THE TRUTH ABOUT IRS FRIVOLOUS TAX ARGUMENTS:
The REST of the story…as Paul Harvey likes to say

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The attached document starting on the next page was downloaded on December 2, 2002 from the IRS Website at http://www.irs.gov/pub/irs-utl/friv_tax.pdf.

We provide our rebuttals to the false arguments presented by the IRS in red Times New Roman surrounded by a box. IRS comments use Arial black font. These rebuttals are based on information freely available on the worldwide web at:

http://famguardian.org/Subjects/Taxes/taxes.htm

Rebuttals to these and other special and false government rhetoric can be found on the above website and especially in the book entitled *The Great IRS Hoax: Why We Don't Owe Income Tax*, which you can download for FREE from the above website. The book exhaustively covers all issues and government lies and propaganda and is over 1,800 pages in length.

We encourage you to send a copy of this document (or at least chapter 5) to your Congressman and/or the IRS and politely tell them you want some answers as to why the IRS continues to insist, absent any delegated authority to do so, that private Americans living in the 50 union states and who are not elected or appointed political officers are incorrectly told they are "liable" for paying Subtitle A Income Taxes. Ask them to refute anything in this rebuttal, which is part of Chapter 8 of that book.

We wish to emphasize that silence in this document about a specific issue doesn't necessarily mean agreement. Instead it means we don't have a complete enough understanding of the issues mentioned to have an informed opinion that is credible enough to reveal to you.

Thanks for taking the time to consider BOTH sides of the arguments and sift through the lies and deceptions that the U.S. government, and especially the IRS, is famous for.

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GENERAL NOTES

1. **Use of the Word "Taxpayer" instead of "individual" or "American"**: 26 U.S.C. Section 7701(a)(14) defines the word "taxpayer" as:

> *26 U.S.C. Section 7701(a)(14) Definitions*
>
> *Taxpayer*
>
> *The term "taxpayer" means any person subject to any internal revenue tax.*

Now if we look up the definition of "subject to" in Black's Law Dictionary, Sixth Edition, page 1425, we find the following:

> *"Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for. Homan v. Employers Reinsurance Corp., 345 Mo. 650, 136 S.W.2d 289, 302.*

So being a "taxpayer" means being either someone who is liable to pay tax or who isn't liable but who has chosen to "volunteer" for the tax or be subservient to it. When one volunteers for the tax, they are considered to be liable because they assess themselves and claim they have taxable income, even if their income is not, in fact, taxable. By definition then, a "taxpayer" is someone liable for paying tax no matter how you look at it. Incidentally, this is the term they use to describe EVERYONE, which by implication deceives EVERYONE into thinking they are liable for the tax. They win the war before it ever gets started just by the language they use. You have to watch these weasels!

In the following pages, the sneaky IRS very carefully uses the word "Taxpayer" instead of "all individuals" or "everyone" to confuse and deceive the reader. For instance, in question III.A, the title of the question is "Taxpayer is not a "citizen" of the United States, thus not subject to the federal income tax laws". This question is a self-fulfilling contradiction. If one is a "taxpayer" then he is liable for tax, which implies that he must be a "person" subject to the Internal Revenue Code. There is no other logical way to look at it. Stupid questions like this show how the IRS corrupts and distorts our language to keep people focused on the wrong questions and arguing about the wrong things. The correct and more revealing and relevant questions, instead, are:

1.1. Does "taxpayer" mean any American?

1.2. What does a sovereign citizen living on nonfederal land who does not want to pay tax and refuses to volunteer liable for? It can't be tax on his wages or income if he is not in receipt of government privileges under the indirect excise tax found in Subtitles A or B of the I.R.C.

Until such time as the IRS meets the burden of proof imposed upon them under 5 U.S.C. §556(d) to demonstrate with evidence that we are liable for Subtitle A income taxes, then we vehemently rebut such presumption through this document and the contents of our *Great IRS Hoax* book. Anyone that uses the term "taxpayer" to describe a "U.S. national" and a "nonresident alien" such as us will hear the following rebuttal:

> *I refuse to allow any IRS or State revenue office to call me or any client a "taxpayer". Just because I may look like one or have the attributes of one does not necessarily make me one. To one IRS lady, and I have no reason to doubt that she fits this category, I use the following example. "Miss you have all of the equipment to be a whore, but that does not make you one by presumption." Until it is proven by a preponderance of evidence I must assume you are a lady and you will be treated as such. Please have the same respect for me, and don't slander my reputation and defame my character by calling me a whore for the government, which is what a "taxpayer" is.*

The IRS DOES NOT have the authority to bestow the status of "taxpayer" on anyone. Below is the cite confirming this from ***Botta v. Scanlon***, 288 F.2d. 504, 508 (1961) held:

> *"A reasonable construction of the taxing statutes does not include vesting any tax official with absolute power of assessment against individuals not specified in the statutes as a*

person liable for the tax without an opportunity for judicial review of this status before the appellation of 'taxpayer' is bestowed upon them and their property is seized..."

Furthermore, 28 U.S.C. §2201 removes the authority of federal courts to declare that status on a sovereign American:

> *United States Code*
> *TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE*
> *PART VI - PARTICULAR PROCEEDINGS*
> *CHAPTER 151 - DECLARATORY JUDGMENTS*
> *Sec. 2201. Creation of remedy*
>
> *(a)* ***In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986****, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority,* ***any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration****, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.*
>
> *(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act.*

The federal courts themselves agree that they do not have the jurisdiction to bestow the status of "taxpayer" upon someone who is a "nontaxpayer" also!:

> *"And by statutory definition the term "taxpayer" includes any person, trust or estate subject to a tax imposed by the revenue act. ...Since the statutory definition of taxpayer is exclusive, the federal [and state] courts do not have the power to create nonstatutory taxpayers for the purpose of applying the provisions of the Revenue Acts..."* ***C.I.R. v. Trustees of L. Inv. Ass'n****., 100 F.2d.18 (1939)*

"We the People", as the Sovereigns, enjoy an especial status as a "nontaxpayer" until such time as we take on the mantle of an artificial entity and by implication of the special privilege we engage in and the special license required we may surrender our sovereign status and become a "taxpayer"....but this event cannot take place without full knowledge and willful participation by the individual. For cases dealing with the term "nontaxpayer" see: ***Long v. Rasmussen***, 281 F. 236, 238 (1922); ***Rothensis v. Ullman***, 110 F.2d. 590(1940); ***Raffaele v. Granger***, 196 F.2d. 620 (1952); ***Bullock v. Latham***, 306 F.2d. 45 (1962); ***Economy Plumbing & Heating v. United States***, 470 F.2d. 585 (1972); and ***South Carolina v. Ragan***, 465 U.S. 367 (1984).

> *"The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws..."*
>
> *"The distinction between persons and things within the scope of the revenue laws and those without is vital."* ***Long v. Rasmussen****, 281 F. 236 @ 238(1922).*

The table below clarifies "responsibility" of persons under Subtitle A to pay tax based on their citizenship. Note that we don't use the word "liable" because there is no statute in all of Subtitle A making anyone liable for the payment of income taxes.

Table 1: Responsibility for Subtitle A income taxes

Residency	***U.S. citizen***	***State citizen only***	***Foreigner***

		(nonresident alien for purposes of federal taxes)	*(citizen of another country, also referred to as a nonresident alien under U.S. tax laws))*
Living on federal land or in the federal United States (federal zone)	26 U.S.C. §861 26 CFR 1.861-8(f) Responsible as corporation or partnership or U.S. government elected or appointed political official.	26 U.S.C. §861 26 CFR 1.861-8(f) Responsible as corporation or partnership or U.S. government elected or appointed political official.	26 U.S.C. §861 26 CFR 1.861-8(f) Responsible as corporation or partnership or U.S. government elected or appointed political official.
Living outside the federal zone but inside the 50 states	26 U.S.C. §862 26 CFR 1.861-8(f)	26 U.S.C. §862 26 CFR 1.861-8(f)	26 U.S.C. §862 26 CFR 1.861-8(f)
Living overseas	26 U.S.C. §911	Not responsible	Not responsible

2. **Abuse of the word "law"**: Each section of IRS propaganda starts off with the phrase "The Law". In this section, you see references to the Internal Revenue Code, 26 U.S.C., and the implementing regulations found at 26 CFR. What the IRS fails to point out anywhere is that according to the legislative notes for 1 U.S.C. §204, the Internal Revenue Code is NOT "positive law", which means that it is not "law" at all. Here are the legislative notes under that section:

> *Title 26, Internal Revenue Code*
>
> *The Internal Revenue Code of 1954 was enacted in the form of a separate code [not "law", but "code"] by act Aug. 16, 1954, ch. 736, 68A Stat. 1. Pub. L. 99–514, § 2(a), Oct. 22, 1986, 100 Stat. 2095, provided that the Internal Revenue Title enacted [into what?] Aug. 16, 1954, as heretofore, hereby, or hereafter amended, may be cited as the "Internal Revenue **Code** of 1986". The sections of Title 26, United States Code, are identical to the sections of the Internal Revenue Code.*

In fact, the I.R.C. has been **REPEALED** since 1939. See 53 Stat. 1, Section 4 at:

http://famguardian.org/CDs/LawCD/Federal/RevenueActs/Revenue%20Act%20of%201939.pdf

When it was repealed, all prior revenue statutes were also repealed with it, leaving it completely without any foundation whatsoever. If it is not "law", then what exactly is it? It is a "code" or a "title" or a "statute", but according to the Supreme Court, it is neither "law", nor "legislation":

> *"**To lay, with one hand, the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms.***
>
> *Nor is it taxation. 'A tax,' says Webster's Dictionary, 'is a rate or sum of money assessed on the person or property of a citizen by government for the use of the nation or State.' 'Taxes are burdens or charges imposed by the Legislature upon persons or property to raise money for public purposes.' Cooley, Const. Lim., 479." [*Loan Association v. Topeka, 20 Wall. 655 (1874)*]*
>
> ____
>
> *"In Calder v. Bull, which was here in 1798, **Mr. Justice Chase said, that there were acts which the Federal and State legislatures could not do without exceeding their authority, and among them he mentioned a law which punished a citizen for an innocent act; a law that destroyed or impaired the lawful private [labor] contracts [and labor compensation, e.g. earnings from employment through compelled W-4 withholding] of citizens; a law that***

made a man judge in his own case; and a law that took the property from A [the worker]. and gave it to B [the government or another citizen, such as through social welfare programs]. 'It is against all reason and justice,' he added, 'for a people to intrust a legislature with such powers, and therefore it cannot be presumed that they have done it. *They may command what is right and prohibit what is wrong; but they cannot change innocence into guilt, or punish innocence as a crime, or violate the right of an antecedent lawful private [employment] contract [by compelling W-4 withholding, for instance], or the right of private property.* ***To maintain that a Federal or State legislature possesses such powers [of THEFT!] if they had not been expressly restrained, would, in my opinion, be a political heresy altogether inadmissible in all free republican governments.*** *' 3 Dall. 388." [Sinking Fund Cases, 99 U.S. 700 (1878)]*

The government's own statistics from the Treasury Financial Management website confirm, in fact, that over half of the monies collected by the Internal Revenue Service under the authority of the I.R.C. are used for wealth transfer, and do **not** support the government. That is illegal robbery disguised as legitimate "taxation". See:

http://famguardian.org/Subjects/Taxes/Research/Analysis-011020.pdf

Consequently, the "code" cannot rise to the level of being "law" and is therefore unenforceable. Theft disguised as legitimate taxation can never be "law". According to our Declaration of Independence, all just powers of government derive from the consent of the governed. The only thing that can be "law" is that which the people consented to through their elected representatives. The people couldn't consent to a direct tax within states of the Union because it would violate 1:9:4 and 1:2:3 of the Constitution. Therefore, the Internal Revenue "code" could not be enacted into "positive law". Consequently, it can never be enforced against people in the states of the Union. To enforce robbery disguised as "taxation" against people who never consented to it would be unjust.

Since the I.R.C. is a "code" or a "title" but not a "law", then it is nothing more than a state-sponsored federal religion in violation of the First Amendment. At the point when the I.R.C. was repealed in 1939, it became a state-sponsored federal religion and a cult promoted mainly by by the abuses and "judge-made law" of the federal judiciary. Since the I.R.C. was never enacted into positive law, then it stands simply as "prima facie evidence" of law, which means "presumptive evidence" that is not admissible in any legitimate legal proceeding. Anything involving presumption is a violation of due process under the Fifth Amendment and also happens to be a Biblical sin under Numbers 15:30 and Psalms 19:12-13. No court can demand that a person violate their religious beliefs by presuming anything, and any judicial proceeding involving a violation of judicial process is a void judgment that is reversible at any time. There is no statute of limitation for violation of due process.

Absent explicit written consent both in the Constitution and in the federal laws that implement it, the only parties that any statute can be enforced against absent implementing regulations are federal employees. There are no implementing regulations authorizing any kind of IRS enforcement actions, and therefore, the IRS can only enforce against federal employees. This requirement is imposed by 26 CFR §601.702(a)(2)(ii), which says:

> 26 CFR §601.702 *Publication and public inspection*
>
> *(ii) Effect of failure to publish. Except to the extent that a person has actual and timely notice of the terms of any matter referred to in subparagraph (1) of this paragraph which is required to be published in the Federal Register,* ***such person is not required in any manner to resort to, or be adversely affected by, such matter if it is not so published or is not incorporated by reference therein pursuant to subdivision*** *(i) of this subparagraph.* ***Thus, for example, any such matter which imposes an obligation and which is not so published or incorporated by reference will not adversely change or affect a person's rights.***

The above requirement is also confirmed by the content of 44 U.S.C. §1505(a)(1), which says:

TITLE 44 > *CHAPTER 15* > *§1505*

§1505. Documents to be published in Federal Register

*(**a**) Proclamations and Executive Orders; Documents Having General Applicability and Legal Effect; Documents Required To Be Published by Congress. There shall be published in the Federal Register—*

*(**1**) Presidential proclamations and Executive orders, except those not having general applicability and legal effect* ***or effective only against Federal agencies or persons in their capacity as officers, agents, or employees thereof;***

3. **Ambiguous use of the word "tax"**: Throughout this document, the IRS does not specify precisely the type of "tax" they are referring to when asserting that it must be paid or for which the taxpayer is allegedly liable. For instance, nowhere do they mention "Subtitle A" income tax, but instead lump *all subtitles* together into a vague whole. For all we know, they could be referring to Alcohol, Tobacco, and Firearms taxes under subtitles D and E, for which there is a *definite liability, and which are completely different from income taxes under Subtitle A*. This deliberate lack of precision and clarity in their language gives the IRS and the government room to deceive and create a false impression when more specific language would not allow them to do so. This is part of the "psyops" that they like to use to trick sovereign Americans into falsely believing that they are "taxpayers" liable for paying Subtitle A income taxes.

4. **Anonymity of author**: Did you notice the IRS *DID NOT* put their logo on their document and didn't have the author inside their agency sign it to authenticate it and validate it, even though they posted it on their website? Have you wondered why? Have you ever wondered why there is NO PLACE anywhere in any public phone book or on the IRS' own website where you can look up the phone number, email address, or mailing address of ANYONE who works in that agency and why the majority of the correspondence they send you isn't signed? The reason is because if the IRS had identified itself as the author and made this an official publication that was attributable to a reputable source, then that author could be subpoenad and then prosecuted for fraud under the *IRS Restructuring and Reform Act* of 1998 and 26 U.S.C. Section 7214 and be held personally liable for damages up to $1,000,000! People who tell lies don't like being held legally responsible and will do everything in their power to hide behind a cloak of secrecy, anonymity, and "official immunity".

5. **Judicial and Conspiracy to Protect the Income Tax**: Remember that courts DO NOT make law, they only interpret it, and they must interpret it according to its plain meaning in a consistent way through a concept called *stare decisis*. As you read through case law, keep some very important facts in mind:
   5.1. The Judicial, the Legislative, and the Executive Branches of the U.S. government are ALL ***tax consumers***.
   5.2. Federal judges are appointed by the President and confirmed by the Senate.
   5.3. All three branches of the government are populated mostly by lawyers. Who trusts lawyers? Lawyers make money by putting your assets at risk and then plundering those assets in the process of defending your right to keep them. The more litigation there is, the more of your assets they can plunder by charging excessive legal fees up to $300/hr to defend you in court from plunder by their coworkers in the government.
   5.4. Even supposedly "private" tax attorneys who defend clients in court work for the government as "officers of the court". They are licensed to practice law by the government and they can have their license or privilege to practice law revoked if they tell the truth about the tax system. For an example of this claim, read the case of Dr. Phil Roberts, whose attorney, Oscar Stilley, was threatened by the judge with losing his privilege to practice law in court for being too effective in defending his client against willful failure to file charges. Read the entire transcript of the trial on our website at: http://famguardian.org/Subjects/Taxes/CaseStudies/PhilRoberts/PhilRoberts.htm
   5.5. You can read more about the extensive judicial conspiracy to protect the income tax in our Great IRS Hoax book at: http://famguardian.org/Publications/GreatIRSHoax/GreatIRSHoax.htm

6. **Authority of cases cited:** IRS' own Internal Revenue Manual (IRM) in section 4.10.7.2.9.8 states:

"Decisions made at various levels of the court system... may be used by either examiners or taxpayers to support a position... ***A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions of lower courts****... Decisions made by lower courts, such as Tax Court, District Courts, or Claims Court, are binding*

on the Service only for the particular taxpayer and the years litigated. Adverse decisions of lower courts do not require the Service to alter its position for other taxpayers." [IRM, 4.10.7.2.9.8 (05/14/99)]

You will note, in particular, that the IRS rebuttal to common arguments relies on cases that EVEN IT would not cite for authority in court by the above requirements. For instance, everything from the U.S. Tax Court, abbreviated "T.C.M" or "T.C." is binding on no more than ONE taxpayer for the current tax year and *not* on *all* taxpayers generally. Furthermore, the U.S. Tax Court "is a kangaroo court" that is run very informally by nonattorneys. Tax Court, for instance, isn't even a part of the Judicial Branch of the U.S. Government, but instead is part of the Executive Branch, and is staffed by the IRS! It's no wonder the sneaky IRS would quote rulings from the Tax Court to sustain their frail position that even they wouldn't use to defend themselves with in court by their own documentation. Consequently, every ruling shown that references a Tax Court decision should be disregarded.

7. **Ignorance of Treasury Regulations and Undocumented or Inflated Claims of Authority**: Most IRS responses completely ignore the detailed regulations of the IRS, which are *the only thing that is binding on the IRS*. Their own Internal Revenue Manual says so:

> *"The Federal Income Tax Regulations (Regs.) are the official Treasury Department interpretation of the Internal Revenue Code..." [IRM, 4.10.7.2.3.1 (05/14/99)]*
>
> *"The Service is bound by the regulations." [IRM, 4.10.7.2.3.4 (05/14/99)]*
>
> *"[T]he Secretary shall prescribe all needful rules and regulations for the enforcement of this title." [26 USC § 7805(a)]*
>
> *"Interpretative regulations are issued under the general authority of IRC section 7805(a) , which allows regulations to be written when the Secretary determines they are needed to clarify a Code section." [IRM, 4.10.7.2.3.2 (05/14/99)]*

You will note that the IRS in this document does NOT cite the specific regulation that authorizes them to do the things they claim to have the authority to do. For instance, did you notice they *didn't* cite the specific regulation that authorizes them to assess penalties for pursuing frivolous arguments or the specific types of taxes and individuals these penalties can lawfully apply to? But guess what, their own regulations, in 26 CFR 301.6671-1 describes WHO these penalties may be applied to:

> *[Code of Federal Regulations]*
> *[Title 26, Volume 17, Parts 300 to 499]*
> *[Revised as of April **1**, 2000]*
> *From the U.S. Government Printing Office via GPO Access*
> *[**CITE**: **26CFR301.6671-1**]*
>
> *[Page 402]*
>
> *TITLE 26--INTERNAL REVENUE*
>
> *Additions to the Tax and Additional Amounts--Table of Contents*
>
> *Sec. 301.**6671-1** Rules for application of assessable penalties.*
>
> *…*
>
> *(b) Person defined. For purposes of subchapter B of chapter 68,* ***the term ``person'' 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.***

Even more interesting, is that the above not only doesn't apply to most Americans. It also doesn't apply to most corporations or partnerships either, because these corporations or partnerships must be registered in the District of Columbia. State-chartered corporations or partnerships aren't liable for IRS penalties either. Furthermore, the only type of employee who can be penalized is an employee of a U.S. corporation registered in the District of Columbia and who is involved in reporting and complying with taxes for the corporation, and NOT for himself individually!

8. **"Cert. Denied" references**: Throughout the document, the term "cert. denied" is underlined. A cert. denied is an instance where a case being heard at the circuit or appeals level was lost and subsequently appealed to the Supreme Court (with a writ of certiorari) and the Supreme Court, for such an appeal, refused to hear the case. By underlining this, the IRS is trying to emphasize that because the Supreme Court wouldn't hear the appeal, that the appellant must have been pursuing a frivolous or bad argument. However, here is how we treat this type of approach in section 6.6.5 of our *The Great IRS Hoax* book:

> *However, it is an important principal of law that the fact that a cert was denied is NOT necessarily an affirmation of a particular federal circuit court ruling by the Supreme Court. This lack of attentiveness by the Supreme Court in not correcting errors by the circuit courts gave the circuit and district courts carte blanche authority to do anything they wanted and to ignore the constitution entirely relative to income taxes. The result was a broadened application of income taxes to what should have been excepted subjects, like citizens living in the 50 states with only income from the 50 states.*

THE TRUTH ABOUT FRIVOLOUS TAX ARGUMENTS

This responds to some of the more common frivolous "legal" arguments made by individuals and groups who oppose compliance with the federal tax laws. These arguments are grouped under six general categories, with variations within each category. Each contention is briefly explained, followed by a discussion of the legal authority that rejects the contention. A final section explains the penalties that the courts may impose on those who pursue tax cases on frivolous grounds.

The underlying implication above is that all persons who advocate any of the arguments in this document are in violation of the tax laws. This is a false premise. What we advocate is FULL COMPLIANCE WITH THE TAX LAWS and we show throughout our Great IRS Hoax book that the real criminals are those at the IRS, who abuse their authority and commit fraud by telling anyone that Subtitle A "income taxes" are mandatory or that they are "taxes" at all. A "tax" is a mandatory contribution, but these "taxes", in fact, are technically "donations" and not taxes for the average American. This subject is covered in section 5.1.2 of our Great IRS Hoax book.

I. The Voluntary Nature of the Federal Income Tax System

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

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

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

I.R.C. §§ 6011(a), 6012(a) DO NOT establish a requirement to file a tax return, only to MAKE a tax return. One can MAKE a tax return but not FILE it and still comply completely with the Internal Revenue Code. Here is the content of that section that purportedly establishes the liability to FILE, according to the IRS, which you can read for yourself at http://www4.law.cornell.edu/uscode/26/6011.html:

> *TITLE 26 - INTERNAL REVENUE CODE*
> *Subtitle F - Procedure and Administration*
> *CHAPTER 61 - INFORMATION AND RETURNS*
> *Subchapter A - Returns and Records*
> *PART II - TAX RETURNS OR STATEMENTS*
> *Subpart A - General Requirements*
> *Sec. 6011. General requirement of return, statement, or list*
>
> *(a) General Rule*
> *When required by regulations prescribed by the Secretary* ***any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return*** *or statement according to the forms and regulations prescribed by the Secretary.*

Do you see anything in the above that requires you to FILE a "return" form? If the form is called a "return" and you fill it out but don't submit it to anyone, did you "make" a "return". You sure did, because you can MAKE a "return" without "filing" a return. This is the very tactic used successfully in the case of a famous tax freedom fighter named Gaylon "Whitey" Harrell. See section 12.2.2 of our Great IRS Hoax book on our website at http://famguardian.org for more details about Gaylon Harrell's case.

Why didn't the government just outright say in section 6011 that you had to *FILE* the return? Because if you are a natural person protected by the Fifth Amendment, they have no authority to do so, and they also don't have any jurisdiction to do so inside the borders of the 50 states on nonfederal land because of Article 1, Section 2, Clause 3 and Article 1, Section 9, Clause 4 of the U.S. Constitution.

The requirement to put ANYTHING on the tax return is also VOLUNTARY. According to the court in the case of *U.S. v. Troescher*, CV 93-5736 (an unpublished case), the 9th Circuit Court of Appeals ruled:

> *"[t]he self-incrimination clause of the Fifth Amendment applies in all instances where a taxpayer has reasonable cause to apprehend criminal prosecution, whether tax related or not."* ***We agree. There is no general "Tax-Crime Exception" to the Fifth Amendment, and Troescher's Fifth Amendment claims were not defeated here simply because he feared prosecution for tax crimes.***

There was evidence in this case of a government conspiracy, as the results of this case were unpublished, which is to say that the government would not allow the court's findings to be published in law journals or case databases, apparently because they did not want the damn to break and start a massive wave of nonfilers or people who refused to put anything on their tax returns at all for fear of incriminating themselves. You can read the court's findings for this unpublished case at our website at:

http://famguardian.org/Subjects/Taxes/CaseStudies/LTroescher/Opinion.htm

Any taxpayer who has received more than a statutorily determined amount of gross income is obligated to file a return. Failure to file a tax return could subject the noncomplying individual to criminal penalties, including fines and imprisonment, as well as civil penalties. In United States v. Tedder, 787 F.2d 540, 542 (10 th 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."

When one completes and submits a tax return, it MUST be completed and signed voluntarily. Why? Because if the filer is doing so under compulsion or duress, he can't be prosecuted for what is on the return because he didn't provide the information freely and therefore can't be guaranteed to be telling the truth! Let's look into this some more:

> ***duress**:* *(Black's Law Dictionary, 6th Edition, page 504) "**Any unlawful threat or coercion used by a person to induce another to act (or to refrain from acting) in a manner he or she otherwise would not (or would)**. Subjecting person to improper pressure which overcomes his will and coerces him to comply with demand to which he would not yield if acting as free agent. Head v. Gadsden Civil Service Bd., Ala.Civ.App., 389 So.2d 516, 519. **Application of such pressure or constraint as compels man to go against his will, and takes away his free agency, destroying power of refusing to comply with unjust demands of another**. Haumont v. Security State Bank, 220 Neb. 809, 374 N.W.2d 2,6.*
>
> ...
>
> ***A contract entered into under duress by physical compulsion is void. Also, if a party's manifestation of assent to a contract is induced by an improper threat by the other party that leaves the victim no reasonable alternative, the contract is voidable by the victim.*** *Restatement, Second, Contracts §§174, 175.*
>
> ***As a defense to a civil action, it must be pleaded affirmatively. Fed.R.Civil P. 8(c).***
>
> ***As an affirmative defense in criminal law, one who, under the pressure of an unlawful***

threat from another human being to harm him (or to harm a third person), commits what would otherwise be a crime may, under some circumstances, be justified in doing what he did and thus not be guilty of the crime in question*. See Model Penal Code §2.09. See also Coercion; Economic duress; Extortion; Undue influence."*

When we sign our tax return, we are signing a contract or agreement, declaring under penalty of perjury that we understand the information provided on the form is true and correct to the best of our ability. This makes our tax return into the equivalent of an affidavit that can be used as evidence against us in court for either civil or criminal proceedings, and against anyone else whose income is listed on that form.

Based on the above then, if we are compelled to sign our tax return and if we indicate that we were compelled, we can't be held responsible for anything that is on the return and anything the government might want to prosecute us for based on the information on the return can't be prosecuted. That creates a real paradox for the government in the collection of taxes. That is why they are forced to say that our tax system depends on "voluntary compliance".

Now if we exercise our Fifth Amendment right by telling the truth on our tax return and writing "duress" next to our signature at the bottom, we are threatened with a $500 frivolous return penalty by the IRS. This leads us to ask, is the Fifth Amendment right really a right if we can be penalized, fined, or taxed by our government for exercising it. The answer is an emphatic NO, which means that our tax system violates the Fifth Amendment, as the Supreme Court made it clear that the government may not penalize us for the exercise of a right guaranteed by the Constitution:

> *"It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution."* ***Frost & Frost Trucking Co. v. Railroad Comm'n of California****, 271 U.S. 583. "Constitutional rights would be of little value if they could be indirectly denied,'* ***Smith v. Allwright****, 321 US. 649, 644, or manipulated out of existence,'* ***Gomillion v. Lightfoot****, 364 U.S. 339, 345."* **Harman v. Forssenius***, 380 U.S 528 at 540, 85 S.Ct. 1177, 1185 (1965):*

Relevant Case Law:

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

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

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

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

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

B. 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.

The Law: The requirement to pay taxes is not voluntary and is clearly set forth in section 1 of the Internal Revenue Code, which imposes a tax on the taxable income of individuals, estates, and trusts as determined by the tables set forth in that section. (Section 11 imposes a tax on the taxable income of corporations.) Furthermore, the obligation to pay tax is described in section 6151, which requires taxpayers to submit payment with their tax returns. Failure to pay taxes could subject the noncomplying individual to criminal penalties, including fines and imprisonment, as well as civil penalties.

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

Relevant Case Law:

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

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."

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

United States v. Gerads, 999 F.2d 1255, 1256 (8 th Cir. 1993) – the court stated that "[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-protestor arguments."

C. 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 a federal tax return for a person who does not file a return. Thus, those who subscribe to this contention believe 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 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.

Our present tax system, by the IRS' own admission, is based on "voluntary compliance" and the taxes truly are voluntary for biological people because there is no statute anywhere in Subtitle A of the Internal Revenue Code that makes anyone, including either business entitles or biological people liable to pay the income tax.

*"Our tax system is based on individual **self-assessment** and voluntary compliance".*

-Mortimer Caplin, *Internal Revenue Audit Manual (1975)*

The IRS likes to quote the regulations under section §1 of the IRC at 26 CFR §1.1-1 which say "liable to the tax" but the federal courts have ruled that a regulation may not expand the scope or authority of a statute because the Secretary of the Treasury does **not** have the authority to make law as a member of the Executive Branch. Therefore, this regulation, insofar as it uses the phrase "liable to the tax" is null and void and unenforceable.

> *"..**liability for taxation must clearly appear**[from statute imposing tax]." Higley v. Commissioner of Internal Revenue, 69 F.2d 160 (1934)*

> *"**While Congress might have the power to place such a personal liability upon trust beneficiaries who did not renounce the trust, yet it would require clear expression of such intent**, and it cannot be spelled out from language (as that here) which can be given an entirely natural and useful meaning and application excluding such intent." Higley v. Commissioner of Internal Revenue, 69 F.2d 160 (1934)*

> *"`Tax' is legal imposition, exclusively of statutory origin, and liability to taxation must be read in statute, or it does not exist." Bente v. Bugbee, 137 A. 552; 103 N.J. Law. 608 (1927)*

> *"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." Terry v. Bothke, 713 F.2d 1405, at 1414 (1983).*

For personal income taxes under Subtitle A of the Internal Revenue Code, the only person who can therefore make you into a "taxpayer" who is "liable" for a tax is **you** and not the IRS, and you do this by assessing yourself and sending in a return that you have prepared or signed **yourself**, or by delegating to the IRS the authority to do it for you. Section 6151 of the Internal Revenue Code says that:

> *"…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..".*

The regulation under this at 26 CFR §1.6151-1 says that:

> *"…the tax shown on any **income tax return** shall, without assessment or notice and demand, be paid to the internal revenue officer with whom the return is filed at the time fixed for filing the return…".*

But what if there isn't a return? Do you have to pay a tax? The answer is that you **don't** have to pay any tax that doesn't appear on a return that YOU FILED. The IRS cannot assess you with a liability but they don't want you to know this, which is why they have to prepare sneaky questions like the one above! The IRS is trying to explain here why it doesn't prepare Substitute for Returns (SFR's) on persons who don't file their **own** returns so that people won't start believing that there is no way the IRS can make a valid or lawful assessment on them without them doing it themselves. Section 5.1.11.6.10 of the IRS' own Internal Revenue Manual under paragraph (1) shows the ONLY forms which are subject to Substitute For Returns (SFR) processing by revenue agents. Conspicuously missing are the IRS forms 1040, 1040A, 1040EZ, 1040NR, which implies that the IRS has ***no authority*** to prepare Substitute For Returns for natural persons (biological people) under 26 U.S.C. §6020(b). The reason for this is that in the context of Subtitle A income taxes, these taxes are direct taxes that violate the rights of natural persons according to the Supreme Court:

> *"Direct taxes bear immediately upon persons, upon the possession and enjoyment of rights; indirect taxes are levied upon the happening of an event as an exchange." [Knowlton v. Moore, 178 U.S. 41 (1900)]*

We have on our website an entire line of questions and corresponding evidence from a real-live revenue agent named John Turner who worked at the IRS as a collection agent for 10 years. You can view the questions yourself at: http://famguardian.org/TaxFreedom/Forms/Discovery/Deposition/Section%2013.htm. Mr. Turner reported under oath

with an affidavit that during his training as a Revenue Officer, a part of the curricula involved 6020(b) Substitute For Returns, and during that official IRS curricula, the forms 1040, 1040A, 1040EZ, and 1040NR were conspicuously *never mentioned*. Those agents who do mistakenly prepare SFR's are making the equivalent of an illegal and void assessment against a "nontaxpayer", and they can be held criminally liable for their violation of rights in any federal or state court:

> *"And by statutory definition the term "taxpayer" includes any person, trust or estate* ***subject to*** *a tax imposed by the revenue act. ...Since the statutory definition of taxpayer is exclusive, the federal [and state] courts do not have the power to create nonstatutory taxpayers for the purpose of applying the provisions of the Revenue Acts..."* ***C.I.R. v. Trustees of L. Inv. Ass'n****., 100 F.2d.18 (1939)*

> *"The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws..."*
>
> *"The distinction between persons and things within the scope of the revenue laws and those without is vital."* ***Long v. Rasmussen****, 281 F. 236 @ 238(1922).*

When a biological person hasn't filed a return under Subtitle A of the Internal Revenue Code, in most cases they are ignored by the IRS because there is no W-2 matching program that allows them to match wages earned to a specific person. However, on occasion, an incompetent or green IRS collection agent who forgot his training on SFR's or who has been unscrupulously pressured to meet a "quota" by his supervisor may prepare an illegal SFR on a biological person or be denied his next pay raise for not meeting quota. When this happens, it is called a "bogus assessment" and you can order your non-sanitized IMF directly from the IRS under the Freedom of Information Act (FOIA) and decode it yourself to prove that the assessment was invalid and illegal, and this evidence can be used in court to prosecute the offending agent for violation of rights and unauthorized collection activity under 26 U.S.C. §7433.

On some occasions, this same agent may also mistakenly and illegally refer you for criminal investigation for Willful Failure to File under 26 U.S.C. §7203. For this too, he can be prosecuted for wrongful prosecution. As a matter of fact, 26 U.S.C. §7203 has no implementing regulations under Title 26 of the Code of Federal Regulations, and is unenforceable. Occasionally, the IRS is able to find an ignorant or greedy judge who will side with them and illegally enforce this statute anyway against an innocent American, but such an act constitutes a Conspiracy against rights in violation of several statutes, including 26 U.S.C. §241 and 18 U.S.C. §1983.

Relevant Case Law:

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, state 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 the failure."

Schiff v. United States, 919 F.2d 830, 833 (2d Cir. 1990) – the court rejected the taxpayer's argument that the IRS must prepare a substitute for return pursuant to section 6010(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 obligation to file established by 26 U.S.C. §6012.

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

A. 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.

Wrong argument once again. This is another IRS red herring to keep people distracted from arguing about the right things, which are *jurisdiction and liability*. The IRS ignores the ***real*** argument, which is basically that the federal government can tax and do whatever it wants on federal property because under Article 1, Section 8, Clause 17 of the constitution, it has exclusive legislative jurisdiction over these areas and complete sovereign powers. These sovereign powers include the ability to legally violate every Amendment of the Bill of Rights against federal citizens or residents, instituting income taxes on wages up to 100%, and whatever else they want to do. As a matter of fact, did you ever stop to think that the Second Amendment makes bearing arms a right, and yet in the District of Columbia, it is against the law to own guns?

The argument is NOT whether the U.S. government *can* tax wages, but ***WHERE***. The feds CAN'T tax wages inside the boundaries of the sovereign 50 states or against natural persons (biological people) who are NOT U.S. citizens! If a natural person is a state Citizen but not a federal citizen, (also called a "natural born sovereign citizens"), then the U.S. government has NO jurisdiction to assess taxes against such persons and that person has NO tax liability, including for income from sources within the United States under 26 U.S.C. Section 861:

> *"Unless the defendant can prove he is not a citizen of the United States, the IRS has the right to inquire and determine a tax liability."* ***U.S. v. Slater****, 545 Fed. Supp. 179,182 (1982)*

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."

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

Relevant Case Law:

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

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

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

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

Reading v. Commissioner, 70 T.C. 730 (1978), aff'd, 614 F.2d 159 (8 th 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.

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

United States v. Romero, 640 F.2d 1014, 1016 (9 th 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."

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."

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."

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

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

The Law: As stated above, for federal income tax purposes, "gross income" means all income from whatever source derived and includes compensation for services. I.R.C. § 61. Further, Treasury Regulation § 1.1-1(b) provides, "[i]n general, all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States." I.R.C. sections 861 and 911 define the sources of income (U.S. versus non-U.S. source income) for such purposes as the prevention of double taxation of income that is subject to tax by more than one country. These sections neither specify whether income is taxable, nor do they determine or define gross income. Further, these frivolous assertions are clearly contrary to well-established legal precedent.

Citing Tax Court rulings as "well established legal precedent" amounts to gross negligence in the legal field. We have a saying: *"Never believe a man who says 'trust me'"*. Extending this metaphor, "Never believe an IRS operative who uses the term 'well established legal precedent' and 'Tax Court' in the same sentence!"

As we said before, only Supreme Court cases may be applied universally to all taxpayers by IRS' own admission in the

Internal Revenue Manual:

> *"Decisions made at various levels of the court system... may be used by either examiners or taxpayers to support a position...* ***A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions of lower courts****... Decisions made by lower courts, such as Tax Court, District Courts, or Claims Court, are binding on the Service only for the particular taxpayer and the years litigated. Adverse decisions of lower courts do not require the Service to alter its position for other taxpayers." [IRM, 4.10.7.2.9.8 (05/14/99)]*

Do you see any citations of Supreme Court rulings in the list of Relevant Case Law below? The IRS, as a matter of fact, has been trying very hard to keep "861 source" arguments out of the district, appellate, and Supreme Court because they don't have a defense against such arguments.

The IRS subterfuge above states: "*These sections neither specify whether income is taxable, nor do they determine or define gross income*." This simply is NOT true, as it completely ignores the meaning of "source". A "source" is an activity that is taxed. One can have income that isn't gross income if it doesn't derive from a taxable source. A "source" consists of a combination of a taxable event within a taxable jurisdiction and the exchange of money as a result of that event.

In the Treasury Regulations (26 CFR) under Section 863 (concerning income from sources inside and outside the U.S.), the following is stated:

> *"****Determination of taxable income****. The taxpayer's taxable income from sources* ***within or without*** *the United States* ***will be determined under the rules of Secs. 1.861-8 through 1.861-14T*** *for determining taxable income from sources* ***within*** *the United States." [26 CFR § 1.863-1(c)]*

(The vast majority of tax professionals ***do not use these sections*** to determine taxable income from sources within the United States of America. At this point, the average Citizen reading this report may guess that there must be some "context," or some other section, or something *somewhere* which would justify the tax professionals blatantly disregarding and disobeying the clear language used in the citations shown above. There is not.)

Note how sections **1.861-8** and following of the regulations are identified as the sections "*for determining taxable income from sources* ***within*** *the United States*," as well as being the sections to be used whether the income is from sources within ***or*** without the United States** (the federal zone). A similar structure occurs in the regulations under Section 862 (dealing with income from outside of the United States**):

> *"(b) Taxable income. The taxable income from sources* ***without*** *the United States... shall be determined on the same basis as that used in* ***Sec. 1.861-8 for determining the taxable income from sources within the United States****." [26 CFR § 1.862-1]*

The amount of tax is computed on the basis of the income that derives from the taxable source. 26 CFR §1.861-8(f) identifies the only legitimate sources of gross income that may be taxed, and these sources are:

> *"The operative sections of the Code which require the* ***determination of taxable income*** *of the taxpayer from* ***specific sources*** *or activities and which gives 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... [international and foreign sales corporations]*
> *(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...*

*(B) The amount of **foreign** mineral income...*

(C) [Reserved]

*(D) The amount of **foreign** oil and gas extraction income...*

*(E) (deals with **Puerto Rico** tax credits)*

*(F) (deals with **Puerto Rico** tax credits)*

*(G) (deals with **Virgin Islands** tax credits)*

*(H) The income derived from **Guam** by an individual...*

*(I) (deals with **China Trade Act** corporations)*

*(J) (deals with **foreign** corporations)*

*(K) (deals with insurance income of **foreign** corporations)*

*(L) (deals with countries subject to **international boycott**)*

*(M) (deals with the **Merchant Marine Act** of 1936)" [26 CFR § 1.861-8(f)(1)]*

None of these "sources" apply to United States citizens who live and work exclusively within the 50 states of the United States of America. (Federal "possessions," such as Guam, Puerto Rico, etc., are considered "foreign" under federal law law) This is the only list of "sources" in Part I of Subchapter N, or the regulations thereunder, which (as the regulations say) "*determine the sources of income for purposes of the income tax.*" We can see quite clearly that all of these taxable sources are part of the "federal zone", which includes the District of Columbia and all federal possessions, or pertain to foreign commerce as allowed under Article 1, Section 8, Clause 3 of the constitution.

Relevant Case Law:

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."

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

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

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

C. Contention: Federal Reserve Notes are not income.

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

The Law: Congress is empowered "[t]o coin Money, regulate the value thereof, and of foreign coin, and fix the Standard of weights and measures." U.S. Const. Art. I, § 8, cl. 5. Article I, Section 10 of the Constitution prohibits the states from declaring as legal tender anything other than gold or silver, but does not limit Congress' power to declare the form of legal tender. See 31 U.S.C. § 5103; 12 U.S.C. § 411. In United States v. Rifen, 577 F.2d 1111 (8th Cir. 1978), the

court affirmed a conviction for willfully failing to file a return, rejecting the argument that Federal Reserve Notes are not subject to taxation. "Congress has declared federal reserve notes legal tender ... and federal reserve notes are taxable dollars." Id. at 1112. The courts have rejected this argument on numerous occasions.

Relevant Case Law:

United States v. Rickman, 638 F.2d 182, 184 (10 th 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. Condo, 741 F.2d 238, 239 (9 th Cir. 1984) – the court upheld the taxpayer's criminal conviction, rejecting as "frivolous" the argument that Federal Reserve Notes are not valid currency, cannot be taxed, and are merely "debts."

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

Jones v. Commissioner, 688 F.2d 17 (6 th 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.

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

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

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

The Law: The Fourteenth Amendment to the United States Constitution defines the basis for United States citizenship, stating that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." The Fourteenth Amendment therefore establishes simultaneous state and federal citizenship. Claims that individuals are not citizens of the United States but are solely citizens of a sovereign state and not subject to federal taxation have been uniformly rejected by the courts.

Are you a "U.S. citizen"? You decide. Here's the ONLY definition of "U.S. citizen" we could find ***anywhere*** in either the Internal Revenue Code and the Implementing Regulations after an electronic search of the entire code and regulations:

26 CFR § 31.3121(e) State, United States, and citizen.

(b)...The term 'citizen of the United States' includes a citizen of the Commonwealth of Puerto Rico or the Virgin Islands, and, effective January 1, 1961, a citizen of Guam or American Samoa.

The answer is EMPHATICALLY NO! Federal citizenship, also called "U.S. citizenship", was first created by the 14th Amendment to the U.S. Constitution. Here is Section 1 of the 14th Amendment that creates "U.S. citizenship":

> *Section 1. All persons born or naturalized in the [federal] United States, **and subject to the jurisdiction thereof**, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

The legal encyclopedia defines Aliens and Citizens as follows:

> ***3C Am Jur 2d §2689, Who is born in United States and subject to United States jurisdiction***
>
> *"A person is born subject to the jurisdiction of the United States, for purposes of acquiring citizenship at birth, if his or her birth occurs **in territory over which the United States is sovereign**, even though another country provides all governmental services within the territory, and the territory is subsequently ceded to the other country."*

Therefore, a person may not legally be a federal or "U.S. citizen" unless they were born on a federal **territory**, such as in Guam, the Virgin Islands, or Puerto Rico. Below is the definition of the word "territory" so you can see for yourself, right from Black's Law Dictionary, Sixth Edition, page 1473:

> ***"Territory**: A part of a country separated from the rest, and subject to a particular jurisdiction. Geographical area under the jurisdiction of another country or sovereign power.*
>
> ***A portion of the United States not within the limits of any state**, which has not yet been admitted as a state of the Union, but is organized with a separate legislature, and with executive and judicial powers appointed by the President."*

Persons born in the sovereign 50 states outside of the "federal zone" are technically not "U.S. citizens", but "U.S. nationals" as defined in 8 U.S.C. §1408 and 8 U.S.C. §1101(a)(21) through (a)(22). As "U.S. nationals", they are classified as "nonresident aliens" within the Internal Revenue Code:

> *26 U.S.C. §7701 Definitions*
>
> *(A) Nonresident alien*
>
> ***An individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident of the [federal] United States** (within the meaning of subparagraph (A)).*

Some people claim that a federal citizen is a taxable entity like a corporation, and is subject to pay an excise tax for the privileges that Congress has granted him/her. However, there is no basis in federal law to support this conclusion that we could find. Persons who are born outside of the federal zone can, however "volunteer" or "elect" to be "U.S. citizens" and the U.S. government will be happy to look the other way even though Title 8 of the U.S. Code doesn't allow them to, because that is how they make federal taxpayers!

The Fourteenth Amendment may establish simultaneous state and federal citizenship, but the two may also exist independent of each other, as shown below:

> *"Both before and after the Fourteenth Amendment to the federal Constitution, it has not been necessary for a person to be a citizen of the United States in order to be a citizen of his state."* **Crosse v. Bd. of Supervisors**, *221 A.2d 431 (1966), citing* ***U.S. v.***

> ***Cruikshank**, supra.*
>
> *"We have in our political system a Government of the United States and a government of each of the several States. Each of these governments is distinct from the others, and each has citizens of its own ...." **United States v. Cruikshank**, 92 U.S. 542 (1875)*

Expatriation is the process of renouncing one's citizenship. The circuit courts have also upheld the right of a person to expatriate, and have identified this right as fundamental to the enjoyment of life, liberty, and the pursuit of happiness:

> *"Almost a century ago, Congress declared that "**the right of expatriation [including expatriation from the District of Columbia or "U.S. Inc", the corporation] is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness,**" and decreed that "**<u>any declaration, instruction, opinion, order, or decision of any officers of this government which denies, restricts, impairs, or questions the right of expatriation, is hereby declared inconsistent with the fundamental principles of this government.</u>**" 15 Stat. 223-224 (1868), R.S. § 1999, 8 U.S.C. § 800 (1940).[1] Although designed to apply especially to the rights of immigrants to shed their foreign nationalities, that Act of Congress "is also broad enough to cover, and does cover, the corresponding natural and inherent right of American citizens to expatriate themselves." **Savorgnan v. United States**, 1950, 338 U.S. 491, 498 note 11, 70 S. Ct. 292, 296, 94 L. Ed. 287.[2] The Supreme Court has held that the Citizenship Act of 1907 and the Nationality Act of 1940 "are to be read in the light of the declaration of policy favoring freedom of expatriation which stands unrepealed." Id., 338 U.S. at pages 498-499, 70 S. Ct. at page 296.That same light, I think, illuminates 22 U.S.C.A. § 211a and 8 U.S.C.A.§ 1185." **Walter Briehl v. John Foster Dulles**, 284 F2d 561, 583 (1957).*

Therefore, since the two citizenships are independent of each other and one may expatriate from either, those who expatriate their U.S. citizenship are relieved from liability for federal income taxes. We describe how to expatriate in chapter 8 of The Great IRS Hoax book, section 8.4.3.13. Furthermore, the existence of the 26 U.S.C. Section 877, entitled "Expatriation to Avoid Tax" proves that people can and often do expatriate to avoid federal taxes.

> *"Unless the defendant can prove he is not a citizen of the United States, the IRS has the right to inquire and determine a tax liability." **U.S. v. Slater**, 545 Fed. Supp. 179,182 (1982).*

The act of expatriation carries with it a strong burden of proof requirement, and we describe in our book how to meet that requirement. The cases cited below that failed in attempts to escape tax through expatriation did not meet the burden of proof requirement, but it can and often is still done quite regularly. Once a person expatriates their "U.S. citizenship" to become a "U.S. national", they become nonresident aliens who then are subject to tax on income derived from U.S. sources described in 26 U.S.C. §871(a) and 26 CFR § 1.861-8(f).

Since most people do not have any income from such U.S. sources, they are not subject to the income tax and fall outside of the jurisdiction of the federal courts. Proof of this assertion is found in the 1040NR booklet, which is the tax form used by nonresident aliens. The booklet is missing the mandatory Privacy Act statement describing whether completing and submitting the form is voluntary or mandatory. The reason this statement was not included is because if the IRS was honest about the use of this form, then they would have to admit that filling it out is "voluntary", which would cause most people who expatriated to become nonresident aliens to stop filing the 1040NR form and paying taxes entirely! Since they don't want to start a stampede of persons leaving the tax system, they have deliberately omitted the Privacy Act statement from the 1040NR form and booklet. See section 5.5.7 of <u>The Great IRS Hoax</u> book for further details on this scam.

Relevant Case Law:

[1] See Carrington, Political Questions: The Judicial Check on the Executive, 42 Va.L.Rev. 175 (1956).
[2] 9 Pet. 692, 34 U.S. 692, 699, 9 L. Ed. 276.

O'Driscoll v. I.R.S., 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."

United States v. Sloan, 939 F.2d 499, 500 (7 th 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 (11 th 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.

United States v. Sileven, 985 F.2d 962 (8 th 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 (8 th Cir. 1993) – the court rejected the Gerads' contention that they were "not citizens of the United States, but rather 'Free Citizens of the Republic of Minnesota' and, consequently, not subject to taxation" and imposed sanctions "for bringing this frivolous appeal based on discredited, tax-protestor arguments."

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

B. 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 (10 th 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.

A person who is a "U.S. citizen is, by definition, *subject to the jurisdiction of the U.S. government* no matter where they reside, so it's pointless to argue otherwise and if that is what Mr. BeCraft did below, we agree with the government and the courts that he wasted his time. Here is what the Fourteenth Amendment says about the jurisdiction that the federal government has over "U.S. citizens":

> *Section 1. All persons born or naturalized in the [federal] United States, **and subject to the jurisdiction thereof**, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or*

immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Even the annotated Fifth Amendment found at http://caselaw.lp.findlaw.com/data/constitution/amendment05/13.html - 6 agrees with this conclusion::

> In laying taxes, the Federal Government is less narrowly restricted by the Fifth Amendment than are the States by the Fourteenth. **The Federal Government may tax property belonging to its citizens, even if such property is never situated within the jurisdiction of the United States**,3[1] and it may tax the income of a citizen resident abroad, which is derived from property located at his residence.4[2] The difference is explained by the fact that protection of the Federal Government follows the citizen wherever he goes, whereas the benefits of state government accrue only to persons and property within the State's borders.

The more important issue is, however, what about those persons who are **not** "U.S. citizens" and instead have chosen to exercise their liberties by expatriating their "U.S. citizenship" to become "U.S. nationals" as defined in 8 U.S.C. §1408 and 8 U.S.C. §1101(a)(21) through 8 U.S.C.. §1101(a)(22)? "U.S. nationals", unlike "U.S. citizens", do not therefore come under the 14th Amendment jurisdiction cited above because a "U.S. national" is not necessarily a "U.S. citizen" but a "U.S. citizen" is always also a "U.S. national" as per 8 U.S.C. §1101(a)(21) through 8 U.S.C.. §1101(a)(22). Therefore the only jurisdiction the U.S. government has in the case of persons who have expatriated is territorial and subject matter jurisdiction. Territorial jurisdiction only exists when they reside ***within the federal United States*** (the federal zone) and subject matter jurisdiction only exists if they have income from taxable sources within the federal United States identified in 26 U.S.C. §871(a) and 26 CFR § 1.861-8(f) that would put them within the jurisdiction of the Internal Revenue Code. The vast majority of persons who have expatriated in this way simply do not have any income that would be taxable under these conditions, and the IRS is loathe to tell them this secret, because it would destroy their tax base and liberate most persons from federal taxation.

According to an unchallenged ruling of ***Walter Briehl v. John Foster Dulles***, 248 F2d 561, 583, (1957) from the U.S. Court of Appeals, D.C. Circuit ***the right of expatriation is absolute and cannot be infringed:***

> "Almost a century ago, Congress declared that "**the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness,**" and decreed that "**any declaration, instruction, opinion, order, or decision of any officers of this government which denies, restricts, impairs, or questions the right of expatriation, is hereby declared inconsistent with the fundamental principles of this government.**" 15 Stat. 223-224 (1868), R.S. § 1999, 8 U.S.C. § 800 (1940).5[1] Although designed to apply especially to the rights of immigrants to shed their foreign nationalities, that Act of Congress "is also broad enough to cover, and does cover, the corresponding natural and inherent right of American citizens to expatriate themselves." **Savorgnan v. United States**, 1950, 338 U.S. 491, 498 note 11, 70 S. Ct. 292, 296, 94 L. Ed. 287.6[2] The Supreme Court has held that the Citizenship Act of 1907 and the Nationality Act of 1940 "are to be read in the light of the declaration of policy favoring freedom of expatriation which stands unrepealed." Id., 338 U.S. at pages 498-499, 70 S. Ct. at page 296.That same light, I think, illuminates 22 U.S.C.A. § 211a and 8 U.S.C.A.§ 1185. Since expatriation is today impossible without leaving the country,7[3] the policy expressed by Congress in 1868 and never repealed precludes a reading of the passport and travel control statutes which would permit the Secretary of State to prevent citizens from leaving."

There is nothing stopping everyone in the country from renouncing their fake (obtained in violation of law) U.S. citizenship through expatriation and thereby being completely emancipated from the federal income tax system. We show you how to expatriate in section 8.5.3.12 of our *The Great IRS Hoax* book. What are you waiting for, friends?

Relevant Case Law:

In re Becraft, 885 F.2d 547, 549-50 (9 th Cir. 1989) – the court, observing that 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 (11 th 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 (5 th Cir. 1997) – noting 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.

C. 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.

This is a very tricky answer. First of all, a "taxpayer" is one who is liable for paying tax or has made himself liable by "volunteering" and assessing him/herself. Did you notice they didn't use the term "American" rather than "taxpayer"? Would the answer be the same if the question was "Individual is not a 'person' as defined by the Internal Revenue Code, thus is not subject to the Subtitle A personal income (indirect excise) taxes as a nonprivileged individual?" The answer is a resounding NO.

Why did the IRS cite U.S. v. Collins in their defense? Because as we said before, this case is a very bad case that conflicts with all previous Supreme Court rulings but favors the IRS. Because the Supreme Court in this case was too busy to take this appeal and denied the writ of certiorari, the IRS takes the circuit court ruling as precedent even though their own regulations and IRM state that the only thing that is binding on more than one taxpayer are the rulings of the Supreme Court:

> *"Decisions made at various levels of the court system... may be used by either examiners or taxpayers to support a position...* ***A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions of lower courts****... Decisions made by lower courts, such as Tax Court, District Courts, or Claims Court, are binding on the Service only for the particular taxpayer and the years litigated. Adverse decisions of lower courts do not require the Service to alter its position for*

other taxpayers." [IRM, 4.10.7.2.9.8 (05/14/99)]

The Supreme Court has never agreed with the findings of the Collins case that Subtitle A income taxes are direct taxes authorized by the constitution, but the IRS seems more than willing to use a circuit court case to overrule the Supreme Court Case because it suits their selfish and conspiratorial agenda.

Also, did you notice that they said "is not subject to the federal income tax laws" rather than "is not liable under for Subtitles A or B of the Internal Revenue Code"? A person can be subject to a law without being liable for anything. More government double-speak. The IRS likes to twist and distract things to keep people arguing about the wrong things.

In conclusion then, knowing the way they have twisted the language teaches us that this question answers itself and deceives the reader, who is NOT a taxpayer in any sense of the word as a private sovereign Citizen living in the 50 states on nonfederal land. What they essentially asked was: "Is the blue sky blue?", "Is a taxpayer liable for tax?". Remember that this is a war of words and to be very careful with our choice of words and how we think about things..

Relevant Case Law:

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

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

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

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

United States v. Studley, 783 F.2d 934, 937 n.3 (9 th 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."

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

Some argue that the federal government can tax only employees of the federal government; therefore, employees in the private sector are immune from federal income tax liability. This argument is based on an apparent 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.

If the word "includes" is meant as a term of enlargement, then why does it say in 26 U.S.C. Sec. 61:

> *(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..." [Emphasis added]*

If "includes" is meant as a term of enlargement, then why would this phrase even be necessary? And how do you reconcile using the term "includes" as a term of enlargement in light of the government's own definition of that word?:

> *Treasury Decision 3980, Vol. 29, January-December, 1927, pgs. 64 and 65 defines the words "includes" and "including" as:*
>
> *"(1) To comprise, comprehend, or embrace...(2) To enclose within; contain; confine...* ***But granting that the word 'including' is a term of enlargement, it is clear that it only performs that office by introducing the specific elements constituting the enlargement. It thus, and thus only, enlarges the otherwise more limited, preceding general language...The word 'including' is obviously used in the sense of its synonyms, comprising; comprehending; embracing."***

Black's Law Dictionary also describes the word includes as a word of limitation and not enlargement:

> *"Include. (Lat. Inclaudere, to shut in. keep within.)* ***To confine within, hold as an inclosure.*** *Take in, attain, shut up, contain, inclose, comprise, comprehend, embrace, involve. Term may, according to context, express an enlargement and have the meaning of and or in addition to, or merely specify a particular thing already included within general words theretofore used. "Including" within statute is interpreted as a word of enlargement or of illustrative application as well as a word of limitation. Premier Products Co. v. Cameron, 240 Or. 123, 400 P.2d 227, 228."*

The American College Dictionary:

> *"include, v.f.;-cluded, -cluding. 1. to contain, embrace, or comprise, as a whole does parts or any part or element."*
>
> *"included, adj. 1. enclosed; embraced; comprised. 2. But. not projecting beyond the mouth of the corolla, as stamens or a style."*

Note that here, even the Botanical meaning is a confining use! Now, Roget's Thesaurus:

> *"include, v,f. comprise, comprehend, contain, admit, embrace, receive; enclose, circumscribe, compose, incorporate, encompass; recon or number among, count in; refer to, place under, take into account."*

So, when you see "including" or "includes," whether in normal usage or in a the Internal Revenue Code, understand that it is limited to the items listed and spelled out in the the statute *and nothing more*. This must be so because the expansive use of the word "includes" and "including" violates our Fifth Amendment due process protections as shown below in the U.S. Supreme Court case of ***Connally v. General Construction Co.,*** 269 U.S. 385 (1926):

> *"A statute which either forbids or requires the doing of an act in terms so vague that men and women of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."*

If the act doesn't specifically identify what is forbidden or "included" and we have to rely not on the statute, but some

judge or lawyer or politician or a guess to describe what is "included", then our due process has been violated and our government has thereby instantly been transformed from a government of laws to a government of men.

> *The concept of "due process of law" as it is embodied in Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a reasonable and substantial relation to the object being sought. [Black's Law Dictionary, Sixth Edition, page 500, under the definition of "due process of law"]*

If the word "includes" is used in its expansive sense, we have, in effect, subjected ourselves to the arbitrary whims of however the currently elected politician or judge wants to describe what is "included". That leads to massive chaos, injustice, and unconstitutional behavior by our courts and our elected representatives. It also promotes unnecessary litigation over the meaning of the tax laws, to the benefit of lawyers, lawmakers, and the American Bar Association, which is a clear conflict of interest.

Why did the Congress define "include" the way they did? Because that way they can define and interpret the Internal Revenue Code however they want! They needed to leave wiggle room for the IRS and the Treasury in the writing of the interpreting regulations. In particular, the interpreting regulations in 26 CFR have a much broader definition of "employer" and "employee" that is not consistent with the U.S. Code section 7701 and 3401, so they had to leave room for the IRS to defend their interpretation of the code by saying:

> *"The code does not define or limit* everything *that is taxable because the word 'include' is not restrictive, and so we can write our regulations however we want to and disregard the codes entirely."*

And other courts describe "includes" as a word of limitation as well:

> *"**Includes** is a word of **limitation**. Where a **general term** in Statute is followed by the word, '**including**' the primary import of the specific words following the quoted words is to indicate restriction rather than enlargement." **Powers ex re. Covon v. Charron R.I.**, 135 A. 2nd 829, 832 Definitions-Words and Phrases pages 156-156, Words and Phrases under '**limitations**'."*

So the question then becomes, can the Internal Revenue Code possibly define or describe ANYTHING if includes is used as the IRS says it is used?

> ***definition**: (Black's Law Dictionary, Sixth Edition, page 423) A description of a thing by its properties; an explanation of the meaning of a word or term. The process of stating the exact meaning of a word by means of other words. Such a description of the thing defined, including all essential elements and excluding all nonessential, as to distinguish it from all other things and classes."*

If "includes" as used in the I.R.C. is used expansively, then every definition that uses it is a NON-definition according to the above! The answer therefore is that the I.R.C. defines NOTHING if the word "includes" is used expansively. Instead, the code means whatever the judge says it means, and by using "includes" expansively, we have transformed our country from being a government of laws to a government of men. Laws, however, are intended to be written clearly in such a way that the common man can know with a certainty whether he is violating the law. There is no way this requirement can be met with the I.R.C. if "includes" is used expansively. It is because of this very problem that the Supreme Court came up with something called the "void for vagueness doctrine", in which if a law doesn't clearly state what is expected, then the courts are obligated to rule in favor of the taxpayer:

> ***The essential purpose** of the "void for vagueness doctrine" with respect to interpretation of a criminal statute, **is to warn individuals of the criminal consequences of their conduct**. ... Criminal statutes which fail to give due notice that an act has been made criminal before it is done are unconstitutional deprivations of due process of law.*
> *[**U.S. v. De Cadena**, 105 F.Supp. 202, 204 (1952), emphasis added]*

The U.S. Supreme Court has also said, based on the rules of statutory construction, that we may *not* extend the meaning of a term beyond that specifically defined or enclosed within its definition:

> *"In the interpretation of* ***statutes levying taxes, it is the established rule not to*** *extend their provisions by implication beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government and in favor of the citizen."* ***Gould v. Gould****, 245 U.S. 151, at 153.*

Consequently, we have to disagree with the IRS' convoluted definition of the term "includes", and instead characterize it as a naked power grab to extend federal jurisdiction into the sovereign 50 states and violate Article 1, Section 2, Clause 3 and Article 1, Section 9, Clause 4 of the constitution. This routine abuse of Constitutional Law by the IRS amounts to "extortion under the color of law", as we clearly explain in our book *The Great IRS Hoax.*

Relevant Case Law:

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

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

Peth v. Breitzmann, 611 F. Supp. 50, 53 (E.D. Wis. 1985) – the court rejected the taxpayer's argument "that he is not an 'employee' under I.R.C. § 3401(c) because he is not a federal officer, employee, elected official, or corporate officer," stating, "[he] mistakenly assumes that this definition of 'employee' excludes all other wage earners."

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

IV. Constitutional Amendment Claims

A. 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 Internal Revenue Service to collect federal income taxes owed by a taxpayer is unconstitutional.

The Law: The Fifth Amendment to the United States Constitution provides that a person shall not be "deprived of life, liberty, or property, without due process of law ..." The U.S. Supreme Court stated in Brushaber v. Union Pacific R.R., 240 U.S. 1, 24 (1916), that "it is ... well settled that [the Fifth Amendment] is not a limitation upon the taxing power conferred upon Congress

by the Constitution; in other words, that the Constitution does not conflict with itself by conferring upon the one hand a taxing power, and taking the same power away on the other by limitations of the due process clause." Further, the Supreme Court has upheld the constitutionality of the summary administrative procedures contained in the Internal Revenue Code against due process challenges, on the basis that a post-collection remedy (e.g., a tax refund suit) exists and is sufficient to satisfy the requirements of constitutional due process. Phillips v. Commissioner, 283 U.S. 589, 595-97 (1931).

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

In recent years, Congress passed new laws providing further protection for taxpayers' due process rights in collection matters. In the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, § 3401, 112 Stat. 685, 746, Congress enacted new sections 6320 (pertaining to liens) and 6330 (pertaining to levies) establishing collection due process rights for taxpayers, effective for collection actions after January 19, 1999. Generally, the IRS must provide taxpayers notice and an opportunity for an administrative appeals hearing upon the filing of a notice of federal tax lien (section 6320) and prior to levy (section 6330). Taxpayers also have the right to seek judicial review of the IRS's determination in these due process proceedings. I.R.C. § 6330(d). However, the Tax Court has indicated that it will impose sanctions pursuant to section 6673 against taxpayers who seek judicial relief based upon frivolous or groundless positions.

Relevant Case Law:

Flora v. United States, 362 U.S. 145, 175 (1960) – the court affirmed its earlier decision 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 (2nd Cir. 1990) – the court rejected a due process claim where the taxpayer chose not to avail himself of the opportunity to appeal a deficiency notice to the Tax Court.

Goza v. Commissioner, 114 T.C. 176 (2000) – the court rejected the taxpayer's attempt to use the judicial review process as a forum to contest the underlying tax liability, since the taxpayer had an opportunity to dispute that liability after receiving the statutory notice of deficiency.

Pierson v. Commissioner, 115 T.C. 576, 581 (2000) – the court considered imposing sanctions against the taxpayer, but decided against doing so, stating, "we regard this case as fair warning to those taxpayers who, in the future, institute or maintain a lien or levy action primarily for delay or whose position in such a proceeding is frivolous or groundless."

Davis v. Commissioner, T.C. Memo. 2001-87, 81 T.C.M. (CCH) 1503 (2001) – the court imposed a $4,000 penalty for frivolous and groundless arguments, after warning that the taxpayer could be penalized for presenting them.

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

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

The Law: There is no constitutional right to refuse to file an income tax return on the ground that it violates the Fifth Amendment privilege against self-incrimination. In United States v. Sullivan, 274 U.S. 259, 264 (1927), the U.S. Supreme Court stated that the taxpayer "could not draw a conjurer's circle around the whole matter by his own declaration that to write any word upon the government blank would bring him into danger of the law." The failure to comply with the filing and reporting requirements of the federal tax laws will not be excused based upon blanket assertions of the constitutional privilege against compelled self-incrimination under the Fifth Amendment.

Once again, the government speaketh with forked tongue. The Fifth Amendment doesn't say you have a right *not* to submit a tax return, but *it does imply that we have a right not to put ANYTHING on it that would incriminate us*, either civilly or criminally. *That means we are perfectly within our rights to file a blank return and can't be penalized for it, under the Fifth Amendment*, and we pointed out earlier in the case of *U.S. v. Troescher*, CV 93-5736 (an unpublished case), the 9th Circuit Court of Appeals that:

> *"[t]he self-incrimination clause of the Fifth Amendment applies in all instances where a taxpayer has reasonable cause to apprehend criminal prosecution, whether tax related or not."* ***We agree. There is no general "Tax-Crime Exception" to the Fifth Amendment, and Troescher's Fifth Amendment claims were not defeated here simply because he feared prosecution for tax crimes.***

Relevant Case Law:

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

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

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

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

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

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

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

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

The above comments violate the U.S. Supreme Court's own definition of slavery in the case of ***Yik Wo v. Hopkins***, 118 U.S. 356 (1885):

> *"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.**"*

Did you also notice they DIDN'T SAY that Subtitle A income taxes weren't involuntary servitude or slavery? They simply said that they weren't the *kind* of slavery referenced in the Thirteenth Amendment. But guess what, Title 18 of the U.S. codes prohibits slavery to pay off debts too:

> ***18 U.S.C. Sec. 1581. Peonage; obstructing enforcement***
> *(a) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, shall be fined under this title or imprisoned not more than 10 years, or both.*
> *(b) Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be liable to the penalties prescribed in subsection (a).*

And peonage is defined as follows:

> ***peonage* 1 a:** *the use of laborers bound in servitude because of debt* **b:** *a system of convict labor by which convicts are leased to contractors* **2:** *the condition of a peon.*
>
> ***peon* 3 a:** *a person held in compulsory servitude to a master for the working out of an indebtedness* **b:** *DRUDGE, MENIAL*

You will note that the Federal Reserve Act and the Income Tax were passed at exactly the same time. Our country was in debt to the Federal Reserve to the tune of more than 6.6 Trillion dollars as of July 2, 2003 (see http://www.publicdebt.treas.gov/opd/opdpenny.htm). This debt is paid off by peonage maintained by the illegal enforcement of the Internal Revenue Code. Isn't "peonage" against the Thirteenth Amendment and Title 18 of the U.S. Code, but that's what the U.S. Congress legalized when it nearly simultaneously passed the Federal Reserve Act and the Income Tax in 1913. The two are linked together because if you are going to run up a big public debt, then

“peons” are needed to pay it off!

We agree that not all forms of taxation amount to slavery or peonage, but only taxes based on wages or those NOT based on privilege or excise taxes. Excise taxes are voluntary in a sense, because if you don’t want to pay taxes on the exercise of a government granted privilege, then you have a choice not to exercise the privilege. Sales taxes are voluntary because if you don’t want to pay the tax, then don’t buy the item that is taxed. Income taxes on wages, on the other hand, are quite a different matter entirely.

The Constitution grants us a right to life, liberty, and the pursuit of happiness. Would anyone be happy or have any liberty at all if income taxes were 100%? We would all be complete (financial) slaves for such a case. Well then, if we pay 50% of our income, then aren’t we “peon” slaves working off a public debt we didn’t even approve of (over 85% of Americans want a balanced budget amendment but Congress has repeatedly thwarted the will of the people by not passing one) Is that liberty or the pursuit of happiness, or is it slavery by a nicer name called peonage? The Supreme Court has ruled that labor is our property because our body is our own property:

> *"Among these unalienable rights, as proclaimed in the Declaration of Independence is the* right *of men to pursue their happiness, by which is meant, the* right *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 them their highest enjoyment...It has been well said that,* ***THE PROPERTY WHICH EVERY MAN HAS IS HIS OWN LABOR, AS IT IS THE ORIGINAL FOUNDATION OF ALL OTHER PROPERTY SO IT IS THE*** **MOST SACRED AND INVIOLABLE..."**

So if labor is property, and when we get money (one type of property) in exchange for labor (another type of property), then why isn’t that exchange treated as a nonprofit EQUAL exchange? To do otherwise would be to treat your body, in effect, as government property that doesn’t belong to you, and to pay taxes on income derived from the “privilege” of borrowing your labor from the government long enough to earn money from it! Is that liberty and is this really a free country under such circumstances?

Relevant Case Law:

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

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

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

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

D. 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.

According to the Supreme Court, the 16th Amendment "conferred no new powers of taxation":

> *"..by the previous ruling it was settled that* ***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, that is by testing the tax not by what it was -- a tax on income, but by a mistaken theory deduced from the origin or source of the income taxed. "*

Therefore, why even argue about whether it was properly ratified. IT'S IRRELEVANT and red herring to keep attention off much more substantive issues discussed elsewhere in our rebuttal to this document.

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, 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.

Relevant Case Law:

Miller v. United States, 868 F.2d 236, 241 (7 th 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 for them having advanced a "patently frivolous" position.

United States v. Stahl, 792 F.2d 1438, 1441 (9 th 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.

Knoblauch v. Commissioner, 749 F.2d 200, 201 (5 th 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.

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

E. 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 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 (10 th 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."

We don't argue that the Sixteenth Amendment authorizes a nonapportioned income tax. The question is WHERE is it authorized, on WHAT type of income is it authorized, and WHO is responsible to pay the tax?

According to the U.S. Supreme Court in the case of Downes v. Bidwell, 182 U.S. 244, (1901):

> ***"CONSTITUTIONAL RESTRICTIONS AND LIMITATIONS [Bill of Rights]*** **WERE NOT APPLICABLE** ***to the areas of lands, enclaves, territories, and possessions over which Congress had EXCLUSIVE LEGISLATIVE JURISDICTION"***

This ruling says that it doesn't matter WHAT the constitution says about apportionment of income taxes among the states, such apportionment *isn't* required on federal property covered by Article 1, Section 8, Clause 17 of the constitution, which gives Congress *exclusive legislative jurisdiction* over federal lands:

> *Constitution (Article 1, Section 8, Clause 17):*
>
> *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 [underlines added]*

Therefore, while it is technically correct to say that the 16th Amendment authorizes an nonapportioned tax, the amendment does so ONLY for U.S. citizens living abroad and those occupying federal properties, including those within the borders of the sovereign 50 states.

Even more important is the fact that up until the 14th Amendment was allegedly ratified in 1868, there was NO SUCH THING as a U.S. citizen! U.S. citizenship was invented ONLY to protect slaves following the end of the civil war in 1865, and one does *not* need to be a U.S. citizen to be a citizen or "national" of their country.

> *"Both before and after the Fourteenth Amendment to the federal Constitution, it has not been necessary for a person to be a citizen of the United States in order to be a citizen of his state."* **Crosse v. Bd. of Supervisors**, *221 A.2d 431 (1966), citing* ***U.S. v. Cruikshank***, *supra.*

Even if we live in the United States of America, there is nothing obligating us to be "U.S. citizens", and we would argue that being a citizen has NO advantages and is mostly a liability. Those who aren't "U.S. citizens" don't have to pay federal income taxes, so why would you want to be one?

> *"Unless the defendant can prove he is not a citizen of the United States, the IRS has the right to inquire and determine a tax liability."* ***U.S. v. Slater***, *545 Fed. Supp. 179,182 (1982)*

If you have made the mistake of claiming that you are a "U.S. citizen" on a tax return, we have detailed instructions on how to eliminate your 14th Amendment U.S. citizenship in our The Great IRS Hoax book found on our website at: http://famguardian.org/Publications/GreatIRSHoax/GreatIRSHoax.htm

The type of income that the 16th Amendment authorizes to be taxed is corporate profits and nothing more. The I.R.C. Subtitle A income tax is an indirect excise/privilege tax on corporate and partnership profits and wages of elected or appointed officials of the U.S. government, but *not* on the wage income of private individuals who aren't corporate officers or U.S. political officials. If you doubt this, examine the following sections of the U.S. Code and the regulations:

- **26 U.S.C., Subchapter D - Seizure of Property for Collection of Taxes**
  Sec. 6331. Levy and distraint
  (a) Authority of Secretary
  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 (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. ***Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official.*** If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

- **26 CFR §31.3401(c) Employee:** "...the term [employee] includes officers and employees, *whether elected or appointed*, **of the United States, a [federal] State, Territory, Puerto Rico or any political subdivision, thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing**. The term 'employee' also includes an **officer of a corporation**."

- **26 U.S.C. Sec. 3401(c) Employee**
  For purposes of this chapter, the term "employee" includes [is limited to] an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

Congressional Research Service Report 97-59A dated May 7, 2001 clearly states that the Subtitle A income tax is an indirect excise tax, not a direct, non-apportioned tax. You can download a copy of this rebutted report from our website at:
http://famguardian.org/Subjects/Taxes//FalseRhetoric/CRS-97-59A-rebuts.pdf

All excise taxes are taxes on "privileges" received by the taxpayer from the entity the tax is paid to.

> "*The term 'excise tax' is synonymous with 'privilege tax'*, and the two have been used interchangeable. Foster & C. Co. v. Graham, 154 Tenn. 412, 285 S.W. 570, 47 ALR 971. Whether a tax is characterized in a statute imposing it, as a privilege tax or an excise tax is merely a choice of synonymous words, for an excise tax is a privilege tax." *Bank of Commerce & T. Co. v. Senter*, 149 Tenn. 569, 260 SW 144, *American Airways v. Wallace*, 57 F.2d 877, 880.

And the definition of privilege is:

> **Privilege**: "A particular benefit or advantage enjoyed by a person, company, or class beyond the common advantages of other citizens..." Black's Law Dictionary, Sixth Edition.

An essential feature of excise taxes is that they may not be coerced and are voluntary:

> "The obligation to pay an excise tax is based upon the voluntary action of the person taxed in performing the act, enjoying the ***privilege***, or engaging in the occupation which is the subject of the excise, and the element of absolute and unavoidable demand is lacking." ***People ex. rel. Atty Gen. v. Naglee***, 1 Cal. 232, ***Bank of Commerce & T.Co. v. Senter***, 149 Tenn. 441, 381 SW 144

So the questions are:

1. "What 'privilege' are we in receipt of from the government that makes us liable for the excise tax known as the income tax?"
2. "What aspect of our behavior, other than the exercise of constitutionally protected rights of life, liberty, and the pursuit of happiness, causes us to "volunteer" to be liable for the excise tax known as the I.R.C. Subtitle A Income tax?"

Is it a privilege to live and eat and breath and to be responsible for supporting oneself with labor and the wages that result from that labor? In fact, it's a ***right*** granted by the Constitution, and the exercise of rights cannot be taxed or penalized or punished by the government:

> "***That the right to...accept employment as a laborer for hire is a fundamental right is inherent to every free citizen, and is indisputable.***" United States v. Morris, 125 F.Rept. 325, 331

However, I.R.C. Subtitle A income taxes amount to a tax on the exercise of rights, which is unconstitutional. What the government has done, in effect, is to turn the exercise a right into a taxable privilege and tax the exercise of the privilege, which violates and encroaches on our rights and violates the Constitution.

> "***Legislature…cannot name something to be a taxable privilege unless it is first a privilege*** [Taxation West Key 53]…***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.***" [Taxation West Key 533]-***Jack Cole Co. v. MacFarland***, 337 S.W. 2d 453, Tenn.

Our fundamental rights come from the Bill of Rights and are also clarified and explained in the Declaration of Independence says so:

> "We hold these truths to be self-evident, that all men are created equal, that ***they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.*** That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. "

Part of the right to "life, liberty, and the pursuit of happiness" is the idea of making a living and supporting oneself so as not to become a burden to society and thereby encroach upon the rights of others by mandating that they support those who will not support themselves.

Once again, why do we pay this illegal [excise/privilege] income tax for privileges we aren't in receipt of?

Relevant Case Law:

In re Becraft, 885 F.2d 547 (9 th 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 (7 th 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 (8 th Cir. 1980) – the court rejected a refund suit, stating that the Sixteenth Amendment authorizes imposition of an income tax without apportionment among the states.

V. Fictional Legal Bases

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

Some argue that the Internal Revenue Service 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 Internal Revenue Service 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 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 Internal Revenue Service was created. Thus, the Internal Revenue Service 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.

We don't argue that the IRS was not created by positive law, but we do argue whether the Secretary of the Treasury or the Department of Justice or the Internal Revenue Service have any delegated authority to enforce Subtitle A personal income taxes inside the boundaries of the sovereign 50 states on nonfederal land. There simply are NO delegation of authority orders authorizing this and there never have been. Please show us such a delegation of authority order.

Relevant Case Law:

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

Young v. I.R.S., 596 F. Supp. 141 (N.D. Ind. 1984) – the court granted summary judgment in favor of government, rejecting Young's claim that the Internal Revenue Service is a private corporation, rather than a government agency.

B. 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 (11 th Cir. 1992).

The issue isn't just whether the form fails to display an OMB control number. The issue is whether it meets ALL THREE of the provisions of the Paperwork Reduction Act. These provisions include the following requirements, as indicated in Public Law 96-511:

1. Displays a valid OMB control number.
2. Indicates whether submission of the form is voluntary or mandatory.
3. Indicates the expiration date of the form, which can be no longer than three years after issuance of the form.

The PRA also says that if a form does not meet the above three requirements, then, and I quote:

> *[It] "**requires all information requests of the public to display a control number, an expiration date, and indicate why the information is needed, how it will be used, and whether it is a voluntary or mandatory request**. Requests which do not reflect a current OMB control number or fail to state why not, are 'bootleg'[8] requests and may be ignored by the public."*

The hypocrisy of the government and the courts toward its own laws, as indicated below, is proof that we live in a lawless society of men, and not law which is devoid of justice.

Relevant Case Law:

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

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

United States v. Holden, 963 F.2d 1114 (8 th Cir.), cert. denied, 506 U.S. 958 (1992) – the court affirmed Holden's conviction for failing to file a return and rejected his contention that he should have been acquitted because tax instruction booklets fail to comply with the PRA.

United States v. Hicks, 947 F.2d 1356, 1359 (9 th 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 (10 th Cir. 1990) – the court found that the PRA "is inapplicable to 'information collection request' forms issued during an investigation against an individual to determine his or her tax liability."

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

Proponents of this contention assert that African Americans can claim a so-called "Black Tax Credit" on their federal income tax returns as reparations for slavery and other oppressive treatment suffered by African Americans.

The Law: There is no provision in the Internal Revenue Code which allows taxpayers to claim a "Black Tax Credit." 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)

[8] Bootleg—adj. 6. Made, sold, or transported unlawfully. (Websters's New Universal Unabridged Dictionary, Random House Dictionary of English Language).

1745 (2001). Unless specifically provided for in the Internal Revenue Code, no deduction or credit may be allowed.

Relevant Case Law:

United States v. Bridges, 86 A.F.T.R.2d (RIA) 5280 (4 th 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."

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

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

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

VI. "Untaxing" Packages or "Untaxing" Trusts

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

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

The Law: The underlying claims for these "untaxing" packages are frivolous, as specified above. 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.

If the underlying claims of these "untaxing" packages are frivolous, then how come:

1. The IRS refuses to address any of the arguments in the book called The Great IRS Hoax?
2. We have records that the IRS has downloaded our *The Great IRS Hoax* book from our website at http://famguardian.org and has not written or contacted us to refute ANY of it?
3. The IRS has refused to address any of the issues raised in chapter 5 of the book in responding to our request for refund?
4. Has stonewalled all persons who have used the 861 source position described in section 5.8.2 of the Great IRS Hoax book and has denied parties who use it an appeal conference hearing so they can litigate their case?

Furthermore, section 7408 provides a cause of action for injunctive relief to the United States against a party suspected of violating the tax laws.

Relevant Case Law:

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

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

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

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

United States v. Raymond, 228 F.3d 804, 812 (7 th Cir. 2000), cert. denied, 121 S. Ct. 2242 (2001) – the court affirmed a permanent injunction against taxpayers who promoted a "De-Taxing America Program," forbidding them from engaging in certain activities that incited others to violate tax laws. The court said, "[W]e conclude that the statements the appellants made in the Just Say No advertisement were representations concerning the tax benefits of purchasing and following the De-Taxing America Program that the appellants reasonably should have known were false."

United States v. Kaun, 827 F.2d 1144 (7 th 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 (8 th Cir. 1987) – the court held that the trusts used were shams. The defendant, an optometrist, exercised the same dominion and control over the corpus and income of the trusts as he had before the trusts were executed. The court further found the defendant illegally attempted to assign his earned income to the various trusts.

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

PENALTIES FOR PURSUING FRIVOLOUS TAX ARGUMENTS

Those who act on frivolous positions risk a variety of civil and criminal penalties. Those who adopt these positions may face harsher consequences than those who merely promote them. As the Seventh Circuit Court of Appeals noted in United States v. Sloan, 939 F.2d 499, 499-500 (7 th Cir. 1991), "Like moths to a flame, some people find themselves irresistibly drawn to the tax protestor movement's illusory claim that there is no legal requirement to pay federal income tax. And, like moths, these people sometimes get burned."

This kind of FUD (Fear, Uncertainty, Doubt)/scare tactic is designed by crafty lawyers at the IRS to keep you from looking into patriot or tax freedom arguments and amounts to a threat to assess penalties against anyone who tries them. However, what the IRS simply will NEVER tell you is that they have NO legal authority to assess penalties for Subtitle A income taxes found in the Internal Revenue Code against the vast majority of Americans. For example, below is the section right our of their own regulations found at the government's own website at http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=26&PART=301&SECTION=6671-1&YEAR=2000&TYPE=TEXT

> *[Code of Federal Regulations]*
> *[Title 26, Volume 17, Parts 300 to 499]*
> *[Revised as of April **1**, 2000]*
> *From the U.S. Government Printing Office via GPO Access*
> ***[CITE: 26CFR301.6671-1]***
>
> *[Page 402]*
>
> *TITLE 26--INTERNAL REVENUE*
>
> *Additions to the Tax and Additional Amounts--Table of Contents*
>
> *Sec. 301.**6671-1** Rules for application of assessable penalties.*
>
> ...
>
> *(b) Person defined. For purposes of subchapter B of chapter 68,* ***the term ``person'' 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.***

Even more interesting, is that the above not only doesn't apply to most Americans. It also doesn't apply to most corporations or partnerships either! Why?…because the corporations or partnerships mentioned above must be registered in the *District of Columbia* (the federal zone). State-(only)chartered corporations or partnerships aren't liable for IRS penalties either because they aren't within the territorial jurisdiction of the IRS either. Furthermore, the only type of employee who can be penalized is an employee of a U.S. corporation registered in the District of Columbia and who is involved in reporting and complying with taxes for the corporation, and NOT for himself individually!

Taxpayers filing returns with frivolous positions may be subject to the accuracy-related penalty under section 6662 (twenty percent of the underpayment attributable to negligence or disregard of rules or regulations) or the civil fraud penalty under section 6663 (seventy-five percent of the underpayment attributable to fraud). Tax preparers who submit returns maintaining groundless positions may be subject to penalties in addition to those imposed on their clients.

Liars. Did they tell you WHO the 'person' or 'taxpayer' was who was liable for these penalties or clarify that this warning only applies to corporations or partnerships registered in the federal zone.

Moreover, section 6702 provides for the imposition of a $500 penalty against any individual who files a frivolous income tax return. The legislative history underlying this section states, "the Committee is concerned with the rapid growth of deliberate defiance of the tax laws by tax protesters. The Committee believes that an immediately assessable penalty on the filing of protest returns will help deter the filing of such returns." S. Rep. No. 494, 97 th Cong., 2d Sess. 277, reprinted in 1982 U.S.C.C.A.N. 781, 1023-24.

The IRS just violated their own Internal Revenue Code with the above statement! It is AGAINST THE IRC to use the term "tax protesters" against taxpayers. Here is the text of the law, from the *IRS Restructuring and Reform act of 1998*, section 3707, available from http://www.irs.gov/irs/display/0,,i1%3D46%26genericId%3D23294,00.html:

> *IRS Restructuring and Reform Act of 1998*
> *Section 3707- Illegal Tax Protester Designation*
>
> ***A. Provision(s) covered:*** *Act § 3707 (No Code section affected) Illegal Tax Protestor Designation Prohibited.*
>
> ***B. Background:*** *The IRS designates individuals who meet certain criteria as "illegal tax protestors" in the IRS Master File. Congress was concerned that taxpayers may be unfairly stigmatized by a designation as an illegal tax protester.*
>
> ***C. Change(s):***
>
> *1. The IRS shall not designate any more taxpayers as "illegal tax protesters." Removal of existing "illegal tax protester" designations from the individual master file is not required to begin before January 1, 1999.*
>
> *2. IRS personnel must disregard any designation in a taxpayer's file (i.e., revenue agents report or other paper records) as of the date of enactment.*
>
> *3. As of the date of enactment, IRS personnel should not describe taxpayers in written documents as "illegal tax protesters." 4. The IRS may designate appropriate taxpayers as nonfilers. The IRS must remove the nonfiler designation once the taxpayer has filed valid tax returns for two consecutive years and paid all taxes shown on these returns.*

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

- a taxpayer instituted a proceeding primarily for delay,
- a position is frivolous or groundless, or
- a taxpayer unreasonably failed to pursue administrative remedies.

The court should also have penalized the IRS for delaying appeal conference hearings so that Americans can't complete the administrative process and thereby litigate their cases in court. They are famous for delaying such hearings, and often try to wait until the statute of limitations of two years expires before they will grant a aggrieved taxpayer the final step in the administrative process, an appeal conference. There are two sides to every coin.

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

constitutional right to bring frivolous suits ... People who wish to express displeasure with taxes must choose other forums, and there are many available."

Relevant Case Law:

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

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

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

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

Haines v. Commissioner, T.C. Memo. 2000-126, 79 T.C.M. (CCH) 1844, 1846 (2000) – stating, "[p]etitioner knew or should have known that his position was groundless and frivolous, yet he persisted in maintaining this proceeding primarily to impede the proper workings of our judicial system and to delay the payment of his Federal income tax liabilities," the court imposed a $25,000 penalty.

Sigerseth v. Commissioner, T.C. Memo 2001-148, 81 T.C.M. (CCH) 1792, 1794 (2001) – pointing out that this case involving the use of trusts to avoid taxes was "a waste of limited judicial and administrative resources that could have been devoted to resolving bona fide claims of other taxpayers," the court imposed a $15,000 penalty.

MatrixInfoSys Trust v. Commissioner, T.C. Memo. 2001-133, 81 T.C.M. (CCH) 1726, 1729 (2001) – in claiming that his income belonged to his trust, the court stated that the taxpayer had made "shopworn arguments characteristic of the tax-protester rhetoric that has been universally rejected by this and other courts," and imposed a $12,500 penalty.

The Nis Family Trust v. Commissioner, 115 T.C. 523, 545-46 (2000) – concluding that the Nis chose "to pursue a strategy of noncooperation and delay, undertaken behind a smokescreen of frivolous tax-protester arguments," the court imposed a $25,000 penalty against them, and also imposed sanctions of more than $10,600 against their attorney for arguing frivolous positions in bad faith.

Madge v. Commissioner, T.C. Memo. 2000-370, 80 T.C.M. (CCH) 804 (2000) – after having warned the taxpayer that continuing with his frivolous arguments – that he was not a taxpayer, that his income was not taxable, and that only foreign income was taxable – would likely result in a penalty, the court imposed the maximum $25,000 penalty.

Davis v. Commissioner, T.C. Memo. 2001-87, 81 T.C.M. (CCH) 1503 (2001) – after warning that the taxpayer could be penalized for presenting frivolous and groundless arguments, the court imposed a $4,000 penalty.

Gass v. United States, 2001 U.S. App. LEXIS 1513 (10 th Cir., Feb. 2, 2001) – the court imposed an $8,000 penalty for contending that taxes on income from real property are unconstitutional. The court had earlier penalized the taxpayers $2,000 for advancing the same arguments in another case.

Brashier v. Commissioner, 2001 U.S. App. LEXIS 6270 (10 th Cir., Apr. 13, 2001) – the court imposed $1,000 penalties on taxpayers who argued that filing sworn income tax returns violated their Fifth Amendment privilege

against self-incrimination, after the Tax Court had warned them that their argument – rejected consistently for more than seventy years – was frivolous.

McAfee v. United States, 2001 U.S. Dist. LEXIS 7131, at *4 (N.D. Ga., Apr. 4, 2001) – after losing the argument that his wages were not income and receiving a $500 penalty, the taxpayer returned to court to try to stop the government from collecting that penalty by garnishing his wages. The court stated that "bringing this ill-considered, nonsensical litigation before this court for yet a second time is nothing but contumacious foolishness which wastes the time and energy of the court system," and imposed a $1,000 penalty.

REVISION HISTORY

Date	***Version***	***Descripton***
1/13/02	1.00	Initial version
2/2/02	1.01	1. Added item I.C and a rebuttal to it.
2/3/02	1.02	Corrected case cites under item I.C.
12/28/02	1.03	Updated section III.A to replace the citation from Amer. Jurisprudence with a later citation.
1/13/03	1.04	Replaced all occurrences of "Treasury Definition" with "Treasury Decision".
7/31/03	1.05	1. Removed cite from Higley v. Commissioner in section I.C. 2. Updated the quote from Botta v. Scanlon in the General Notes section to change "states" to "statutes".
10/7/03	1.06	Corrected section reference in section 1.A. to point to section 12.2.2 of the Great IRS Hoax instead of 11.2.3.
11/12/04	1.07	1. Updated the web link to the original pamphlet at the beginning. 2. Updated introduction information about Great IRS Hoax book. 3. Replaced all references to IRM section 5.1.11.9 with 5.1.11.6.10. 4. Added item 2 entitled "Abuse of the word 'law'" in the General Notes at the beginning. 5. Removed all references to "the law" in our rebuttal and replaced most with "the Internal Revenue Code". Also replaced the phrase "lawful authority" with "authority" throughout the document.