned Income Credit" on line 56* ▶	31	0 —

Exhibit FF Pg 20 of 10

Tax Computation (See page 23.)

32	Amount from line 31 (adjusted gross income)	32	0
33a	Check if: ☐ **You** were 65 or older, ☐ Blind; ☐ **Spouse** was 65 or older, ☐ Blind. Add the number of boxes checked above and enter the total here ▶ 33a		
b	If your parent (or someone else) can claim you as a dependent, check here ▶ 33b ☐		
c	If you are married filing separately and your spouse itemizes deductions or you are a dual-status alien, see page 24 and check here ▶ 33c ☐		
34	Enter the **larger** of your: **Itemized deductions** from Schedule A, line 26, **OR** **Standard deduction** shown below for your filing status. **But if you checked any box on line 33a or b,** go to page 24 to find your standard deduction. If you checked **box 33c,** your standard deduction is zero. • Single—$3,700 • Head of household—$5,450 • Married filing jointly or Qualifying widow(er)—$6,200 • Married filing separately—$3,100	34	6200
35	Subtract line 34 from line 32	35	0
36	If line 32 is $81,350 or less, multiply $2,350 by the total number of exemptions claimed on line 6e. If line 32 is over $81,350, see the worksheet on page 25 for the amount to enter	36	4700
37	***Taxable income.*** *Subtract line 36 from line 35. If line 36 is more than line 35, enter -0-*	37	0
38	Tax. Check if from a ☐ Tax Table, b ☐ Tax Rate Schedules, c ☐ Schedule D Tax Worksheet, or d ☐ Form 8615 (see page 25). Amount from Form(s) 8814 ▶ e	38	
39	Additional taxes (see page 25). Check if from a ☐ Form 4970 b ☐ Form 4972	39	
40	Add lines 38 and 39 ▶	40	0

If you want the IRS to figure your tax, see page 24.

Credits (See page 25.)

41	Credit for child and dependent care expenses. Attach Form 2441	41		
42	Credit for the elderly or the disabled. Attach Schedule R	42		
43	Foreign tax credit. Attach Form 1116	43		
44	Other credits (see page 26). Check if from a ☐ Form 3800 b ☐ Form 8396 c ☐ Form 8801 d ☐ Form (specify)	44		
45	Add lines 41 through 44			45
46	Subtract line 45 from line 40. If line 45 is more than line 40, enter -0- ▶			46 0

Other Taxes

47	*Self-employment tax. Attach Schedule SE. Also, see line 25.*	47	
48	Alternative minimum tax. Attach Form 6251	48	
49	Recapture taxes (see page 26). Check if from a ☐ Form 4255 b ☐ Form 8611 c ☐ Form 8828	49	
50	Social security and Medicare tax on tip income not reported to employer. Attach Form 4137	50	
51	Tax on qualified retirement plans, including IRAs. If required, attach Form 5329	51	
52	Advance earned income credit payments from Form W-2	52	
53	Add lines 46 through 52. This is your **total tax** ▶	53	0

Payments

Attach Forms W-2, W-2G, and 1099-R on the front.

54	Federal income tax withheld. If any is from Form(s) 1099, check ▶ ☐	54		
55	1993 estimated tax payments and amount applied from 1992 return	55		
56	**Earned income credit.** Attach Schedule EIC	56		
57	Amount paid with Form 4868 (extension request)	57		
58a	Excess social security, Medicare, and RRTA tax withheld (see page 28)	58a		
b	*Deferral of additional 1993 taxes. Attach Form 8841*	58b		
59	Other payments (see page 28). Check if from a ☐ Form 2439 b ☐ Form 4136	59		
60	Add lines 54 through 59. These are your **total payments** ▶			60 0

Refund or Amount You Owe

61	If line 60 is more than line 53, subtract line 53 from line 60. This is the amount you **OVERPAID** ▶	61	
62	Amount of line 61 you want **REFUNDED TO YOU** ▶	62	
63	Amount of line 61 you want **APPLIED TO YOUR 1994 ESTIMATED TAX** ▶ 63		
64	If line 53 is more than line 60, subtract line 60 from line 53. This is the **AMOUNT YOU OWE.** For details on how to pay, including what to write on your payment, see page 29	64	0
65	Estimated tax penalty (see page 29). Also include on line 64 65		

Sign Here

Keep a copy of this return for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature: James Leslie Rushing — Date: 12/24/2008 — Your occupation: N/A

Spouse's signature if a joint return, BOTH must sign: Clara Louise Rushing — Date: 12/24/08 — Spouse's occupation: —

Paid Preparer's Use Only

Preparer's signature — Date — Check if self-employed ☐ — Preparer's social security no.

Firm's name (or yours if self-employed) and address — E.I. No. — ZIP code

Exhibit FF pg. 3 of 10

9595 ☐ VOID ☒ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents $	OMB No. 1545-0115 1993 Form 1099-MISC	Miscellaneous Income
Pilot Temporary Services, Inc. PO Box 91299 Mobile, AL 36691	2 Royalties $		
	3 Other income $	4 Federal income tax withheld $	Copy A For Internal Revenue Service Center
PAYER'S federal identification number: 63-1078154 / RECIPIENT'S identification number	5 Fishing boat proceeds $	6 Medical and health care payments $	File with Form 1096.
RECIPIENT'S name: James L. Reading	7 Nonemployee compensation $ -0-	8 Substitute payments in lieu of dividends or interest $	For Privacy Act and Paperwork Reduction Act Notice, see the 2008 General Instructions for Forms 1099, 1098, 5498, and W-2G.
Street address (including apt. no.): 2425 E. Fox St.	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ► ☐	10 Crop insurance proceeds $	
City, state, and ZIP code: Mesa, AZ 85213-5320	11	12	
Account number (see instructions) / 2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $	
15a Section 409A deferrals $ / 15b Section 409A income $	16 State tax withheld $ $	17 State/Payer's state no.	18 State income $ $

Form 1099-MISC Cat. No. 14425J Department of the Treasury - Internal Revenue Service

This corrected Form 1099-MISC is submitted to rebut a document known to have been submitted by the party identified above as 'PAYER' which erroneously alleges a payment to the party identified above and on the attached Form 1040X as 'RECIPEINT' of "gains, profit or income" made in the course of a "trade or business".

Under penalty of perjury, I declare that I have examined this statement and to the best of my knowledge and belief, it is true, correct and complete.

James Leslie Reading
James Leslie Reading

12/24/2008
Date

Exhibit FF Pg 4 of 10

9595 ☐ VOID ☒ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
Pilot & Associates, Inc. PO Box 91299 Mobile, AL 36691	$	1993	
	2 Royalties $	Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	Copy A For Internal Revenue Service Center File with Form 1096.
PAYER'S federal identification number 63-0847253 / RECIPIENT'S identification number	5 Fishing boat proceeds $	6 Medical and health care payments $	
RECIPIENT'S name James L. Reading	7 Nonemployee compensation $ - 0 -	8 Substitute payments in lieu of dividends or interest $	For Privacy Act and Paperwork Reduction Act Notice, see the 2008 General Instructions for Forms 1099, 1098, 5498, and W-2G.
Street address (including apt. no.) 2425 E. Fox St.	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ► ☐	10 Crop insurance proceeds $	
City, state, and ZIP code Mesa, AZ 85213-5320	11	12	
Account number (see instructions) / 2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $	
15a Section 409A deferrals $ / 15b Section 409A income $	16 State tax withheld $ $	17 State/Payer's state no.	18 State income $ $

Form 1099-MISC Cat. No. 14425J Department of the Treasury - Internal Revenue Service

This corrected Form 1099-MISC is submitted to rebut a document known to have been submitted by the party identified above as 'PAYER' which erroneously alleges a payment to the party identified above and on the attached Form 1040X as 'RECIPEINT' of "gains, profit or income" made in the course of a "trade or business".

Under penalty of perjury, I declare that I have examined this statement and to the best of my knowledge and belief, it is true, correct and complete.

James Leslie Reading
James Leslie Reading

12/24/2008
Date

Exhibit FF Pg 5 of 10

9595 ☐ VOID ☒ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
Pilot Catastrophe Services, Inc. 708 Oak Cir DR W Mobile, AL 36609	$	1993	
	2 Royalties $	Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	Copy A For Internal Revenue Service Center
PAYER'S federal identification number: 63-1012513 / RECIPIENT'S identification number	5 Fishing boat proceeds $	6 Medical and health care payments $	File with Form 1096.
RECIPIENT'S name: James L. Reading	7 Nonemployee compensation $ - 0 -	8 Substitute payments in lieu of dividends or interest $	For Privacy Act and Paperwork Reduction Act Notice, see the 2008 General Instructions for Forms 1099, 1098, 5498, and W-2G.
Street address (including apt. no.): 2425 E. Fox St.	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ► ☐	10 Crop insurance proceeds $	
City, state, and ZIP code: Mesa, AZ 85213-5320	11	12	
Account number (see instructions) / 2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $	
15a Section 409A deferrals $	15b Section 409A income $	16 State tax withheld $ $	17 State/Payer's state no.	18 State income $ $

Form 1099-MISC Cat. No. 14425J Department of the Treasury - Internal Revenue Service

This corrected Form 1099-MISC is submitted to rebut a document known to have been submitted by the party identified above as 'PAYER' which erroneously alleges a payment to the party identified above and on the attached Form 1040X as 'RECIPEINT' of "gains, profit or income" made in the course of a "trade or business".

Under penalty of perjury, I declare that I have examined this statement *and to the best of my knowledge and belief, it is true, correct and complete.*

James Leslie Reading
James Leslie Reading

12/24/2008
Date

Exhibit FF Pg. 6 of 10

...ame(s) shown on Form 1040. Do not enter na... and social security number if shown on other side.

JAMES C. READING

Your social security number 367:54:8531

Schedule B—Interest and Dividend Income

Attachment Sequence No. 08

Part I Interest Income

(See pages 16 and B-1.)

Note: If you received a Form 1099-INT, Form 1099-OID, or substitute statement from a brokerage firm, list the firm's name as the payer and enter the total interest shown on that form.

Note: *If you had over $400 in taxable interest income, you must also complete Part III.*

Interest Income		Amount
1 List name of payer. If any interest is from a seller-financed mortgage and the buyer used the property as a personal residence, see page B-1 and list this interest first. Also show that buyer's social security number and address ▶	1	
2 Add the amounts on line 1	2	
3 Excludable interest on series EE U.S. savings bonds issued after 1989 from Form 8815, line 14. You MUST attach Form 8815 to Form 1040	3	
4 Subtract line 3 from line 2. Enter the result here and on Form 1040, line 8a ▶	4	

Part II Dividend Income

(See pages 17 and B-1.)

Note: If you received a Form 1099-DIV or substitute statement from a brokerage firm, list the firm's name as the payer and enter the total dividends shown on that form.

Note: *If you had over $400 in gross dividends and/or other distributions on stock, you must also complete Part III.*

Dividend Income		Amount
5 List name of payer. Include gross dividends and/or other distributions on stock here. Any capital gain distributions and nontaxable distributions will be deducted on lines 7 and 8 ▶ AM CAP FUND ORGAIN	5	968 70
AMCAP FUND		-64 58
FUNDAMENTAL INVESTORS FUND		50 76
FUNDAMENTAL INVESTORS FUND ST G AIN		18 74
FUNDAMENTAL INVESTORS FUND ORGAIN		75A 44
CASH MANAGEMENT TRUST		99 12
6 Add the amounts on line 5	6	1956 34
7 Capital gain distributions. Enter here and on Schedule D* . 7		
8 Nontaxable distributions. (See the inst. for Form 1040, line 9.) 8		
9 Add lines 7 and 8	9	
10 Subtract line 9 from line 6. Enter the result here and on Form 1040, line 9 ▶	10	1956 34

**If you received capital gain distributions but do not need Schedule D to report any other gains or losses, see the instructions for Form 1040, lines 13 and 14.*

Part III Foreign Accounts and Trusts

(See page B-2.)

If you had over $400 of interest or dividends OR had a foreign account or were a grantor of, or a transferor to, a foreign trust, you must complete this part.	Yes	No
11a At any time during 1993, did you have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account? See page B-2 for exceptions and filing requirements for Form TD F 90-22.1		
b If "Yes," enter the name of the foreign country ▶		
12 Were you the grantor of, or transferor to, a foreign trust that existed during 1993, whether or not you have any beneficial interest in it? If "Yes," you may have to file Form 3520, 3520-A, or 926		

SCHEDULE D (Form 1040)

Department of the Treasury
Internal Revenue Service

Capital Gains and Losses

▶ Attach to Form 1040. ▶ See Instructions for Schedule D (Form 1040).
▶ Use lines 20 and 22 for more space to list transactions for lines 1 and 9.

OMB No. 1545-0074

1993

Attachment Sequence No. 12

Name(s) shown on Form 1040: JAMES L. READING

Your social security number: 367 54 8531

Part I Short-Term Capital Gains and Losses—Assets Held One Year or Less

(a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see page D-3)	(e) Cost or other basis (see page D-3)	(f) LOSS If (e) is more than (d), subtract (d) from (e)	(g) GAIN If (d) is more than (e), subtract (e) from (d)
1 AMCAP FUND	4/30/93	5/21/93	16597.11	18,017.00	1419.89	—
AMCAP FUND.	6/1/93	8/4/93	17587.45	17,641.97	54.52	—
FUNDAMENTAL INV. FUND	8/31/93	9/7/93	17510.33	17,618.82	108.43	
2 Enter your short-term totals, if any, from line 21			2 32475.28		972.42	384.26
3 **Total short-term sales price amounts.** Add column (d) of lines 1 and 2			3 84170.17			
4 Short-term gain from Forms 2119 and 6252, and short-term gain or (loss) from Forms 4684, 6781, and 8824					4 —	—
5 Net short-term gain or (loss) from partnerships, S corporations, and fiduciaries from Schedule(s) K-1					5 —	—
6 Short-term capital loss carryover from 1992 Schedule D, line 38					6 —	
7 Add lines 1, 2, and 4 through 6, in columns (f) and (g)					7 (2555.25)	384.26
8 **Net short-term capital gain or (loss).** Combine columns (f) and (g) of line 7					8	<2171.00>

Part II Long-Term Capital Gains and Losses—Assets Held More Than One Year

9 150 sh G/M	8/31/71	3/10/93	6018.75	5645.62	—	373.13
						—
						—
10 Enter your long-term totals, if any, from line 23			10 —		—	—
11 **Total long-term sales price amounts.** Add column (d) of lines 9 and 10			11 6018.75			
12 Gain from Form 4797; long-term gain from Forms 2119, 2439, and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824					12	—
13 Net long-term gain or (loss) from partnerships, S corporations, and fiduciaries from Schedule(s) K-1					13	—
14 Capital gain distributions					14	—
15 Long-term capital loss carryover from 1992 Schedule D, line 45					15	
16 Add lines 9, 10, and 12 through 15, in columns (f) and (g)					16 (—)	373.13
17 Net long-term capital gain or (loss). Combine columns (f) and (g) of line 16					17	373.13

Part III Summary of Parts I and II

18 If lines 8 and 17 are gains, see the **Schedule D Tax Worksheet** on page D-4	18	—
19 If a loss, enter here and as a (loss) on Form 1040, line 13, the **smaller** of these losses: ($3,000) or if married filing separately, ($1,500)	19 (1797.87)	

If lines 18 and 19 are losses, see the *Capital Loss Carryover Worksheet* on page D-4 if the loss on line 18 exceeds the loss on line 19 or if Form 1040, line 35, is a loss.

For Paperwork Reduction Act Notice, see Form 1040 instructions. Cat. No. 11338H Schedule D (Form 1040) 1993

Exhibit FF pg. 8 of 10

Schedule D (Form 1040) 1993 — Attachment Sequence No. 12 — Page 2

Name(s) shown on Form 1040. Do not enter name and social security number if shown on other side.

JAMES L READING — Your social security number 367 54 8531

Part IV Short-Term Capital Gains and Losses—Assets Held One Year or Less (Continuation of Part I)

(a) Description of property (Example: 100 shs. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see page D-3)	(e) Cost or other basis (see page D-3)	(f) LOSS If (e) is more than (d), subtract (d) from (e)	(g) GAIN If (d) is more than (e), subtract (e) from (d)
20 FUNDAMENTAL INV. FUND	9/28/93	10/14/93	17,826 68	17,533 58	—	293 10
"	10/28/93	11/22/93	6864 95	7837 37	972 42	—
"	11/30/93	12/14/93	7783 65	7692 49	—	91 16
Add columns (d), (f), and (g) and enter on line 2		21	32 475 28		972 42	384 26

Part II Short-Term Capital Gains and Losses—Assets Held More Than One Year (Continuation of Part II)

22						
Combine totals. Add columns (d), (f), and (g). Enter here and on line 10		23				

Exhibit FF Pg. 9 of 10

TRUST NO. 30 75149 00

C SWAYZE TRUST FOR CLARE

RECEIPT

THE UNDERSIGNED HEREBY ACKNOWLEDGES RECEIPT FROM THE NBD BANK, N.A. OF THE FOLLOWING DESCRIBED SECURITIES:

STOCK		ACQUIRED	COST
150 SHS	GENERAL MOTORS CORPORATION COMMON	08-31-71	5,645.62

NC 173111 @ 150 SHS DTD MAR 10 1993

N/O CLARE READING

DATED AT, 3-20-93 6 40 pm

THIS _____ DAY OF _____, 1993

BY: CLR
N/O CLARE READING

DM/mfs

8/02/06 GM Computershare
James Cripe 1-800-331-9922
150 SH GM Common Stock
Acquired: 8/31/71 @ $5,645.62 received as gift – college graduation
Sold: 3/10/93 @ $40.125 = $6,018.75
Gained: $373.13 in value over 22 years

8/02/06 Merrill Lynch – Superstition Springs
480-324-2900 Commission on sale @ $6,018.75 = $148.54
Actual cash: $5,870.21
- $5645.62 ACQUIRED COST (GIFT)
$ 224.59 = GAIN

Exhibit FF Pg 10 of 10

From:
James Leslie Reading
Clare Louise Reading
2425 East Fox Street
Mesa, Arizona 85213-5320

INTERNAL REVENUE SERVICE
W & I - FIELD ASSISTANCE
MESA, AZ 85204

DEC 24 2008

RECEIVED
43206

To:
Department of the Treasury
Internal Revenue Service
Fresno, CA 93888-0002

Enclosures:

1994 1040 2 pages
1994 Corrected 1099-MISC Pilot Catastrophe Services, Inc. 1 page
1994 Corrected 1099-MISC Pilot & Associates, Inc. 1 page
AMCAP Fund & Fundamental Investors report 1994 showing loss 5 pages

Exhibit GG Pg. 1-7

Form **1040** Department of the Treasury—Internal Revenue Service **U.S. Individual Income Tax Return** **1994** (99) IRS Use Only—Do not write or staple in this space.

For the year Jan. 1–Dec. 31, 1994, or other tax year beginning , 1994, ending , 19 OMB No. 1545-0074

Label (See instructions on page 12.) **Use the IRS label.** Otherwise, please print or type.

LABEL HERE

Your first name and initial: JAMES L. Last name: READING — Your social security number: 367 54 8531

If a joint return, spouse's first name and initial: CLARE L. Last name: READING — Spouse's social security number: 384 54 4550

Home address (number and street). If you have a P.O. box, see page 12.: 2425 E. FOX Apt. no.

City, town or post office, state, and ZIP code. If you have a foreign address, see page 12.: MESA, ARIZONA

For Privacy Act and Paperwork Reduction Act Notice, see page 4.

Presidential Election Campaign (See page 12.)

	Yes	No	
Do you want $3 to go to this fund?		✓	**Note:** *Checking "Yes" will not change your tax or reduce your refund.*
If a joint return, does your spouse want $3 to go to this fund?		✓	

Filing Status (See page 12.) Check only one box.

1 [ ] Single

2 [X] 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 13.) 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 13.)

Exemptions (See page 13.)

6a [X] **Yourself.** If your parent (or someone else) can claim you as a dependent on his or her tax return, **do not** check box 6a. But be sure to check the box on line 33b on page 2

b [X] **Spouse**

c **Dependents:**

(1) Name (first, initial, and last name)	(2) Check if under age 1	(3) If age 1 or older, dependent's social security number	(4) Dependent's relationship to you	(5) No. of months lived in your home in 1994

If more than six dependents, see page 14.

d If your child didn't live with you but is claimed as your dependent under a pre-1985 agreement, check here ▶ [ ]

e Total number of exemptions claimed

No. of boxes checked on 6a and 6b: 2

No. of your children on 6c who:
- lived with you: 0
- didn't live with you due to divorce or separation (see page 14): 0

Dependents on 6c not entered above: 0

Add numbers entered on lines above ▶: 2

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 15.

Enclose, but do not attach, any payment with your return.

7	Wages, salaries, tips, etc. Attach Form(s) W-2	7	0 —
8a	**Taxable** interest income (see page 15). Attach Schedule B if over $400	8a	
b	**Tax-exempt** interest (see page 16). DON'T include on line 8a [8b]		
9	Dividend income. Attach Schedule B if over $400	9	
10	Taxable refunds, credits, or offsets of state and local income taxes (see page 16)	10	
11	Alimony received	11	
12	Business income or (loss). Attach Schedule C or C-EZ	12	
13	Capital gain or (loss). If required, attach Schedule D (see page 16)	13	0 —
14	Other gains or (losses). Attach Form 4797	14	
15a	Total IRA distributions [15a] b Taxable amount (see page 17)	15b	
16a	Total pensions and annuities [16a] b Taxable amount (see page 17)	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 (see page 18)	19	
20a	Social security benefits [20a] b Taxable amount (see page 18)	20b	
21	Other income. List type and amount—see page 18	21	
22	Add the amounts in the far right column for lines 7 through 21. This is your **total income** ▶	22	0 —

Adjustments to Income

Caution: See instructions . . ▶

23a	Your IRA deduction (see page 19)	23a		
b	Spouse's IRA deduction (see page 19)	23b		
24	Moving expenses. Attach Form 3903 or 3903-F	24		
25	One-half of self-employment tax	25		
26	Self-employed health insurance deduction (see page 21)	26		
27	Keogh retirement plan and self-employed SEP deduction	27		
28	Penalty on early withdrawal of savings	28		
29	Alimony paid. Recipient's SSN ▶	29		
30	Add lines 23a through 29. These are your **total adjustments** ▶			30

Adjusted Gross Income

31	Subtract line 30 from line 22. This is your **adjusted gross income.** If less than $25,296 and a child lived with you (less than $9,000 if a child didn't live with you), see "Earned Income Credit" on page 27 ▶	31	0 —

Tax Computation (See page 23.)

32	Amount from line 31 (adjusted gross income)	32	0 —
33a	Check if: ☐ **You** were 65 or older, ☐ Blind; ☐ **Spouse** was 65 or older, ☐ Blind. Add the number of boxes checked above and enter the total here ▶ 33a		
b	If your parent (or someone else) can claim you as a dependent, check here ▶ 33b ☐		
c	If you are married filing separately and your spouse itemizes deductions or you are a dual-status alien, see page 23 and check here ▶ 33c ☐		
34	Enter the **larger** of your: **Itemized deductions** from Schedule A, line 29, **OR** **Standard deduction** shown below for your filing status. **But if you checked any box on line 33a or b,** go to page 23 to find your standard deduction. If you checked **box 33c,** your standard deduction is zero. • Single—$3,800 • Head of household—$5,600 • Married filing jointly or Qualifying widow(er)—$6,350 • Married filing separately—$3,175	34	6350 —
35	Subtract line 34 from line 32	35	0 —
36	If line 32 is $83,850 or less, multiply $2,450 by the total number of exemptions claimed on line 6e. If line 32 is over $83,850, see the worksheet on page 24 for the amount to enter	36	4900 —
37	**Taxable income.** Subtract line 36 from line 35. If line 36 is more than line 35, enter -0-	37	0 —
38	Tax. Check if from **a** ☐ Tax Table, **b** ☐ Tax Rate Schedules, **c** ☐ Capital Gain Tax Worksheet, or **d** ☐ Form 8615 (see page 24). Amount from Form(s) 8814 ▶ **e**	38	
39	Additional taxes. Check if from **a** ☐ Form 4970 **b** ☐ Form 4972	39	
40	Add lines 38 and 39 ▶	40	0 —

If you want the IRS to figure your tax, see page 24.

Credits (See page 24.)

41	Credit for child and dependent care expenses. Attach Form 2441	41		
42	Credit for the elderly or the disabled. Attach Schedule R	42		
43	Foreign tax credit. Attach Form 1116	43		
44	Other credits (see page 25). Check if from **a** ☐ Form 3800 **b** ☐ Form 8396 **c** ☐ Form 8801 **d** ☐ Form (specify)	44		
45	Add lines 41 through 44			45
46	Subtract line 45 from line 40. If line 45 is more than line 40, enter -0- ▶			46 0 —

Other Taxes (See page 25.)

47	Self-employment tax. Attach Schedule SE	47	
48	Alternative minimum tax. Attach Form 6251	48	
49	Recapture taxes. Check if from **a** ☐ Form 4255 **b** ☐ Form 8611 **c** ☐ Form 8828	49	
50	Social security and Medicare tax on tip income not reported to employer. Attach Form 4137	50	
51	Tax on qualified retirement plans, including IRAs. If required, attach Form 5329	51	
52	Advance earned income credit payments from Form W-2	52	
53	Add lines 46 through 52. This is your **total tax** ▶	53	0 —

Payments

Attach Forms W-2, W-2G, and 1099-R on the front.

54	Federal income tax withheld. If any is from Form(s) 1099, check ▶ ☐	54		
55	1994 estimated tax payments and amount applied from 1993 return	55		
56	**Earned income credit.** If required, attach Schedule EIC (see page 27). Nontaxable earned income: amount ▶ and type ▶	56		
57	Amount paid with Form 4868 (extension request)	57		
58	Excess social security and RRTA tax withheld (see page 32)	58		
59	Other payments. Check if from **a** ☐ Form 2439 **b** ☐ Form 4136	59		
60	Add lines 54 through 59. These are your **total payments** ▶			60 0 —

Refund or Amount You Owe

61	If line 60 is more than line 53, subtract line 53 from line 60. This is the amount you **OVERPAID** ▶	61	
62	Amount of line 61 you want **REFUNDED TO YOU** ▶	62	
63	Amount of line 61 you want **APPLIED TO YOUR 1995 ESTIMATED TAX** ▶ 63		
64	If line 53 is more than line 60, subtract line 60 from line 53. This is the **AMOUNT YOU OWE.** For details on how to pay, including what to write on your payment, see page 32	64	0 —
65	Estimated tax penalty (see page 33). Also include on line 64 65		

Sign Here

Keep a copy of this return for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature [signature] Date 12/24/2008 Your occupation N/A

Spouse's signature. If a joint return, BOTH must sign. [signature] Date 12/24/08 Spouse's occupation —

Paid Preparer's Use Only

Preparer's signature | Date | Check if self-employed ☐ | Preparer's social security no.

Firm's name (or yours if self-employed) and address | E.I. No. | ZIP code

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Name(s) shown on Form 1040. Do not enter name and social security number if shown on other side.

JAMES READING

OMB No. 1545-0074 Page 2

Your social security number 367:54:8531

Schedule B—Interest and Dividend Income

Attachment Sequence No. 08

Part I Interest Income

(See pages 15 and B-1.)

Note: If you received a Form 1099-INT, Form 1099-OID, or substitute statement from a brokerage firm, list the firm's name as the payer and enter the total interest shown on that form.

Note: *If you had over $400 in taxable interest income, you must also complete Part III.*

1 List name of payer. If any interest is from a seller-financed mortgage and the buyer used the property as a personal residence, see page B-1 and list this interest first. Also show that buyer's social security number and address ▶

NONE

		Amount
1		
2	Add the amounts on line 1	
3	Excludable interest on series EE U.S. savings bonds issued after 1989 from Form 8815, line 14. You MUST attach Form 8815 to Form 1040	
4	Subtract line 3 from line 2. Enter the result here and on Form 1040, line 8a ▶	

Part II Dividend Income

(See pages 16 and B-1.)

Note: If you received a Form 1099-DIV or substitute statement from a brokerage firm, list the firm's name as the payer and enter the total dividends shown on that form.

Note: *If you had over $400 in gross dividends and/or other distributions on stock, you must also complete Part III.*

5 List name of payer. Include gross dividends and/or other distributions on stock here. Any capital gain distributions and nontaxable distributions will be deducted on lines 7 and 8 ▶

		Amount
5	CASH MANAGEMENT TRUST	2 69
	FUNDAMENTAL INVESTORS FUND	42 89
	FUNDAMENTAL INVESTORS FUND ZERO	6 —
	FUNDAMENTAL INVESTORS FUND CAP GAIN	28 31
6	Add the amounts on line 5	79 89
7	Capital gain distributions. Enter here and on Schedule D*	
8	Nontaxable distributions. (See the inst. for Form 1040, line 9.)	
9	Add lines 7 and 8	
10	Subtract line 9 from line 6. Enter the result here and on Form 1040, line 9 ▶	79 89

**If you do not need Schedule D to report any other gains or losses, enter your capital gain distributions on Form 1040, line 13. Write "CGD" on the dotted line next to line 13.*

Part III Foreign Accounts and Trusts

(See page B-2.)

If you had over $400 of interest or dividends OR had a foreign account or were a grantor of, or a transferor to, a foreign trust, you must complete this part.

		Yes	No
11a	At any time during 1994, did you have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account? See page B-2 for exceptions and filing requirements for Form TD F 90-22.1		
b	If "Yes," enter the name of the foreign country ▶		
12	Were you the grantor of, or transferor to, a foreign trust that existed during 1994, whether or not you have any beneficial interest in it? If "Yes," you may have to file Form 3520, 3520-A, or 926		

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SCHEDULE D (Form 1040)

Department of the Treasury Internal Revenue Service (99)

Capital Gains and Losses

▶ Attach to Form 1040. ▶ See Instructions for Schedule D (Form 1040).

▶ Use lines 20 and 22 for more space to list transactions for lines 1 and 9.

OMB No. 1545-0074

1994

Attachment Sequence No. 12

Name(s) shown on Form 1040: JAMES L. READING

Your social security number: 367 54 8531

Part I Short-Term Capital Gains and Losses—Assets Held One Year or Less

(a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see page D-3)	(e) Cost or other basis (see page D-3)	(f) LOSS If (e) is more than (d), subtract (d) from (e)	(g) GAIN If (d) is more than (e), subtract (e) from (d)
1 FUNDAMENTAL INVESTORS	12/20/93	2/18/94	7809.98	7785.28	—	65.11
FUNDAMENTAL INVESTORS	2/23/94	3/31/94	7660.93	7809.98	149.05	—
—	—	—	—	—	—	—
2 Enter your short-term totals, if any, from line 21			2 —		—	—
3 **Total short-term sales price amounts.** Add column (d) of lines 1 and 2			3 15470.91			
4 Short-term gain from Forms 2119 and 6252, and short-term gain or (loss) from Forms 4684, 6781, and 8824					4 —	—
5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1					5 —	—
6 Short-term capital loss carryover. Enter the amount, if any, from line 9 of your 1993 Capital Loss Carryover Worksheet					6 —	
7 Add lines 1, 2, and 4 through 6, in columns (f) and (g)					7 (149.05)	65.11
8 **Net short-term capital gain or (loss).** Combine columns (f) and (g) of line 7 ▶					8	<83.94>

Part II Long-Term Capital Gains and Losses—Assets Held More Than One Year

9						
10 Enter your long-term totals, if any, from line 23			10			
11 **Total long-term sales price amounts.** Add column (d) of lines 9 and 10			11			
12 Gain from Form 4797; long-term gain from Forms 2119, 2439, and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824					12	
13 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1					13	
14 Capital gain distributions					14	
15 Long-term capital loss carryover. Enter the amount, if any, from line 14 of your 1993 Capital Loss Carryover Worksheet					15	
16 Add lines 9, 10, and 12 through 15, in columns (f) and (g)					16 ( )	
17 **Net long-term capital gain or (loss).** Combine columns (f) and (g) of line 16 ▶					17	

Part III Summary of Parts I and II

18 Combine lines 8 and 17. If a loss, go to line 19. If a gain, enter the gain on Form 1040, line 13. **Note:** *If both lines 17 and 18 are gains, see the* ***Capital Gain Tax Worksheet*** *on page 25*	18	
19 If line 18 is a (loss), enter here and as a (loss) on Form 1040, line 13, the **smaller** of these losses:		
a The (loss) on line 18; **or**		
b ($3,000) or, if married filing separately, ($1,500)	19	(83.94)

Note: *See the* ***Capital Loss Carryover Worksheet*** *on page D-3 if the loss on line 19* ***or*** *if Form 1040, line 35, is a loss.*

9595 ☐ VOID ☒ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
Pilot & Associates, Inc. PO Box 91299 Mobile, AL 36691	$	1994	
	2 Royalties $	Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	Copy A For Internal Revenue Service Center
PAYER'S federal identification number 63-0847253 / RECIPIENT'S identification number	5 Fishing boat proceeds $	6 Medical and health care payments $	File with Form 1096.
RECIPIENT'S name James L. Reading	7 Nonemployee compensation $ - 0 -	8 Substitute payments in lieu of dividends or interest $	For Privacy Act and Paperwork Reduction Act Notice, see the 2008 General Instructions for Forms 1099, 1098, 5498, and W-2G.
Street address (including apt. no.) 2425 E. Fox St.	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ► ☐	10 Crop insurance proceeds $	
City, state, and ZIP code Mesa, AZ 85213-5320	11	12	
Account number (see instructions) / 2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $	
15a Section 409A deferrals $ / 15b Section 409A income $	16 State tax withheld $ $	17 State/Payer's state no.	18 State income $ $

Form 1099-MISC Cat. No. 14425J Department of the Treasury - Internal Revenue Service

This corrected Form 1099-MISC is submitted to rebut a document known to have been submitted by the party identified above as 'PAYER' which erroneously alleges a payment to the party identified above and on the attached Form 1040X as 'RECIPEINT' of "gains, profit or income" made in the course of a "trade or business".

Under penalty of perjury, I declare that I have examined this statement and to the best of my knowledge and belief, it is true, correct and complete.

James Leslie Reading
James Leslie Reading

12/24/2008
Date

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9595 ☐ VOID ☒ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
Pilot Catastrophe Services, Inc. 708 Oak Cir DR W Mobile, AL 36609	$	1994	
	2 Royalties $	Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	Copy A For Internal Revenue Service Center File with Form 1096.
PAYER'S federal identification number: 63-1012513 / RECIPIENT'S identification number	5 Fishing boat proceeds $	6 Medical and health care payments $	
RECIPIENT'S name: James L. Reading	7 Nonemployee compensation $ - 0 -	8 Substitute payments in lieu of dividends or interest $	For Privacy Act and Paperwork Reduction Act Notice, see the 2008 General Instructions for Forms 1099, 1098, 5498, and W-2G.
Street address (including apt. no.): 2425 E. Fox St.	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ► ☐	10 Crop insurance proceeds $	
City, state, and ZIP code: Mesa, AZ 85213-5320	11	12	
Account number (see instructions) / 2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $	
15a Section 409A deferrals $ / 15b Section 409A income $	16 State tax withheld $ $	17 State/Payer's state no.	18 State income $ $

Form 1099-MISC Cat. No. 14425J Department of the Treasury - Internal Revenue Service

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Under penalty of perjury, I declare that I have examined this statement and to the best of my knowledge and belief, it is true, correct and complete.

James Leslie Reading — James Leslie Reading

12/24/2008 — Date

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From:
James Leslie Reading
Clare Louise Reading
2425 East Fox Street
Mesa, Arizona 85213-5320

To:
Department of the Treasury
Internal Revenue Service
Fresno, CA 93888-0002

Enclosures:

1995 1040 2 pages
1995 Corrected 1099-MISC Pilot Catastrophe Services, Inc. 1 page

Form **1040** Department of the Treasury—Internal Revenue Service **U.S. Individual Income Tax Return** **1995** (99) IRS Use Only—Do not write or staple in this space.

For the year Jan. 1–Dec. 31, 1995, or other tax year beginning , 1995, ending , 19 OMB No. 1545-0074

Label (See instructions on page 11.) **Use the IRS label.** Otherwise, please print or type.

Your first name and initial: JAMES L.	Last name: READING
If a joint return, spouse's first name and initial: CLARE L.	Last name: READING
Home address (number and street). If you have a P.O. box, see page 11. 2425 E. FOX	Apt. no.
City, town or post office, state, and ZIP code. If you have a foreign address, see page 11. MESA ARIZONA	

Your social security number: 367 54 8531
Spouse's social security number: 384 54 4550

For Privacy Act and Paperwork Reduction Act Notice, see page 7.

Presidential Election Campaign (See page 11.)

	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 (See page 11.) Check only one box.

1 [ ] Single
2 [X] 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 12.) 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 12.)

Exemptions (See page 12.)

6a [X] **Yourself.** If your parent (or someone else) can claim you as a dependent on his or her tax return, **do not** check box 6a. But be sure to check the box on line 33b on page 2
b [X] **Spouse**
c **Dependents:**

(1) First name / Last name	(2) Dependent's social security number. If born in 1995, see page 13.	(3) Dependent's relationship to you	(4) No. of months lived in your home in 1995
NONE			

If more than six dependents, see page 13.

No. of boxes checked on 6a and 6b: 2
No. of your children on 6c who:
- lived with you: 0
- didn't live with you due to divorce or separation (see page 14): 0

Dependents on 6c not entered above: 0
Add numbers entered on lines above ▶: 2

d If your child didn't live with you but is claimed as your dependent under a pre-1985 agreement, check here ▶ [ ]
e Total number of exemptions claimed

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 14. Enclose, but do not attach, your payment and payment voucher. See page 33.

7	Wages, salaries, tips, etc. Attach Form(s) W-2	7	0 —
8a	**Taxable** interest income (see page 15). Attach Schedule B if over $400	8a	
b	**Tax-exempt** interest (see page 15). DON'T include on line 8a [8b]		
9	Dividend income. Attach Schedule B if over $400	9	
10	Taxable refunds, credits, or offsets of state and local income taxes (see page 15)	10	
11	Alimony received	11	
12	Business income or (loss). Attach Schedule C or C-EZ	12	
13	Capital gain or (loss). If required, attach Schedule D (see page 16)	13	
14	Other gains or (losses). Attach Form 4797	14	
15a	Total IRA distributions [15a]	15b	b Taxable amount (see page 16)
16a	Total pensions and annuities [16a]	16b	b Taxable amount (see page 16)
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 (see page 17)	19	
20a	Social security benefits [20a]	20b	b Taxable amount (see page 18)
21	Other income. List type and amount—see page 18	21	
22	Add the amounts in the far right column for lines 7 through 21. This is your **total income** ▶	22	0 —

Adjustments to Income

23a	Your IRA deduction (see page 19)	23a	
b	Spouse's IRA deduction (see page 19)	23b	
24	Moving expenses. Attach Form 3903 or 3903-F	24	
25	One-half of self-employment tax	25	
26	Self-employed health insurance deduction (see page 21)	26	
27	Keogh & self-employed SEP plans. If SEP, check ▶ [ ]	27	
28	Penalty on early withdrawal of savings	28	
29	Alimony paid. Recipient's SSN ▶	29	
30	Add lines 23a through 29. These are your **total adjustments** ▶	30	

Adjusted Gross Income

31	Subtract line 30 from line 22. This is your **adjusted gross income.** If less than $26,673 and a child lived with you (less than $9,230 if a child didn't live with you), see "Earned Income Credit" on page 27 ▶	31	0 —

Tax Computation (See page 23.)

32	Amount from line 31 (adjusted gross income)	32	0
33a	Check if: ☐ **You** were 65 or older, ☐ Blind; ☐ **Spouse** was 65 or older, ☐ Blind. Add the number of boxes checked above and enter the total here ▶ 33a		
b	If your parent (or someone else) can claim you as a dependent, check here ▶ 33b ☐		
c	If you are married filing separately and your spouse itemizes deductions or you are a dual-status alien, see page 23 and check here ▶ 33c ☐		
34	Enter the **larger** of your: **Itemized deductions** from Schedule A, line 28, **OR** **Standard deduction** shown below for your filing status. **But if you checked any box on line 33a or b,** go to page 23 to find your standard deduction. If you checked **box 33c,** your standard deduction is zero. • Single—$3,900 • Married filing jointly or Qualifying widow(er)—$6,550 • Head of household—$5,750 • Married filing separately—$3,275	34	6550
35	Subtract line 34 from line 32	35	0
36	If line 32 is $86,025 or less, multiply $2,500 by the total number of exemptions claimed on line 6e. If line 32 is over $86,025, see the worksheet on page 23 for the amount to enter	36	5000
37	**Taxable income.** Subtract line 36 from line 35. If line 36 is more than line 35, enter -0-	37	0
38	Tax. Check if from a ☐ Tax Table, b ☐ Tax Rate Schedules, c ☐ Capital Gain Tax Worksheet, or d ☐ Form 8615 (see page 24). Amount from Form(s) 8814 ▶ e	38	
39	Additional taxes. Check if from a ☐ Form 4970 b ☐ Form 4972	39	
40	Add lines 38 and 39 ▶	40	0

If you want the IRS to figure your tax, see page 35.

Credits (See page 24.)

41	Credit for child and dependent care expenses. Attach Form 2441	41		
42	Credit for the elderly or the disabled. Attach Schedule R	42		
43	Foreign tax credit. Attach Form 1116	43		
44	Other credits (see page 25). Check if from a ☐ Form 3800 b ☐ Form 8396 c ☐ Form 8801 d ☐ Form (specify)	44		
45	Add lines 41 through 44			45
46	Subtract line 45 from line 40. If line 45 is more than line 40, enter -0- ▶			46 0

Other Taxes (See page 25.)

47	Self-employment tax. Attach Schedule SE	47	
48	Alternative minimum tax. Attach Form 6251	48	
49	Recapture taxes. Check if from a ☐ Form 4255 b ☐ Form 8611 c ☐ Form 8828	49	
50	Social security and Medicare tax on tip income not reported to employer. Attach Form 4137	50	
51	Tax on qualified retirement plans, including IRAs. If required, attach Form 5329	51	
52	Advance earned income credit payments from Form W-2	52	
53	Household employment taxes. Attach Schedule H	53	
54	Add lines 46 through 53. This is your **total tax** ▶	54	0

Payments

Attach Forms W-2, W-2G, and 1099-R on the front.

55	Federal income tax withheld. If any is from Form(s) 1099, check ▶ ☐	55		
56	1995 estimated tax payments and amount applied from 1994 return	56		
57	**Earned income credit.** Attach Schedule EIC if you have a qualifying child. Nontaxable earned income: amount ▶ and type ▶	57		
58	Amount paid with Form 4868 (extension request)	58		
59	Excess social security and RRTA tax withheld (see page 32)	59		
60	Other payments. Check if from a ☐ Form 2439 b ☐ Form 4136	60		
61	Add lines 55 through 60. These are your **total payments** ▶			61 0

Refund or Amount You Owe

62	If line 61 is more than line 54, subtract line 54 from line 61. This is the amount you **OVERPAID**	62	
63	Amount of line 62 you want **REFUNDED TO YOU** ▶	63	
64	Amount of line 62 you want **APPLIED TO YOUR 1996 ESTIMATED TAX** ▶ 64		
65	If line 54 is more than line 61, subtract line 61 from line 54. This is the **AMOUNT YOU OWE.** For details on how to pay and use **Form 1040-V,** Payment Voucher, see page 33 ▶	65	0
66	Estimated tax penalty (see page 33). Also include on line 65 66		

Sign Here Keep a copy of this return for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature: [illegible]	Date: 12/24/08	Your occupation: N/A
Spouse's signature. If a joint return, BOTH must sign. [illegible]	Date: 12/24/08	Spouse's occupation: —

Paid Preparer's Use Only

Preparer's signature	Date	Check if self-employed ☐ / Preparer's social security no.
Firm's name (or yours if self-employed) and address		EIN / ZIP code

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HH 3-4

PROD2514

US000032

9595 ☐ VOID ☒ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
Pilot Catastrophe Services, Inc. 708 Oak Cir DR W Mobile, AL 36609	$	1995	
	2 Royalties $	Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	Copy A For Internal Revenue Service Center
PAYER'S federal identification number: 63-1012513 / RECIPIENT'S identification number	5 Fishing boat proceeds $	6 Medical and health care payments $	File with Form 1096.
RECIPIENT'S name: James L. Reading	7 Nonemployee compensation $ - 0 -	8 Substitute payments in lieu of dividends or interest $	For Privacy Act and Paperwork Reduction Act Notice, see the 2008 General Instructions for Forms 1099, 1098, 5498, and W-2G.
Street address (including apt. no.): 2425 E. Fox St.	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ► ☐	10 Crop insurance proceeds $	
City, state, and ZIP code: Mesa, AZ 85213-5320	11	12	
Account number (see instructions) / 2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $	
15a Section 409A deferrals $ / 15b Section 409A income $	16 State tax withheld $ $	17 State/Payer's state no.	18 State income $ $

Form 1099-MISC Cat. No. 14425J Department of the Treasury - Internal Revenue Service

This corrected Form 1099-MISC is submitted to rebut a document known to have been submitted by the party identified above as 'PAYER' which erroneously alleges a payment to the party identified above and on the attached Form 1040X as 'RECIPEINT' of "gains, profit or income" made in the course of a "trade or business".

Under penalty of perjury, I declare that I have examined this statement and to the best of my knowledge and belief, it is true, correct and complete.

James Leslie Reading — James Leslie Reading

12/24/2008 — Date

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HH 4-4

PROD2515

US000033

Russell B. Adelmann, CFP®
FINANCIAL PLANNING VALUES-BASED STEWARDSHIP

June 17, 2008

Mr. and Mrs. Jaimie Reading
2425 East Fox Street
Mesa, AZ 85213

Dear Mr. and Mrs. Reading:

Enclosed are the 1993 and 1994 Transaction Reports from American Funds on your accounts in the Cash Management Fund, AmCap Funds, and Fundamental Investors. I have prepared a recap of the activity to help you read the transaction reports a little better. Hopefully this will answer the questions that have been raised on your accounts.

If you have any questions on the recaps that have been prepared, please feel free to contact me at (800) 747-7374.

Sincerely,

Karen

Karen R. Loy
Service Assistant

1993 <$2,171.00>
1994 <$ 83.94>
<$2,254.94>
TOTAL NET LOSS

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II 1 18

RUSSELL B. ADELMANN • REGISTERED INVESTMENT ADVISOR
5540 N. ACADEMY BLVD., SUITE 250 • COLO SPRGS, CO 80918 • PHONE: 719.599.7374 • TOLL FREE: 800.747.7374 • FAX: 719.599.7158

1993 TRANSACTIONS
AMCAP FUND

DATE	EXCHANGE IN / BUY	EXCHANGE OUT / SELL	GAIN/LOSS	DIVIDEND	ST GAIN	CAP GAIN
4/30/1993	$18,000.00					
5/3/1993	$17.00					
5/21/1993		$16,597.11	($1,419.89)			
5/24/1993				$64.58		$968.70
5/29/1993	$17,630.39					
6/1/1993	$11.58					
8/4/1993		$17,587.45	($54.52)			
NET	**$35,658.97**	**$34,184.56**	**($1,474.41)**			

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REPORT NUMBER: R011030
SOURCE PROGRAM: SSRYR036
JOB NAME/#: DCYMU77A/01174

1993 TRANSCRIPT

PAGE: 1
SUPER SHEET DATE: 06/02/1994
CURRENT DATE: 06/06/1994
TIME: 12:53:59

FUND CODE/NAME: 2/AMCAP FUND
ACCOUNT NUMBER: 59788184-2 SSN-TAX ID/TIN:

SHAREOWNER MASTER RECORD

MGMT CODE/NAME: CR/AMERICAN FUNDS SERVICE COMPANY

SHAREOWNER REGISTRATION
CLARE L READING &
JAMES L READING JT WROS
2425 E FOX ST
MESA AZ 85213-5320

DEALER NUMBER/BRANCH 67488/005
REP NUMBER/NAME 20 /ADELMANN
DEALER REGISTRATION OMNIVEST, INC.
1115 ELKTON DRIVE
SUITE 101
COLORADO SPRINGS CO 80907

DATE ESTABLISHED 04/30/1993
ALPHA CODE READINGCLA
FIDUCIARY ACCOUNT NO
PENALTY WITHHOLDING NO
CAPITAL GAIN OPTION REINVEST
DIVIDEND OPTION REINVEST
CUMULATIVE DISCOUNT 1188943
MATRIX LEVEL 0
STATE/COUNTRY CODE 002
FRGN TAX RATE 00.0
SOCIAL CODE 015
B/C NOTICE NO / NO

LAST MAINT DATE 03/03/1994 STOP MAIL DATE 00/00/0000

1993 CUTOFF DATES: INCOME DIV 12/31/1993 LTCG 12/31/1993 STCG 12/31/1993

BEG SHARES ISSUED: .0000
BEG SHARES UNISSUED: .0000

SHAREOWNER TRANSACTION HISTORY

BEGINNING BALANCE: 0.0000

TRANS # / TC - TS	CONFIRM DATE / TRADE DATE	TRANSACTION DESCRIPTION / SHARES	GROSS AMOUNT / PRICE	BATCH / CERT ISS	DC	SHARE BALANCE
1 038 - 001	04/30/1993 04/30/1993	EXCHANGE FROM CMTA 1,290.3230 (+)	18,000.00 13.9500	997 NO	4	1,290.3230
2 001 - 087	05/03/1993 05/03/1993	REINVEST FROM CMTA 1.2810 (+)	17.00 13.2700	0 NO	99	1,291.6040
3 040 - 001	05/21/1993 05/21/1993	EXCHANGE TO CMTA 1,291.6040 (-)	16,597.11 12.8500	997 NO	0	.0000
4 013 - 026	05/24/1993 05/21/1993	INCOME DIV .05 CASH .0000 ( )	64.58 0.0000	0 NO	0	.0000
5 014 - 026	05/24/1993 05/21/1993	CAPITAL GAIN .75 CASH .0000 ( )	968.70 0.0000	0 NO	0	.0000
6 038 - 001	05/28/1993 05/28/1993	EXCHANGE FROM CMTA 1,359.3210 (+)	17,630.39 12.9700	997 NO	99	1,359.3210
7 001 - 087	06/01/1993 06/01/1993	REINVEST FROM CMTA .8840 (+)	11.58 13.1000	0 NO	99	1,360.2050
8 040 - 001	08/04/1993 08/04/1993	EXCHANGE TO CMTA 1,360.2050 (-)	17,587.45 12.9300	997 NO	0	.0000

ENDING BALANCE ISSUED: .0000 UNISSUED: .0000 TOTAL SHARES: .0000

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FUND CODE/NAME: 2/AMCAP FUND
ACCOUNT NUMBER: 59788184-2 SSN-TAX ID/TIN:

MGMT CODE/NAME: CR/AMERICAN FUNDS SERVICE COMPANY

TAX REPORTING TOTALS

FORM 1099 DIV TOTALS

GROSS DISTRIBUTION	(BOX 1A):	1,033.28
ORDINARY INCOME	(BOX 1B):	64.58
LONG TERM CAP GAIN	(BOX 1C):	968.70
NON-TAXABLE DIST	(BOX 1D):	0.00
FEDERAL TAX W/HELD	(BOX 2):	0.00
FOREIGN TAX PAID	(BOX 3):	0.00
LIQUID DIST CASH	(BOX 5):	0.00
LIQUID DIST NONCASH	(BOX 6):	0.00
1042S FOREIGN WITHHOLDING	:	0.00
1099B GROSS REDEMPTIONS	:	34,184.56
1099B GROSS WITHHOLDING	:	0.00

FORM 5498 TOTALS

ROLLVR CONTRIB:	0.00	
TOTAL CONTRIB:	0.00	
ACCOUNT VALUE :	0.00	

FORM 1099R TOTALS

PREMATURE DIS :	0.00
PRE EXEMPT DIS:	0.00
DISABILITY DIS:	0.00
DEATH DIS :	0.00
PROHIBITED DIS:	0.00
NORMAL DIS :	0.00
EXCESS DIS :	0.00
ROLL IRA :	0.00
ROLL PLAN/403B:	0.00
ROLL IRA DEATH:	0.00
415 EXCESS DBF:	0.00
EX-CON CURRENT:	0.00
EX-CON CUR ERN:	0.00
EX-CON PRIOR :	0.00
EX-CON PRI ERN:	0.00
EX-CON OTP :	0.00
EX-CON OTP ERN:	0.00
REDEMP WH :	0.00

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1993 TRANSACTIONS
FUNDAMENTAL INVESTORS

DATE	EXCHANGE IN / BUY	EXCHANGE OUT / SELL	GAIN/LOSS	DIVIDEND	ST GAIN	CAP GAIN
8/30/1993	$17,587.45					
8/31/1993	$31.37					
9/7/1993		$17,510.33	($108.43)			
9/27/1993	$17,510.33					
9/28/1993	$23.25					
10/14/1993		$17,826.68	$293.10			
10/27/1993	$7,826.68					
10/28/1993	$10.69					
11/22/1993		$6,864.95	($972.42)			
11/22/1993				$50.76	$18.74	$754.44
11/29/1993	$7,688.89					
11/30/1993	$3.60					
12/14/1993		$7,783.65	$91.16			
NET	**$50,682.26**	**$49,985.61**	**($696.59)**			

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REPORT NUMBER: RO11030
SOURCE PROGRAM: SSRYR036
JOB NAME/#: OCYMU77C/10972

1993 TRANSCRIPT

PAGE: 1
SUPER SHEET DATE: 06/02/1994
CURRENT DATE: 06/07/1994
TIME: 08:40:14

FUND CODE/NAME: 10/FUNDAMENTAL INVESTORS
ACCOUNT NUMBER: 59708104-2 SSN-TAX ID/TIN:

SHAREOWNER MASTER RECORD
MGMT CODE/NAME: CR/AMERICAN FUNDS SERVICE COMPANY

SHAREOWNER REGISTRATION
CLARE L READING &
JAMES L READING JT WROS
2425 E FOX ST
MESA AZ 85213-5320

DEALER NUMBER/BRANCH 67488/005
REP NUMBER/NAME 20 /ADELMANN
DEALER REGISTRATION OMNIVEST, INC.
1115 ELKTON DRIVE
SUITE 101
COLORADO SPRINGS CO 80907

DATE ESTABLISHED 08/30/1993
ALPHA CODE READINGCLA
FIDUCIARY ACCOUNT NO
PENALTY WITHHOLDING NO
CAPITAL GAIN OPTION REINVEST
DIVIDEND OPTION REINVEST
CUMULATIVE DISCOUNT 1188943
MATRIX LEVEL 0
STATE/COUNTRY CODE 002
FRGN TAX RATE 00.0
SOCIAL CODE 015
B/C NOTICE NO / NO

LAST MAINT DATE 03/03/1994 STOP MAIL DATE 00/00/0000

1993 CUTOFF DATES: INCOME DIV 12/31/1993 LTCG 12/31/1993 STCG 12/31/1993

PEND: 327-12/03/1993 451-10/21/1993

BBG SHARES ISSUED: .0000
BBG SHARES UNISSUED: .0000

SHAREOWNER TRANSACTION HISTORY

BEGINNING BALANCE: 0.0000

TRANS # / TC - TS	CONFIRM DATE / TRADE DATE	TRANSACTION DESCRIPTION / SHARES	GROSS AMOUNT / PRICE	BATCH / CERT ISS	DC	SHARE BALANCE
1 038 - 001	08/30/1993 08/30/1993	EXCHANGE FROM CMTA 901.9210 (+)	17,587.45 19.5000	997 NO	99	901.9210
2 001 - 087	08/31/1993 08/31/1993	REINVEST FROM CMTA 1.6050 (+)	31.37 19.5400	0 NO	99	903.5260
3 040 - 001	09/07/1993 09/07/1993	EXCHANGE TO CMTA 903.5260 (-)	17,510.33 19.3800	997 NO	0	.0000
4 038 - 001	09/27/1993 09/27/1993	EXCHANGE FROM CMTA 887.0480 (+)	17,510.33 19.7400	997 NO	99	887.0480
5 001 - 087	09/28/1993 09/28/1993	REINVEST FROM CMTA 1.1770 (+)	23.25 19.7500	0 NO	99	888.2250
6 040 - 001	10/14/1993 10/14/1993	EXCHANGE TO CMTA 888.2250 (-)	17,826.68 20.0700	997 NO	0	.0000
7 038 - 001	10/27/1993 10/27/1993	EXCHANGE FROM CMTA 389.9690 (+)	7,826.68 20.0700	997 NO	99	389.9690
8 001 - 087	10/28/1993 10/28/1993	REINVEST FROM CMTA .5290 (+)	10.69 20.2000	0 NO	99	390.4980
9 011 - 000	11/22/1993 11/19/1993	INCOME DIVIDEND .13 2.8630 (+)	50.76 17.7300	0 NO	0	393.3610
10 069 - 001	11/22/1993 11/19/1993	SHORT TERM GAIN .048 1.0570 (+)	18.74 17.7300	0 NO	0	394.4180
11 012 - 000	11/22/1993 11/19/1993	CAPITAL GAIN 1.932 42.5520 (+)	754.44 17.7300	0 NO	0	436.9700

FUND CODE/NAME: 10/FUNDAMENTAL INVESTORS
ACCOUNT NUMBER: 59788184-2 SSN-TAX ID/TIN:

SHAREOWNER TRANSACTION HISTORY
MGMT CODE/NAME: CR/AMERICAN FUNDS SERVICE COMPANY

TRANS # / TC - TS	CONFIRM DATE / TRADE DATE	TRANSACTION DESCRIPTION / SHARES		GROSS AMOUNT / PRICE	BATCH / CERT ISS	DC	SHARE BALANCE
12 040 - 001	11/22/1993 11/22/1993	EXCHANGE TO CMTA 390.4980	(-)	6,864.95 17.5800	997 NO	0	46.4720
13 055 - 010	11/22/1993 11/19/1993	CASH INCOME DIVIDEND 2.8630	(-)	50.76 17.7300	0 NO	0	43.6090
14 069 - 020	11/22/1993 11/19/1993	CASH SHORT TERM CAP GAIN 1.0570	(-)	18.74 17.7300	0 NO	0	42.5520
15 056 - 010	11/22/1993 11/19/1993	CASH CAPITAL GAIN 42.5520	(-)	754.44 17.7300	0 NO	0	.0000
16 038 - 001	11/29/1993 11/29/1993	EXCHANGE FROM CMTA 433.9100	(+)	7,688.89 17.7200	997 NO	99	433.9100
17 001 - 087	11/30/1993 11/30/1993	REINVEST FROM CMTA .2030	(+)	3.60 17.7400	0 NO	99	434.1130
18 040 - 001	12/14/1993 12/14/1993	EXCHANGE TO CMTA 434.1130	(-)	7,783.65 17.9300	997 NO	0	.0000
19 038 - 001	12/17/1993 12/17/1993	EXCHANGE FROM CMTA 430.9880	(+)	7,783.65 18.0600	997 NO	99	430.9880
20 001 - 087	12/20/1993 12/20/1993	REINVEST FROM CMTA .0900	(+)	1.63 18.0500	300 NO	99	431.0780

ENDING BALANCE ISSUED: .0000 UNISSUED: 431.0780 TOTAL SHARES: 431.0780

REPORT NUMBER: R011030
SOURCE PROGRAM: SSRYR036
JOB NAME/#: DCYMU77C/10972

1993 TRANSCRIPT

SUPER SHEET DATE: 06/02/1994
CURRENT DATE: 06/07/1994
TIME: 08:40:14

FUND CODE/NAME: 10/FUNDAMENTAL INVESTORS
ACCOUNT NUMBER: 59788184-2 SSN-TAX ID/TIN:

MGMT CODE/NAME: CR/AMERICAN FUNDS SERVICE COMPANY

TAX REPORTING TOTALS

FORM 1099 DIV TOTALS

GROSS DISTRIBUTION (BOX 1A):	823.94
ORDINARY INCOME (BOX 1B):	69.50
LONG TERM CAP GAIN (BOX 1C):	754.44
NON-TAXABLE DIST (BOX 1D):	0.00
FEDERAL TAX W/HELD (BOX 2):	0.00
FOREIGN TAX PAID (BOX 3):	0.00
LIQUID DIST CASH (BOX 5):	0.00
LIQUID DIST NONCASH (BOX 6):	0.00
1042S FOREIGN WITHHOLDING :	0.00
1099B GROSS REDEMPTIONS :	49,985.61
1099B GROSS WITHHOLDING :	0.00

FORM 5498 TOTALS

ROLLVR CONTRIB:	0.00
TOTAL CONTRIB:	0.00
ACCOUNT VALUE :	7,824.07

FORM 1099R TOTALS

PREMATURE DIS :	0.00
PRE EXEMPT DIS:	0.00
DISABILITY DIS:	0.00
DEATH DIS :	0.00
PROHIBITED DIS:	0.00
NORMAL DIS :	0.00
EXCESS DIS :	0.00
ROLL IRA :	0.00
ROLL PLAN/403B:	0.00
ROLL IRA DEATH:	0.00
415 EXCESS DEP:	0.00
EX-CON CURRENT:	0.00
EX-CON CUR ERN:	0.00
EX-CON PRIOR :	0.00
EX-CON PRI ERN:	0.00
EX-CON OTP :	0.00
EX-CON OTP ERN:	0.00
REDEMP WH :	0.00

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1993 TRANSACTIONS
CASH MANAGEMENT TRUST

DATE	EXCHANGE IN / BUY	EXCHANGE OUT / SELL	GAIN/LOSS	DIVIDEND ST GAIN CAP GAIN
4/16/1993	$18,000.00			
4/30/1993		$18,000.00	$0.00	$17.00
5/21/1993	$16,597.11			
5/24/1993	$1,033.28			
5/28/1993		$17,630.39	$0.00	$11.58
8/4/1993	$17,587.45			
8/30/1993		$17,587.45		$31.37
9/7/1993	$17,510.33			
9/27/1993		$17,510.33	$0.00	$23.25
10/14/1993	$17,826.68			
10/20/1993		$10,000.00 CK		
10/27/1993		$7,826.68	$0.00	$10.69
11/22/1993	$6,864.95			
11/23/1993	$823.94			
11/29/1993		$7,688.89	$0.00	$3.60
12/14/1993	$7,783.65			
12/17/1993		$7,783.65		$1.63
NET	**$104,027.39**	**$104,027.39**	**$0.00**	**$99.12**

REPORT NUMBER: R011030
SOURCE PROGRAM: SSRYR036
JOB NAME/#: DCYMU77C/10972

1993 TRANSCRIPT

PAGE: 1
SUPER SHEET DATE: 06/02/1994
CURRENT DATE: 06/07/1994
TIME: 08:40:14

FUND CODE/NAME: 9/THE CASH MANAGEMENT TRUST OF AMERICA
ACCOUNT NUMBER: 59788184-2 SSN-TAX ID/TIN:

SHAREOWNER MASTER RECORD
MGMT CODE/NAME: CR/AMERICAN FUNDS SERVICE COMPANY

SHAREOWNER REGISTRATION
CLARE L READING &
JAMES L READING JT WROS
2425 S FOX ST
MESA AZ 85213-5320

DEALER NUMBER/BRANCH 67488/005
REP NUMBER/NAME 20 /ADELMANN
DEALER REGISTRATION OMNIVEST, INC.
1115 ELKTON DRIVE
SUITE 101
COLORADO SPRINGS CO 80907

DATE ESTABLISHED 04/16/1993
ALPHA CODE READINGCLA
FIDUCIARY ACCOUNT NO
PENALTY WITHHOLDING NO
CAPITAL GAIN OPTION REINVEST
DIVIDEND OPTION REINVEST
CUMULATIVE DISCOUNT 1188943
MATRIX LEVEL 0
STATE/COUNTRY CODE 002
FRGN TAX RATE 00.0
SOCIAL CODE 015
B/C NOTICE NO / NO

LAST MAINT DATE 03/03/1994 STOP MAIL DATE 00/00/0000

1993 CUTOFF DATES: INCOME DIV 01/03/1994 LTCG 01/03/1994 STCG 01/03/1994

PEND: 245-04/30/1993 327-12/04/1993 493-11/26/1993 630-04/16/1993

BEG SHARES ISSUED: .0000
BEG SHARES UNISSUED: .0000

SHAREOWNER TRANSACTION HISTORY

BEGINNING BALANCE: 0.0000

TRANS # / TC - TS	CONFIRM DATE / TRADE DATE	TRANSACTION DESCRIPTION / SHARES	GROSS AMOUNT / PRICE	BATCH / CERT ISS	DC	SHARE BALANCE
1 001 - 000	04/16/1993 04/16/1993	DIRECT INVESTMENT 18,000.0000 (+)	18,000.00 1.0000	3000010 NO	0	18,000.0000
2 040 - 001	04/30/1993 04/30/1993	EXCHANGE TO AMCAP 18,000.0000 (-)	18,000.00 1.0000	997 NO	0	.0000
3 013 - 087	04/30/1993 04/30/1993	DIV EXCH TO .0000 ( )	17.00 0.0000	0 NO	0	.0000
4 038 - 001	05/21/1993 05/21/1993	EXCHANGE FROM AMCAP 16,597.1100 (+)	16,597.11 1.0000	997 NO	99	16,597.1100
5 001 - 099	05/24/1993 05/24/1993	DIRECT INVESTMENT-NAV 1,033.2800 (+)	1,033.28 1.0000	8000015 NO	99	17,630.3900
6 040 - 001	05/28/1993 05/28/1993	EXCHANGE TO AMCAP 17,630.3900 (-)	17,630.39 1.0000	997 NO	0	.0000
7 013 - 087	05/28/1993 05/28/1993	DIV EXCH TO .0000 ( )	11.58 0.0000	0 NO	0	.0000
8 038 - 001	08/04/1993 08/04/1993	EXCHANGE FROM AMCAP 17,587.4500 (+)	17,587.45 1.0000	997 NO	99	17,587.4500
9 040 - 001	08/30/1993 08/30/1993	EXCHANGE TO FI 17,587.4500 (-)	17,587.45 1.0000	997 NO	0	.0000
10 013 - 087	08/30/1993 08/30/1993	DIV EXCH TO .0000 ( )	31.37 0.0000	0 NO	0	.0000
11 038 - 001	09/07/1993 09/07/1993	EXCHANGE FROM FI 17,510.3300 (+)	17,510.33 1.0000	997 NO	99	17,510.3300

REPORT NUMBER: R011030
SOURCE PROGRAM: SSRYR036
JOB NAME/#: DCYNU77C/10972

1993 TRANSCRIPT

PAGE: 2
SUPER SHEET DATE: 06/02/1994
CURRENT DATE: 06/07/1994
TIME: 08:40:14

SHAREOWNER TRANSACTION HISTORY

FUND CODE/NAME: 9/THE CASH MANAGEMENT TRUST OF AMERICA MGMT CODE/NAME: CR/AMERICAN FUNDS SERVICE COMPANY
ACCOUNT NUMBER: 59788184-2 SSN-TAX ID/TIN:

TRANS # / TC - TS	CONFIRM DATE / TRADE DATE	TRANSACTION DESCRIPTION / SHARES	GROSS AMOUNT / PRICE	BATCH / CERT ISS	DC	SHARE BALANCE
12 040 - 001	09/27/1993 09/27/1993	EXCHANGE TO FI 17,510.3300 (-)	17,510.33 1.0000	997 NO	0	.0000
13 013 - 087	09/27/1993 09/27/1993	DIV EXCH TO .0000 ( )	23.25 0.0000	0 NO	0	.0000
14 038 - 001	10/14/1993 10/14/1993	EXCHANGE FROM FI 17,826.6800 (+)	17,826.68 1.0000	997 NO	99	17,826.6800
15 024 - 000	10/20/1993 10/20/1993	WRITE-A-CHECK REDEMPT 1001 10,000.0000 (-)	10,000.00 1.0000	0 NO	0	7,826.6800
16 040 - 001	10/27/1993 10/27/1993	EXCHANGE TO FI 7,826.6800 (-)	7,826.68 1.0000	997 NO	0	.0000
17 013 - 087	10/27/1993 10/27/1993	DIV EXCH TO .0000 ( )	10.69 0.0000	0 NO	0	.0000
18 038 - 001	11/22/1993 11/22/1993	EXCHANGE FROM FI 6,864.9500 (+)	6,864.95 1.0000	997 NO	99	6,864.9500
19 001 - 083	11/23/1993 11/23/1993	DIV REINVEST FROM FUND 10 823.9400 (+)	823.94 1.0000	6287 NO	99	7,688.8900
20 040 - 001	11/29/1993 11/29/1993	EXCHANGE TO FI 7,688.8900 (-)	7,688.89 1.0000	997 NO	0	.0000
21 013 - 087	11/29/1993 11/29/1993	DIV EXCH TO .0000 ( )	3.60 0.0000	0 NO	0	.0000
22 038 - 001	12/14/1993 12/14/1993	EXCHANGE FROM FI 7,783.6500 (+)	7,783.65 1.0000	997 NO	99	7,783.6500
23 040 - 001	12/17/1993 12/17/1993	EXCHANGE TO FI 7,783.6500 (-)	7,783.65 1.0000	997 NO	0	.0000
24 013 - 087	12/17/1993 12/17/1993	DIV EXCH TO .0000 ( )	1.63 0.0000	0 NO	0	.0000

ENDING BALANCE ISSUED: .0000 UNISSUED: .0000 TOTAL SHARES: .0000

FUND CODE/NAME: 9/THE CASH MANAGEMENT TRUST OF AMERICA MGMT CODE/NAME: CR/AMERICAN FUNDS SERVICE COMPANY
ACCOUNT NUMBER: 59788184-2 SSN-TAX ID/TIN:

TAX REPORTING TOTALS

FORM 1099 DIV TOTALS

GROSS DISTRIBUTION (BOX 1A):	99.12
ORDINARY INCOME (BOX 1B):	99.12
LONG TERM CAP GAIN (BOX 1C):	0.00
NON-TAXABLE DIST (BOX 1D):	0.00
FEDERAL TAX W/HELD (BOX 2):	0.00
FOREIGN TAX PAID (BOX 3):	0.00
LIQUID DIST CASH (BOX 5):	0.00
LIQUID DIST NONCASH (BOX 6):	0.00
1042S FOREIGN WITHHOLDING :	0.00
1099B GROSS REDEMPTIONS :	0.00
1099B GROSS WITHHOLDING :	0.00

FORM 5498 TOTALS

ROLLVR CONTRIB:	0.00
TOTAL CONTRIB:	0.00
ACCOUNT VALUE :	0.00

FORM 1099R TOTALS

PREMATURE DIS :	0.00
PRE EXEMPT DIS:	0.00
DISABILITY DIS:	0.00
DEATH DIS :	0.00
PROHIBITED DIS:	0.00
NORMAL DIS :	0.00
EXCESS DIS :	0.00
ROLL IRA :	0.00
ROLL PLAN/403B:	0.00
ROLL IRA DEATH:	0.00
415 EXCESS DEF:	0.00
EX-CON CURRENT:	0.00
EX-CON CUR ERN:	0.00
EX-CON PRIOR :	0.00
EX-CON PRI ERN:	0.00
EX-CON OTP :	0.00
EX-CON OTP ERN:	0.00
REDEMP WH :	0.00

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1994 TRANSACTIONS
FUNDAMENTAL INVESTORS

DATE	EXCHANGE IN / BUY	EXCHANGE OUT / SELL	GAIN/LOSS	DIVIDEND	ST GAIN	CAP GAIN
12/17/1993	$7,783.65					
12/20/1993	$1.63					
2/14/1994		$40.41				
2/18/1994		$7,809.98	$65.11			
2/22/1994				$42.89	$6.00	$28.31
2/23/1994	$7,809.98					
3/3/1994		$7,660.93	($149.05)			
NET	**$15,595.26**	**$15,511.32**	**($83.94)**			

REPORT NUMBER: R011030
SOURCE PROGRAM: SSRYR036
JOB NAME/#: DCYMU77C/29208

1994 TRANSCRIPT

SUPER SHEET DATE: 05/26/1995
CURRENT DATE: 05/31/1995
TIME: 09:44:45

FUND CODE/NAME: 10/FUNDAMENTAL INVESTORS
ACCOUNT NUMBER: 59788184-2 SSN-TAX ID/TIN:

SHAREOWNER MASTER RECORD
MGMT CODE/NAME: CR/AMERICAN FUNDS SERVICE COMPANY

SHAREOWNER REGISTRATION
CLARE L READING &
JAMES L READING JT WROS
2425 E FOX ST
MESA AZ 85213-5320

DEALER NUMBER/BRANCH 67488/001
RBP NUMBER/NAME 20 /ADELMANN
DEALER REGISTRATION OMNIVEST. INC.
9185 EAST KENYON AVENUE
SUITE 100
DENVER CO 80237

DATE ESTABLISHED 08/30/1993
ALPHA CODE READINGCLA
FIDUCIARY ACCOUNT NO
PENALTY WITHHOLDING NO
CAPITAL GAIN OPTION REINVEST
DIVIDEND OPTION REINVEST
CUMULATIVE DISCOUNT 1188943
MATRIX LEVEL 0
STATE/COUNTRY CODE 002
FRGN TAX RATE 00.0
SOCIAL CODE 015
B/C NOTICE NO / NO

LAST MAINT DATE 08/08/1994 STOP MAIL DATE 00/00/0000

1994 CUTOFF DATES: INCOME DIV 12/31/1994 LTCG 12/31/1994 STCG 12/31/1994

PEND: 327-12/03/1993 451-10/21/1993

BEG SHARES ISSUED: .0000
BEG SHARES UNISSUED: 431.0780

SHAREOWNER TRANSACTION HISTORY

BEGINNING BALANCE: 431.0780

TRANS # / TC - TS	CONFIRM DATE / TRADE DATE	TRANSACTION DESCRIPTION / SHARES	GROSS AMOUNT / PRICE	BATCH / CERT ISS	DC	SHARE BALANCE
1 021 - 000	02/14/1994 02/14/1994	SHARES REDEEMED 2.1940 (-)	40.41 18.4200	5535700 NO	0	428.8840
2 040 - 001	02/18/1994 02/18/1994	EXCHANGE TO CMTA 428.8840 (-)	7,809.98 18.2100	997 NO	0	.0000
3 013 - 026	02/22/1994 02/18/1994	INCOME DIV .10 CASH .0000 ( )	42.89 0.0000	0 NO	0	.0000
4 069 - 019	02/22/1994 02/18/1994	SHORTTERM CG .014 CASH .0000 ( )	6.00 0.0000	0 NO	0	.0000
5 014 - 026	02/22/1994 02/18/1994	CAPITAL GAIN .066 CASH .0000 ( )	28.31 0.0000	0 NO	0	.0000
6 038 - 001	02/23/1994 02/23/1994	EXCHANGE FROM CMTA 425.8440 (+)	7,809.98 18.3400	997 NO	99	425.8440
7 021 - 000	03/03/1994 03/03/1994	SHARES REDEEMED 425.8440 (-)	7,660.93 17.9900	3568770 NO	0	.0000

ENDING BALANCE ISSUED: .0000 UNISSUED: .0000 TOTAL SHARES: .0000

FUND CODE/NAME: 10/FUNDAMENTAL INVESTORS
ACCOUNT NUMBER: 59788184-2 SSN-TAX ID/TIN:

MGMT CODE/NAME: CR/AMERICAN FUNDS SERVICE COMPANY

TAX REPORTING TOTALS

FORM 1099 DIV TOTALS

GROSS DISTRIBUTION (BOX 1A):	77.20
ORDINARY INCOME (BOX 1B):	48.89
LONG TERM CAP GAIN (BOX 1C):	28.31
NON-TAXABLE DIST (BOX 1D):	0.00
FEDERAL TAX W/HELD (BOX 2):	0.00
FOREIGN TAX PAID (BOX 3):	0.00
LIQUID DIST CASH (BOX 5):	0.00
LIQUID DIST NONCASH (BOX 6):	0.00
1042S FOREIGN WITHHOLDING :	0.00
1099B GROSS REDEMPTIONS :	15,511.32
1099B GROSS WITHHOLDING :	0.00

FORM 5498 TOTALS

ROLLVR CONTRIB:	0.00
TOTAL CONTRIB:	0.00
ACCOUNT VALUE :	0.00

FORM 1099R TOTALS

PREMATURE DIS :	0.00
PRE EXEMPT DIS:	0.00
DISABILITY DIS:	0.00
DEATH DIS :	0.00
PROHIBITED DIS:	0.00
NORMAL DIS :	0.00
EXCESS DIS :	0.00
ROLL IRA :	0.00
ROLL PLAN/403B:	0.00
ROLL IRA DEATH:	0.00
415 EXCESS DBF:	0.00
EX-CON CURRENT:	0.00
EX-CON CUR ERN:	0.00
EX-CON PRIOR :	0.00
EX-CON PRI ERN:	0.00
EX-CON OTP :	0.00
EX-CON OTP ERN:	0.00
REDEMP WH :	0.00

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1994 TRANSACTIONS
CASH MANAGEMENT TRUST

DATE	EXCHANGE IN / BUY	EXCHANGE OUT / SELL	GAIN/LOSS	DIVIDEND	ST GAIN	CAP GAIN
2/18/1994	$7,809.98					
2/23/1994	$77.20					
2/23/1994		$7,809.98	$0.00			
3/1/1994					$2.66	
3/3/1994		$79.86			$0.03	
NET	**$7,887.18**	**$7,889.84**	**$0.00**		**$2.69**	

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REPORT NUMBER: R011030
SOURCE PROGRAM: SSRYR036
JOB NAME/#: DCYMU77C/29208

1994 TRANSCRIPT

SUPER SHEET DATE: 05/26/1995
CURRENT DATE: 05/31/1995
TIME: 09:44:45

SHAREOWNER MASTER RECORD

FUND CODE/NAME: 9/THE CASH MANAGEMENT TRUST OF AMERICA MGMT CODE/NAME: CR/AMERICAN FUNDS SERVICE COMPANY
ACCOUNT NUMBER: 59788184-2 SSN-TAX ID/TIN:

SHAREOWNER REGISTRATION
CLARE L READING &
JAMES L READING JT WROS
2425 E FOX ST
MESA AZ 85213-5320

DEALER NUMBER/BRANCH 67488/001
REP NUMBER/NAME 20 /ADELMANN
DEALER REGISTRATION OMNIVEST, INC.
9185 EAST KENYON AVENUE
SUITE 100
DENVER CO 80237

DATE ESTABLISHED 04/16/1993
ALPHA CODE READINGCLA
FIDUCIARY ACCOUNT NO
PENALTY WITHHOLDING NO
CAPITAL GAIN OPTION REINVEST
DIVIDEND OPTION REINVEST
CUMULATIVE DISCOUNT 1188943
MATRIX LEVEL 0
STATE/COUNTRY CODE 002
FRGN TAX RATE 00.0
SOCIAL CODE 015
B/C NOTICE NO / NO

LAST MAINT DATE 08/08/1994 STOP MAIL DATE 00/00/0000

1994 CUTOFF DATES: INCOME DIV 01/03/1995 LTCG 01/03/1995 STCG 01/03/1995

PEND: 245-04/30/1993 327-12/04/1993 493-11/26/1993 630-04/16/1993

BEG SHARES ISSUED: .0000
BEG SHARES UNISSUED: .0000

SHAREOWNER TRANSACTION HISTORY

BEGINNING BALANCE: 0.0000

TRANS # / TC - TS	CONFIRM DATE / TRADE DATE	TRANSACTION DESCRIPTION / SHARES	GROSS AMOUNT / PRICE	BATCH / CERT ISS	DC	SHARE BALANCE
1	02/18/1994	EXCHANGE FROM FI	7,809.98	997	99	7,809.9800
038 - 001	02/18/1994	7,809.9800 (+)	1.0000	NO		
2	02/23/1994	DIV REINVEST FROM FUND 10	77.20	6419	99	7,887.1800
001 - 083	02/22/1994	77.2000 (+)	1.0000	NO		
3	02/23/1994	EXCHANGE TO FI	7,809.98	997	0	77.2000
040 - 001	02/23/1994	7,809.9800 (-)	1.0000	NO		
4	03/01/1994	INCOME DIVIDEND	2.66	0	0	79.8600
011 - 000	02/28/1994	2.6600 (+)	1.0000	NO		
5	03/03/1994	SHARES REDEEMED	79.86	3568770	0	.0000
021 - 000	03/03/1994	79.8600 (-)	1.0000	NO		
6	03/03/1994	INC DIVIDEND	0.03	0	0	.0000
013 - 000	03/03/1994	.0000 ( )	0.0000	NO		

ENDING BALANCE ISSUED: .0000 UNISSUED: .0000 TOTAL SHARES: .0000

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FUND CODE/NAME: 9/THE CASH MANAGEMENT TRUST OF AMERICA MGMT CODE/NAME: CR/AMERICAN FUNDS SERVICE COMPANY
ACCOUNT NUMBER: 59788184-2 SSN-TAX ID/TIN:

TAX REPORTING TOTALS

FORM 1099 DIV TOTALS

GROSS DISTRIBUTION (BOX 1A):	2.69
ORDINARY INCOME (BOX 1B):	2.69
LONG TERM CAP GAIN (BOX 1C):	0.00
NON-TAXABLE DIST (BOX 1D):	0.00
FEDERAL TAX W/HELD (BOX 2):	0.00
FOREIGN TAX PAID (BOX 3):	0.00
LIQUID DIST CASH (BOX 5):	0.00
LIQUID DIST NONCASH (BOX 6):	0.00
1042S FOREIGN WITHHOLDING :	0.00
1099B GROSS REDEMPTIONS :	0.00
1099B GROSS WITHHOLDING :	0.00

FORM 5498 TOTALS

ROLLVR CONTRIB:	0.00
TOTAL CONTRIB:	0.00
ACCOUNT VALUE :	0.00

FORM 1099R TOTALS

PREMATURE DIS :	0.00
PRE EXEMPT DIS:	0.00
DISABILITY DIS:	0.00
DEATH DIS :	0.00
PROHIBITED DIS:	0.00
NORMAL DIS :	0.00
EXCESS DIS :	0.00
ROLL IRA :	0.00
ROLL PLAN/403B:	0.00
ROLL IRA DEATH:	0.00
415 EXCESS DEF:	0.00
EX-CON CURRENT:	0.00
EX-CON CUR ERN:	0.00
EX-CON PRIOR :	0.00
EX-CON PRI ERN:	0.00
EX-CON OTP :	0.00
EX-CON OTP ERN:	0.00
REDEMP WH :	0.00

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REQUESTOR: 9555-9040
ICS HISTORY TRANSCRIPT
HISTORY INFORMATION

Name: JAMES L & CLARE L READING **TIN: 367-54-8531**

jurisdiction for all periods mentioned in the R/O's suit request. The taxpayer's have received final notices and demand (letter 1058) for all periods and have been provided with appeal rights , Publication 1, 1660 and 594 on several occasions. The R/O has exhausted all available remedies with little or no effort from the taxpayer's in resolving or paying the unpaid tax liabilities other than providing additional frivolous information.

The Revenue Officer has completed all required actions prior to submitting the request for suit actions. The Forms 4477 have accruals and balance dues computed through 09/11/2009 which should not be a problems since blue ribbon transcripts will be ordered for the Department of Justice prior to filing the actual suit with the actual balances due. The Forms 4478, 4479, 4480 and 4481 are included in the R/O's request. Transcripts for all periods named in the suit are associated with the request including all evidence and documents needed for further review by local area counsel and the department of Justice.

I have this date completed review of the R/O's request and concur with the recommendation to file suit to reduce the tax claim to judgment and to enforce the tax lien under the authority of IRC section 7403 to seek a judicial sale of the taxpayer's principal residence. The approval levels are that of the Collect G/M, T/M, Area Director, Area Counsel and the Department of Justice. I will prepare the F-3210 and forward to Collection T/M for review and approval.

ACTION DATE: 12/15/2009 SYSTEM DATE: 12/15/2009 CONTACT: OTHER CREATE ID: 26976712

GENERAL HISTORY

Advisor prepared F-3210 and forwarded Suit Request to Collection T/M R. Harper in SLC, Utah this date.

ACTION DATE: 12/15/2009 SYSTEM DATE: 12/15/2009 CONTACT: OTHER CREATE ID: 26104683

GENERAL HISTORY

The GM approved the CDP memo and F12153-A. She sent F12153-A to CCP for input.

I printed the memo and form and will compile the CDP package tomorrow.

I pulled the RAR for 30-199312 and 199412 so I can review the assessments and see if TP's amended returns make sense.

ACTION DATE: 12/16/2009 SYSTEM DATE: 12/16/2009 CONTACT: OTHER CREATE ID: 26104683

GENERAL HISTORY

I reviewed the RAR for the years of 199312 and 199412 for Mr. TP. The work papers were not included so I could not see how the capital gains amount was determined but the SNOD and F4549A which details the income and adjustments were. From the stock summary received from TPs for the year of 1993, I came up with total stock sales of $84,170.17. The RA came up with total stock sales of $85,889.Taking the gains and losses per stock into consideration, TPs overall loss was $2,171 instead of a gain of $85K shown by the RA.

I do not have the RARs for Mrs. TP but in one FOIA request, the Disclosure Specialist sent

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STANDARD FORM 61
REVISED SEPTEMBER 1970
U.S. CIVIL SERVICE COMMISSION
F.P.M. CHAPTER 295
61-107

OMB APPROVAL NO. 50-R0116

APPOINTMENT AFFIDAVITS

Revenue Officer (Position to which appointed) — 9/22/80 (Date of appointment)

Treasury (Department or agency) — IRS (Bureau or division) — L.A. (Place of employment)

I, Debra (b)(6), do solemnly swear (or affirm) that—

A. OATH OF OFFICE

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

B. AFFIDAVIT AS TO STRIKING AGAINST THE FEDERAL GOVERNMENT

I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof.

C. AFFIDAVIT AS TO PURCHASE AND SALE OF OFFICE

I have not, nor has anyone acting in my behalf, given, transferred, promised or paid any consideration for or in expectation or hope of receiving assistance in securing this appointment.

Debra (b)(6)
(Signature of appointee)

Subscribed and sworn (or affirmed) before me this 22nd day of September A.D. 1980,

at Los Angeles (City) California (State)

[SEAL]

Monica Leon
(Signature of officer)

Commission expires. Sec 206 Act of June 25, 1948
(If by a Notary Public, the date of expiration of his Commission should be shown)

Personnel Clerk
(Title)

NOTE—*The oath of office must be administered by a person specified in 5 U.S.C. 2903. The words "So help me God" in the oath and the word "swear" wherever it appears above should be stricken out when the appointee elects to affirm rather than swear to the affidavits; only these words may be stricken and only when the appointee elects to affirm the affidavits.*

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☆U.S. GPO:1977-O-241-530/3288

Jan. 3, 1992

Internal Revenue Service
Ogden, Utah 84201

Dear Internal Revenue Service:

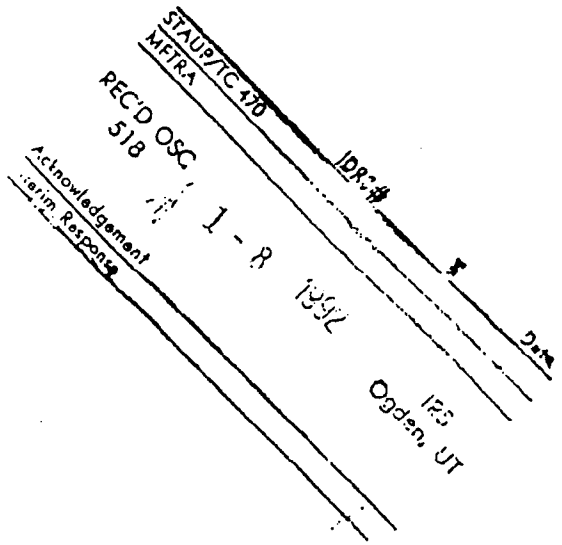
Please be so kind as to send a copy of your regulation that states that I am liable to pay income tax. (Not sections 7602 and 7603, as mentioned in your 12-30-91 form letter).

Your assistance is most appreciated.

James L. Reading

James L. Reading

2425 E. Fox St.
Mesa, Ariz. 85213



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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
AUTOMATED COLLECTION SYSTEM
P.O. BOX 9940
OGDEN, UT 84409

LT-16

DATE: 02/07/92
TAXPAYER IDENTIFYING NUMBER:
367-54-8531
CONTACT TELEPHONE NUMBERS:
IN DENVER AREA: 740-0400
TOLL FREE: 1-800-829-0977

JAMES L & CLARE L READING

2425 E FOX
MESA AZ 85203-5320

MAR 12 1992

ITP UNIT

REQUEST FOR TELEPHONE CONTACT

YOU DID NOT RESPOND TO OUR PREVIOUS NOTICES. AS A RESULT, YOUR ACCOUNT HAS BEEN ASSIGNED FOR ENFORCEMENT ACTION. TO AVOID THIS ACTION AND ADDITIONAL INTEREST (AND PENALTY ON UNPAID TAX), IT IS EXTREMELY IMPORTANT THAT YOU CALL US IMMEDIATELY AT THE APPROPRIATE NUMBER SHOWN ABOVE, OR ENSURE THAT PAYMENT FOR THE TOTAL AMOUNT DUE AND ALL DELINQUENT TAX RETURNS REACH US WITHIN 10 DAYS FROM THE ABOVE DATE. IF YOU WRITE TO US, INCLUDE A COPY OF THIS LETTER AND GIVE US YOUR TELEPHONE NUMBER AND THE BEST TIME TO CALL YOU.

SANDRA MORELAND
CHIEF, AUTOMATED COLLECTION BRANCH

ENCLOSURES:
ACCOUNT SUMMARY
COPY OF LETTER
ENVELOPE

INTERNAL REVENUE SERVICE
RECEIVED
FEB 14 1992
COLLECTION STAFF
OGDEN SERVICE CENTER

RECEIVED
FEB 12 1992
OGDEN, UT

LETTER 2050 (ACSDEN) (REV. 8-89)

PLEASE SEND YOUR RESPONSE IN THE ENCLOSED ENVELOPE

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JAMES L & CLAIR L READING 367-54-8671 12-16

ACCOUNT SUMMARY

TYPE OF TAX	PERIOD ENDING	NAME OF RETURN
1040	12-31-89	US INDIVIDUAL INCOME TAX RETURN

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Feb. 7, 1992

Dear Sandra Moreland,

Actually, I did respond to you. It was on Jan. 7, 1992, and there was no name listed on the form letter, so, I just wrote to the address at the top of the page.

In my response was a request to you that still remains unanswered: Please send a copy of the law that states that I am liable for income tax.

Thank you for your time and consideration.

Sincerely,

James L. Reading
without prejudice

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NON-FILER 8812

06-16-94
We considered taxpayer's letter dated May 27, 1994. It contained protest language, so we are sending CE-22, then issuing 90 day letter.

06-21-94 Sending taxpayer 90-day stat notice.

NOTE: Taxpayer states in his letter of 5-27-94 that we need to contact him at his MAILING address of 2425 E Fox Mesa AZ 85213; therefore, we are making a Masterfile change to this correct address.

09-27-94 We received taxpayer's wife's letter received 08-05-94 and taxpayer's letter of 07-29-94. They are protest responses. Since we previously sent CE-22, we will not respond to argue the issue. Re-file in 90-Day File.

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EXAMINER: PACKER, W GRADE: 08

REVIEWER: _____

ADDRESS:

2425 E FOX

MESA AZ 85213

REPRESENTATIVE NAME/ADDRESS:

INDIVIDUAL TO CONTACT:

TELE: - - EXT:
TELE: - - EXT:
TELE: - - EXT:

2848 ( ) 2848D ( ) OTHER ( )
TELE: - - EXT:

MORE THAN ONE POA ( )

CLOSED NO CHANGE

YEAR(S):

LETTER: 590 ( ) 1156 ( ) 992 ( ) OTHER:

EXAMINER: _____ DATE: _____

REVIEWER: _____ DATE: _____

APPEARED FOR INITIAL INTERVIEW: TP H ( ) TP W ( ) POA ( ) OTHER:

INFORMATION PROVIDED: EXAMINATION PROCESS ( ) APPEAL RIGHTS ( ) PRIVACY ACT AND PAPERWORK REDUCTION ACT (NOTICE 609) ( )
PUBLICATION 1, YOUR RIGHTS AS A TAXPAYER ( )

METHOD OF ACCOUNTING: CASH ( ) ACCURAL ( ) HYBRID ( ) COMMENT:

YR: 8812 ISSUE: NON-FILER ADJUSTMENT: 0.00 INDEX: D
04-26-94 Taxpayer's last record of filing is in 87. He filed joint with V Clare L Reading, 384-54-4550. Taxpayer is a protester. We have a letter dated 1-3-92 in which he is inquiring about regulations to file. We are sending L-1862 and P-4549. Response was answered by another area.
06-16-94 SEE NOTES!

YR: 8812 ISSUE: FILING STATUS - MFS ADJUSTMENT: INDEX: E
04-26-94 We are allowing a married filing separate filing status.

YR: 8812 ISSUE: EXEMPTION ADJUSTMENT: -1 INDEX: F
04-26-94 We are allowing taxpayer his exemption.

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PROTEST TAX RETURNS
CLASSIFICATION CHECK SHEET

FORM: ☑ 1040 ☐ 1120 ☐ 1041 ☐ 1065 ☐ ☐ AUTOMATIC

PART I - CLASSIFICATION (To be checked by Classifier or Group Manager)

INSTRUCTIONS: Classifier will check those items which in his opinion require adjustment or explanation. Group Manager will check other items which appear to require adjustment or explanation.

ITEM	REASONS FOR SELECTION: BY CLSFR.	REASONS FOR SELECTION: BY GP. MGR.	REMARKS
CE			Taxpayer a protester since 9413 and a non-filer since 9212
YR 9312			
Illegal Tax Protester			
Scheme Non-Filer			
Source Code 24			
Organization Code ~~5002~~ 5060			
Project Code 165			
			SELECTED MAR 10 1995 EXAM. DIV. SC07 NO. 50
Frivolous Return Penalty			
____ Has been assessed			
____ Should be considered during examination			
✓ Is not applicable			
			☐ CONT. ☐ TAXES ☐ LOSSES ☐ MISC. ☐ INT. ☐ MED. ☐ CHILD CARE

PART II - ASSIGNMENT AND CARDING INSTRUCTIONS

BRANCH	POST OF DUTY	GROUP
☐ Field Exam.		
☐ Office Exam.		

CLASSIFIER'S INITIALS: AV DATE: 3-8-95 EXAMINER'S INITIALS: DATE:

599-1-248 (7-93)

Department of the Treasury
IRS - Southeast Region

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KK 7 7

Department of the Treasury - Internal Revenue Service
Income Tax Examination Changes

Name and Address of Taxpayer	SS or EI Number:	Return Form No.
CLARE READING	[redacted]4550	1040

	Person with whom examination changes were discussed	Name and Title	
1. Adjustments to Income	Period End 12/31/1994	Period End 12/31/1995	Period End
A. 1099MISC-PILOT & ASSOC.	$ 22,287.00	$	$
B. 1099MISC-PILOT CATASTROPH	56,008.00	58,824.00	
C. CAPITAL GAIN OR LOSS	11,948.00		
D. DIVIDEND INCOME	59.00		
E. EXEMPTIONS	(2,156.00)	(2,500.00)	
F. STANDARD DEDUCTION	(3,175.00)	(3,275.00)	
G.			
H.			
I.			
J.			
K.			
L.			
M.			
N.			
O.			
P.			
Q.			
R.			
S.			
2. Total Adjustments	84,971.00	53,049.00	
3. Taxable Income Per Return or as Previously Adjusted	0.00	0.00	
4. Corrected Taxable Income	84,971.00	53,049.00	
Tax Method	TAX TABLE	TAX TABLE	
Filing Status	MARRIED SEPARATE	MARRIED SEPARATE	
5. Tax	23,243.00	12,489.00	
6. Additional Taxes			
7. Corrected Tax Liability	23,243.00	12,489.00	
8. Less Credits A.			
B.			
C.			
D.			
9. Balance (Line 7 less total of lines 8A through 8D)	23,243.00	12,489.00	
10. Plus Other Taxes A.			
B.			
C.			
D.			
11. Total Corrected Tax Liability (Line 9 + lines 10A to 10D)	23,243.00	12,489.00	
12. Total Tax Shown on Return or as Previously Adjusted	0.00	0.00	
13. Adjustments to A. Special Fuels Credit			
B.			
14. Deficiency - Increase in Tax or (Overassessment - Decrease in tax) (Line 11 less Line 12 adjusted by Line 13)	23,243.00	12,489.00	
15. Adjustments to Prepayment Credits			
16. Balance Due or Overpayment (Line 14 Adjusted by Line 15) (Excluding Interest and penalties)	$ 23,243.00	$ 12,489.00	$

The Internal Revenue Service has agreements with State tax agencies under which information about Federal tax, including increases or decreases, is exchanged with the States. If this change affects the amount of your State income tax, you should file the State form.

You may be subject to backup withholding if you underreport your interest, dividend, or patronage dividend income and do not pay the required tax. *The IRS may order backup withholding at 31 percent after four notices have been issued to you over a 120-day* period and the tax has been assessed and remains unpaid.

Department of the Treasury - Internal Revenue Service
Income Tax Examination Changes

Name and Address of Taxpayer	SS or EI Number:	Return Form No.
JAMES L. READING	[redacted]8531	1040
	Person with whom examination changes were discussed	*Name and Title*

1. Adjustments to Income	Period End 12/31/1993	Period End 12/31/1994	Period End 12/31/1995
A. 1099MISC-PILOT & ASSOC.	$ 25,628.00	$ 44,574.80	$
B. 1099MISC-PILOT CATASTROPH	14,935.00	112,015.00	117,648.00
C. CAPITAL GAIN OR LOSS	85,889.00	11,948.00	
D. DIVIDEND INCOME	338.00	59.00	
E. EXEMPTIONS			(1,400.00)
F. INTEREST INCOME	96.00		
G. SE AGI ADJUSTMENT	(1,833.00)	(5,854.00)	(5,370.00)
H. STANDARD DEDUCTION	(3,100.00)	(3,175.00)	(3,275.00)
I. WAGES-PILOT TEMP. SERVICE	36,796.00		
J.			
K.			
L.			
M.			
N.			
O.			
P.			
Q.			
R.			
S.			
2. Total Adjustments	158,749.00	159,567.00	107,603.00
3. Taxable Income Per Return or as Previously Adjusted	0.00	0.00	0.00
4. Corrected Taxable Income	158,749.00	159,567.00	107,603.00
Tax Method	SCHEDULE D	TAX RATE	TAX RATE
Filing Status	MARRIED SEPARATE	MARRIED SEPARATE	MARRIED SEPARATE
5. Tax	50,929.00	51,341.00	31,198.00
6. Additional Taxes			
7. Corrected Tax Liability	50,929.00	51,341.00	31,198.00
8. Less Credits A.			
B.			
C.			
D.			
9. Balance (Line 7 less total of lines 8A through 8D)	50,929.00	51,341.00	31,198.00
10. Plus Other Taxes A. SELF EMPLOYMENT TAX	3,666.00	11,708.00	10,740.00
B.			
C.			
D.			
11. Total Corrected Tax Liability (Line 9 + lines 10A to 10D)	54,595.00	63,049.00	41,938.00
12. Total Tax Shown on Return or as Previously Adjusted	0.00	0.00	0.00
13. Adjustments to A. Special Fuels Credit			
B.			
14. Deficiency - Increase in Tax or (Overassessment - Decrease in tax) (Line 11 less Line 12 adjusted by Line 13)	54,595.00	63,049.00	41,938.00
15. Adjustments to Prepayment Credits	2,959.00		
16. Balance Due or Overpayment (Line 14 Adjusted by Line 15) (Excluding Interest and penalties)	$ 51,636.00	$ 63,049.00	$ 41,938.00

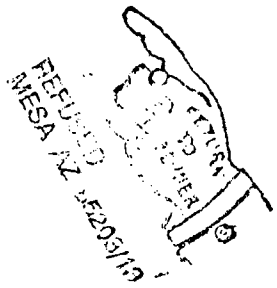
The Internal Revenue Service has agreements with State tax agencies under which information about Federal tax, including increases or decreases, is exchanged with the States. If this change affects the amount of your State income tax, you should file the State form.

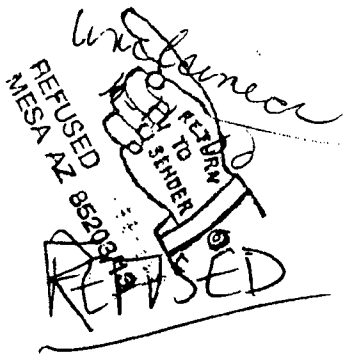
You may be subject to backup withholding if you underreport your interest, dividend, or patronage dividend income and do not pay the required tax. The IRS may order backup withholding at 31 percent after four notices have been issued to you over a 120-day period and the tax has been assessed and remains unpaid.

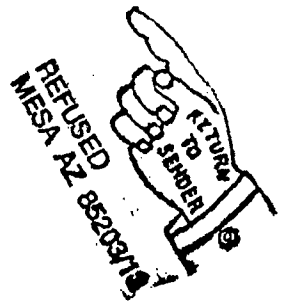
Official Business
Penalty for Private Use, $300

4021PX-9DU

MAIL







RECEIVED
INTERNAL REVENUE SERVICE

NOV 2 7 2000

Comp Services Terr 11-5
Phoenix, AZ

Clare Reading
2425 East Fox Street
Mesa, AZ 85213-5320

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INTERNAL REVENUE SERVICE

DEPARTMENT OF THE TREASURY

Date: November 30, 2000

Person to Contact:
B. Bowers # 86-16162
Telephone Number
(602) 207-8339

Clare Reading
2425 East Fox Street
Mesa, AZ 85213-5320 254

Notice of Deficiency
Dated: November 15, 2000

Dear Taxpayer(s):

Since we realize there are many reasons why you were unable to retrieve your certified mail, enclosed is a courtesy copy of the notice that was previously mailed to you in accordance with the provisions of the Internal Revenue Service code.

Please note that this letter does not extend or suspend the period stated in the Statutory Notice of Deficiency previously mailed to you for filing a petition with the United States Tax Court.

Contact the person listed above if you have any questions regarding the status of your case.

Mail Stop 4021-PHX –90 Day
210 E. Earll Drive, Phoenix, AZ 85012-2623

Exhibit / Page / Of
MM 2 6

Department of the Treasury
Internal Revenue Service
DISTRICT DIRECTOR

DEFAULTED

Date: NOV 15 2000

Taxpayer Identification Number: 384-54-4550

Form: 1040

Person to Contact: Ms. Bowers

Telephone Number: (602) 207- 8339

Employee Identification Number: 86-16162

Refer Reply to: Letter 531

Last Day to File a Petition With the United States Tax Court: FEB 13 2001

CLARE READING
2425 EAST FOX STREET
MESA, AZ 85213-5320 254

Tax Year Ended:	12/31/1994	12/31/1995
Deficiency:		
Increase in tax	$ 23,243.00	$ 12,489.00
Penalties		
IRC 6651(a)(1)	$ 5,811.00	$ 3,122.00
IRC 6654	1,206.00	677.00

NOTICE OF DEFICIENCY

Dear TAXPAYER:

We have determined that you owe additional tax or other amounts, or both, for the tax year(s) identified above. This letter is your NOTICE OF DEFICIENCY, as required by law. The enclosed statement shows how we figured the deficiency.

If you want to contest this determination in court before making any payment, you have 90 days from the date of this letter (150 days if this letter is addressed to you outside of the United States) to file a petition with the United States Tax Court for a redetermination of the deficiency. You can get a copy of the rules for filing a petition and a petition form you can use by writing to the address below:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

The Tax Court has a simplified procedure for small tax cases when the amount in dispute is $50,000 or less for any one tax year. You can also get information about this procedure by writing to the Tax Court.

Send the completed petition form, a copy of this letter, and copies of all statements and/or schedules you received with this letter to the Tax Court at the above address. The Court cannot consider your case if the petition is filed late. The petition is considered timely filed if the postmark date falls within the prescribed 90 to 150 day period and the envelope containing the petition is properly addressed with the correct postage.

The time you have to file a petition with the court is set by law and cannot be extended or suspended. Thus, contacting the Internal Revenue Service (IRS) for more information, or receiving other correspondence from the IRS won't change the allowable period for filing a petition with the Tax Court.

Department of the Treasury
Internal Revenue Service
DISTRICT DIRECTOR

DEFAULTED

Date: NOV 15 2000

Taxpayer Identification Number: 384-54-4550

Form: 1040

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Telephone Number: (602) 207- 8339

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Z 096 928 396 TPW

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail *(See reverse)*

Sent to	
Street & Number	
Post Office, State, & ZIP Code	
Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$
Postmark or Date	

PS Form 3800, April 1995

Department of the Treasury
Internal Revenue Service
DISTRICT DIRECTOR

DEFAULTED

Date: NOV 15 2000

Taxpayer Identification Number: 384-54-4550

Form: 1040

Person to Contact: Ms. Bowers

Telephone Number: (602) 207- 8339

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Refer Reply to: Letter 531

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7011 2970 0002 0675 8322

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com
OFFICIAL USE

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

Postmark Here

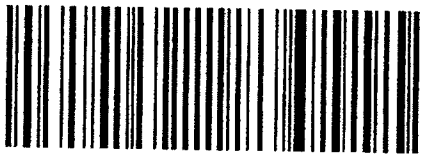
Sent To
Street, Apt. No.; or PO Box No.
City, State, ZIP+4

PS Form 3800, August 2006 See Reverse for Instructions

7011 2970 0002 0675 8322

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL™



7011 2970 0002 0675 8322

7011 2970 0002 0675 8322

U.S. Postal Service™

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OFFICIAL USE

Postage $

Certified Fee

Return Receipt Fee (Endorsement Required)

Restricted Delivery Fee (Endorsement Required)

Total Postage & Fees $

Postmark Here

Sent To

Street, Apt. No.; or PO Box No.

City, State, ZIP+4

PS Form 3800, August 2006 See Reverse for Instructions

Exhibit / Page / Of

mm 6 6

Name of Taxpayer: CLARE READING 03/28/2000
Identification Number: [redacted]-4550 TOTAL 4.60.00

199412 - EXPLANATION OF THE ESTIMATED TAX PENALTY

Since you did not pay sufficient estimated tax, addition to the tax is charged as shown below, in accordance with Section 6654(a) of the Internal Revenue Code.

1. Total corrected tax liability, Form 4549, line 11 (Tax Per Return, if a return was filed)				23,243.00
2. Withholding taxes				0.00
3. Line 1 less line 2 (if less than $500, estimated penalty does not apply)				23,243.00
4. 90% of line 1				20,918.70
5. Prior year tax liability (110% of tax if AGI was more than $150,000. or if MFS more than $75,000.)				0.00
6. The smaller of line 4 or 5 (as adjusted)				20,918.70
7. Payment Due Date	Apr 15, 1994	Jun 15, 1994	Sep 15, 1994	Jan 15, 1995
8. Payment Required	5,229.68	5,229.68	5,229.68	5,229.68
9. Payments & Credits	0.00	0.00	0.00	0.00
10. Overpayment from Line 16		0.00	0.00	0.00
11. Total of Lines 9 & 10		0.00	0.00	0.00
12. Previous Qtr Underpayment		5,229.68	10,459.36	15,689.04
13. 11 minus 12	0.00	0.00	0.00	0.00
14. Remaining Underpayment		5,229.68	10,459.36	
15. Underpayment	5,229.68	5,229.68	5,229.68	5,229.68
16. Overpayment	0.00	0.00	0.00	0.00
CALCULATION OF QUARTERLY PENALTIES ATTACHED				
17. Penalty	437.85	376.67	273.37	118.20
18. Previously Assessed Penalty				0.00
19. Estimated Tax Penalty				1,206.09

Exhibit / Page / Of
NN 1 of 2

Name of Taxpayer: CLARE READING
Identification Number: [redacted]-4550 TOTAL 03/28/2000 4.60.00

199512 - EXPLANATION OF THE ESTIMATED TAX PENALTY

Since you did not pay sufficient estimated tax, addition to the tax is charged as shown below, in accordance with Section 6654(a) of the Internal Revenue Code.

1.	Total corrected tax liability, Form 4549, line 11 (Tax Per Return, if a return was filed)				12,489.00
2.	Withholding taxes				0.00
3.	Line 1 less line 2 (if less than $500, estimated penalty does not apply)				12,489.00
4.	90% of line 1				11,240.10
5.	Prior year tax liability (110% of tax if AGI was more than $150,000. or if MFS more than $75,000.)				0.00
6.	The smaller of line 4 or 5 (as adjusted)				11,240.10
7.	Payment Due Date	Apr 15, 1995	Jun 15, 1995	Sep 15, 1995	Jan 15, 1996
8.	Payment Required	2,810.03	2,810.03	2,810.03	2,810.03
9.	Payments & Credits	0.00	0.00	0.00	0.00
10.	Overpayment from Line 16		0.00	0.00	0.00
11.	Total of Lines 9 & 10		0.00	0.00	0.00
12.	Previous Qtr Underpayment		2,810.03	5,620.06	8,430.09
13.	11 minus 12	0.00	0.00	0.00	0.00
14.	Remaining Underpayment		2,810.03	5,620.06	
15.	*Underpayment*	2,810.03	2,810.03	2,810.03	2,810.03
16.	Overpayment	0.00	0.00	0.00	0.00

CALCULATION OF QUARTERLY PENALTIES ATTACHED

17.	Penalty	258.09	211.13	146.23	61.73
18.	Previously Assessed Penalty				0.00
19.	Estimated Tax Penalty				677.18

Exhibit / Page / Of
NN 2 of 2

Prod0048

US06391

Trans Code	DR/CR	File	Title	Valid Doc. Code	Remarks
483		I/B	Correction of Erroneous Posting of TC 480 Returned (Not Processable)	77	Records information that TC 480 OIC was posted in error. Does not extend Assessment and Collection Statute Expiration Dates, reverts to normal date. Generates OIC Transcript but discontinues further OIC transcripts.
488		B	Installment and/or Manual Billing	77	Updates Module status to "14", deletes any TDA deferred actions pertaining to the module, and (on non cc "S" Form 1041) establishes the appropriate deferred action to issue CP 191, on BMF. Note: Status "14" is released by zero or credit balance, a subsequent debit balance does not update status to "14". (BMF - Form 1041 and 706).
489		B	Installment Defaulted	77	Updates module status to "21", delete any deferred action to issue CP 191 and go through TDA analysis.
490		P	Mag Media Waiver	64	Shows that a waiver of magnetic media filing requirements was issued.
→ 494		B/I	Notice of Deficiency	77	Indicates that a Statutory Notice of Deficiency (90-day) was issued. Issuing Organization Code two position numeric only (70, 71, 84). CC: STN 90
495		B/I	Closure of TC 494 or correction of TC 494 processed in error	77	Closure of Notice of Deficiency or Notice of Deficiency processed in error. Issuing Organization Code two position numeric only (70, 71, 84). CC: STN 90
500		I	Military Deferment	77	Suspends Collections Status Expiration Date. New expiration date is input with TC 550. Hold is established if tax module balance is debit; hold is released when balance becomes zero or credit and when TC 502 or 550 is posted. Generates TC 340 Valid CC 50 or 51. See Section 11 Collection, for appropriate closing codes.
502		I	Correction of TC 500 Processed in Error	77	Corrects an erroneously posted military deferment and restores the original Collection Statute Expiration Date. Releases Hold established by TC 500. TC 502 does not release the interest and/or penalty freezes. A TC 290 must be input with the appropriate TC.
503				77	TC 500 changed to 503 when posting TC 502
510		I	Releases Invalid SSN Freeze on Refunds	77	Releases invalid SSN freeze indefinitely, as long as SSN/Name Control remain unchanged.
520		I/B	IRS Litigation Instituted	77 or Generated Transaction	Freeze is released by TC 521 or 522. Some CCs suspend CSED. See Section 11.08(6). For IMF only an optional CSED TIN indicator (P) Primary, (S) Secondary or (B) Both can be used to identify which taxpayer the extension applies to. (See Section 11 for appropriate closing codes)
521		I/B	Reversal of 520	77	Records reversal of a previously posted TC 520. If TC 520 posted prior to cycle 8624, TC 550 must be input to extend the CSED. Refer to section 11 for specific CC reversal activity.
522		I/B	Correction of 520 Processed in Error	77	Indicates and reverses previously posted 520's as an error, and causes Closing Codes, if 70-89, to be updated to zeros.

LISTING OF INFORMATION RETURNS

TAXPAYER'S NAME: CLARE L. READING

SOCIAL SECURITY # 384-54-4550

ADDRESS: 4968 NW 97TH PL.
MIAMI, FL. 33178

TAX YEAR 1993

	COLUMN A	COLUMN B	COLUMN C	COLUMN D	COLUMN E
	NAME OF PAYER	KIND OF PAYMENT	AMOUNT REPORTED TO IRS	AMOUNT ON RETURN	DIFFERENCE
1	FUNDAMENTAL INVESTORS	DIVIDENDS	$ 823	$ 0	$ 823
2	GENERAL MOTORS CORP.	DIVIDENDS	106	0	106
3	AMCAP FUND TRADE DATE 8-04-93	STOCKS & BONDS	17587	0	17587
4	AMCAP FUND	DIVIDENDS	1033	0	1033
5	THE CASH MANAGEMENT TRUST OF AMERICA	DIVIDENDS	99	0	99
6	FUNDAMENTAL INVESTORS TRADE DATE 11-22-93	STOCKS & BONDS	6864	0	6864
7	FUNDAMENTAL INVESTORS TRADE DATE 12-14-93	STOCKS & BONDS	7783	0	7783
8	FUNDAMENTAL INVESTORS TRADE DATE 09-07-93	STOCKS & BONDS	17510	0	17510
9	FUNDAMENTAL INVESTORS TRADE DATE 10-14-93	STOCKS & BONDS	17826	0	17826
10	FUNDAMENTAL INVESTORS TRADE DATE 05-21-93	STOCKS & BONDS	11597	0	16597
11					
12			81,228.00		86,228.00

Taxpayer's Explanation of Difference:

$5000.00 DIFF.

Exhibit | Page | of
PP 1 1

20031089143

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: JUL 17 2003

> JAMES READING
2425 E FOX STREET
MESA AZ 85213

Re: SSN 367-54-8531
TAX YEAR 1994

Dear Mr. Reading:

This is in reply to your Freedom of Information Act request dated June 21, 2003, and received in the Phoenix Disclosure Office June 24, 2003, copy enclosed.

We have searched our records and find no Substitute for Return filed on your behalf for tax year 1994. Enclosed is Notice 393, which explains the appeal rights.

If you have any questions concerning this letter, please contact Pam Blake, ID #89-01018, at 602-207-8384; or by writing to the Phoenix Disclosure Office Mail Stop 7000PHX, 210 E. Earll Drive, Phoenix, AZ 85012. Please refer to case #86-2003-01675F.

Sincerely,

for Fred G. Damaske
Disclosure Officer

Enclosure(s)

Exhibit / Page / Of
QQ 1 of 1

PILOT

P.O. BOX 91299
MOBILE, ALABAMA 36691-1299

June 18, 2003

Clare Reading
c/o 2425 East Fox Street
Mesa, Arizona 85213

RE: SSN 384-54-4550

Pursuant to your request of June 14, 2003, I do not show that you were employed by any of the Pilot owned Corporations during 1994 or 1995.

If I can be of further assistance, please do not hesitate to contact me.

Terry L Aucoin
Comptroller

(251) 607-7700 • [FAX (251) 607-7724] • (800) 345-2287

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

February 21, 2006

James L. Reading
2425 East Fox Street
Mesa, Arizona 85213

Refer Reply To:
11-2006-02656

Dear Mr. Reading:

This letter is in response to your Freedom of Information Act (FOIA) request dated February 7, 2006 that was received in the Denver Disclosure Office on February 13, 2006. You are requesting a copy of all Notice(s) and Demand(s) for payment and a copy of the Certified or Registered Return Receipts showing that such Notice(s) and Demand(s) for payment was/were sent via certified or registered mail per 26 USC Section 6212(a)(b), all investigative reports/history/notes/daily reports and any other notes/reports by any agent/IRS employee pertaining to taxpayer.

Our research indicates there are no documents responsive to your request.

If it is your Examination/Administrative Files you are seeking, please resubmit a Freedom of Information Act request stating the same. Upon completion of your request, please forward it to this office for processing.

Enclosed please find a copy of Notice 393 regarding your Appeal Rights. If you have any questions regarding this letter, please contact Disclosure Specialist Anna Marie Robles (Badge #84-00071) of the Denver Disclosure Office at (303) 446-1284 or by mail at 210 E. Earll Dr., MS 7000PHX, Phoenix, AZ 85012.

Sincerely,

Barbara Rodriguez
Disclosure Officer

Enclosure

Exhibit / Page / Of
551 - 1 - 5

COPY

FREEDOM OF INFORMATION ACT REQUEST

From:
James L. Reading
% 2425 East Fox Street
Mesa, Arizona 85213

To:
Director / Disclosure Officer
Service Center, Internal Revenue Service
1160 W. 1200 S. Street
Ogden, UT 84201

Cert Mail #
7005 1160 0001 9150 4685

Dear Sir or Madam:

1. This is a request under the Freedom of Information Act, 5 USC 552. This is my firm promise to pay fees and costs for locating and duplicating the documents and information requested below. I am waiving your review of the information requested.

2. If some of my request is exempt from release, please send me those portions reasonably segregable and provide me with an indexing, itemization and detailed justification concerning information which you are not releasing.

3. The information is needed by the requestor to provide an understanding of the rules and policies of the agency. Please respond to the numbered paragraphs with the requested documents or in the alternative clearly state that the documents do not exist or provide the address from which the information requested may be obtained.

4. The undersigned requestor attests under penalty of perjury as to the category of "other requestor" pursuant to 28 USC 1746(1).

5. Please send me a copy of this request with your response. (Copy enclosed for your convenience, please stamp and return).

6. Please send me a copy of all "Notice(s) and Demand(s) for Payment".

7. Please send me a copy of the "Certified or Registered Return Receipt(s)" showing that such "Notice(s) and Demand(s) for Payment" was/were sent via certified or registered mail as per 26 USC Section 6212(a) and (b).

8. Pursuant to the above paragraphs please send me a copy of all investigative reports/history/notes/daily reports and any other notes/reports by any agent/IRS employee pertaining to me within this system of records.

Exhibit / Page / Of

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I understand the penalties provided in 5 USC 552a(i)(3) for requesting or obtaining access to records under false pretenses. I am the individual making this request. Enclosed is a photocopy of my State of Arizona Drivers License for identification purposes only.

The Social Security Number 367-54-8531 is not provided voluntarily and is restricted and limited for the purpose of record identification only.

Respectfully,

James L. Reading

Date: February 7, 2006

Enclosure

FOIA 159/A
2-07-06

Exhibit / Page / Of
551 3-5

COPY

FREEDOM OF INFORMATION ACT REQUEST

From:
James L. Reading
% 2425 East Fox Street
Mesa, Arizona 85213

To:
Director / Disclosure Officer
Internal Revenue Service
210 E. Earll Drive
Phoenix, AZ 85012

(Cert Mail # 7005 1160 0001 9182 4670

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Exhibit / Page / Of
551 4-5

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Respectfully,

James L. Reading

Date: February 7, 2006

Enclosure

FOIA 159/A
2-07-06

Exhibit / Page / Of

SSI 5-5

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

February 21, 2006

Claire L. Reading
2425 East Fox Street
Mesa, Arizona 85213

Refer Reply To:
11-2006-02657

Dear Ms. Reading:

This letter is in response to your Freedom of Information Act (FOIA) request dated February 7, 2006 that was received in the Denver Disclosure Office on February 13, 2006. You are requesting a copy of all Notice(s) and Demand(s) for payment and a copy of the Certified or Registered Return Receipts showing that such Notice(s) and Demand(s) for payment was/were sent via certified or registered mail per 26 USC Section 6212(a)(b), all investigative reports/history/notes/daily reports and any other notes/reports by any agent/IRS employee pertaining to taxpayer.

Our research indicates there are no documents responsive to your request.

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Sincerely,

Barbara Rodriguez
Disclosure Officer

Enclosure

Exhibit / Page / Of
552 1 - 5

COPY

FREEDOM OF INFORMATION ACT REQUEST

From:
Clare L. Reading
% 2425 East Fox Street
Mesa, Arizona 85213

To:
Director / Disclosure Officer
Service Center, Internal Revenue Service
1160 W. 1200 S. Street
Ogden, UT 84201

CERT mail #
7005 1160 [illegible]

Dear Sir or Madam:

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Exhibit / Page / Of
552 2-5

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The Social Security Number 384-54-4550 is not provided voluntarily and is restricted and limited for the purpose of record identification only.

Respectfully,

Clare L. Reading

Clare L. Reading

Date: February 7, 2006

Enclosure

FOIA 159/A
2-07-06

Exhibit / Page / Of

552 3-5

COPY

FREEDOM OF INFORMATION ACT REQUEST

From:
Clare L. Reading
% 2425 East Fox Street
Mesa, Arizona 85213

To:
Director / Disclosure Officer
Internal Revenue Service
210 E. Earll Drive
Phoenix, AZ 85012

Cert Mail #
7005 1160 0001 9150 4634

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3. The information is needed by the requestor to provide an understanding of the rules and policies of the agency. Please respond to the numbered paragraphs with the requested documents or in the alternative clearly state that the documents do not exist or provide the address from which the information requested may be obtained.

4. The undersigned requestor attests under penalty of perjury as to the category of "other requestor" pursuant to 28 USC 1746(1).

5. Please send me a copy of this request with your response. (Copy enclosed for your convenience, please stamp and return).

6. Please send me a copy of all "Notice(s) and Demand(s) for Payment".

7. Please send me a copy of the "Certified or Registered Return Receipt(s)" showing that such "Notice(s) and Demand(s) for Payment" was/were sent via certified or registered mail as per 26 USC Section 6212(a) and (b).

8. Pursuant to the above paragraphs please send me a copy of all investigative reports/history/notes/daily reports and any other notes/reports by any agent/IRS employee pertaining to me within this system of records.

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I understand the penalties provided in 5 USC 552a(i)(3) for requesting or obtaining access to records under false pretenses. I am the individual making this request. Enclosed is a photocopy of my State of Arizona Drivers License for identification purposes only.

The Social Security Number 384-54-4550 is not provided voluntarily and is restricted and limited for the purpose of record identification only.

Respectfully,

Clare L. Reading

Clare L. Reading

Date: February 7, 2006

Enclosure

FOIA 159/A
2-07-06

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James Leslie Reading, *Pro Se*
Clare Louise Reading, *Pro Se*
2425 East Fox Street
Mesa, Arizona 85213

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

AFFIDAVIT OF CLARE L READING and JAMES LESLIE READING # SS
REGARDING
NO NOTICE AND DEMAND SENT OR RECEIVED

I, Clare Reading, hereafter Affiant, and I, James Leslie Reading, hereinafter, Affiant, are natural born citizens of the United States of America and of Arizona, over the age of 18 and mentally competent. Affiant has personal knowledge of the statements being made hereafter in this document. I, Clare Reading, and I, James Leslie Reading, having been first duly sworn on my oath, state the following:

1. On February 21, 2006, Disclosure Officer for the IRS, Barbara Rodriquez responded to our Freedom of Information Act requests pertaining to all years asking for "a copy of all 'Notice(s) and Demand(s) for payment'".

2. We also requested a "Copy of the 'Certified or Registered Return Receipt(s)' showing such 'Notice(s) and Demand(s) for Payment' was/were sent via certified or registered mail as per 26 USC Section 6212(a) and (b).

3. Our request continued, 'Pursuant to the above paragraphs please send me a copy of all investigative reports/history/notes/daily reports and any other notes/reports by any agent/IRS employee pertaining to me within this system of records.'

4. This request was mailed by James Leslie Reading and by Clare Louise Reading via Certified Mail to the Director / Disclosure Officer at the Service Center in Ogden, Utah and also to the IRS in Phoenix.

5. Knowing that we had not received any "Notice and Demand for Payment", we were not surprised at the response we received to our requests, both dated on February 21, 2006:

"Our research indicates there are no documents responsive to your request."

Affiants declare: I am not an expert in the law however, I do know right from wrong. If there is any human being damaged by any statements herein, if he will inform me by verifiable facts I will sincerely make every effort to make correction(s). I hereby and herein reserve the right to amend this document as necessary in order that the truth may be ascertained and proceedings justly determined. If the parties given notice by means of this document have information that would controvert and overcome this Affidavit, please advise me IN WRITTEN AFFIDAVIT FORM within thirty (30) days from receipt hereof providing me with your counter affidavit, proving with particularity by stating all requisite actual evidentiary fact and all requisite actual law, and not merely the ultimate facts or conclusions of law, under penalty of perjury, that this Affidavit is substantially and materially false sufficiently to materially change my status and factual declarations. Your silence stands as consent to, and tacit approval of, the factual declarations herein being established as fact as a matter of law.

Jurat

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, 28 USC § 1746(1).

Reserving ALL Natural God-given unalienable birthrights, waiving none,

/s/ Clare Louise Reading

Clare Louise Reading

/s/ James Leslie Reading

James Leslie Reading

Arizona State)
) ss
Maricopa County)

Clare Louise Reading and James Leslie Reading appeared before me, a Notary, subscribed and sworn under oath this 8th day of August, 2012.

Notary Public My Commission expires: 3/25/2016

seal

KEVIN S. KEPLINGER
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
March 25, 2016

Exhibit 4.75.14-8 (08-16-2006) Form 4549 and 4549-A, Instructions for Completion

Sections of the forms not discussed are self-explanatory.

Name and Address	Enter the correct name and address of the taxpayer.
Filing Status	**Enter Corporation, Trust, or Association.**
Person with Whom Examination Changes Were Discussed	Enter the name of person with whom the examination changes were discussed. **If the person holds a power of attorney or is a corporate officer, also enter title.**
Year	Enter the taxable year for which the column applies as follows:
	• Calendar Year – Show ending date (12/31/1996) • Fiscal Year – Show ending date (6/30/1996) • Short Period – Show beginning and ending dates (1/1/1996-9/30/1996) • 52-53 Week Year -- Show last day of year (5/25/1996)
Adjustments to Income	List adjustments. Place a bracket around the dollar amount if an adjustment is in the taxpayer's favor. If there are more than seven adjustments, write "See page ____" on line 1(a) and use Form 4549–B to list the adjustments.
Adjusted Gross or Taxable Income Shown on Return or as Previously Adjusted	Enter the final figure computed by the taxpayer on the last processed return or as computed on a prior processed examiner's report if applicable.
Corrected Tax or Additional Taxes	Identify how the tax was computed (tax table, tax rate schedule, etc.) and the amount of tax. If additional tax applies, indicate on this line, and attach a schedule showing the computation of the corrected tax figure. Do not include alternative minimum tax on this line.
Less Credits	This line should include only non-refundable credits. Do not include credits such as earned income credits or withholding tax and excess FICA credits.
Other Taxes	**Include recapture taxes, self-employment tax, alternative minimum tax, etc. Attach the appropriate forms detailing the computations.**
Total Tax Shown on Return or as Previously Adjusted	Include tax per return plus any additional tax assessed as reflected on a transcript.
Adjustment to EIC/Fuels Credit	These credits should be shown here as originally calculated or as corrected based on the adjustments to income. The calculation of these credits should be attached to the agreed report.
Adjustments to	Any changes to prepayment credits should be reflected on this line.

Prepayment Credits	
Penalties	Identify penalties by IRC section and title. If the penalty cannot be currently computed, place an asterisk in the line amount field and describe the process of the calculation in the "Other Information" section.