In the U.S. District Court for the

District of Colorado

Jeffrey T. Maehr	)	
Petitioner,	)	
	)	
v.	)	Case No. 08-cv-02274-LTB-KLM
	)	
UNITED STATES OF AMERICA	)	
Respondent	)	
	)	

Motion for Denial of U.S. Denial of Petition to Quash; Brief and Memorandum of Law

Petitioner comes before this honorable court and hereby moves Judge Babcock to deny Respondent's Motion to Deny Petition to Quash. A Brief and Memorandum of Law is provided in support of this motion.

Petitioner now understands, from the Respondent's motion, that the stated "deficiency" is named as failure to serve a "copy of the Court-issued Civil Summons" on the U.S. Attorney General and the U.S. District Attorney for the District of Colorado."

Petitioner denies having such a "court-issued summons" in his possession, and therefore cannot provide such a document to either party and should not bar Petitioner from pursuing this case. Summons received by Petitioner and by Citizens Bank of Pagosa is NOT a "court-issued summons" but is an administrative summons having no court involvement, which is one of Petitioner's arguments against Respondent. If the claimed deficiency is that there was no copy of the original "third party summons" provided to either named party, this was either a very unusual oversight, (Petitioner IS dealing with at least 5 other similar Summons in 5 other states), or document has been "misplaced" by parties named above. It is Petitioner's word against Respondents. No proof that document was NOT properly served can be furnished. Petitioner certainly hopes it wasn't out of convenience that the Summons disappeared, and thus service

claimed as “not being proper.” The Petitioner respectfully requests leave of Judge Babcock to provide another copy of Summons (a small inconvenience to the judicial process) to named parties, and will providing said document (once again?) to said parties, with this Motion, and hopes that justice will not only be served, but that it will appear to be served.

"It is important that the litigant not only actually receive justice, but that he believes that he has received justice." Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989). In Pfizer Inc. v. Lord, 456 F.2d 532 (8th Cir. 1972).

The Supreme Court has ruled and has reaffirmed the principle that "justice must satisfy the appearance of justice." Levine v. United States, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954). (See Attachment G).

Petitioner moves Your Honor to take Mandatory Judicial Notice, under Federal Rule 201(d), of the following case law:

1. "The Court is free to act in a judicial capacity, free to disagree with the administrative enforcement actions if a substantial question is raised or **the minimum standard is not met.** The District Court reserves the right to prevent the ‘arbitrary’ exercise of administrative power, by nipping it in the bud." United States v. Morton Salt Co., 338 U.S. 632, 654, (1950).

2. "It is on this account that our law is deemed certain, and founded in permanent principles, and not dependant on the caprice or will of judges. A more alarming doctrine could not be promulgated by any American court, than that it was at liberty to disregard all former rules and decisions, (precedent-JTM) and to decide for itself, without reference to the settled course of antecedent principles. It was required, and enforced in every state in the Union; and a departure from it would have been justly deemed an approach to tyranny and arbitrary power, to the exercise of mere discretion, and to the abandonment of all the just checks upon judicial authority.” Faye Anastasoff vs. United States of America, 8th Circuit Court, 2000, quoting Justice (Professor) Joseph Story “Commentaries on the Constitution of the United States” §§ 377-78 (1833). (See Attachment E on Precedent law).

Introduction

Petitioner begs your honor to consider this issue now brought forth herein "*in toto*," and forgive any redundancy that may exist. This is a major undertaking. Please bear with Petitioner as he lays an introductory framework for the argument. Much of the discussion below will be addressed with evidence in the Brief, and in the Memorandum of law.

Our nation was founded on the Rule of Law and the Constitutional principles which made this country great and prosperous. This Summons issue before this Honorable Court, and your honor, seems a small, superficial case, but it is a complex manifestation of far greater and unavoidably related elements which will be discussed below. Original intent of Congress and the Founding Fathers is at issue, but which "waters" have been slowly muddied over time. The issue has been made complex through decades of obfuscation, propaganda, and misinformation. This issue involves every American in our nation, all people, and everyone who has taken upon themselves to take personal responsibility to know the laws and Constitution, and to uphold them. This goes to the very heart and soul of our country and our collective future.

Respondent's own correspondence with Petitioner's requests for clarification, answers and direction on the Internal Revenue Laws states that they would not answer such questions, and that such would have to be answered in a judicial setting. THAT is the cause and purpose for this inevitable case. Most American's love their country and want to see it prosper and be successful. We all want our government, our courts, our judges to be the protectors of the People's rights and property we hired them to be. We WANT them to be just, true, freedom-loving and supportive of law as representatives of God.

All Americans have a duty and the authority to resist continuing damage to our nation, our laws and our Constitution. The Founding Fathers saw to that in our Constitution, and this law was based on the higher laws of God and the Bible. There is no higher law than God, who is a God of laws, authority, truth, freedom, free will and justice.

Petitioner, through this action and filing, is not being lawless, un-American, a "tax protester," anti-government, anti-authority or any other cliche or label some would pin on him. Petitioner IS anti-lawlessness, anti-corruption, anti-illegal taxes, anti-unconstitutional taxes, etc. Petitioner has a Constitutional Right of Redress of Grievance. If Petitioner has not received legitimate

answers to serious and legal questions from Respondent over the last 6 years, and is labeled to create bias in this court, castigated, ignored and now illegally pursued as an enemy, this only fuels the conclusions that millions have already come to... that something is wrong with the system and such actions as this by Respondent only support the vastly growing revolution in this country.

It is estimated by government that over 60 million Americans do not file tax returns. Of these, there are undoubtedly many millions who either are learning bits and pieces of the laws, or actually “know” the law and have attempted to bring it out and have been met with nothing but resistence and attacks. If such position taken my so many, including Petitioner, is incorrect and unlawful, surely Respondent could easily answer all the challenges made with facts and evidence, but they steadfastly refuse to do so. How does this serve Respondent’s lawful purpose and authority, or serve the American people by helping them to understand what they have come to find as seriously questionable practices? Our economy is proof of that.

Every revolution the world has ever seen started with oppression, suppression of truth, loss of freedoms, corruption in government and more. The people have always risen up during such times, and either the nation was saved, or it disappeared. Truth may be resisted, fought, suppressed, castigated and maligned for less than honorable purposes, but it always rises up again to reveal itself. Such is happening today nationwide, and herein.

Petitioner is simply following previous court warnings, the Constitution, Rule of Law, and learning for himself what is required of him and what has always been there, but has been subverted under color of law. Freedom demands vigilance and action. Any American in this country who sees these laws and facts, comes to the same conclusions. A jury anywhere across America who would hears this evidence would agree to its obvious validity and conclusions.

Petitioner loves this country and there is risk in defending freedom and the Rule of Laws. Petitioner doesn’t want our nation to continue down this domino collapse to financial destruction, which it certainly will if the law is not upheld. Petitioner did not create this evidence. He obtained it from the vastly growing body of evidence easily obtained from law sources and a collection of research contributed to by 10's of thousands across the nation. This is not going

away. The court of public opinion WILL hear this more and more, especially as they realize the destruction of our economy is directly tied, in part, to Respondent's lawlessness and subversion of our Constitution and laws.

All those who have made their stand previously are testament to the truth, and the legal and financial liability involved with this fraud is huge, with evidence in every courtroom, every IRS file, every piece of paper Respondent is involved with. Ongoing investigations are leading to an inevitable Grand Jury or Private Attorney's General investigation and criminal charges against people across the country. Petitioner is but following our Founding Father's stated rights...

"If money is wanted by rulers who have in any manner oppressed the People, they may retain it until their grievances are redressed, and thus peaceably procure relief, without trusting to despised petitions or disturbing the public tranquility." Journals of the Continental Congress. 26 October, 1774 1789. Journals 1:105, 13.

Your honor may not know this, but every cent collected as "income" tax goes for no service at all in this country, no roads, no bridges, no schools, nothing but one thing... paying the interest on the fraudulently-created national debt, a debt which the government has the authority to eliminate completely and print its own money rather than have a private banking cartel print it for them and charge the American people this interest on money created out of nothing. The Government's own "Grace Commission Report" confirms this fact.

This doesn't have to be a battle between the People and government because the People will eventually win. Petitioner is not doing this because he enjoys spending enormous amounts of time and money, but because truth and freedom demand it. Petitioner cannot deny the weight of evidence, the weight of case law, and the weight of the Constitution in determining his legal and moral position in all this. I have a duty to God and my country to defend truth and law. I can do no other thing. The governments of the world are here to serve and protect the people and are limited and controlled by law, or we have fascism, communism, socialism or a democracy where 51% can take away all rights and freedoms of the other 49%. Is this what we have come to? This is a Republic, where all have rights, and protection of Law.

Petitioner now provides his argument and evidence in fact in rebuttal to Respondent's frivolous

position, and requests your honor to strongly consider the issues before this honorable court as part of this Petition to Quash.

BRIEF **(emphasis mine throughout)**

Petitioner wishes to address Respondent's Motion to Deny and to challenge and clarify issues which have been raised by the Respondent in the Motion to Deny and Summons itself. It might be a temptation by Your Honor to disregard these issues raised by Respondent (see below) in this case as "not being before the Court," but Petitioner believes these issues have not only been directly raised by Respondent in the Summons and within their Motion, but have an unequivocal bearing upon the whole issue and to Respondent's frivolous position against Petitioner. To set aside these foundational issues which are the underpinnings of Respondent's entire position, severely reduces or eliminates Procedural Due Process and Petitioner's right to a fair hearing and consideration of all precedent Case Law, Constitutional Law and Congressional evidence to support Petitioner's position that Respondent has NO legal standing on issues raised herein, or jurisdiction or authority to unlawfully request personal information, especially from a third party source, and especially based on presumed, hearsay legal obligations of Petitioner.

Even though Respondent claims to stand on Court cases, these cases are isolated, microcosmic aspects, taken out of context and painted with a fraudulent brush by Respondent to appear to be the *in toto* answer, but when placed in the light of the Constitution, Congressional testimony, and precedent presented herein, the fraud is exposed.

If Respondent's case foundation and their claimed authority is void and extra-legal, the Summons becomes a moot issue immediately, and the fraud vitiates all ongoing actions, as declared by the Courts.

"Fraud in its elementary common law sense of deceit... **includes the deliberate concealment of material information in a setting of fiduciary obligation**. A public official is a fiduciary toward the public, and **if he deliberately conceals material information from them he is guilty of fraud**." McNally v. U.S., 483 U.S. 350, 371 372, Quoting U.S. v Holzer, 816 F.2d.

304, 307.

"Fraud destroys the validity of everything into which it enters," Nudd v. Burrows, 91 U.S 426;

"Fraud vitiates everything", Boyce v. Grundy, 3 Pet. 210;

"Fraud vitiates the most solemn contracts, documents and even judgments." U.S. v. Throckmorton, 98 U.S. 61.

In addition, anything that is outside the Constitutional provisions, or relevant precedent case law, (See Attachment E) is void...

"The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void and ineffective for any purpose, since its unconstitutionality dates from the time of its enactment... In legal contemplation, it is as inoperative as if it had never been passed... Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no right, creates no office, bestows no power or authority on anyone, affords no protection and justifies no acts performed under it... A void act cannot be legally consistent with a valid one. An unconstitutional law cannot operate to super cede any existing law. Indeed insofar as a statute runs counter to the fundamental law of the land, (the Constitution - JTM) it is superseded thereby. No one is bound to obey an unconstitutional law and no courts are bound to enforce it." *Bonnett v. Vallier, 116 N.W. 885, 136 Wis. 193 (1908); NORTON v. SHELBY COUNTY, 118 U.S. 425 (1886). See also Bonnett v Vallier, 136 Wis 193, 200; 116 NW 885, 887 (1908); State ex rel Ballard v Goodland, 159 Wis 393, 395; 150 NW 488, 489 (1915); State ex rel Kleist v Donald, 164 Wis 545, 552-553; 160 NW 1067, 1070 (1917); State ex rel Martin v Zimmerman, 233 Wis 16, 21; 288 NW 454, 457 (1939); State ex rel Commissioners of Public Lands v Anderson, 56 Wis 2d 666, 672; 203 NW2d 84, 87 (1973); and Butzlaffer v Van Der Geest & Sons, Inc, Wis, 115 Wis 2d 539; 340 NW2d 742, 744-745 (1983).*

If Respondent's position is Constitutional, and legally valid, and supported by actual Constitutional law, and case law, then Respondent can surely provide this proof and rebuttal, to

Your Honor and to this Honorable Court, in answer to these challenges, and provide direct answers to the Court precedent presented herein by Petitioner.

The issue is NOT a challenge on whether the government has a Constitutional or legal right to tax citizens. That fact is well established, and need not be presented as a distraction and misdirection away from the issues at hand. The question raised is “HOW” Respondent may tax Petitioner, and how it may do so within the law. Administrative actions are subject to laws, and supposed “laws,” including the IR Code itself, or activities performed by Respondent which circumvent the Constitution, and the laws, are void. Taxes are to be Constitutionally applied and legally enforced.

The IR Code is so convoluted, and covered by “smoke and mirrors,” so as to make it extremely difficult for any average person of intelligence to be able to piece together the relevant and critical evidence, but this has been done, in part herein. The “smoke and mirrors” of the IR Code is purposefully, craftily and constructively (fraudulently) concocted so as to confuse and mislead the public and Your Honor, and which dishonors this Court. (See Attachment F, Line 498-576).

Respondent claims to be standing on the law, but is showing complete disregard in these proceedings for not only the Rule of Law, and IR Code itself, but has failed to provide ANY law that makes Petitioner “liable” for “income” taxes to begin with, which would have to be a fact of record to make Petitioner a “taxpayer.”

Respondent is grossly silent and showing wonton disregard of case law and ALL elements of these issues:

"Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading. . . We cannot condone this shocking behavior by the IRS. Our revenue system is based on the good faith of the taxpayer and the taxpayers should be able to expect the same from the government in its enforcement and collection activities. If that is the case we hope our message is clear. This sort of deception will not be tolerated and if this is routine it should be corrected immediately." *U.S. v. Tweel, 550 F.2d 297, 299. See also U.S. v.*

Prudden, 424 F.2d 1021, 1032; Carmine v. Bowen, 64 A. 932.

"Silence is a species of conduct, and constitutes an implied representation of the existence of facts in question. When silence is of such character and under such circumstances that it would become a fraud, it will operate as an Estoppel." *Carmine v. Bowen, 64 U.S. 932.*

Respondent, et al., are placing this Honorable Court and Your Honor into a possible position where Fraud upon the Court could occur, and which Respondent would depend upon to succeed in their Motion. Preconceived beliefs, and even misquoted or out of *"in toto* context" case law cannot be relied upon, and only the facts in evidence can enter this Honorable Court. Acting under the color of law, Respondent is attempting to maintain a reality which does not exist in order to proceed with their Summons action, and looking to Your Honor, to be a possible accomplice in these actions. (See Exhibit G). Fraud upon the Court has NO statute of Limitations.

Rebuttal Memorandum and Further Evidence Submitted Regarding Summons, and Respondent Motion Arguments

a) The Respondent failed to properly address the challenge to their status as a Federal Agency, and thus, authority or jurisdiction over Petitioner:

-line 128, a) page 6; Is Respondent's quoted case law provided more weighty than Respondent's own case in Diversified Metals Products v. IRS -CV93-4117; (see also CV-93-405E-EJE U.S.D.C.D.I., Public Law 94-564, Senate Report 94-1148 pg. 5967, Reorganization Plan No. 26, Public Law 102-391.)? The Respondent contradicts themselves by evidence which counters evidence given by Respondent in their own previous case sited by Petitioner. The Respondent's own stated declaration in Attachment S3 that "**denies that the IRS is an agency of the United States Government**" provides valid evidence contrary to Respondent stated case law claiming Petitioner's challenge is "frivolous, "without merit and frivolous," "completely lacking in legal merit and frivolous." This cannot be labeled as "frivolous" if it was entered in a court of law, and presented as evidence. This is NOT Petitioner's case or hearsay evidence. It

is the Respondent's own self-authenticated evidence in support of Petitioner's claim. Is Respondent claiming that this testimony given in Diversified Metals Products v. IRS, et al., is frivolous testimony? Do we throw out this testimony because it is damaging to Respondent's position? It is prima facie evidence, even self-authenticating evidence (if perjury and fraud did not take place) that the Respondent felt was relevant in this case, for their own benefit. If this case testimony is NOT frivolous and fraudulent, then it stands as authenticated evidence and cannot be dismissed as frivolous or any other label Respondent would care to interject, stated case law notwithstanding.

"The law creates a presumption, where the burden is on a party to prove a material fact peculiarly within his knowledge and he fails without excuse to testify, that his testimony, if introduced, would be adverse to his interests." Meier v CIR, 199 F 2d 392, 396 (8th Cir. 1952) quoting 20 Am Jur, Evidence Sec 190, page 193.

b) The IR Code 26 is NOT positive law, but is only prima facie evidence of law, but once challenge is made with evidence herein, the Respondent cannot continue its actions and force Petitioner to accept a contract. (See Attachments S and T).

c) No agency with the name Internal Revenue Service was ever established by law according to Congress. (See Attachment L). Petitioner challenges any legal jurisdiction by the "IRS" to be doing what they are doing without lawful authority by Congress.

Respondent, continuing in argument, makes many more "presumptive," (See Attachment H) unproven, unauthenticated statements and hearsay testimony...

d) Referencing said Respondent Motion to Deny Petition, Page 1, "Background," Respondent testifies that Petitioner "has not filed federal income tax returns for years 2003, 2004, 2005, 2006..." and "is conducting an examination into income tax liabilities of petitioner for the tax years 2003-2006. (Sothen Decl. 1, 3)."

Respondent's hearsay and extremely presumptive argument is baseless and wholly without merit. Respondent is stating an unauthenticated statement with no evidence in fact other than presumption, for the following reasons:

1. No evidence whatsoever has been forthcoming to even begin to claim that Petitioner is legally “liable” to file any 1040 tax return. Liability cannot be created by fiat or presumption. Liability cannot exist absent a law creating that liability. Petitioner’s personal documents cannot create a legal liability in and of themselves, let alone third party documents. Liability is ONLY a product of law. Law, alone, must create the liability, and THEN personal documents or third party documents could be lawfully used as evidence to support the degree of liability. Petitioner’s personal records, or Respondent’s hearsay testimony or belief, or even the claims of “that’s the way we’ve always done it” by Respondent, does not create such liability. Petitioner can find no place in the IR Code making him personally liable to file any 1040 tax form, and Respondent has provided no evidence in fact for such liability, therefore the Summons necessity for Petitioner’s personal financial information on “tax liability or the collection of the tax liability” (See Summons) based on personal financial records is without merit and has no legal standing and is under the color of law and in violation of the Constitution and outside legal jurisdiction. (See Attachment F).

"Keeping in mind the well settled rule, that the citizen is exempt from taxation, **unless the same is imposed by clear and unequivocal language,** and that where the construction of a tax is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid." Spreckles Sugar Refining Co. vs. McLain: 192 US 397. The IR Code DOES NOT, in a “clear and unequivocal” manner, make Petitioner liable. (See Attachment FF).

2. The Respondent’s claim that Petitioner has not filed “income tax returns” suggests that he had a duty to do so. Petitioner presents evidence that the 1040 form is a facially void document under the Paperwork Reduction Act (PRA). All government documents which are requests for information from the public must have a proper and legal Office of Management and Budget (OBM) number on them, which the 1040 form does not have. Claiming that Petitioner has any mandatory duty to file such a “bootleg” document is frivolous and fraudulent. (See Attachment M).

3. Respondent uses the term “income” in their Motion. Petitioner challenges Respondent’s notions that he has any legal “income” as defined by case law and the 16th Amendment. The IR Code provides no definition for the word “income...” "The general term income is not defined in the Internal Revenue Code." US v Ballard, 535 F2d 400, 404, (1976),

but Congressional testimony and case law have clearly defined and settled this issue long ago.

"The United States Supreme Court (or the Respondent-JTM) cannot supply **what Congress has studiously omitted in a statute**." Federal Trade Com. v. Simplicity Pattern Co., 360 US SS, p. 55, 475042/56451 (1959).

Respondent, conventional wisdom, belief or feelings do not define “income.” The statute must define income...

"The statute and the statute alone determines what is income to be taxed. It taxes only income "derived" from many different sources; **one does not "derive income" by rendering services and charging for them.**" Edwards v. Keith, 231 F. 110 (2nd Cir. 1916).

Since the word “income” has not been “defined” by statutes, but has been clearly defined through case law and Congressional testimony, we must look to both, and other authenticated evidence, for the truth and original intent. (See attachment A for complete discussion of this topic).

Lastly, USC Title 15 Chapter 1 Section 17 clearly states: "The labor of a human being is not a commodity or article of commerce."

Petitioner’s right to labor for a wage cannot be the target of Respondent’s intervention in private commerce.

4. Only Constitutionally taxable events can be addressed by Respondent, and can create liability against Petitioner. Petitioner denies being involved with any constitutionally, or IR Code, taxable event, and maintains that Respondent holds no jurisdiction over him. (See Attachment F and FF).

e) Respondent, in their Motion, labels Petitioner as a “taxpayer,” which Petitioner denies is legally binding, and then attempts to use case law which supports Respondent’s position that they have the right to investigate said “taxpayers.” Petitioner does NOT deny

that someone who is made “liable” for legal “income” taxes is legally liable to pay those taxes in whatever legal means is provided. If Petitioner were producing or manufacturing alcohol, tobacco or firearms, then he is “made liable” within the IR Code and has a legal duty to pay any legal “income” taxes involved. Petitioner also does not deny that someone who is “made liable” for income taxes is, then, and ONLY then, a “taxpayer.” There is a difference between a “taxpayer,” and a “non-taxpayer...”

"The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers and not to non-taxpayers. **The latter are without their scope. No procedure is prescribed for non-taxpayers 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**. **Persons who are not taxpayers are not within the system** and can **obtain no benefit by following the procedures prescribed for taxpayers...**" *United States Court of Claims, Economy Plumbing and Heating v. United States, 470 Fwd 585, at 589 (1972).*

IRS Manual - 1.2.1.2.1 (Approved 12-18-1993), P-1-1, provides more prima facie evidence in support of this distinction:

2. Tax matters will be handled in a manner that will promote public confidence. All tax matters between taxpayers and the Internal Revenue Service are to be resolved within established administrative and judicial channels. Service employees, in handling such matters in their official relations with “taxpayers” **(that is NOT me)** or the “public,” **(that would be me, a public non-taxpayer)** will conduct themselves in a manner that will promote public confidence in themselves and the Service. Employees will be impartial and will not use methods which are threatening or harassing in their dealings with the public.

Respondent can no more attempt to force or claim “taxpayer” status, or being “liable,” on Petitioner, outside the law, than they can in attempting to make a German or Frenchman a “taxpayer” or “liable” without legal, valid and Constitutional proof. No evidence is presented by Respondent that Petitioner is, indeed, a “taxpayer.”

IR Code Section 7701(a)(14) gives the legal definition of the term "taxpayer" in relation to income tax. It states: "The term 'taxpayer' means any person **subject to** any internal revenue tax."

Respondent presumes “all working Americans are ‘taxpayers,’” but then why the distinction between “taxpayer” “non-taxpayer,” and “public?” How is Petitioner made “subject to” any internal revenue tax?

Respondent, and your honor, in this honorable court, cannot “presume” (See Attachment H) that the Respondent has authority over Petitioner without valid documentation proving Petitioner is a “taxpayer,” and “within the scope of the revenue laws” and “subject to” Respondent’s attempts to obtain personal records.

Emotions, beliefs, feelings, hearsay, presumptions and “conventional wisdom” have NO place in this Honorable Court, and only facts in evidence and ALL court *in toto* case precedent on these issues can have affect and can legally and Constitutionally be considered.

“[J]ust as a district court generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented, see *Poller* v. *Columbia Broadcasting System, Inc*., 368 U.S. 464, 467-468 (1962); 6 J. Moore, Federal Practice para. 56.02 [10], p. 56-45 (2d ed. 1976), so too a court of appeals is not at liberty to deny an individual a *de novo* hearing on his claim … **because of the court's assessment of the credibility of the evidence.**” Agosto v. Immigration & Naturalization Serv., 436 U.S. 748, 756-7 (1978).

"Tax liability is a condition precedent to the demand. Merely demanding payment, even repeatedly, **does not cause liability**. For the condition precedent of liability to be met, there must be a lawful assessment... (Section 301.6203-1, title 26 CFR.) Verification under penalty of perjury or seal, either **a voluntary one by the taxpayer** (See Attachment A) or **one procedurally proper by the IRS**..." *Bothke v. Flour, 713 F. 2d 1405, pg 1414, [14, 15].* (See Attachment D).

Respondent’s own code states...

"Electing **the option** of estimating a speculated tax and sending accompanying deposit via use of Form 1040, or should surmised assessment not be made by appropriate authority within the time restraints of three (3) years, reasonable assumption exists a tax is not owing." 26 USC Section 6501.

No lawful assessment has been forthcoming, even though requests have been made to IRS as part of Petitioner's Individual Master File in Respondent's possession. Respondent is also attempting to obtain records beyond the 3 year time restraints as stated above.

Petitioner is aware of, and relies upon, the United States Supreme Court ruling where the court stated;

"Whenever any act done under its authority is challenged, **the proper sanction must be found in its charter, or the act is ultra vires and void**." See PACIFIC INS. CO. v. SOULE, 74 U.S. 433 (1868).

This includes ALL challenges made by Petitioner herein, and Petitioner seeks all "proper sanctions" to be authenticated, and rebuttal given, or Petitioner maintains Respondent's position, and Summons, is invalid and void.

This current matter involves the same Internal Revenue Service as from their beginning days. The current law requires the taxpayers consent to an assessment by the filing of a return; See 26 U.S.C. §6201.

The burden of proof falls to Respondent to provide proof that Petitioner is made a "taxpayer," by law and statute, "subject to" Respondent's jurisdiction, that he has taxable "income," and the Respondent is not in contravention of the Constitution and laws as Petitioner herein provides.

e) Reference Respondent Motion, Page 10; Respondent/DOJ et al., which states Petitioner "...instead relies on frivolous tax defier rhetoric and misstatements of established law..." Respondent is providing more hearsay, presumptive and unfounded accusations. Petitioner stands on the laws of the land, to include the Constitution of the United States, and

relevant case law *"in toto,"* which has not been done by any court in this land to date, but where Petitioner has provided substantially more evidence, herein presented, that is relevant to this case, which is NOT presumption and clearly counters Respondent's presumption.

Further more, it is Petitioner's right to not only challenge government position and authority, per the below case law referenced, (See m) below) but it is Petitioner's right to avoid any and all taxes, legally and constitutionally...

"The legal right of an individual to decrease or ALTOGETHER AVOID his/her taxes by means which the law permits cannot be doubted." Gregory v. Helvering, 293 U.S. 465, (1935).

f) Reference Summons, section labeled "Provisions of the IR Code," **(See Attachment W)** references throughout, "The Secretary..." "The Secretary may..." "The Secretary shall..." "The Secretary establishes..." etc. Petitioner has seen no authority within these code sections, or any other place, for the Respondent to be acting on behalf of the Secretary of the Treasury and challenges such authority. The Code clearly states "The Secretary..." shall do" thus and such, which includes "serving the Summons," (7603(a)), to having the Summoned "appear before" the Secretary, (7610(a)(1)), among many other references that require the Secretary, and NOT the Respondent or any agent employed by Respondent, to be acting in place of the Secretary. Respondent finds no laws authorizing any Respondent usurpation of the Secretary of the Treasury's authority or office and challenges any and all references Respondent has made in Summons contrary to the IR Code, and other law, which are too numerous to name, but provide self-authenticating evidence in the Summons itself.

g) Reference Respondent's Motion, page 8; Respondent references U.S.C. 7609(a)(1), regarding needing only a 3 day time period in which to notice Petitioner prior to serving Summons on Citizen's bank. Petitioner challenges this testimony. In U.S.C. Section 7602(c)(1), it clearly states; "An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer with respect to the determination of collection or collection of the tax liability of such taxpayer without providing **reasonable notice** in advance to the taxpayer that contacts with persons other than the taxpayer may be made."

3 days is NOT “reasonable notice” to Petitioner. Petitioner denies any such “reasonable notice” or ANY notice at all of this possible contact or any planned contact by agent Sothen, and is in violation of this code.

h) Reference Respondent’s Motion, page 8; Respondent claims that Summons “do not require prior judicial approval.” Petitioner challenges this on two counts;

1. Prior case laws addressing summonses suggest otherwise:

"...absent an effort to seek enforcement through a federal court, IRS summonses apply no force to taxpayers, and no consequence whatever can befall a taxpayer who refuses, ignores, or otherwise does not comply with an IRS summons until that summons is **backed by a federal court order** [a taxpayer] cannot be held in contempt, arrested, detained, or otherwise punished for refusing to comply with the original IRS summons, no matter the taxpayer's reasons, or lack of reasons for so refusing." Schulz v. IRS, Case No. 04-0196-cv.

Petitioner maintains that Respondent’s Summons restrictions also apply to third party recipients under this precedent and challenges their “presumed” right to access Petitioner’s personal information, even through third party records, without cause. The Schulz Court included **ALL** administrative actions by the Respondent, which includes issuing third party summonses:

"Any legislative scheme that denies subjects an opportunity to seek judicial review of **administrative orders** except by refusing to comply, and so put themselves in immediate jeopardy of possible penalties 'so heavy as to prohibit resort to that remedy,' Oklahoma Operating Co. v. Love, 252 U.S. 331, 333 (1920), **runs afoul of the due process requirements of the Fifth and Fourteenth Amendments**." Schulz v. IRS and Anthony Roundtree.

Although the above precedent regards first party summons, the case law applies, in spirit and intent, to third party summons under the same laws, and still deals with my 5th and 14th Amendment rights being violated if this summons is granted and my private, personal information is released, even by a third party. Would the courts look favorably upon the release

of someone's private information by me to a third party, such as their social security number, bank account numbers and information, credit card numbers, etc., without cause, legal right or authority?

2. Tiffany Fine Arts, Inc. V. United States, quoted by Respondent, states that summons can be served... **"if the information sought is necessary to ascertain that person's tax liability**." Petitioner maintains that this cited case is not relevant to this case per the above challenges on creating "tax liability" and having and legal "income." Information is NOT necessary to ascertain Petitioner's tax liability because there is no liability demonstrated by law or in their own code, and such documents cannot create this liability.

h) The government's power to investigate is not without limits. To obtain enforcement of a summons, the Respondent must **demonstrate** the following elements, citing *United States v. Powell,* and Petitioner challenges 3 of the stated elements and their relevance to Petitioner and the Summons: Per *Powell*...

1. **"The investigation will be conducted pursuant to a legitimate purpose;"**

No legitimate (read "legal") purpose has been stated in the Summons that has bearing on Petitioner. No connection has been made between Summons and purpose that affects Petitioner as a non-taxpayer, "liable" for taxes, and in regard to "income," as discussed above. Obtaining private financial records in an effort to create a tax liability where no law does such is getting the cart before the horse. Liability MUST be established by law, and THEN records could be used to determine the extent of that liability. Could the Respondent seek and obtain the private records of a German or Canadian through such an administrative Summons without establishing the right under law, or having proof they are "liable" to Respondent in any way? Being a Citizen of the United States of America does NOT make Petitioner "liable" for "income" taxes, or being a "taxpayer," any more than being a citizen of Germany or Canada makes them "liable" for "income" to Respondent, or make them a "taxpayer." The law has to do this, or they themselves have to declare it voluntarily.

2. "The inquiry will be relevant to that purpose;"

To repeat, there has been no proof of relevance between Petitioner's personal banking information and any tax liability, apart from hearsay "presumptions" and personal belief systems. Petitioner, being a non-taxpayer, is prima facie evidence that there is no relevance to Summons. No laws have been provided to prove any connection between Summons purpose and records of Petitioner.

3. "That the IRS has taken the administrative steps necessary to the issuance of a summons;"

Petitioner challenges Respondent's presentment of case law suggesting that petitioner's right to Due Process are void in regard to "administrative" summons," quoting page 8..."The administrative summonses issued pursuant to section 7602 do not require judicial approval." Is Respondent claiming that Petitioner's Due Process rights under the 5th and 14th amendment are null and void by "administrative" procedures? Petitioner claims his rights under the Constitution, and all other relevant laws and rights, and that such summons is a violation of my Constitutional rights, being that such "laws" would be void, per case law cited further above.

There is no legitimate or legal purpose stated in the Summons that is relevant to Petitioner as to why Respondent wants Petitioner's personal information records, and what they will be using them for, in violation of *Powell*, as well as improper administrative steps being involved, per *Schulz v. U.S.* There simply is no law that ties Petitioner or his personal, private information to any jurisdictional elements of the Respondent or the Summons.

i) Document "Declaration of William Sothen:" Sothen provided hearsay testimony to the same "presumption" that Petitioner is legally "liable" to file said 1040 tax returns for the years stated, or any other years for that matter, and to the use of the word "income" without any evidence in fact to support his statements. This provides *prima facie* evidence that makes Sothen a possible accomplice in violation of 18 U.S.C. Racketeering Laws, and U.S.C. 7214:

U.S.C. 7214 - Offenses by officers and employees of the United States.
(a) Unlawful acts of revenue officers or agents
Any officer or employee of the United States acting in connection with any revenue law of the United States—

(1) who is guilty of any extortion or **willful oppression** under color of law; or
(2) who knowingly demands other or greater sums **than are authorized by law**...;

The *prime facie* evidence in the facially void Summons itself proves this illegal action.

j) Petitioner challenges Department of Justice (DOJ) authority to be defending the Respondent in any fashion, and Petitioner believes the DOJ is not authorized by law to be acting in a defense capacity for Respondent or against Petitioner and is outside its jurisdictional authority where the Respondent is NOT a government agency, was not created by law, has no jurisdiction over Petitioner, and/or where the DOJ has no proven created authority to be acting on behalf of Respondent. (See Attachment R), and below.

The Department of Justice's own Criminal Resource Manual documents the true limits of the DOJ's police authority: 664 Territorial Jurisdiction. Of the several categories listed in 18 U.S.C. § 7, Section 7(3) is the most significant, and provides:

The term "special maritime and territorial jurisdiction of the United States," as used in this title, includes: . . . (3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

As is readily apparent, this subsection, and particularly its second clause, bears a striking resemblance to the 17th Clause of Article I, Sec. 8 of the Constitution. This clause provides:

"The Congress shall have power.. . 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."

The constitutional phrase "**exclusive legislation**" is the equivalent of the statutory expression "exclusive jurisdiction." See James v. Dravo Contracting Co., 302 U.S. 134, 141 (1937), citing, Surplus Trading Co. v. Cook, 281 U.S. 647, 652 (1930).

No jurisdiction by the DOJ is in evidence and Petitioner challenges all such claimed jurisdiction by the DOJ.

"It has also been held that jurisdiction must be affirmatively shown and will not be presumed." Special Indem. Fund v. Prewitt, 205 F2d 306, 201 OK. 308, (1948).

Even the Respondent's own Criminal Investigative Division manual shows it does not have jurisdiction inside the fifty states:

"The Criminal Investigative Division **enforces the criminal statutes applicable to income**, estate, gift, employment, and excise tax laws **involving United States citizens residing in foreign countries** and nonresident aliens **subject to** federal income tax filing requirements." Internal Revenue Manual Chapter 1100 Organization and Staffing, section 1132.75.

The Respondent has no authority to collect personal or financial information on Respondent as he is NOT within their criminal investigation jurisdiction, but the Summons clearly references possible “offenses” being reviewed.

The Federal Rules of Civil Procedure even states the Respondent has no jurisdiction inside the States since Respondent claims it exists due to an “act of Congress:”

"Act of Congress includes any act of Congress locally applicable to and in force in the District of Columbia, in Puerto Rico, in a territory or in an insular possession." See 18 USC, Rule 54 of the Federal Rules of Criminal Procedure.

There is NO reference to the 50 "states" and Petitioner **challenges the jurisdiction** of the DOJ to be acting on behalf of the Respondent, and Respondent to be acting against Petitioner (See Attachment B and I) as a private citizen of the State of Colorado. It is mandatory for proof of

jurisdiction to be provided before the Respondent's position can be examined. (See Attachment J).

k) The Summons dated October 6, 2008 has the name "Dan Aupperle" listed. The summons clearly states that the summoned is... "required to appear... to give testimony, and to bring with you (specific person not named, but presumed to be Dan Aupperle) and to testify, and produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability..."

Petitioner challenges the authority for the Respondent to request anything from Citizens Bank of Pagosa that is NOT provided by a **Competent Fact Witness**, someone who has **first hand knowledge** of all records and transactions, and can provide **authenticated evidence** regarding said records. There is no evidence in fact presented by Respondent that Dan Aupperle, President of Citizens Bank of Pagosa, or any other unnamed person employed by Citizens Bank, is qualified to give the "testimony" requested. Evidence must be provided by someone who has first hand knowledge of **ALL** records and entries provided, under oath and penalty of perjury. Petitioner maintains that Respondent must provide prior proof of such authority, from Citizens Bank of Pagosa, to include name of any bank employee who can authenticate all documents, and all entries in records relating to Petitioner, otherwise Respondent is seeking only hearsay and "presumptive" testimony from unqualified representatives, and records which are not authenticated, which is required in a court of law. Mistakes are often made by banking personnel and in banking records and cannot be used as evidence short of authenticated evidence. All such entries must be validated.

Since Summons is vague as to who is being summoned, their authority to provide testimony or provide authenticated evidence in fact in regard to Petitioner's "tax liability" (something not proven or in record), it is therefore void as it is far too general in nature, and only a fishing expedition. Petitioner maintains that Dan Aupperle, or any other Citizens Bank employee, is NOT qualified to determine, Quote... "data related to the tax liability or the collection of the tax liability" of the Petitioner. They are not proven tax experts, or expert witnesses, and have no knowledge of what makes Petitioner "liable" apart from "presumptive" hearsay or misunderstanding or personal belief, and therefore cannot give "testimony" without it being

“presumptive” hearsay, and irrelevant. **Petitioner challenges any such person designated to present such “data,” and their “presumptions” regarding any documents or records which suggest an unproven, invalidated and frivolous “tax liability.”**

l) Respondent’s attempts to access Petitioner’s private information, whether from third party sources or Petitioner directly, is to violate Petitioner’s privacy and circumvent the law. Despite the actual physical “documents” being sought potentially claimed as possibly being the “property” of Citizens Bank of Pagosa, (property which I have a direct legal right to obtain copies of and having access to at any time suggesting, “ownership” and rights to them) the Petitioner’s **personal, private and financial information** contained therein is NOT the Banks personal property to dispose of as they wish, and is being illegally sought by Respondent under color of law. This personal and financial information certainly is relevantly attached to Petitioner’s Constitutional rights and privacy, whether directly or indirectly. Citizens Bank of Pagosa has a fiduciary duty to Petitioner to NOT illegally or unconstitutionally release Petitioner’s private information to others acting under the color of law.

"The search for and seizure of stolen or forfeited goods, or goods liable to duties and concealed to avoid the payment thereof, are totally different things from a search for and seizure of a man's **private books and papers for the purpose of obtaining information therein contained, or of using them as evidence against him**. The two things differ *toto coelo*. In the one case, the government is entitled to the possession of the property; in the other it is not.”

"Papers are the owner's goods and chattels; they are his dearest property, and are so far from enduring a seizure, that they will hardly bear an inspection; and though the eye cannot by the laws of England be guilty of a trespass, yet where private papers are removed and carried away **the secret nature of those goods** will be an aggravation of the trespass, and demand more considerable damages in that respect. Where is the written law that gives any magistrate such a power? Petitioner can safely answer, there is none; and therefore it is too much for us, without such authority, to pronounce a practice legal which would be subversive of all the comforts of society." *at 628. BOYD v. U S, 116 U.S. 616, 623 (1886):*

m) Petitioner’s 4th Amendment protect is being violated **without due cause or process**:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

"It does not require the actual entry upon premises and search **for a seizure of papers to constitute an unreasonable search and seizure within the meaning of the Fourth Amendment**. **A compulsory production** of a party's private books and records, **to be used against himself or his property** in a criminal penal proceeding or a forfeiture, is within the spirit or meaning of the (4th) Amendment." Boyd vs. U.S., 116 U.S. 616.

Respondent’s attempts to obtain petitioner’s personal information (directly tied to Petitioner’s personal life) from others Petitioner is contracted with or doing business with **is unreasonable**, given the amount of good faith efforts Petitioner has shown toward communicating with the Respondent, (IMF record attests) and evidence herein that refutes Respondent’s authority to force Citizens Bank to do so.

n) Citizen’s of these United States have only the Rule of Law and the Constitution to govern this land. We are expected to know and comply with the law. In order to do that, we must read the law and study all facets of it to determine where we are accountable.

"Whatever the form in which the government functions, anyone entering into an arrangement with the government takes the risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority, even though the agent himself may be unaware of limitations upon his authority." The United States Supreme Court, Federal Crop Ins. Corp, v. Merrill, 332 US 380 388 (1947).

“Persons dealing with the government are charged with knowing government statutes and regulations, and they assume the risk that government agents may exceed their authority and provide misinformation." Ninth Circuit Court of Appeals, Lavin v Marsh, 644 f.2D 1378, (1981).

"All persons in the United States are chargeable with knowledge of the Statutes at Large... It is

well established that anyone who deals with the government assumes the risk that the agent acting in the government's behalf has exceeded the bounds of his authority." Bollow v. Federal Reserve Bank of San Francisco, 650 F.2d 1093, 9th Cir., (1981).

When one comes to find that the Law has been used maliciously against them, they have ONLY to resort to the law and Constitution, and the Judicial Machinery of the Courts, to find relief and to bring governments under the chains of the Constitution. My correspondence with the Respondent over the past, almost 6 years, has only been met with threats, intimidation and actual previous theft of monies from my account without Due Process (Evidence available) , and with NO actual law or facts provided to convince Petitioner that his position is wrong. Petitioner's entire Individual Master File (IMF) presents Prima Facie evidence that the Respondents have NO desire to comply with the Constitution and laws of the land, or to serve the public they swore an oath to defend.

Can justice and fairness be achieved where silence and neglect is the norm and where a duty to respond is required but not provided?

In order for Petitioner to know what he is legally compelled to do, he must know what the law says, and understand it. If there is no knowledge of the law, obedience is not possible, and where Petitioner seeks to discover the actual laws, but is thwarted, threatened and denied such, and told it is all "frivolous," or that he has to go to court to get answers, he is, at best, left to depend on his own research and that of others to be sure he can comply, in fact, and at worst, be forced into what might be viewed as civil disobedience to bring the issue before the courts. Petitioner is liable for all constitutional law, and cannot claim ignorance. Petitioner has a moral and legal responsibility to determine what the law is he is being asked to comply with, and to determine whether any government employee or agency is truly within the law when that individual, or agency, is acting in the name of any government or other party. This requirement by Petitioner cannot be labeled as "frivolous" if Respondent or others do not agree with the conclusions, especially where case law and other testimony has been provided.

Petitioner has been attempting to ascertain whether Respondent has "exceeded their bounds of authority" for well over 5 years, (Please see **Attachment X** for Respondent's typical answers to such inquires, and **Attachment C** regarding additional evidence that the Respondent's claimed

authority for income taxation without apportionment comes from the 16th Amendment), and depending on the Respondent's own IR Code rules (Please see Attachment Y), and on case laws, Constitutional law and Congressional testimony. In order for justice to prevail and for the truth of this issue to be forthcoming, it is necessary to address the foundation of Respondent's whole case, and that the Respondent does **NOT have a right**, the jurisdiction and authority to even consider examining personal information records of Petitioner or obtain private information directly related to Petitioner.

o) Respondent has presented case law as evidence of their legal standing, but often this case law is in direct contradiction to more complete case law presented by Petitioner throughout these documents. If case law contradicts itself, then there is a larger problem of interpretation of the original issues and intent being adjudicated within Respondent's stated cases. Since the case law Petitioner has presented is substantial, and extremely precise in its statements, Respondent should be able to provide clear answers to these questions raised by this case law rather than providing "cookie cutter" case law which ignores the direct questions and challenges raised by other case law. (See Attachment E).

p) Respondent makes claims of jurisdiction over Petitioner, and therefore their right to Summons private information, Petitioner denies such jurisdiction by the IRS, and provides evidence in fact. (See Attachment B and I).

q) Petitioner has challenged Respondent on these issues multiple times as Petitioner's IMF file reveals. Petitioner believes the Respondent is already in default, since uncontested affidavits are deemed admitted and true. See Attachment P.

r) Petitioner maintains that the filing of a 1040 form constitutes a clear attempt to force Petitioner to violate his 5th amendment rights to not be a witness against himself:

"There can be no question that one who files a return under oath is a witness within the meaning of the (5th) amendment." Sullivan v. U.S.. 274 U.S. 259.

"The information revealed in the preparation and filing of an income tax return is, for the purposes of Fifth Amendment analysis, the testimony of a witness. Government compels the

filing of a return much as it compels, for example, the appearance of a witness before a grand jury." 1975: Garner v. United States, 424 U.S. 648.

"The Fifth Amendment provision that the individual cannot be compelled to be a witness against himself cannot be abridged." Miranda vs. U.S., 424 U.S. 648.

How can Petitioner be forced to comply with a law that violates his 5th amendment right to not be a witness against himself? All 1040 forms are signed under oath. This either means any such filings cannot EVER be used as evidence against Petitioner in ANY actions, or Petitioner cannot be forced to file said documents, and is not "liable" to file said forms. How do we disregard the above case law and facts?

CONCLUSION

Petitioner is just the little guy, fighting the Goliath of many lawyers and agents who are making mindless and lawless "presumptions," and providing hearsay testimony in an attempt to carry out an unlawful act. Petitioner is using the simple but powerful "sling and rocks" of the Constitution, Rule of Law, Case Law and the Judicial Machine of the Court. Respondent cannot pick and choose case law anymore than anyone can pick and choose biblical scriptures out of context to try to create a "truth" to support their position or belief, while ignoring all the other case (or biblical) laws which impact the collective data and the truth being sought.

Just because Respondent may believe "things have always been done this way," or try to maintain, "everyone knows they have to pay income taxes," or, "we all know the definition of income is obvious," or "because we said so," does not make those things FACT. Everyone "knew..." it was conventional wisdom... that the Earth was flat, and that spontaneous generation of animals was a "scientific fact," too. People who claimed otherwise, even with available evidence, were attacked and maligned regularly, even killed... until the evidence was actually considered and tested. Without testing, proving and complete evaluation of all data, the truth is never found, and perhaps this is why Respondent fails to prove up their claims or answer these simple challenges.

Respondent, et al., may claim they are “just doing their job,” and may be sincerely believing they are doing so, but **they have the “higher duty” to know ALL the law** they supposedly uphold, and have a duty to answer for it. Ignorance of the laws is no excuse. If they, or anyone taking a stand on this issue, have not actually read any of the IR code, personally, and have not read all the relevant case laws and other testimony and material in this case, personally, and have not considered the Constitutional elements herein, and continue to stand their ground, this is deceptive, and very unprofessional conduct, at the least, and bordering on **willful fraud, wonton disregard for the rule of law and the Constitution, criminal collusion and Racketeering, malfeasance, misfeasance**, among other violations, and has nothing to do with freedom, the rule of law, and liberty in this country.

Petitioner maintains they have met their burden to submit a “minimal amount of evidence” and has raised much more than “a substantial question” to support contention of civil rights violations being done under the color of law, Respondent’s lack of good faith in addressing Petitioner’s individual issues, and Respondent’s obfuscation of the facts and definitions, potential fraud, all of which support Cause for denying Respondent’s Motion for Denial, and to Grant Petitioner’s Petition to Quash Summons, and grant relief requested below.

If we are merely playing a “legal game” whereby any rules go and the government can make them up as they go, and the courts support them, subverting long established laws, and original intent of Congress and our Founding Fathers, what can become of our country? It is this kind of flagrant disregard for truth and the Rule of Law and our Constitutional safeguards that has gotten us into the financial disaster we face today as a nation. Do we continue on this ride into the black hole of lawlessness and more destruction, or do we turn it around and do the right, and legal, thing?

Lastly, given all this evidence, it might surprise your honor to learn that this is not all of it, by any stretch, as there are many more twists and turns down this rabbit hole that are equally incorrect and even unlawful and unconstitutional. All this will soon be addressed by a collection of major organizations on a national level. Petitioner hopes your honor will consider all this in adjudicating this evidence.

Petitioner believes this case is ripe for adjudication. To rehash the irrelevant presumptive and hearsay testimony depended upon by Respondent, without Respondent answering these direct case law challenges, and other testimony, point by point, is a waste of this Honorable Court's resources, and Your Honor's time, and does not serve justice and the search for truth, and is a clear default by Respondent and suggests government and court bias toward Petitioner.

Petitioner requests non-discretionary Findings of Fact and Conclusions of Law for any decision other than granting Petition to Quash, to include specific, relevant case law, and legal evidence that overrides stated case and other laws of all facts presented...

FEDERAL MARITIME COMMISSION v. SOUTH CAROLINA STATE PORTS AUTHORITY etal. certiorari to the united states court of appeals for the fourth circuit No. 01-46. Argued February 25, 2002—Decided May 28, 2002: "***The parties are entitled to know the findings and conclusions on all of the issues of fact, law, or discretion presented on the record.***"

Do Now Request:

1. Your Honor Deny Respondent's Motion for Summary Denial, and Grant Petitioner's Petition to Quash 3rd Party Summons, with prejudice.

2. Declatory Judgement that Petitioner is not a "taxpayer," as mislabeled by the Respondent according to all existing evidence provided, and to declare Petitioner to be a "non-taxpayer" till proven otherwise.

3. ORDER Respondent to remove and destroy all records related to any aspect of Petitioner's fraudulent "taxpayer" status with Respondent until Respondent, in good faith, proves such status in law.

4. Order that all rebuttal, challenges, laws, testimony, etc., submitted to Respondent by Petitioner over the last 6 years be maintained as Petitioner's IMF file.

5. ORDER Respondent to provide factual and legal answers to Petitioner's original Affidavit

dated March 25, 2006, (copy attached, minus attachments for size, but available via Respondent in Petitioner's IMF File, or from Petitioner), all other correspondence, and this case challenges on all issues, point by point, to show good faith, and to comply with the IR Manual itself (See Attachment Y) in their responsibility to the public, which they have failed to do thus far.

6. ORDER Respondent to have all these answers published to the public, and to have a "Redress of Grievance" nationwide publically televised and advertised forum where independent parties, and the public, will evaluate all evidence on these issues, which Respondent, (and all of Congress, the President, and many others within the administrations who have been legally noticed on these things, and Redress requested), has, multiple times since 1995, agreed to do under the "Redress of Grievances" clause of the Constitution, (non-discretionary) but then reneged on over and over again, without excuse. (Evidence available). What do they have to fear if they stand on laws and truth?

If the Respondent truly seeks to serve the public and provide lawful direction, this response will help to easily and simply quell the rapidly growing resistance to what is proving to be extra-legal activity by Respondent and government, and that Respondent refuses to answer for under Constitutional right to Redress of Grievance. If they stand on the law, they should be able to answer the specifics because they certainly must have the material in order to be stating and claiming and doing what they are, if it is legal.

7. Under 26 USC 7433; Compensation for costs of time and expenses in responding to Respondent's frivolous and void actions, at 75 hours research and preparation, at $175 per hour, and all related filing costs.

8. Respondent's, et al., have shown clear evidence of wanton and willful disregard for the Rule of Law, the Constitution and their oath to defend and uphold the same, gross neglect of duty, conspiracy and other illegal activities referenced above, under the color of law, making themselves liable for prosecution under 7214 and Racketeering Laws, which the DOJ MUST act on under law, now being noticed of possible crimes, and which Petitioner requests Your Honor to ORDER said response and FULL investigation. (See Attachment D, lines 91-126, 151-187, and 283-314 for violations).

9. Request injunctions against Respondent, et al., from attempting any future illegal schemes to circumvent the law and Petitioner's rights, and cease and desist any and all correspondence with Petitioner, unless they can provide lawful, factual, authenticated evidence that would bring Petitioner within Respondent's jurisdiction, such as being an employee of the U.S. Government, or living within the territorial "United States," and other valid proof.

10. Default Judgement against Respondent regarding Original Affidavit financial claims, with interest, on funds fraudulently obtained from Petitioner by Respondent without lawful authority. Refund based on case law as stated in copy of Original Affidavit provided to this Honorable Court, to be provided within 21 days of Judgement and as described in Original Affidavit.

11. Find Respondent, et. al., in Contempt of Court for all the obvious violations of law, and false testimony, which Respondent, et. al., are attempting against the Rule of Law, Rules of Evidence, the Constitution, and against this Honorable Court, and Your Honor.

Enclosed: Attachments A, B, C, D, E, F, FF, G, H, I, J, L, M, P, R, S, T, W, X, Y; Original Affidavit, Certificate of Mailing.

Respectfully submitted in the spirit of truth and freedom for our great country, and dated this_____ day of January, 2009.

_____

Jeffrey T. Maehr, Pro Se
924 E. Stollsteimer Rd
Pagosa Springs, CO 81147

Attachment A

What is Constitutional "Income?"

The premise of Attachment A is that "income" defined in our modern-day language is quite different than the original intent of the framers of tax laws and especially the income tax code. Over the course of decades the terminology and definitions for income have been manipulated in the public consciousness for less than honorable purposes.

The argument is stated thus: "Income" is not all that comes in and was never intended to be wages, salary or compensation for labor. Income is a completely different category of creature, which excludes “wages, salaries and compensation,” and where Constitutional and legal “income” exists, it must be taxed Constitutionally and legally. The right to work and obtain “wages, salaries and compensation,” is inalienable, and cannot be taxed contrary to original intent of Congress, The People, or the Constitution. Taxation applies to specific isolated categories of activities and entities, NOT the People’s living.

The IRS creates a presumption in the minds of all Americans that all Americans are liable for taxes on wages, salaries and compensation...

"Every presumption is to be in the oldest in favor of faithful compliance by Congress with the mandates of the fundamental law [the Constitution}. Courts are reluctant to adjudge any statute in contravention of them. But, under our frame of government, no other places is provided where the citizen may be heard to urge that the law fails to conform to the limits set upon the use of a granted power. When such a contention comes here we naturally require a showing that by no reasonable possibility can the challenged legislation fall within the wide range of discretion permitted to the Congress. How great is extent that range, when the subject is the promotion of the general welfare of the United States, we hardly need remark. But, despite the breadth of the legislative discretion, our duty to hear and to render judgment remains as. If the statute plainly violates the stated principal of the Constitution we must so declare." United States v. Butler, 297 U.S. (1935).

Disputable presumption: "A species of evidence that may be accepted and acted upon when there is no other evidence to uphold contention for which it stands; and when evidence is introduced supporting such contention, evidence takes place of presumption, and there is no necessity for indulging in any presumption. A rule of law to be laid down by the court, which shifts to the party against whom it operates the burden of evidence, merely." Black's 6th Law Dictionary.

This attachment provides such evidence against this “presumption."

"The general term "income" is not defined in the Internal Revenue Code." *US v Ballard, 535 F2d 400, 404, (1976)*.

"...income; as used in the statute should be given a meaning so as not to include everything that comes in. The true function of the words 'gains' and "profits' (as defined in the code-JTM) is to limit the meaning of the word 'income." *S. Pacific v. Lowe, 247 F. 330. (1918)*

"...Taxation on income is in its nature an excise entitled to be enforced as such" (in other words indirectly as a tax upon an optional exercise of privilege, and taxed uniformly across the country to everyone.)

"Since the right to receive income or earnings is a right belonging to every persons, this right cannot be taxed as privilege."(Excise or "income" tax) *Jack Cole Company v. Alfred T, MacFarland, Commissioner, 206 Tenn. 694, 337 S.W.2d 453 Sup. Court of Tennessee (1960)*

In other words, income taxation is legally and constitutionally ONLY on privilege, i.e. Corporate profits (after expenses and salaries) and unearned income "from whatever source derived" - 16th amendment, and is also ONLY on those serving in a public office or working for the government.

"A tax upon the privilege of selling property at the exchange,...differs radically from a tax upon every sale made in any place. A sale at an exchange differs from a sale made at

a man's private office or on his farm, or by a partnerships because, although the subject matter of the sale may be the same in each case, there are at an exchange certain advantages, in the way of finding a market, obtaining a price, the saving of time, and in the security of payments and other matters, which are more easily obtained there than at an office or a farm." *Nicol v. Ames, 173 U.S. 509 (1899)*.

"Every presumption is to be in the oldest in favor of faithful compliance by Congress with the mandates of the fundamental law (the Constitution-JTM). Courts are reluctant to adjudge any statute in contravention of them. But, under our frame of government, no other places is provided where the citizen may be heard to urge that the law fails to conform to the limits set upon the use of a granted power. When such a contention comes here we naturally require a showing that by no reasonable possibility can the challenged legislation fall within the wide range of discretion permitted to the Congress. How great is extent that range, when the subject is the promotion of the general welfare of the United States, we hardly need remark. But, despite the breadth of the legislative discretion, our duty to hear and to render judgment remains... If the statute plainly violates the stated principal of the Constitution we must so declare." United States v. Butler, 297 U.S. (1935).

26 CFR 39.21-1 (1956).. Meaning of net income. (a) The tax imposed by chapter 1 is upon income. Neither income exempted by statute or fundamental law, nor expenses incurred in connection therewith, other than interest, enter into the computation of net Income as defined by section 21

26 CFR 39.22(b)-1 Exemption--Exclusions from gross income. Certain items of income specified in section 22(b) are exempt from tax and may be excluded from gross income. These items however, are exempt only to the extent and in the amount specified. No other items may be excluded from gross income except (a) those items of income which are under the Constitution, not taxable by the Federal government;"

Today's regulations put it this way: CFR - 1.61-1 (Current)

Gross income. General definition. Gross income means all income <u>from whatever source</u> <u>*derived*</u> unless excluded by law.

The "excluded by law" clause refers to constitutional forms of taxation and all other applicable laws as set forth herein.

The IR Code defines “income” as:

Section 22 GROSS INCOME:

(a): Gross income includes gains, profits, and income derived from salaries, wages, or compensation for personal service..."

"Gross income and not 'gross receipts' is the foundation of income tax liability... The general term 'income' is not defined in the Internal Revenue Code... 'gross income' means the total sales, less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources." U.S. v. BALLARD, 535 F2d 400 (1976).

My gross income is NOT a "gain, profit or income," that is "DERIVED FROM" anything but my labor, which is NOT my "profit." Actual "gross income," as defined in IR Code, and in keeping with case law and Congressional records, is any "profit" or "gain" that is "derived FROM" my income. Example: I receive $10,000 wage for service or labor provided. This is an equal exchange, with NO **“material difference”** in the exchange - (*Material difference case law - COTTAGE SAVINGS ASSN v. COMMISSIONER, 499 U.S. 554 (1991)*. My labor or service is equal in value to the payment (or other compensation) received. This is NOT taxable under law.

I take this $10,000, and invest it in some way, and receive a "profit" or "gain" FROM this income I received, as interest, or what is termed "unearned income." I exerted NO personal labor, (which I own,) and received an actual "profit" or "gain" from the investment. THIS, and ONLY this "gain," is possibly taxable, but ONLY according to constitutional law across the country, and ONLY according to other personal tax liability defined in IR Code and the issues presented throughout this document. The actual principle amount is NOT diminished in any way, and ONLY the profit or gain "DERIVED FROM" the principle is possibly taxable. The tax is for the privilege of gaining MORE wealth, and the tax is for the functioning of government at the same time.

"Income Tax: A tax on the yearly profits arising from property, professions and trades, and offices." Henry Campbell Black, A Law Dictionary 612 (1910).

Income tax: An 'income tax' is a tax which relates to product or income from property or from business pursuits." Levi v. City of Louisville, 30 S.W. 973, 974, 97 Ky. 394, 28 L.R.A. 480.

"The term 'income tax' includes a tax on the gross receipts of a corporation or business." Parker v. North British Ins. Co. 7 South. 599, 600, 42 La. Ann. 428.

My labor is my property which I am free to use and dispose of as I wish:

"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 to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give them their highest enjoyment... It has been well said that, the property which every man has in his own labor, as it is the original foundation of all other property, (without said property, ((labor or service, which allows the receipt of money FROM which someone may produce "income")) so it is the most sacred and inviolable ...to hinder his employing.., in what manner he thinks proper, without injury to his neighbor, is a plain violation of the most sacred property." Butchers' Union Co. V. Crescent City, CO., 111 U.S. 746, 757 (1883).

"A man is free to lay hand upon his own property. To acquire and possess property is a right, not a privilege ... The right to acquire and possess property cannot alone be made the subject of an excise .... nor, generally speaking, can an excise be laid upon the mere right to possess the fruits thereof, as that right is the chief attribute of ownership." Jerome H. Sheip Co. v. Amos, 100 Fla. 863, 130 So. 699, 705 (1930).

"Can be said with any degree of sense were just as that the property which a man has been his labor which is the foundation of all property in which is the only capital of so large majority of the citizens of our country is not property; or, at least, not that character of property which can demand boom of protection from the government? We

think not." Jones v. Leslie, 112 P. 81 (1910).

"Though the earth and all inferior creatures the common to all men, that every man has a property in his own person; this no Body has any right to but himself. The labor of his body and the work of his hands, we may say, are properly his." John Locke, "2nd Treatise of government (1690), Sec. 27.

"Property is everything which has an exchangeable value, in the right of property includes the power to dispose of that according to the will of the owner. Labor is property, and as such merits protection. The right to make it available is next in importance to the rights of life and liberty. It lives to a large extend the foundation of most other forms of property, and of all solid individual and national prosperity." Slaughter - House Cases, 83 U.S. 36, at 127 (1873).

The issue of whether a man's labor is his actual property rests in the fact that a person's labor or service has value, and that it can be exchanged for something of similar value.

"We all have the innate ability to earn income based on our natural intelligence and physical strength...the income from the skills is in part to return to earlier investments in food, shelter, and clothing." A. Parkman, "The Recognition of Human Capital As Property in Divorce Settlements, 40 Arkansas Law Review, 439, 441 (winter 1987).

In order to produce labor or service in exchange for wages or compensation, there must be a reasonable amount of support structure such as food, shelter, clothing, health support, adequate rest, reasonable amount of recreation, etc. Without these basic elements, the ability to produce labor, wages, and such is impossible. Human energy in the form of labor and service is a commodity. It is something that can be bought or sold for a price. Anything that has economic value inevitably raises the question of who owns it. If I do not own my personal ability to labor and produce, then who does?

"To a slave, as such, there appertains and can appertain no relation, civil or political, with the state or the government. He is himself strictly property, to be used in subserviency to the interests, the convenience, or the will, of his owner." Dred Scott v. Sandford, 19 How. 393, at 475 -- 476 (1856).

To own slaves meant that their labor can be owned as a form of legal property or capital asset. The principal of slavery is at work with anyone who is deprived under power and color of law of the right to claim their labor as their property. Human labor has all the essential legal prerogatives and attributes of property.

"In our opinion that section, in particular mentioned, in an invasion of the personal liberty, as well as of the right of property, guaranteed by that Amendment (Fifth). Such liberty and right embraces the right to make contracts for the purchase of the labor of others and equally the right to make contracts for the sale of one's own labor;... The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it... In all such particulars the employer and the employee have the quality of right, and any legislation that disturbs that equality is an arbitrary interference of liberty of contract which no government can legally justify a free land." Adair v. United States, 208 U. S. 161, at 172-175 (1908).

"Included in the right of personal liberty and the right of private property -- are taking of the nature of each -- is the right to make contracts for the acquisition of property. The chief among such contracts instead of personal employment, by which in labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other artists away to begin to acquire property, save by working for money... The right to follow any lawful vocation and to make contracts is as completely within the protection of the Constitution as the right to hold property free from unwarranted seizure, or the liberty to go when and where one will. One of the ways of obtaining property is by contract. The right, therefore, to contract cannot be infringed by the legislature without violating the letter and spirit of the Constitution. Every citizen is protected in his right to work where and for whom he will. He may select not only his employer, but also his associates." " Coppage v. Kansas, 236 U.S. 1, at 14, 23-24 (1915).

Thus, a contract for labor is a contract for sale of property;

"The time and labor provided by the employees of the Chattanooga city school system were purchased with public funds and thus became property, with an easily determined value, which belonged to the city. The appellant converted the proceeds of those public funds to his own use to repay favors and a creating more comfortable home for himself and his girlfriend. The statute was sufficiently clear to place the appellant, or any other public official, on notice that the embezzlement of the labor of employees of the state of Tennessee or any County or municipality therein, is a criminal act." State v. Brown, 791 S.W. 2d 31, 32 (1990).

"Property... corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value." Blacks Law Dictionary, 1979 edition.

"We conclude that if one's gambling activities pursued full-time, in good faith, and with regularity, to the production of income for a livelihood, and is not a mere hobby, it is a trade or business within the meaning of the statutes which we are here concerned. Respondents Groetzinger satisfied that test in 1978. Constant and large -- scale effort on his part was made. Skill was required and supplied. He did what he did for a livelihood, though with a less than successful result. This was not a hobby or a passing fancy or an occasional debt for amusement." Commissioner v. Groetzinger, 480 U.S. 23 (1987).

In the above case, it clearly shows that someone who puts regular, consistent efforts into making a living is engaged in a trade or business, NOT related to U.S. government employment, whether they are employed by another party or were employed themselves. Concerning my own employment, I have pursued my occupation of selling my labor, energy and skills on a full-time basis, in good faith, continuity and regularity, representing a constant and large-scale effort over many years, for the production of income for a livelihood, with skills being required and applied. It is not a sporadic activity, a mere hobby, or an amusement diversion. These very facts, being applied to all Americans across the country, should, at the very least, allow each and every one of them to deduct all living expenses required to maintain their personal property which is used in making a living.

Corporations and the self-employed have the luxury of deducting many expenses

related to the production of income or profit, yet the common employee is not able to deduct one penny for expenses related to their production of income. This is an inequity that cannot be overlooked.

IR Code Sections 1001, 1011 and 1012 and their regulations, 26 C.F. R. Sections 1.1001-1(a) 1.1011-1 and 1.1012-1(a), provide the method for determining the gain derived from the sale of property:

Section 1001(a);

"The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in section 1011 for determining gain..."

Section 1001(b);

The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received."

Section 1011:

The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis (determined under section 1012...) adjusted as provided in section 1016."

Section 1012:

"The basis of property shall be the cost of such property..."

The cost of property purchased under contract is its fair market value as evidenced by the contract itself, provided neither the buyer nor the seller were acting under compulsion in entering into the contract, and both were fully aware of all of the facts

regarding the contract. See Terrance developmental Co. v. C.I.R., 345 F.2d 933 (19650; Bankers Trust Co. v. U.S., 518 F.2d 1210 (1975); Bar L Ranch, Inc. v. Phinney, 426 F.2d 995 (1970); Jack Daniel Distillery v. U.S., 379 F.2d 569 (1967).

In other words, if an employer and employee agree that the employee will exchange one hour of his time in return for a certain amount of money, the cost, or basis under Section 1012, of the employee's labor is the pay agreed upon. By the same token, if an attorney, doctor or other independent contractor agrees to perform a certain service for an agreed upon amount of compensation, the value of the service to be performed is the amount agreed upon as payment for the service.

In the case of the sale of labor, none of the provisions of Section 1016 are applicable, and the adjusted basis of the labor under Section 1011 is the amount paid. Therefore, when the employer pays the employee the amount agreed upon, or the professional is paid for his or her services, there is no excess amount realized over the adjusted basis, and there is no gain under Section 1001. There being no gain, there is no "income" in the constitutional sense, and no "gross income" under Section 61(1).

If one has no gain, one would not have sufficient "gross income" to require the filing of a federal personal income tax return under Section 6012. Likewise, without gain, there can be no "self-employment income," and one who is self-employed would not be required to file a federal personal income tax return under Section 6017.

All other issues such as FICA tax, Railroad Retirement Tax, Federal Unemployment Tax, W4's, etc., would be null because no gain or "income" has actually been realized.

"In principle, there can be no difference between the case of selling labor and the case of selling goods." Adkins v. Children's Hospital, 261 U.S. at 558.

The sale of one's labor constitutes personal property. The IR Code specifically provides that only the amount received in EXCESS of the fair market value of personal property upon its sale constitutes "gain." 26 U.S.C. Sections 1001, et seq. Reading Court;

"It could hardly be denied that a tax laid specifically on the exercise of those freedoms

would be unconstitutional... A state [or federal government-JTM] may not impose a charge for the enjoyment of a right (working-JTM) granted by the federal Constitution." - Murdock v Pennsylvania, 319 US 105, at 113; 480-487; 63 S Ct at 875; 87 L Ed at 1298 (1943).

"The statute and the statute alone determines what is income to be taxed. It taxes only income ‘derived’ from many different sources; one does not ‘derive income’ by rendering services and charging for them." Edwards v. Keith, 231 F. 110 (2nd Cir. 1916).

"Citizens under our Constitution and laws mean free inhabitants ... Every citizen and freeman is endowed with certain rights and privileges to enjoy which no written law or statute is required. These are fundamental or natural rights, recognized among all free people... That the right to... accept employment as a laborer for hire as a fundamental right is inherent in every free citizen, and is indisputable..." United States v. Morris, 125 F. Rept. *325,* 331.

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

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

The term [liberty] ... denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life... and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men... The established doctrine is that this liberty may not be interfered with, under the guise of protecting public interest, by legislative action..." Meyer v. Nebraska, 262 U.S. 390, 399, 400. referencing also Slaughter-House Cases, 16 Wall. 36; Butchers' Union Co. v. Crescent City Co ., 111 U.S. 746 , 4 Sup. Ct. 652; Yick Wo v. Hopkins, 118 U.S. 356 , 6 Sup. Ct. 1064; Minnesota v. Bar er, 136 U.S. 313 , 10 Sup. Ct. 862; Allegeyer v. Louisiana, 165 U.S. 578 , 17 Sup. Ct. 427; Lochner v. New York, 198 U.S. 45 , 25 Sup. Ct. 539, 3 Ann. Cas. 1133; Twining v. New Jersey 211 U.S. 78 , 29 Sup. Ct. 14; Chicago, B. & Q. R. R. v. McGuire, 219 U.S. 549 , 31 Sup.

Ct. 259; Truax v. Raich, 239 U.S. 33 , 36 Sup. Ct. 7, L. R. A. 1916D, 545, Ann. Cas. 1917B, 283; Adams v. Tanner, 224 U.S. 590 , 37 Sup. Ct. 662, L. R. A. 1917F, 1163, Ann. Cas. 1917D, 973; New York Life Ins. Co. v. Dodge, 246 U.S. 357 , 38 Sup. Ct. 337, Ann. Cas. 1918E, 593; Truax v. Corrigan, 257 U.S. 312 , 42 Sup. Ct. 124; Adkins v. Children's Hospital (April 9, 1923), 261 U.S. 525 , 43 Sup. Ct. 394, 67 L. Ed. --; Wyeth v. Cambridge Board of Health, 200 Mass. 474, 86 N. E. 925, 128 Am. St. Rep. 439, 23 L. R. A. (N. S.) 147."

My labor has a value, just as an employer or customer's money has value. I agree to my employer's wage or customer's money for my merchandise, and they agree to the labor or service I will "exchange" FOR that income. The process is an even exchange... (See COTTAGE SAVINGS ASSN v. COMMISSIONER, 499 U.S. 554 (1991).

"The right to hold specific private employment and to follow a chosen profession free from unreasonable government interference comes within the 'liberty' and 'property' concepts of the Fifth Amendment." Greene v. McEleroy, 360 U.S. 424, 492 (1959).

This means the right to hold a job to generate a living is a "use" or a "holding of property for the production of income."

The exchange of labor for wages, salary or compensation, materially, has NO difference in value, and therefore, there is nothing which is an actual "profit" that can be taxed. My labor cannot be valued LESS THAN the value of the money or wage paid to me for my labor or service, but this is what takes place when my wage is directly or indirectly taxed.

Any exchange of my labor cannot be devalued below the value of the wage I received in order to attempt to show that I received a "profit," and possibly make me "liable" for a tax. My labor is valued EQUAL TO the wage I receive. Neither can the wage I make be counted in its entirety as a "profit," or this makes my labor or service worth nothing. I exchange my labor or service, which I value exactly equal to the income I receive. There is NO material difference between the values for either my labor or service provided, and the income received FOR labor or service.

I have the freedom and right to value my labor at any amount, and can, therefore,

accept ANY amount of income as equal value to any labor or service I provide any party. Anything short of this that is taxed is clearly due to slave labor, and is theft by coercion, fraud and conversion, and is clearly unconstitutional and against common law and case law. (See Attachments C and that the legal application of taxation against some citizen's are those that are in the “employee” of the IRS and U.S. Government - See 26 USC 3401(d)).

The following case law on "material difference" help to clarify "income" facts:

An example of "no material difference" in the exchange of labor for wage, salary or compensation:

John has hundred dollar bills but needs some twenty dollar bills. Mary has twenty dollar bills, but needs some hundred dollar bills. They agree to work for each other because John wants some twenties for his $100 bills, and Mary wants some $100 bills for her twenties. They agree to work for each other for the day. John agrees to give Mary one, one hundred dollar bill for the day, and Mary agrees to give John 5, twenty dollar bills for the day. At the end of the day's work for each other, they pay each other, or, exchange the bills. Question: Which one of them has made a "profit" from the exchange made?

When someone works for a wage or salary, they have agreed to exchange their labor for the money offered by the employer or customer. The person has agreed that their labor is worth whatever the employer or customer is willing to offer, (or is willing to accept the pay even though they value their labor at MORE than what is paid, thereby causing them a "material LOSS"). The process is simply an "exchange" of value, 1 to 1. There is NO "profit" being made by either at the point. The employee has his labor and needs cash, while the employer has cash, and needs labor performed.

If they both are considered to have made a "profit," just from the exchange of labor for money, in what way has this occurred? What "material difference" is there between the one, one hundred dollar bill, and the 5, twenty dollar bills? What "material difference" is there between the exchange of labor for cash? Are they not equal in value to each other? What "profit" has been made by labor or service provided in exchange for money or service? How has an actual profit occurred unless the actual labor or service is

valued at zero value and ALL that was received was "profit?"

In the same way, EVERY "exchange" of labor or service for compensation, in whatever form, has NO "material difference" between either. To suggest otherwise, is to effectively make all labor and services of NO intrinsic value, and we become slaves through that process.

Another example: A company, receives money for services or products provided. This money is received and used by all those engaged as part of this enterprise. This cash or money is NOT considered a "profit" for this company because of expenses, costs of doing their work or service. After all wage expenses, material costs, and purchases to improve their business, the remaining money is, today, being classified as “income.” However, the cash or money... compensation or whatever that a private individual receives, IS considered a "profit" even though THEY, too, have costs and expenses in providing THEIR labor, which they spent money in various ways to be able to provide.

I have requested the IRS or any related agency to explain this "material difference" - See *COTTAGE SAVINGS ASSN v. COMMISSIONER, 499 U.S. 554 (1991)* for legal case law on "material difference" legal issue, and how "all that someone receives as wages or compensation is “profit" is a gross inaccuracy.

Case Law Proving Labor is property, and wages, salary and compensation (all income as termed today) is NOT subject to the income tax:

Legal and intended Definition of "Income," and law affecting Respondent's Actions;

Section 22 GROSS INCOME:

(a): Gross income <u>includes</u> gains, profits, and income <u>derived from</u> salaries, wages, or compensation for personal service..."

Gross Income Defined: Section 213. That for the purposes of this title (except as otherwise provided in section 233, [Gross Income Of Corporations Defined -JTM]) the

term gross income-(a) includes gains, profits, and income derived from salaries, wages, and compensation for personal service (including in the case of the President of the United States, the judges of the Supreme and lower inferior of the United States, and all other officers and employees, whether elected or appointed, of the United States, Alaska, Hawaii, or any political subdivision thereof or the District of Columbia, the compensation received as such).

Said "gains, profits, and income" are all classified as being "DERIVED FROM" salaries, wages or compensation... This is in keeping with the original intent of the 16th Amendment and what the so-called "Income" tax was designed for... to tap the unearned "income" the wealthy had an abundance of:

"An unapportioned direct tax on anything which is not income would be unconstitutional." - C.I.R. v. Obear-Nester Glass Co., C.A. 7, 1954, 217 F.2d, 75 S. Ct. 570 348 U.S. 982, 99L.Ed. 764, 75 S. Ct. 870, 349 U.S. 948, 99 L. Ed. 1274.

"When a court refers to an income tax as being in the nature of an excise, it is merely stating that the tax is not on the property itself, but rather it is a fee for the privilege of receiving gain from the property. The tax is based upon the amount of the gain, not the value of the property." C.R.S. Report Congress 92-303A (1992) by John R. Lackey, Legislative attorney with the library of Congress:

"The meaning of "income" in this amendment is the gain derived from or through the sale or conversion of capital assets: from labor or from both combined; not a gain accruing to capital or growth or increment of value in the investment, but a gain, a profit, something of exchangeable value, proceeding from the property, severed from the capital however employed and coming in or being "derived", that is, received or drawn by the recipient for his separate use, benefit, and disposal." Taft v. Bowers, N.Y. 1929, 49 S.Ct. 199, 278 U.S. 470, 73 L.Ed. 460.

"It becomes essential to distinguish between what is, and what is not "income"... Congress may not, by any definition it may adopt, conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone, that power can be lawfully exercised....[Income is] Derived--from--capital--the--gain--derived--from-capital, etc. Here we have the essential

matter--not gain accruing to capital, not a growth or increment of value in the investment; but a gain, a profit something of exchangeable value...severed from the capital however invested or employed, and coming in, being "derived," that is received or drawn by the recipient for his separate use, benefit and disposal-- that is the income derived from property. Nothing else answers the description.... "The words 'gain' and 'income' mean the same thing. They are equivalent terms..." - Congressional Globe, 37th Congress 2nd Session, pg. 1531.

"The word "income" as used in this [16th] amendment does not include a stock dividend, since such a dividend is capital and not income and can be taxed only if the tax is apportioned among the several state in accordance with Art. 1 Sec. 2, cl.3 and Art. 1, Sec. 9, cl. 4 of the Constitution." Eisner v. Macomber. N.Y. 1929, 40 5.Ct 189, 252 U.S. 189, 64 L.Ed. 521.

"[Income is] derived--from--capital--the--gain--derived--from--capitol, etc. Here we have the essential matter--not gain accruing to capitol, not growth or increment of value in the investment; but a gain, a profit, something of exchangeable value...severed from capitol however invested or employed and coming in, being "derived", that is received or drawn by the recipient for his separate use, benefit and disposal--that is the income derived from property. Nothing else answers the description...". [emphasis in original]... "After examining dictionaries in common use (Bouv. L.D.; Standard Dict.; Webster's Internat. Dict.; Century Dict.), we find little to add to the succinct definition adopted in two cases arising under the Corporation Tax Act of 1909 (Stratton's Independence v. Howbert, 231 U.S. 399, 415; Doyle v. Mitchell Bros. Co, 247 U.S. 179, 185) "Income may be defined as the gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through a sale or conversion of capital assets..." Doyle v. Mitchell, 247 U.S. 179-185 (1920); Stratton's Indep. v. Howbert, 231 U.S. 339 (1913); So. Pacific v. Lowe, 247 U.S. 330 (1918); Eisner v. Macomber, 252 US 189 (1920); Merchant's Loan v. Smietanka, 255 U.S. 509 (1921).

"The claim that salaries, wages, and compensation for personal services are to be taxed as an entirety and therefore must be returned by the individual who has performed the services which produce the gain is without support, either in the language of the Act or in the decisions of the courts construing it. Not only this, but it is directly opposed to provisions of the Act and to regulations of the U.S. Treasury Department, which either prescribed or permits that compensations for personal services not be taxed as a

entirety and not be returned by the individual performing the services. It has to be noted that, by the language of the Act, it is not salaries, wages or compensation for personal services that are to be included in gross income. That which is to be included is gains, profits, and income derived from salaries, wages, or compensation for personal services." The United States Supreme Court, Lucas v. Earl, 281 U.S. 111 (1930)

The original intent of the founders of the Constitution was NOT to tax wages or salaries of the people of the several states. The word "income" had a completely different meaning then, compared to what is presumed to be the meaning today. Not only Supreme Court Case law, but hundreds of Congressional Records of the time (as documented in the book "Constitutional Income: Do you have any?") clearly show what the "income" tax was understood to be:

"The task of interpretation must therefore be to discover what was the meaning common to each of these terms at the time the Constitution was adopted." Francis W. Bird, Constitutional Aspects of the Federal Tax on the Income of Corporations, 24 Harvard Law Review 31, 32 (1911).

"The Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary [meaning] as distinguished from [their] technical meaning; where the intention is clear there is no room for construction and no excuse for interpolation or addition." United States v. Sprague, 282 U.S. 716, 731 (1930).

"The Treasury cannot by interpretive regulations, make income of that which is not income within the meaning of revenue acts of Congress, nor can Congress, without apportionment, tax as income that which is not income within the meaning of the 16th Amendment." Helvering v. Edison Bros. Stores, 133 F2d 575. (1943)

"It is not a function of the United States Supreme Court to sit as a super-legislature and create statutory distinctions where none were intended. " American Tobacco Co. v. Patterson, 456 US 63, 71 L Ed 2d 748, 102 S Ct. 1534 (1982)

"...**income**; as used in the statute should be given a meaning so as not to include everything that comes in. The true function of the words "gains" and "profits" is to limit the meaning of the word "income." S. Pacific v. Lowe, 247 F. 330. (1918)

Gains, profits, and income all relate back to one another as being equal, and quite distinct from "wages and salaries." Working for wages or salaries or other compensation to provide for family and livelihood were NOT "income" nor intended to be taxed. Such taxation diminishes the ability to provide for "Life, Liberty and the pursuit of happiness," and diminishes wealth... diminishes the "principle" and therefore makes one poorer because of it.

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." West Virginia State Board of Education v. Barnette - 319 U.S. 623

Such property was NOT to be taxes, but the "gains, profits, and income" from such property WAS available to be taxed, but ONLY according to Constitutional law.

"...we are of the opinion that there is a clear distinction in this particular between an individual and a corporation, and that the latter has no right to refuse to submit its books and papers for an examination at the suit of the state. The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the state or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the state, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the state, and can only be taken from him by due process of law, and in accordance with the Constitution. He owes nothing to the public so long as her does not trespass upon their rights." Hale v. Henkel, 201 U.S. 74 (1905):

"Privilege" was what "could" be taxed by the "income" tax. Such privilege was NOT the "RIGHT" to work. "Right" and "privilege" are two distinctly different things.

It was not the intention of the American people to tax the wages and salaries of the working man, but ONLY to reach the "gains, profits and unearned income" of the country... something that was fought by big business and the wealthy of the country, and something which most people in the nation did NOT have...

"We are bound to interpret the Constitution in the light of the law as it existed at the time it was adopted." Mattox v. U.S. 156 U.S. 237, 243 (1895).

"For 1936, taxable income tax returns filed represented only 3.9% of the population," and, "The largest portion of consumer incomes in the United States is not subject to income taxation. likewise, only a small proportion of the population of the United States is covered by the income tax." Treasury Department's Division of Tax Research publication, 'Collection at Source of the Individual Normal Income Tax,' 1941."

Are we to believe that only 3.9% of the entire population of America worked for a living, making wages and salaries in 1936? Despite the incorrect definition for the word "income," the Treasury Department clearly shows how "incomes," while mis-defined, also shows that wages and salaries (what they believed to be income) were not yet the focus of "income" taxes.

Constitutional income" means what We the People say it Means. Any word or term used in the Constitution has the meaning the People intended that word or term to mean at the time the Constitution was ratified. Or, in the case of an amendment to the Constitution, we use the words therein as the American People understood them to mean at the time the amendment was (supposedly) ratified by the several States. To understand what the meaning of the word "income" is, we must examine the history of income taxes in America prior to the ratification of the 16th Amendment.

"Under the Internal Revenue Act of 1954 if there is no gain, there is no income." - 26 U.S.C.A. '54, Sec. 61(a).

"There must be gain before there is 'income' within the 16th Amendment." U.S.C.A. Const. Am 16.

"The true function of the words 'gains' and profits' is to limit the meaning of the word 'income' and to show its use only in the sense of receipts which constituted an accretion to capital. So the function of the word 'income 'should be to limit the meaning of the words 'gains' and profits." Southern Pacific v. Lowe. Federal Reporter Vol. 238 pg. 850. See also, Walsh v. Brewster. Conn. 1921, 41 S.Ct. 392, 255 U.S. 536, 65 L.Ed. 762..

"I assume that every lawyer will agree with me that we can not legislatively interpret meaning of the word "income." That is a purely judicial matter... The word "income" has a well defined meaning before the amendment of the Constitution was adopted. It has been defined in all of the courts of this country [as gains and profits-PH]... If we could call anything that we pleased income, we could obliterate all the distinction between income and principal. The Congress can not affect the meaning of the word "income" by any legislation whatsoever... Obviously the people of this country did not intend to give to Congress the power to levy a direct tax upon all the property of this country without apportionment." 1913 Congressional Record, pg. 3843, 3844 Senator Albert B. Cummins.

Compensation:"...Giving an equivalent or substitute of equal value...giving back an equivalent in either money, which is but the measure of value..." Black's Law Dictionary.

"There is a clear distinction between 'profit' and 'wages' and compensation for labor. Compensation for labor CANNOT be regarded as profit within the meaning of the law. The word 'profit,' as ordinarily used, means the gain made upon any business or investment---a different thing altogether from mere compensation for labor." - Oliver v. Halstead, 86 S.E. Rep. 2d 859. (1955).

"...Reasonable compensation for labor or services rendered is not profit..." Laureldale Cemetery Assc. v. Matthews. 47 Atlantic 2d. 277 (1946).

"All are agreed that an income tax is a "direct tax" on gain or profits..." Bank of America National T. & Sav. Ass'n. V United States, 459 F.2d 513, 517 (Ct.Cl 1972).

"The phraseology of form 1040 is somewhat obscure...But it matters little; the statute and the statute alone determines what is income to be taxed. It taxes income 'derived' from many different sources; one does not 'derive income' by rendering services and

charging for them." - Edwards v. Keith, 231 Fed. Rep. (Note: Webster's Dictionary defines "derived" as: "to obtain from a parent substance." The property or compensation would be the parent substance and the "gain or profit" would be a separate "derivative" obtained from the substance (property or compensation). "From" means "to show removal or separation.")

Public Salary Act of 1939, TITLE I - SECTION 1. "22(a) of the Internal Revenue Code relating to the definition of 'gross income,' is amended after the words 'compensation for personal service' the following: including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing.

The Preface of 1939 Internal Revenue Code states:

"The whole body of internal revenue laws in effect January 2 1939, therefore, has its ultimate origin in 164 separate enactments of Congress. The earliest of these was approved July 1. 1862."

"And be it further enacted, that on and after the first day of August, 1862 there shall be levied collected and paid on all salaries of officers, or payments to persons in the civil military, naval, other employment or service of the United States, including senators and representatives and delegates in Congress..."

This law was later expanded to include, "employees of the United States, the District of Columbia or any agency or instrumentality thereof whether elected or appointed." The Public Salary Act of 1939 added employee and officers of the States and Municipalities as subjects of the income tax.

"Income" as the framers and people of America understood it, was not "all that comes in"... (S. Pacific v. Lowe, 247 F. 330. (1918)) but was, as The United States Supreme Court, Lucas v. Earl, 281 U.S. 111 (1930), above, states it, was "gains and profits DERIVED FROM salaries, wages, etc." In other words, wages were NOT income, but interest FROM wages sitting in a bank, or profit received FROM property, or interest FROM a loan to another WAS "INCOME"... but was STILL subject to Constitutional law in HOW that "income" is taxed.

"Simply put, pay from a job is a 'wage,' and wages are not taxable. Congress has taxed INCOME, not compensation (wages and salaries)." - Conner v. U.S. 303 F Supp. 1187 (1969).

Sec. 30 Judicial Definitions of income. By the rule of construction, noscitur a sociis, however, the words in this statute must be construed in connection with those to which it is joined, namely, gains and profits; and it is evidently the intention, as a general rule, to tax only the profit of the taxpayer, not his whole revenue." Roger Foster, A treatise on the Federal Income Tax Under the Act of 1913, 142.

Congressional Testimony:

Mr. Heflin. "An income tax seeks to reach the unearned wealth of the country and to make it pay its share." 45 Congressional Record. 4420 (1909) Mr. Heflin. "But sir, when you tax a man on his income, it is because his property is productive., He pays out of his abundance because he has got the abundance." 45 Congressional Record. 4423 (1909)

"There can be no tax upon a man's right to live and earn his bread by the sweat of his brow." O'Connell v. State Bd. of Equalization, 25 P.2d 114, 125 (Mont. 1933).

"...Every man has a natural right to the fruits of his own labor, as generally admitted; and no other person can rightfully deprive him of those fruits; and appropriate them against his will..." The Antelope, 23 U.S. 66, 120.

"So that, perhaps, the true question is this: is income property, in the sense of the constitution, and must it be taxed at the same rate as other property? The fact is, property is a tree; income is the fruit; labour is a tree; income the fruit; capital, the tree; income the fruit. The fruit, if not consumed (severed) as fast as it ripens, will germinate from the seed...and will produce other trees and grow into more property; but so long as it is fruit merely, and plucked (severed) to eat... it is no tree, and will produce itself no fruit." Waring v. Citv of Savennah. 60 Ga. 93, 100 (1878).

Louisiana Civil Code: "Art. 551. Kinds of fruits; "Fruits are things that are produced by or derived from another thing without diminution of its substance. There are two kinds of fruits; natural fruits and civil fruits. Natural fruits are products of the earth or of animals. Civil fruits are revenues derived from a thing by operation of law or by reason of a juridical act, such as rentals, interest, and certain corporate distributions."

"The right to labor and to its protection from unlawful interference is a constitutional as well as a common-law right. Every man has a natural right to the fruits of his own industry." 48 Am Jur 2d. 2, Page 80.

"The poor man or the man in moderate circumstances does not regard his wages or salary as an income that would have to pay its proportionate tax under this new system." Gov. A.E. Wilson on the Income Tax (16th) Amendment, N.Y. Times, Part 5, Page 13, February 26, 1911.

"As has been repeatedly remarked, the corporation tax act of 1909 was not intended to be and is not, in any proper sense, an income tax law. This court had decided in the Pollock case that the income tax law of 1894 amounted in effect to a direct tax upon property, and was invalid because not apportioned according to populations, as prescribed by the Constitution. The act of 1909 avoided this difficulty by imposing not an income tax [direct], but an excise tax [indirect] upon the conduct of business in a corporate capacity, measuring however, the amount of tax by the income of the corporation". Stratton's Independence, LTD. v. Howbert, 231 US 399, 414 (1913).

"The legislature has no power to declare as a privilege and tax for revenue purposes, occupations that are of common right" Sims vs. Ahrens, 167 Ark. 557; 271 S.W. 720, 730-733 (1925).

"An examination of these and other provisions of the Act (Corporation Excise Tax Act of August 5, 1909) make it plain that the legislative purpose was not to tax property as such, or the mere conversion of property, but to tax the conduct of the business of corporations organized for profit upon the gainful returns from their business operations." Doyle v. Mitchell Bros., 247 U.S. 179, 183 (1918).

"Nothing can be clearer than that what the constitution intended to guard against was

the exercise by the general government of the power of directly taxing persons and property within any state through a majority made up from the other states." Pollock vs. Farmers' Loan and Trust Co. on original intent, 157 US 429, 582 (1895).

"We have considered the act only in respect of the tax on income derived from real estate, and from invested personal property, and have not commented on so much of it as bears on gains or profits from business, privileges, or employments, in view of the instances in which taxation on business, privileges, or employments has assumed the guise of an excise tax and been sustained as such. It is evident that the income from realty formed a vital part of the scheme for taxation embodied therein. If that be stricken out, and also the income from all investments of all kinds, it is obvious that by far the largest part of the anticipated revenue would be eliminated, and this would leave the burden of the tax to be borne by professionals, trades, employments, or vocations; and in that way what was intended as a tax on capital would remain in substance as a tax on occupations and labor. We cannot believe that such was the intention of Congress. We do not mean to say that an act laying by apportionment a direct tax on all real estate and personal property, or the income thereof, might not lay excise taxes on business, privileges, employments and vocations. But this is not such an act; and the scheme must be considered as a whole." Pollock, 158 U.S. at 635-637.

Guise: "A superficial seeming: an artful or simulated appearance (as of property or worth). Webster's Third New International Dictionary.

"We are of the opinion that a tax on the gross income of an individual is embraced by the words "capitation, or other direct tax," in the Constitution, and should be assessed and collected on the principle of apportionment and not of uniformity, and that the several sections of the Internal Revenue act imposing such tax are therefore unconstitutional. We are further of opinion that no decision of the Supreme Court of the United States precludes this view, or discourages the expectation that it will receive the sanction of the court. On the contrary, there are dicta and suggestions in the only decisions bearing upon the subject which tend to confirm the opinion we have expressed." 13 Internal Revenue Record 76.

"It is obvious that these decisions in principle rule the case bar if the word "income" has the same meaning in the Income Tax Act of 1913 that it had in the Corporation Excise Tax Act of 1909, and that it has the same scope of meaning was in effect decided in

Southern Pacific Co. V. Lowe 247 U.S. 330, 335, where it was assumed for the purpose of decision that there was no difference in its meaning as used in the act of 1909 and in the Income Tax Act of 1913. There can be no doubt that the word must be given the same meaning and content in the Income Tax Acts of 1916 and 1917 that it had in the act of 1913. When to this we add that in Eisner v. Macomber, supra, a case arising under the same Income Tax Act of 1916 which is here involved, the definition of "income" which was applied was adopted from Stratton's' Independence v. Howbeit, arising under the Corporation Excise Tax Act of 1909, with the addition that it should include "profit gained through sale or conversion of capital assets," there would seem to be no room to doubt that the word must be given the same meaning in all Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act, and that what that meaning is has now become definitely settled by decisions of this Court."

"...it [income] should include *profit gained through a sale or conversion of capital assets'.* There would seem to be no room to doubt that the word must be given the same meaning in all of the Income Tax Acts of Congress that it was given to it in the Corporation Excise Tax Act, and what that meaning is has now become definitely settled by decisions of this court. In determining the definition of the word "income" thus arrived at, this court has consistently refused to enter into the refinements of lexicographers or economists and has approved, in the definitions quoted, what is believed to be the commonly understood meaning of the term [‘gains and profits'] which must have been in the minds of the people when they adopted the Sixteenth Amendment to the Constitution..."Merchants Loan & Trust Co. v. Smietanka. 225 U.S. 509, 518, 519 (1923).

"Before the 1921 Act this Court had indicated (see Eisner v. Macomber, 252 U.S. 189, 207, 64 L.ed 521, 9 A.L.R. 1570, 40 S. Ct. 189), what it later held, that 'income,' as used in the revenue acts taxing income, adopted since the 16th Amendment, has the same meaning that it had in the Act of 1909. Merchants; Loan & T. Co. v. Smietanka, 255 U.S. 509, 519, 65 L.ed. 751, 755, 15 A.L.R. 1305, 41 S. Ct. 386; see Southern Pacific Co. v. Lowe. 247 U.S. 330, 335, 62 L.ed. 114, 1147, 38 S. Ct. 540." Burnet vs. Harmel 287 US 103.

"... the Corporation Tax, as imposed by Congress in the Tariff Act of 1909, is not a direct tax but an excise; it does not fall within the apportionment clause of the Constitution; but is within, and complies with, the provision for uniformity throughout the United States; it

is an excise on the privilege of doing business in the corporate capacity..."

"The requirement to pay [excise] taxes involves the exercise of privilege." Flint v. Stone Tracey Company, 220 U.S. 107, 108 (1911).

By this decision, the Court stated that it would accept only one definition of "income" [under the 16th Amendment] and that any tax law that Congress wanted to pass under the authority of the 16th Amendment would have to use just that one definition of "income" - and that definition was the one Congress used in the 1909 Corporate Tax Act! In short, the Court was telling Congress that since the 16th Amendment was a part of the Constitution, its meaning must be fixed and permanent, and since Congress could not be trusted to stick to one single definition, the Court was giving Congress one single definition with which to work if it wished its income tax acts to pass Constitutional scrutiny by the Court.

"The obligation to pay an excise 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. Seater, 149 Tenn. 441, 381 Sw 144.

"The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter power to the State, but the individual's right to live and own property are natural rights for the enjoyment of which an excise cannot be imposed." Redfield v. Fisher, 292 Oregon 814, 817.

"Yet it is plain, we think, that by the true intent and meaning of the Act the entire proceeds of a mere conversion of capital assets were not to be treated as income. Whatever difficulty there may be about a precise and scientific definition of 'income', it imports, as used here, something entirely distinct from principle or capital either as a subject of taxation or as a measure of the tax; conveying rather the idea of gain or increase arising from corporate activities. We must reject in this case...the broad contention submitted in behalf of the Government that all receipts - everything that comes in - are income within the proper definition of the term 'gross income'..." Doyle v.

Mitchell Brother, Co., 247 US 179 (1918).

Earnings: "That which is earned; money earned; the price of services performed; the reward of labor; money or the fruits of proper skill, experience, industry; ...derived without the aid of capital, merited by labor, services, or performances. Earnings are not income." *Saltzman v. City of Council Bluffs.* 214 Iowa, 1033, 243 N.W. 161, 161.

"Income within the meaning of the Sixteenth Amendment and Revenue Act, means *'gains* '...and in such connection *'gain' means* profit...proceeding from property, severed from capital, however invested or employed and coming in, received or drawn by the taxpayer, for his separate use, benefit and disposal..." Income is not a wage or compensation for any type of labor. Staples v. U.S., 21 F Supp 737 U.S. Dist. Ct. ED PA, 1937].

"There is a clear distinction between 'profit' and 'wages' or 'compensation for labor.' Compensation for labor cannot be regarded as profit within the meaning of the law...The word profit is a different thing altogether from mere compensation for labor...The claim that salaries, wages and compensation for personal services are to be taxed as an entirety and therefore must be returned by the individual who performed the services which produced the gain is without support either in the language of the Act or in the decisions of the courts construing it and is directly opposed to provisions of the Act and to Regulations of the Treasury Department..." U.S. v. Balard, 575 F. 2D 400 (1976), Oliver v. Halstead, 196 VA 992; 86 S.E. Rep. 2D 858:

Black's 3rd Law Dictionary: Income: "Income is the gain which proceeds from [the investment of capital received from] labor, business or property;..." Trefry v. Putnam, 116 N.E. "Income is the *gain* derived from capital, from labor or from both combined; something of exchangeable value, proceeding from the property, *severed from the capital...and* drawn by the recipient for his separate use..." Eisner v. Macomber, 40 S. Ct 189, 252 U.S. 189, L. Ed. 521, 9 A.L.R. 1570. Goodrich v. Edwards, 41 5. Ct. 390, 255 U.S. 527, 65 L. Ed 758. *"Income* is something that *has grown out of capital,* leaving the capital unimpaired and intact." Gavit v. Irwin. (D.C.) 275 F. 643, 645. "Income is used...in law in contradistinction [contrast, opposition] to *capital."* 21 C.J. 397. "Income, [gains and profits] ...is something produced by capital without impairing such capital, the property being left intact. and nothing can be called income which takes away from the property itself' - Sargent Land Co. v. Von Baumbach, (D.C.), 207 F. 423, 430.

Conner v. United States. 303 F. Supp. 1187 (1969) pg. 1191: "[1] ...It [income] is not synonymous with receipts."47 C.J.S. Internal Revenue 98, Pg. 226.

"Income, as defined by the supreme Court means, 'gains and profits as a result of corporate activity and profit gained through the sale or conversion of capital assets.'" Stanton v. Baltic Mining Co. 240 U.S. 103, Stratton's Independence v. Howbert 231 U.S. 399. Doyle v. Mitchell Bros. Co. 247 U.S. 179, Eisner v. Macomber 252 U.S. 189, Evans v. Gore 253 U.S. 245, Merchants Loan & Trust Co. v. Smietanka 225 U.S. 509. (1921).

U.S. Supreme Court GOODRICH v. EDWARDS, 255 U.S. 527 (1921) 255 U.S. 527 GOODRICH v. EDWARDS, Collector of Internal Revenue.No. 663. Argued March 10 and 11, 1921. Decided March 28, 1921. Mr. Justice CLARKE delivered the opinion of the Court. ....."And the definition of 'income' approved by this Court is: "'The gain derived from capital, from labor, or from both combined, provided it be understood to include profits gained through sale or conversion of capital assets.'" Eisner v. Macomber, 252 U.S. 189, 207, 40 S. Sup. Ct. 189, 193 (64 L. Ed. 521, 9 A. L. R. 1570)."...

U.S. Supreme Court MILES v. SAFE DEPOSIT & TRUST CO. OF BALTIMORE, 259 U.S. 247 (1922) 259 U.S. 247 MILES, Collector of Internal Revenue, v. SAFE DEPOSIT & TRUST CO. OF BALTIMORE. No. 416. Argued Dec. 16, 1921. Decided May 29, 1922. Mr. Justice PITNEY delivered the opinion of the Court. ...."In that as in other recent cases this court has interpreted 'income' as including gains and profits derived through sale or conversion of capital assets, whether done by a dealer or trader, or casually by a non-trader, as by a trustee in the course of changing investments. Merchants' Loan & Trust Co. v. Smietanka, 255 U.S. 509, 517-520, 41 Sup. Ct. 386, 15 A. L. R. 1305"....

"[1]... The meaning of income in its everyday sense is a gain... the amount of such gain recovered by an individual in a given period of time." Webster's Seventh New Collegiate Dictionary, p. 425 "Income is more or less than realized gain." Shuster v. Helvering, 121 F. 2d 643 (2nd Cir. 1941). "it [income] is not synonymous with receipts." 47 C.J.S. Internal Revenue 98, p. 226."

"[2] Whatever may constitute income, therefore, must have the essential feature of gain to the recipient. This was true when the 16th amendment became effective, it was true at the time of the decision in Eisner v. Macomber (supra), it was true under section 22(a) of the Internal Revenue Code of 1939, and it is true under section 61(a) of the Internal Revenue Code of 1954. If there is no gain, there is no income." Conner v. United States. 303 F. Supp. 1187 (1969) pg. 1191

INCOME TAX: Blacks Law Dictionary - 2nd Edition: "A tax on the yearly profits arising from property, professions, trades and offices." -See also 2 Steph. Comm 573. Levi v. Louisvill, 97 Ky. 394, 30 S.W. 973. 28 L.R.A. 480; Parker Insurance Co., 42 La. Ann 428, 7 South. 599.

"...I therefore recommend an amendment imposing on all corporations an excise tax measured by 2% in the net income of such corporations. This is an excise on the privilege of doing business as an artificial entity." President Taft, Congressional Record, June 16, 1909, Pg. 3344.

While a "cash dividend" represents profit to the shareholder, and is thus "income" under the 16th Amendment, a "stock dividend" is not profit that has been "severed from capital" as is required to meet the definition of income under the 16th Amendment (ibid, Eisner).

The Eisner quote featured above clearly illustrates that the apportionment clause of the Constitution is alive and well and has not been repealed or substantially altered by the 16th Amendment.

"[The Pollock court] recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct tax was adapted to prevent, in which case the duty would arise to disregard the form and consider the substance alone and hence subject the tax to the regulation of apportionment which otherwise as an excise would not apply." Brushaber v. Union Pacific RR Co., 240 US 1 (1916)

What the Brushaber court is saying is that any income tax, which has been structured

as an excise tax, but is enforced in such a way as to effectively convert the tax to a direct tax, would cause the court to declare it unconstitutional due to lack of apportionment. What type of enforcement might effectively convert an excise tax to a direct tax? Once the demand for the tax money is unavoidable, and I can no longer avoid the demand and/or the collection of the tax, even when I have not engaged in any excise taxable activity, that is when the Executive Branch's enforcement of the tax has converted the tax, in substance, from an excise into a direct tax.

The 16th Amendment only pertains to "income" in the form of dividends, patronage dividends, and interest from corporate investment. The 16th Amendment tax is upon the privilege (to shareholders) of operating a business as an artificial entity. The 16th Amendment tax is not upon "income"; the income is only the yardstick used to determine the value of the privilege, and hence the amount of tax to be paid.

The 16th Amendment overturned the Pollock Decision by way of a constitutional amendment allowing income taxes on net income from real estate and personal property to be levied according to the rule of uniformity instead of the rule of apportionment.

"Indeed, in light of the history which we have given and of the decision in the Pollock Case, and the ground upon which the ruling in that case was based, there can be no escape from the conclusion that the (16th) Amendment was drawn for the purpose of doing away from the future with the principle upon which the Pollock Case was decided." Brushaber v. Union Pac. R.R. Co., 240 U.S. 1, 18 (1916).

Decided cases have made the distinction between wages and income and have refused to equate the two in withholding or similar controversies. See Peoples Life Ins. Co. v. United States, 179 Ct. Cl. 318, 332, 373 F.2d 924, 932 (1967); Humble Pipe Line Co. v. United States, 194 Ct. Cl. 944, 950, 442 F.2d 1353, 1356 (1971); Humble Oil & Refining Co. v. United States, 194 Ct. Cl. 920, 442 F.2d 1362 (1971); Stubbs, Overbeck & Associates v. United States, 445 F.2d 1142 (CA5 1971); Royster Co. v. United States, 479 F.2d, at 390; Acacia Mutual Life Ins. Co. v. United States, 272 F. Supp. 188 (Md. 1967).

"It is a basic principle of statutory construction that courts have no right first to

determine the legislative intent of a statute and then, under the guise of its interpretation, proceed to either add words to or eliminate other words from the statute's language." DeSoto Securities Co. v. Commissioner, 235 F.2d 409, 411 (7th Cir. 1956); see also 2A Sutherland Statutory Construction § 47.38 (4th ed. 1984).

To further show the IRS' confusing the income tax issue, we have the following:

"At the very threshold of the case is the question whether an income tax is, under the provisions of the fourteenth amendment of the state constitution, a property tax, as the respondents contend, or whether it is an excise tax, as appellants contend. That question has recently been squarely presented to this court and has been definitely determined by it. Culliton v. Chase, 174 Wash. 363, 25 P.2d 81.

In that case, it was held that the state income tax law of 1932 (initiative measure 69, chapter 5, Laws of 1933, p, 49, Rem. 1933 Sup., SS 11200-1 et seq.) was unconstitutional and void. Although four members of the court dissented, it was held by the majority that, under our constitution, income is property, and that an income tax is a property tax, and not an excise tax. Nothing was said, or intended to be suggested, in any of the opinions that the court, as then constituted, had receded from its former emphatic declaration that, under our constitution, income is property, and that an income tax is a property tax." Jensen v. Henneford, 185 Wash. 209, 53 P.2d 607 (1936).

The court in this case definitively ruled that income was property, and is being taxed "directly," which forces such taxation to be apportioned according to constitutional provisions for direct taxes.

However, since income has been ruled as "property," and such property is obviously used in the production of income, under excise tax laws, such income can possibly become subject to excise taxation, of course, under the rules of uniformity ONLY. In addition to this, under 26 U.S.C 212, "all the ordinary and necessary expenses paid or incurred during the taxable year" for the production of income and for "the management, conservation, or maintenance of property held for the production of income..." would be tax deductible from ANY income taxes we would otherwise be subject to.

Despite the disregard for higher Court case law, this concession was made:

"Of course, we recognize the necessity for expenditures for such items as food, shelter, clothing, and proper health maintenance. They provide both the mental and physical nourishment essential to maintain the body at a level of effectiveness that will permit it's labor to be productive. We do not even deny that a certain similarity exists between the 'cost of doing labor' and the 'cost of goods sold' concept." Reading v. Commissioner, 70 T.C. 733, 734 (1978) case

"Excise: In current usage the term has been extended to include various license fees and practically every Internal Revenue tax except the income tax." Blacks Law Dictionary, Sixth Edition, 1990.

More testimony and Case law:

"The privilege of giving or withholding our money is an important barrier against the undue exertion of prerogative which if left altogether without control may be exercised to our great oppression; and all history shows how efficacious its intercession for redress of grievances and reestablishment of rights, and how important would be the surrender of so powerful a mediator." Thomas Jefferson: Reply to Lord North, 1775, Papers 1:225.

"If money is wanted by rulers who have in any manner oppressed the People, they may retain it until their grievances are redressed, and thus peaceably procure relief, without trusting to despised petitions or disturbing the public tranquility." *Continental Congress To The Inhabitants Of The Province Of Quebec. Journals of the Continental Congress. 1774 -1789. Journals 1: 105-13.*

"Although the [enforcement] power provisions of the Internal Revenue Code are to be liberally construed, a court must be careful to insure that its construction will not result in a use of the power beyond that permitted by law." United States v. Humble Oil & Refining Co., 488 F.2d 953 at 958 (5th Cir. 1974).

"Under the facts and the law, the Court should satisfy itself, via sworn testimony of the Defendant, that the IRS is not acting arbitrarily and capriciously, and that there was a

plausible reason for believing fraud is being practiced on the revenue. The Court is free to act in a judicial capacity, free to disagree with the administrative enforcement actions if a substantial question is raised or the minimum standard is not met. The District Court reserves the right to prevent the "arbitrary" exercise of administrative power, by nipping it in the bud." *United States v. Morton Salt Co., 338 U.S. 632, 654.*

"The IRS at all times must use the enforcement authority in good-faith pursuit of the authorized purposes of Code." *U.S. v. La Salle N.B., 437 U.S. 298 (1978).*

"A statute must be set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest." *See Arnett v. Kennedy*, 416 U.S. 134, 159, 40 L. Ed. 2d 15, 94 S. Ct. 1633 (1974) (quoting *United States Civil Serv. Commission v. National Association of Letter Carriers*, *413 U.S. 548, 579, 37 L. Ed. 2d 796, 93 S. Ct. 2880 (1973)*.

"Eight decades of amendments...to [the] code have produced a virtually impenetrable maze...The rules are unintelligible to most citizens...The rules are equally mysterious to many government employees who are charged with administering and enforcing the law." - Shirley Peterson, former IRS Commissioner, April 14, 1993 at Southern Methodist University.

Petitioner Challenges the mandatory nature of filing a 1040 form:

"The tax system is based on **voluntary** compliance..." 26 CFR 601.602

" The income tax system is based upon **voluntary compliance, not distraint**." United States Supreme Court, Flora v. United States, 362 US 145. Helvering v Mitchell, 303 U.S. 391, 399, 82 L ed 917, 921

"The IRS's primary task is to collect taxes under a voluntary compliance system-- Jerome Kurtz, IRS Commissioner.

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

Mortimer Caplin, IRS Commissioner. Internal Revenue Audit Manual (1975) .

"Each year American taxpayers voluntarily file their tax returns..."Johnnie Walters, IRS Commissioner.

"Let me point this out now. **Your income tax is 100 percent voluntary tax**, and your liquor tax is 100 percent enforced tax. Now **the situation is as different as day and night**. Consequently, your same rules just will not apply," Testimony of Dwight E. Avis, Head of the Alcohol and Tobacco Tax Division of the Bureau of Internal Revenue, before the House Ways and Means committee on Restructuring the IRS (83rd Congress, 1953).

"The United States has a system of taxation by confession." - Hugo Black, Supreme Court Justice, in U.S.A. Kahriger.

"Only the rare taxpayer would be likely to know that he could refuse to produce his records to IRS agents... Who would believe the ironic truth that the cooperative taxpayer fares much worse than the individual who relies upon his constitutional rights." - Judge Cummings, U.S. Federal Judge, in US. v. Dickerson (7th Circuit 1969).

Voluntary: 1) 1 : proceeding from the will or from one's own choice or consent

2 : unconstrained by interference : self-determining

3 : done by design or intention : intentional

4 : of, relating to, subject to, or regulated by the will

5 : having power of free choice

6 : provided or supported by voluntary action

7 : acting or done of one's own free will without valuable consideration **or legal obligation**. Webster's Dictionary.

Distraint:: 1) to force compulsion, 2) to seize and hold goods of another in order to obtain satisfaction of a claim for damages, 3) to levy a distress. - Webster's Dictionary.

Voluntary compliance can only respond to a request or as a choice. It cannot and does not respond to a requirement. The word "voluntary," which connotes an agreement, implies willingness, volition, and intent. It suggests a freedom of choice and refers to the doing of something which a person is free to do or not to do, as he so decides.

"In its legal aspect, and as commonly used in law, the word 'voluntary' is defined as meaning gratuitous; without valuable consideration; acting, or done, of one's own free will without valuable consideration, acting, or done, **without any present legal obligation to do the thing done**." Corpus Juris Secundum (C..J.S. 92: 1029, 1030, 1031).

In the IR Code and other government records, Petitioner also can find NO definition for "dollar." On the 1040 form, Petitioner is expected to sign, under the penalty of perjury, that everything is true and correct regarding "income," however, if I have no way of legally defining what a "dollar" is, and there is no way for Petitioner to measure it in legal terms, how can Petitioner attest to any supposed “income” being measured by "dollars" as being accurate? In the days of tangible money, or sound money, or even just plain money, as opposed to "credit," the dollar was easy to define: 412.5 grains of standard (90% pure) silver in coin form. The 412.5 grain figure was an average; the coin weighed 416 when minted. When, through wear and tear, its weight fell below 409 grains, it was no longer a dollar, but could be used in trade for a value in proportion to its weight. If a "dollar" has no legal identity, does it actually exist as a real commodity and can it be any measure of debt payment? The Constitution says NO!

I could voluntarily and willingly file a 1040 and pay taxes according to IRS schedules to contribute to government expenses disregarding constitutional authority. I could ALSO voluntarily enter into a taxable activity, such as a corporation, where excise taxes are required. Petitioner "voluntarily" can enter into this taxable activity and make himself potentially liable for income taxes. Petitioner chooses to do neither.

Since the "income" tax is "voluntary," how can the IRS or other government agencies force payment, especially without due process of law? How can it be made a "law" which all Americans are forced to comply with? The “voluntary” nature of income tax payment seems to be a facade that allows the Respondent to receive funds under the color of law, causing Petitioner to self-assess, freely, outside the constitution regarding “income” taxes.

If the Constitutional law, and IR Code "law" support Respondent's position on "income" taxes, then why doesn't the Respondent simply take the figures they have for most Americans, reported by employers routinely, and legally assess them and make this whole thing much easier, and less costly for the Respondent in trying to track down those who supposedly do NOT comply? This would also save the public many billions of dollars each year alone in dealing with this activity.

The Constitution and case law are clear; Petitioner is NOT made liable to pay taxes on wages, salary and compensation for work performed, and since the Respondent cannot "Constitutionally" collect taxes themselves, depends on ignorance and "willful" compliance with what is believed to be "law." In any case, **fraud is still involved with this scheme, violating Petitioner's Constitutional Rights**.

"WAIVERS OF CONSTITUTIONAL RIGHTS NOT ONLY MUST BE VOLUNTARY, THEY MUST BE KNOWINGLY INTELLIGENT ACTS DONE WITH SUFFICIENT AWARENESS OF THE RELEVANT CIRCUMSTANCES AND CONSEQUENCES." Brady v. U.S. 397 U.S. 742 at 748.

Based upon the above evidence, I, Jeffrey T. Maehr, believe beyond any doubt that "income" is NOT "wages, salary or compensation," and therefore does not apply to my wages, salary or compensation, and excludes me from being a "taxpayer," and any liability for filing a 1040 form, or reporting wages, salary or compensation, or maintaining records of same, until proven otherwise in law. If this can be refuted, please do so to comply with IR Code requirements - "Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all."

_____

Jeffrey T. Maehr

Attachment B

Citizenship and Jurisdiction: (See also Attachment X).

The premise for this attachment is that the United States government, (NOT the united several (50) States of the American union) is a de facto government, having defrauded all Americans by creating an illegally created dual citizenship and placing ALL Americans into this "United States defacto government" Jurisdiction, (See Attachment X), AS U.S. citizens/nationals, thereby causing them to become legally bound to U.S. de facto laws, including IRS income taxation and all the thousands of statutory laws created contrary to Common and Constitutional laws, to gradually steal freedoms and finances... a communist/socialist society. This "representation" of this de facto "citizenship" by the U.S. government created a possible taxable issue, which Petitioner rejects.

This de facto government over the 50 states is supported unwittingly by the American people, via voting for representatives of this government and allowing it to exist unchallenged as is. This "dual" citizenship causes all Americans to commit treason against their own, true, de jure nation... that of the nation/state of their birth. This true nation is NOT the "United States," but is the sovereign people which make up the union of states, or union of “nations,” of which the United States government is servant to, under law.

The U.S. government's jurisdiction over Petitioner’s life, liberty and actions regarding, but not limited to, all issues within this affidavit, is hereby rescinded according to law, and Petitioner expatriates himself from this de facto "United States" foreign nation and claims all de jure rights and freedoms under all applicable laws, and personally accept ONLY that service which the organic Constitution affords the United States government "Of The People, By The People and For The People" of the several united States.

The case and Constitutional law and documentation in support:

Colorado State, one of the sovereign states in these united States has not legally ceded jurisdiction to Respondent over Petitioner, and cannot. Jurisdiction of Respondent is

severely limited in law:

The “Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas” (See Attachment BB) Within the States issued "Part II" of its report entitled "Jurisdiction Over Federal Areas Within the States" in 1957. The Report makes the following statements:

a. "The Constitution gives express recognition to but one means of Federal acquisition of legislative jurisdiction -- by State consent under Article I, section 8, clause 17...

Justice McLean suggested that the Constitution provided the sole mode for transfer of jurisdiction, and that if this mode is not pursued, no transfer of jurisdiction can take place." Id., at 41.

b. "It scarcely needs to be said that unless there has been a transfer of jurisdiction

(1) pursuant to clause 17 by a Federal acquisition of land with State consent, or

(2) by cession from the State to the Federal Government, or

(3) unless the Federal Government has reserved jurisdiction upon the admission of the State, the Federal Government possesses no legislative jurisdiction over any area within a State, such jurisdiction being for exercise by the State, subject to non-interference by the State with Federal functions." Id., at 45.

c. "The Federal Government cannot, by unilateral action on its part, acquire legislative jurisdiction over any area within the exterior boundaries of a State." Id., at 46.

d. "... the Federal Government ... has no power to punish for various other crimes, jurisdiction over which is retained by the States under our Federal-State system of government, unless such crime occurs on areas as to which legislative jurisdiction has been vested in the Federal Government." Id., at 107.

No Act of Congress provides jurisdiction by Respondent over State sovereign territories:

Rule 54 of the federal rules of criminal procedure, as contained in United States Code. USC 18 Rule 54(c), defines "Act of Congress."

"Act of Congress **includes** any act of Congress locally applicable to and in force in the District of Columbia, in Puerto Rico, in a territory, or in an insular possession."

Petitioner finds no laws, or secession by the State of Colorado for Respondent to have ANY authority over Colorado State or Petitioner in income taxation or IRS laws, and challenges any such jurisdiction:

JURISDICTION: "Jurisdiction must be either of the subject matter, which is acquired by exercising **powers conferred by law over property within the territorial limits of the sovereignty**, or of the person, which is acquired by actual service of process, or personal appearance of the defendant... Jurisdiction in a personal action cannot be obtained by service on a defendant outside of the jurisdiction; 95 U.S. 714. The courts of one state have no jurisdiction over persons of other states unless found within their territorial limits." Bouvier's Law Dictionary.

"...[W]here the question of jurisdiction in the court over the person, the subject matter, or the place where the crime was committed can be raised, in any stage of a criminal proceeding; it is never presumed, but **must always be proved**; and it is never waived by the defendant." U.S. v. Rogers, DC Ark. 1855, 23 Fed 658.

"Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action." Melo v. US, 505 F2d 1026.

"There is no discretion to ignore that lack of jurisdiction." Joyce v. US, 474 F2d 215.

"The burden shifts to the court to prove jurisdiction." Rosemond v. Lambert, 469 F2d 416.

"Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted." Lantana v. Hopper, 102 F2d 188; Chicago v. New York, 37 F Supp 150.

"A universal principle as old as the law is that a proceedings of a court without

jurisdiction are a nullity and its judgment therein without effect either on person or property." Norwood v. Renfield, 34 C 329; Ex parte Giambonini, 49 P. 732.

"Jurisdiction is fundamental and a judgment rendered by a court that does not have jurisdiction to hear is void ab initio." In Re Application of Wyatt, 300 P. 132; Re Cavitt, 118 P2d 846.

"Thus, where a judicial tribunal has no jurisdiction of the subject matter on which it assumes to act, its proceedings are absolutely void in the fullest sense of the term." Dillon v. Dillon, 187 P 27.

"A court has no jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal in its power to act, and a court must have the authority to decide that question in the first instance." Rescue Army v. Municipal Court of Los Angeles, 171 P2d 8; 331 US 549, 91 L. ed. 1666, 67 S.Ct. 1409.

"A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an excess of jurisdiction." Wuest v. Wuest, 127 P2d 934, 937.

"Where a court failed to observe safeguards, it amounts to denial of due process of law, court is deprived of juris." Merritt v. Hunter, C.A. Kansas 170 F2d 739.

Thus, from an abundance of case law, buttressed by this lengthy and definitive government treatise on this issue, the "jurisdiction of the United States" is carefully circumscribed and defined as a very precise portion of America. The government of the United States is one of the 51 jurisdictions, the 50 other jurisdictions being the 50 sovereign states.

TITLE 18 > PART I > CHAPTER 69 > 1425. Procurement of citizenship or naturalization unlawfully.

"The idea is quite unfounded that on entering into society we give up any natural right." --Thomas Jefferson to Francis Gilmer, 1816. ME 15:24.

(Burks v. Lasker, 441 US 471) & (U.S v. Grimaud 220 US 506) The issue of Jurisdiction. When jurisdiction is not squarely challenged it is presumed to exist. In the courts there is no meaningful opportunity to challenge jurisdiction, as the court merely proceeds summarily. However **once jurisdiction has been challenged in the courts, it becomes the responsibility of the plaintiff to assert and prove said jurisdiction**.. (Hagans v. Lavine, 415 US 533) as mere good faith assertions of power have been abolished.(Owens v. City of Independence, 100 S Ct, 1398, 1980).

"We start with first principles. The Constitution creates a Federal Government of enumerated powers." See U.S. Const., Art. I, 8. As James Madison wrote;

"[t]he powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." The Federalist No. 45, pp. 292-293 (C. Rossiter ed. 1961).

This constitutionally mandated division of authority "was adopted by the Framers to ensure protection of our fundamental liberties." 1995: U.S. v. Lopez, 000 U.S. U10287.

"Just as the separation and independence of the coordinate branches of the Federal Government serves to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." Ibid. Gregory v. Ashcroft, 501 U.S. 452, 458 (1991).

"A canon of construction which teaches that of Congress, unless a contrary intent appears, is meant to apply **only within the territorial jurisdiction of the United States**." U.S. v. Spelar, 338 U.S. 217 at 222 (1949).

IRC 3121)(e) **United States**: The term "United States" when used in a geographical sense **includes** the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.)

The "United States" in the above does NOT mean the 50 sovereign nation/states of the united several States of America. These are TWO distinct entities.

"The term 'United States' may be used in any one of several senses. It may be merely

the name of a sovereign occupying the position analogous to that of other sovereigns in the family of nations. **It may designate the territory over which the sovereignty of the United States extends**, [324 U.S. 652, 672] or it may be the collective name of the states which are united by and under the Constitution." 1945: Hooven & Allison Co. v. Evatt, 324 US 652.

"The United States is a government, and, consequently, a body politic and corporate... This great corporation was ordained and established by the American people..." United States v. Maurice, 26 Fed.Cas. No. 15, 747, 2 Brock 96, Circuit Court, D. Virginia, 1823

Foreign government: "The government of the United States of America, as distinguished from the government of the several states." (Black's Law Dictionary, 5th Edition).

The government of the "United States" is actually foreign to the government of the sovereign 50 states. It was meant to be a separate "thing," but not to become a replacement "nation" for the 50 sovereign nation/states. Preamble of Public Law, 15 United States Statutes at Large, chapter 249, pps 223-224 (1868).

"It is conceded by the court that Congress may lawfully impose direct taxes in the District (of Columbia - territory of the U.S. NOT the 50 states) for District purposes, without regard to the rule of apportionment, and that Congress is under no constitutional necessity to impose direct taxes by the rule of apportionment upon the District of Columbia, or upon the territories, even though such a direct tax is laid upon the states." William Bradford Bosley, The Constitutional Requirements of Uniformity in Duties, Imposts and Excises, 9 Yale Law Journal 164, 169 (1900).

“We are of the opinion that the island of Porto Rico is a territory appurtenant and belonging to the United States, but not a part of the United States within the revenue clauses of the Constitution." Downes v. Bidwell, 182 U.S. 244, 287 (1901).

Title 28 USC Part IV, Chapter 176, 3002: United States means...15 (A) a federal corporation. It is clear that the United States is a corporation. 534 FEDERAL SUPPLEMENT 724.

It is well settled that "United States" et al., is a corporation, originally incorporated February 21, 1871 under the name "District of Columbia," 16 Stat. 419 Chapter 62. It was reorganized June 11, 1878; a bankrupt organization per House Joint Resolution 192 on June 5, 1933, Senate Report 93-549, and Executive Orders 6072, 6102, and 6246, a de facto government, originally the ten square mile tract ceded by Maryland and Virginia and comprising Washington D. C., plus the possessions, territories, forts, and arsenals.

Foreign Laws: "The laws of a foreign country **or sister state**." (Black's Law Dictionary, 6th Edition).

The laws of the 50 states are all foreign to each other, and to the "United States" as it is commonly regarded today.

Foreign States: "**Nations outside of the United States**" **Term may also refer to another state; i.e. a sister state**. The term 'foreign nations,' ...should be construed to mean all nations and states other than that in which the action is brought; and hence, **one state of the Union is foreign to another**, in that sense." (Black's Law Dictionary, 6th Edition)

In O'Donoghue v. United States (289 U.S. 516, 53, Sup. Ct. 740), the court set out 4 general conclusions regarding the differences between the states of the Union and the District of Columbia and the territories:

1. The District of Columbia and the *territories* are not "states" within the judicial clause [Article 3] of the Constitution giving jurisdiction in cases between citizens of different states;

2. *Territories* are not "states" within the meaning of Revised Statutes section 709, permitting writs of error from this court in cases where the validity of a "state" statute is drawn in question;

3. The District of Columbia and the *territories* are "**states**" as that word is used in treaties with **foreign powers**, with respect to the ownership, disposition, and inheritance of property;

4. The District of Columbia and the *territories* are not within the clause of the Constitution providing for the creation of a supreme court and such inferior courts as "Congress may see fit to establish."

Foreign "states;" The third conclusion... "The District of Columbia and the territories are "states" as that word is used in treaties with *foreign* powers, with respect to the ownership, disposition, and inheritance of property," is at odds with the other conclusions as well as our common understanding of the word "state." However, this definition of "state" is the one which Congress uses in the Internal Revenue Code.

The 1821 case of *Cohens v. Virginia* (6 Wheat. 264; 5 L.Ed. 257) is still quoted in the bar review books and sets out the limited legislative power of the federal government, to wit:

"It is clear that Congress, as a legislative body, exercise two species of legislative power: the one, limited as to its objects but extending all over the Union; the other, an absolute, exclusive legislative power over the District of Columbia."

In the case of *Ellis v. United States*, 206 U.S. 246; 27 S.Ct. 600 (1907), the United States Supreme Court considered whether the minimum wage law of the United States would apply to the dredging of Chelsea creek in Boston harbor, Massachusetts. Notice these quoted conclusions:

--Congress possesses no power to legislate except such as is affirmatively conferred upon it through the Constitution, or is fairly to be inferred therefrom.

--An act which may be constitutional upon its face, or as applied to certain conditions, may yet be found to be unconstitutional when sought to be applied in a particular case.

--The work of dredging in Chelsea creek, in Boston harbor, as shown in the record, is not part of the "public works of the United States" within the meaning of the statute in question.

--It is unnecessary to lay special stress on the title to the soil in which the channels were dug, but it may be noticed that it was ***not in the United States***.

--The language of the acts is "public works of the United States." As the works are things upon which the labor is expended, the most natural meaning of "of the United States" is "belonging *to* the United States."

Two conclusions can be drawn from this ruling. First, Chelsea creek in Boston harbor is not "in the United States." Chelsea creek is in Massachusetts which, as a sovereign state of the Union, is not under the jurisdiction of the United States except for those things that have been delegated to the United States [Federal] government in the U.S. Constitution. Second, the term "of the United States" means "*belonging to* the United States". The 50 states of the Union are not territories of the United States and do not belong to the United States. The states of the Union have a sovereignty that predates the creation of the federal government.

However, the *territories* have no sovereignty as they are the property of the United States government. Thus, the term "States of the United States" as expressed in federal codes includes only the *territories* as Inchoate states which *belong to* the United States. Consequently, the court concluded that the minimum wage law of the United States did not apply to the work done at Chelsea creek.

This shows that all the 50 states are "nations outside of the United States." How can the "United States be outside of itself? This "foreign states" isn't referring to other International "states," but to THE 50 states. Why would our laws be describing other countries outside the collective "United Union" of 50 nation/states?

If an individual (human being) derives income from a source that is **inside** the 50 Nation/States of the Union, THEN that income is "foreign income" because it is income derived from a "foreign source" or "situs" specifically "foreign" WITH RESPECT TO the municipal jurisdiction of the federal government (read "looking outward from a situs INSIDE D.C.")

The Federal Government has jurisdiction ONLY over what the states and "People" concede to it...

"Almost a century ago, Congress declared that "the right of expatriation [including expatriation from the District of Columbia or "U.S. Inc", the corporation - JTM] 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).

"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.

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).

"Special provision is made in the Constitution for the cession from the States over places where the federal government shall establish forts or other military works. And it is **only** in these places, or in the **territories of the United States**, where it can exercise a general jurisdiction." New Orleans v. United States, 35 U.S. (10 Pet.) 662, (1836).

I am NOT a territory, nor is Colorado state, or Iowa state, legally sovereign to the "U.S." "Territories" of the U.S. government.

Constitution for the United States, Article I. 8. Claus 17. "The Congress shall have the power...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, [District of Columbia] and to exercise like authority over all places [federal enclaves] 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 - To make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers..."

"Constitutional restrictions and limitations were NOT applicable to the areas of lands, enclaves, territories and possessions over which Congress had exclusive legislative authority." Downes **v.** Bidwell, 182 U.S. 244

"In exercising its constitutional power to make all needful regulations respecting *territory* ***belonging to the United States,*** Congress [under Art. I, 8, Cl. 17 and Article IV 3, Cl. 2. of the Constitution] is not subject to the same constitutional limitations as when it is legislating for the United States [the 50 states]. " Hooven v. Evatt, 324 U.S. 674.

Article IV, **3. Cl.** 2. "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the **Territory or other Property belonging to the United States**; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."

Bouvier's Law Dictionary: Territory: "A part of the country separated from the rest and subject to a *particular* jurisdiction. *A portion of the country* ***subject to*** *and* ***belonging to the United States which is not within the boundary*** *of any state* ***or the District of Columbia.*** 262 U.S. 122; 3 Wheat 336, 390...The United States has supreme sovereignty over *territory,* [i.e. Puerto Rico, Guam, Virgins Islands] and congress has full and complete legislative authority over its people and government. 136 U.S. 1... In Relation to the United States: "...It is held as a well-established doctrine that the territories of the United States are entirely subject to the legislative authority of congress. They are ***not organized under the constitution,*** nor subject to its complex distribution of powers of government as the organic law, but are a creation. exclusively of the legislative department, and subject to its [Congress'] supervision and control..." 96 Fed. Rep. 456, citing 16 How. 1 Kent, 243, 359, 1 Pet. 511164; 101 U.S. 129; 114 U.S. ***15;*** 136 U.S. 1; 143 U.S. 135; 141 U.S. 174; 152 U.S. 1.

Black's 6th Law Dictionary. *Territory:* "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 officers appointed by the President. See trust territory.

"Ballentine's Law Dictionary. *Territory:* 1. "A geographical region over which a nation exercises sovereignty, but whose inhabitants do not enjoy political, social or legal parity

with the inhabitants of other regions which are constitutional components of the nation. With respect for the United States, for example, Guam or the Virgins Islands as opposed to New York, California or Texas."

"The idea prevails with some, indeed it has found expression in arguments at the bar, that we have in this country substantially two national governments: one to be maintained under the Constitution, with all its restrictions; the other to be maintained by Congress outside and independently of that instrument, by exercising such powers [of absolutism] as other nations of the earth are accustomed to...I take leave to say that, if principles thus announced should ever receive the sanction of a majority of this court, a radical and mischievous change in our system of government will result. We will, in that event, pass from the era of constitutional liberty guarded and protected by a written constitution into an era of legislative absolutism... IT WILL BE AN EVIL DAY FOR AMERICAN LIBERTY IF THE THEORY OF A GOVERNMENT OUTSIDE THE SUPREME LAW OF THE LAND FINDS LODGMENT IN OUR CONSTITUTIONAL JURISPRUDENCE. No higher duty rests upon this court than to exert its full authority to prevent all violation of the principles of the Constitution." Downes vs Bidwell. 182 U.S. 244.

Because of this ruling, Congress has been able to circumvent the Constitution for the united States of America, as follows:

(1) The United States Government legally creates legislation, which may be unconstitutional for the 50 states, under the authority and guise of legislating for the citizens and residents of the territories and possessions "belonging to" the United States, over which the United States has exclusive authority.

(2) Such federal legislation is made applicable only to the citizens born and residing in Territories, possessions, instrumentality's and enclaves under the exclusive jurisdiction of the United States. These "individuals" are called "U.S. citizens" or "citizens of the United States, subject to its jurisdiction" in such legislation. The average American, of course, believes he or she is such a citizen (because it was never disclosed to them that our Congress legislates for two different types of citizens). Because that American has respect for the law, he or she voluntarily consents to obey this legislation that is contrary to the Constitution.

The power to "legislate generally upon" life, liberty, and property, as opposed to the "power to provide modes of redress" against offensive state action, was "repugnant" to the Constitution. City of Boerne v. Florez.

"The restrictions that the Constitution places upon the government in its capacity as lawmaker, i.e., as the regulator of private conduct, are not the same as the restrictions that it places upon the government in its capacity as employer. We have recognized this in many contexts, with respect to many different constitutional guarantees. Private citizens perhaps cannot be prevented from wearing long hair, but policemen can. Kelley v. Johnson 425 U.S. 238, *247* (1976) Private citizens cannot have their property searched without probable cause, but in many circumstances government employees can. O'Connor v Ortega 480 U.S. 709, 723 (l987) (plurality opinion) id at 732 (SCALIA J., concurring in judgment). Private citizens cannot be punished for refusing to provide the government information that may incriminate them, but government employees can be dismissed when the incriminating information that they refuse to provide relates to the performance of their job. Gardner v. Broderick, 392 U.S. 273, 277-278 (1968). With regard to freedom of speech in particular: Private citizens cannot be punished for speech of merely private concern, but government employees can be fired for that reason. Connick v. Myers, 461 U.S. 138, 147 (1983). Private citizens cannot be punished for partisan political activity, but federal and state employees can be dismissed and otherwise punished for that reason. Public Workers v. Mitchell, 330 U.S. 75, 101 (1947); Civil Service Comm'n v. Letter Carriers, 413 U.S. 548, 556 (1973); Broadrick v. Oklahoma, 4l3 U.S. 601,616-617(1973). [Rutan v. Republican Party of Illinois, *497* U.S. 62 (1990)]

In other words, the Federal Government has little jurisdiction over the 50 State's affairs unless the States concede that jurisdiction through legal channels. Therefore, citizens of the several states are NOT "de jure" citizens of the United States, (as defined in the IR Code and supported by Supreme Court case law), except through fraud, and therefore NOT liable for federal income taxes as promoted and enforced. I have certified requested documentation sent to Colorado state, under FOIA or Colorado equivalent, on such ceding of authority or jurisdiction to the U.S. government, by Colorado state, and Colorado state has provided no such documented concessions to the Federal Government.

(30) United States person

The term "United States person" means-

(A) **a citizen or resident of the United States**,

26 CFR 1.1-1(c): (c) Who is a citizen. Every person born or naturalized in the [federal] United States and subject to its jurisdiction [exclusive federal jurisdiction under Article 1, Section 8, Clause 17 of the Constitution] is a citizen.

Born or naturalized in District of Columbia, Puerto Rico, or other US territories... NOT one of the sovereign 50 states.

"The words 'people of the United States' and 'citizens,' are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the government through their representatives. They are what we familiarly call the '**sovereign people**,' and every citizen is one of this people, and a constituent member of this sovereignty. ..." [Boyd v. State of Nebraska, 143 U.S. 135 (1892)]

What is a person born or naturalized in the U.S., but NOT subject to its jurisdiction?

What is a person NOT born or naturalized in the U.S. (Born in a sovereign nation/state, NOT the United States), and NOT subject to its jurisdiction?

Nation/state Citizens, being domiciled OUTSIDE the federal zone, (Corporate United States) are NOT subject to the municipal jurisdiction of the federal government. Therefore, State Citizens are legally "nonresident aliens" with respect to the municipal jurisdiction of the federal government, and that is the major reason why they are NOT embraced by the legal definition of "U.S. persons:"
http://www.supremelaw.org/fedzone11/

Based on the above and below facts, I am asserting that the following points are true concerning my human self:

1. I am NOT a citizen of the "United States" as described in code or statutory law,

and relinquish any such de facto relationship and any unconstitutional jurisdiction of same over me. All such "presumption" is broken.

"The United States government is a foreign corporation with respect to a state." N.Y. re: Merriam, 36 N.E. 505, 141 N.Y. 479, Affirmed 16 S.Ct. 1973, 41 L.Ed. 287

"Corporations are also of all grades, and made for varied objects; **all governments are corporations**, created by usage and common consent, or grants and charters which create a body politic for prescribed purposes; but whether they are private, local or general, in their objects, for the enjoyment of property, or the exercise of power, they are all governed by the same rules of law, as to the construction and the obligation of the instrument by which the incorporation is made. **One universal rule of law protects persons and property**. [Proprietors of Charles River Bridge v. Proprietors of Warren Bridge, 36L S. 420 (1837)]

See. 3002. Definitions Title 28 - Judiciary And Judicial Procedure (15) "United States" means -

(A) a Federal corporation

(B) an agency, department, commission, board, or other entity of the United States; or

(C) an instrumentality of the United States.

"In the United States of America, there are two (2) separated and distinct jurisdictions, such being the jurisdiction of the states within their own state boundaries, and the other being federal jurisdiction (United States), which is limited to the District of Columbia, the U.S. Territories, and federal enclaves within the states, under Article I, Section 8, Clause 17." Bevans v. United States, 16 U.S. 336 (1818).

1818: U.S. v. Bevans, 16 U.S. 336 - Establishes two separate jurisdictions within the United States Of America: 1. The "federal zone" and 2. "the 50 States". The I.R.C. only has jurisdiction within the "federal zone."

"The exclusive jurisdiction which the United States have in forts and dock-yards ceded to them, is derived from the express assent of the states by whom the cessions are

made. It could be derived in no other manner; because without it, the authority of the state would be supreme and exclusive therein," 3 Wheat., at 350, 351.

"**State**:" The term "State" shall be construed to "**include**" the **District of Columbia**, where such construction is necessary to carry out provisions of this title." 26 U.S.C. Sec. 7701

United States: The term "United States" when used in a geographical sense **includes** (is limited to - See Attachment F, line 59-97) only the "States," (see definition for "state" above) and the District of Columbia. 26 U.S.C. Sec. 7701.

"It is a well established principle of law that all federal legislation applies only within territorial jurisdiction of the United States unless a contrary intent appears." Foley Brothers. Inc. V. Filardo, 336 U.S. 281 (1948).

"The laws of Congress in respect to those matters [outside of Constitutionally delegated powers] do not extend into the territorial limits of the states, but have force ONLY in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government." Caha V. US, 152 U.S. 211.

"Criminal jurisdiction of the federal courts is restricted to federal reservations over which the Federal Government has exclusive jurisdiction, as well as to forts, magazines, arsenal, dockyards or other needful buildings." United States Code, Title 18 45 1, Par. 3d.

Title 18 USC at 7 specifies that the "territorial jurisdiction" of the United States extends only OUTSIDE the boundaries of lands belonging to any of the 50 states.

The following cases also substantiate that it is a fact of law that the person asserting jurisdiction must, when challenged, prove that jurisdiction exists: Federal Procedures 2.455; McNutt v. G.M., 56 S. Ct. 789, 80 L. Ed. 1135, Griffin v. Matthews, 310 Supp. 341, 423, F. 2d 272 Basso v. U.P.L., Shields v. Utah Idaho Central Railroad Co., 305 U.S. 177-187, 83 L.Ed.111, 495 F. 2d 906, Albrect v. U.S., 273 U.S. 1.

“Jurisdiction is essential to give validity to the determinations of administrative agencies and where jurisdictional requirements are not satisfied, the action of the agency is a

nullity..." City Street Improv. Co. v. Pearson 181 C 640, 185 P. 962 0'Neill v. Dept. of Professional & Vocational Standards, 7 CA2d 393, 46 P2d 234.

"The law requires PROOF OF JURISDICTION to **appear on the Record of** the administrative agency and all administrative proceedings." Hagans v. Lavine, 415 U.S. 533.

"Therefore, it is necessary that the record present the fact establishing the jurisdiction of the tribunal." Lowe v. Alexander 15C 296; People v. Board of Delegates of S.F. Fire Dept. 14 C 479.

"IF ANY TRIBUNAL (COURT) FINDS ABSENCE OF PROOF OF JURISDICTION OVER PERSON AND SUBJECT MATTER, THE CASE MUST BE DISMISSED." Louisville RR v. Motley, 211 US 149, 29 5. Ct. 42.

Federal Civil Judicial Procedure and Rules book, Rule 12(b) Defenses and Objections -

(b)...the following defenses may at the option of the pleader be made by motion:

(1) lack of jurisdiction over the subject matter.

(2) lack of jurisdiction over the person.

...A motion making any of these defenses shall be made before pleading...

(h)(3) "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."

****

2. I am a "sovereign" de jure American national of Colorado nation/state, originally born as a de jure national of Iowa nation/state...

"**COUNTRY**: By country is meant the state of which one is a member. Every man's country is in general the state in which he happens to have been born." Bouvier's Law, 1856, Title 8, USC 1101(a)(21), 1984 U.S. government Style manual, chapter 5.22/5.23, Law of Nations.

Country: "The portion of earth's surface occupied by an independent nation or people, or the inhabitants of such territory." Blacks Law Dictionary, 4th edition.

Country: "The territory occupied by an independent nation or people, or the inhabitants of such territory. In the primary meaning of "country" denotes the population, the nation, the state, or the government, **having possession and dominion** over a territory." Blacks Law Dictionary, 6th Edition.

"A **nation-state** is a specific form of state (a political entity), which exists to provide a sovereign territory for a particular nation (a cultural entity), and which derives its legitimacy from that function. The compact OED defines it as: "a sovereign state of which most of the citizens or subjects are united also by factors which define a nation, such as language or common descent." Typically it is a **unitary state with a single system of law and government**. It is almost by definition **a sovereign state**, meaning that there is **no external authority above the state itself**.**"** Wikipedia Encyclopedia.

"in REGARD TO THE PROTECTION OF OUR CITIZENS IN THEIR RIGHTS AT HOME AND ABROAD WE HAVE NO LAW WHICH DIVIDES THEM INTO CLASSES, OR MAKES ANY DIFFERENCE WHATEVER BETWEEN THEM. A NATIVE AND A NATURALIZED American may, therefore, go forth with equal security over every sea and through every land under heaven, including the **country** in which the latter was born." 9 Op. (US) Att.-Gen. 360 (1859).

All 50 states of the union are "nations" according to law, and hold sovereign rights above any "United States government" rights. All nationals of these nation/states are sovereign and hold all rights of common law and the organic Constitution. All citizens of the 50 sovereign states can pass between all other states, safely, and with government protection.

"Each [state] declared itself sovereign and independent, according to the limits of its territory... The soil and sovereignty within their acknowledged limits were as much theirs at the Declaration of Independence as at this very hour." Harcourt v. Gaillard, 25 U.S. (12 Wheat, 523, 526, 527).

"Prior to the adoption of the federal Constitution, states possessed unlimited and

unrestricted sovereignty and retained the same afterward. Upon entering the Union they retained all their original power and sovereignty, except such as was surrendered to the federal government or they were expressly prohibited from exercising by the United States Constitution." Blair v. Ridgely, 97 D. 218, 249. S.P. People v. Coleman, 60 D. 581.

The 14th Amendment created a "Federal nation" as compared to the sovereign "state nations" comprised of the 50 sovereign states of the union. This Amendment created a de facto citizenship which every American "became" through unwitting acquiescence, thereby placing them under "privilege" of such citizenship and also allegiance to, and subject under the laws to same. Case law supports this premise.

14th Amendment, Section. 1. (**Clause one**) All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they "**reside**." (**Clause two**) No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; (**Clause three**) 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.

1. Section. 1. (Clause one) All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

This clearly creates a de facto "dual citizenship" status never before existing for the sovereign state citizens prior to the 14th Amendment:

Dual Citizenship: Citizenship in two different countries. Status of citizens of the United States who reside within a state; i.e. persons who are born **or naturalized** in the United States are citizens of the United States and the State wherein they reside." Blacks Law Dictionary, 6th edition.

Naturalized: "To grant full citizenship to (one of foreign birth). American Heritage Dictionary.

Prior to the 14th Amendment "citizens of the United States" meant a "citizen" of one of

the United States of America, however, this was NOT defined by Congress. Because this phrase is NOW used in the 14th amendment, this sets forth a specific terminology and can no longer mean anything else, other than a "citizen of the federal government..." a "United States Citizen" naturalized as such at birth **without informed consent.**

"...in examining the form of our government it might be correctly said that there is no such thing as a citizen of the United States. But constant usage - arising from convenience, and perhaps necessary and dating from the formation of the Confederacy - has given substantial existence to the idea which the term conveys. A citizen of any one of the States of the Union is, held to be and called, a citizen of the United States, although technically and abstractly there is no such thing..." - Ex Parte. - Frank Knowles, 5 Cal. 300, 302 (1855) .

"No political dreamer was ever wild enough to think of breaking down the lines which separate the states and compounding them into one common mass." M'Cuioch v Mai'yland 4 Wheal 316, 403 (1819).

Article 4, 2, Cl. 1 states, "the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens of the several States."

"Therefore, a citizen of one state is considered as a citizen of every other state of the union." Butler v Farnsworth, 4 Feirl Cas 902 (1821).

"If a citizen of one state thinks proper to change his domicile and to remove with his family, if he have one, to another state, with bona fide intention to reside these, he becomes instantly a citizen of that state." Cooper v. Gaibraith, 6 FeA Ca & 472, 473 (1819).

"... This section (section 1) contemplates **two sources of citizenship** and two sources only: birth and naturalization. The persons declared to be citizens are "All persons born or naturalized in the United States and subject to the jurisdiction thereof." The evident meaning of these last words is, not merely subject in some respect or degree to the **jurisdiction of the United States**, but completely subject to **their** political jurisdiction and owing **them** direct and immediate allegiance..." Elk v Wilkins, 112 U.S. 94 (1884).

The use of the words, "their" and "them" indicates a de facto power created to be ABOVE the American People, something NO American willingly accepts and no organic law supports.

"... and whereas it is claimed that such American citizens, with their descendants, are **subjects of foreign states**, (foreign to the United States government) owing allegiance to the governments (of the states) thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance **"should"** be promptly and finally disavowed." Preamble of the Expatriation Act.

("Should" indicates no such legal requirement exists, but is what they want all de jure citizens to do.)

Case law prior to 14th Amendment passage:

"... for it is certain, that in the sense in which the word "Citizen" is used in the federal Constitution*, "Citizen of each State,"* and *"Citizen of the United States,"* are convertible terms; they mean the same thing; for the "Citizens of each State are entitled to all Privileges and Immunities of Citizens in the several States," and "Citizens of the United States" are, of course, Citizens of <u>all</u> the United States." [44 Maine 518 (1859) Hathaway, J. dissenting] Italics in original, underlines and C's added].

Case law AFTER passage of the 14th Amendment:

"It is quite clear, then, that **there is a citizenship of the United States** and a **citizenship of a State**, which are distinct from each other and which depend upon different characteristics or circumstances in the individual." [Slaughter House Cases, 83 U.S. 36] (1873).

"The first clause of the fourteenth amendment made negroes citizens of the United States, and citizens of the State in which they reside, and **thereby created <u>two classes of citizens,</u> one of the United States and the other of the state**." Cory et al. V. Carter, 48 Ind. 327 1874 head note 8.

"We have in our political system **a Government of the United States and a government of each of the several States**. Each one of these governments is distinct

from the others, **and each has citizens of its own**...." U.S. v. Cruikshank, 92 U.S. 542 1875.

"One may be a citizen of a State **and yet not a citizen of the United States**." Thomas v. State, 15 Ind. 449; Cory v. Carter, 48 Ind. 327 (17 Am. R. 738); McCarthy v. Froelke, 63 Ind. 507; In Re Wehlitz, 16 Wis. 443. McDonel v. State, 90 Ind. 320, 323, 1883.

I applied for no such dual citizenship of the insurgent United States de facto government, (created about the time of the so-called "civil" war, which was actually an International war against the sovereign nation/states of the union) apart from or in addition to, my natural born de jure nationality received at birth. I reject such de facto citizenship of the United States, and retain my de jure nationality of the sovereign nation/state in which I am domiciled at any given time, based on my original de jure Iowa nation/state nationality. Law of Nations; Title 8 USC 1101 (a)(21).

2. Section 1, (Clause two) " No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

This portion of section 1 clearly defines that such "United States de facto citizens" do not have natural rights, but are "granted" privileges for being such a de facto citizen, thereby removing them from de jure status as nationals of their respective states, including all natural rights such sovereigns would otherwise enjoy. Government does NOT grant natural rights, it is to UPHOLD them.

"... all naturalized citizens of the United States, while in "**foreign states**," (one of the several American States) shall be entitled to, and shall receive from this government, the same protection of persons and property that is accorded to native born citizens in like situations and circumstances." Expatriation Act, Section 2.

"The term "foreign states" includes outlying possessions of a foreign state, but self-governed dominions or territories under mandate or trusteeship shall be regarded as separate foreign states." Title 8 USC 1101(a)(14).

This is trying to imply that all de facto citizens of the de facto United Stated are being given all the same de jure rights that de jure citizens (read, NON-citizens of the United States but citizens of de jure states) have, but this is NOT true as all U.S. citizens are

under the jurisdiction of the United States and all "its" laws. These "privileges and immunities" are NOT the same as the ones secured by Article IV, Section 2 of the organic Constitution for NON-14th amendment citizens.

"Citizens are members of **a political community** who, in their associated capacity, have established or **submitted themselves** to the dominion of a government for the promotion of their general welfare and the protection of their individual as well as collective rights. The citizen cannot complain, because he has **voluntarily submitted himself** to such a form of government... he owes allegiance to the two departments, so to speak, and within their respective spheres must pay the penalties." U.S. v Cruikshank, 92 U.S. 542 (1875).

This makes all 14th amendment states, dependencies of the federal government, and as such, "colonies" of the same:

Colony. A dependent **political community**, consisting of a number of citizens of the same country who have emigrated therefrom to people another, and remain subject to the mother country. Territory attached to another nation, known as the mother country, with political and economic ties e.g. possessions or dependencies of the British Crown. (e.g. Original 13 colonies of the united states).

The Neutrality Act of 1939, Preamble, Title 8 USC and Title 22, USC all set forth two different jurisdictions; the de jure jurisdiction, under the constitution, and the de facto jurisdiction, under the 14th amendment.

Upon birth, under 14th amendment rules, all Americans are fictionally transported to Washington D.C., then fictionally transported back to the State wherein they "reside." This quick change of citizenship is done without knowing approval and by fraud, and takes all who submit to such, OUT of being a sovereign de jure national of the state of their birth and INTO the de facto "residential" jurisdiction of the federal government and de facto United States within the several states.

If one is naturally born into a state/nation, he has NOT legally submitted to such. Petitioner has NOT knowingly accepted the "naturalized citizenship" of the 14th amendment related to the United States and reject this de facto fraud.

Usurpation, government. "The tyrannical assumption of the government by force contrary to and in violation of the constitution of the country." Bouvier's Law Dictionary, 1856.

The United States has accomplished this through legal fraud, deceit and American's unwitting acceptance of the same through ignorance. Petitioner no longer wishes to rebel against my nation/state, and accept the de jure natural and common law jurisdiction which resides with the People.

Source for above facts of law: "The Red Amendment," by the People's Awareness Coalition." www.pacinlaw.org/.

"All subjects over which the sovereign power of the state extends [ie. corporations] are objects of taxation but those lie, sovereign natural born Citizens over which it does not extend are, upon the soundest principle EXEMPT FROM TAXATION. This proposition may almost be pronounced as self evident. The sovereignty of a state extends to everything which exists by its own authority or exists by its permission."- McCulloch v. the State of Maryland, 4 Wheat., 316.

"It has been justly thought a matter of importance to determine from what source the United States derives its authority... The question here proposed is whether our bond of union is a compact entered into by the state, or whether the Constitution is an organic law established by the People. To this we answer: "We the People... ordain and establish this Constitution"... "... The government of the state had only delegated power (from the People) and even if they had an inclination, they had no authority to transfer the authority of the sovereign People. The people in their capacity as Sovereigns made and adopted the Constitution; and it binds the state governments without the state's consent. The United States, as a whole, therefore, emanates from the People and not from the states, and the Constitution and the laws of the states, whether made before or since the adoption of that Constitution of the United States, are subordinate to the United States Constitution and the laws made in pursuance of it.

The People are the fountain of Sovereignty. The whole was originally with them as their own. The state governments are but trustees acting under a derived authority, and had no power to delegate what is delegated to them. BUT THE PEOPLE, AS THE ORIGINAL FOUNTAIN, MIGHT TAKE AWAY WHAT THEY HAVE LET AND INTRUST

TO WHOM THEY PLEASE. THEY HAVE THE WHOLE TITLE AND AS ABSOLUTE PROPRIETORS HAVE THE RIGHT OF USING OR ABUSING. -jus utendi et abutendi.. IT IS A MAXIM CONSECRATED IN PUBLIC LAW AS WELL AS COMMON SENSE AND THE NECESSITY OF THE CASE THAT A SOVEREIGN IS ANSWERABLE FOR HIS ACTS ONLY TO HIS GOD AND HIS OWN CONSCIENCE... THERE IS NO AUTHORITY ABOVE A SOVEREIGN TO WHICH AN APPEAL CAN BE MADE." 4 Wheat. 402 (Bouvier's 14th Ed. Law Dictionary: 'Sovereignty').

"In the United States the people are sovereign and the government cannot sever its relationship to the people by taking away their citizenship." Afroyim v. Rusk, 387 US 253 (1967).

"The law subscribes to the king [in America, the People] the attribute of sovereignty; he is sovereign and independent within his own dominion; and owes no kind of subjection to any other potentate upon earth. Hence, it is, that no suit or action can be brought against the king, even in civil matters; because no court can have jurisdiction over him; for all jurisdiction implies supremacy of power." Chisholm v. Georgia, 2 Dali. 419, 458.

"The People, or the Sovereign are not bound by general words in statutes, restrictive of prerogative right, title or interest, unless expressly named. Acts of limitation do not bind the King nor the People. The People have been ceded all the Rights of the King, the former Sovereign...It is a maxim of the common law that when an act of parliament is made for the public good, the advancement of religion and justice, and to prevent injury and wrong, the king shall be bound by such an act, though not named; but when a statute is general, and any prerogative right, title or interest would be divested or taken from the King (or the People) in such case he shall not be bound." - The People v. Herkimer 15 Am Dec 379, 4 Cowen (N.Y. 345, 348 (1825).

"The individual my stand upon his Constitutional rights as a Citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State or to his neighbors to divulge his business or to open his doors to investigation. ..He owes no duty to the State. since he receives nothing therefrom. beyond the protection of his life and property. His rights are such as existed by the Law of the Land, long antecedent to the organization of the State, and can only be taken from him by due process of the law and in accordance with the Constitution. He owes nothing to the public so long as he does not trespass upon their rights." -

Supreme Court, Hale vs. Henkle 201 U.S. 43 at 74

As in our interaction with our fellow-men certain principles of morality are assumed to exist, without which society would be impossible. So certain inherent rights lie at the foundation of all action, and upon a recognition of them alone can free institutions be maintained. These inherent rights have never been more happily expressed than in the Declaration of Independence, the evangel of liberty to the people: "We hold these truths to be "self evident" - words so plain that their truth is recognized upon their mere statement - "that all men are endowed" - NOT by the edicts of Emperors or decrees of Parliament, or acts of Congress, but by their Creator with certain "unalienable rights" - that is, rights which cannot be bartered away, or given away, or taken away... and that among these are life, liberty and the pursuit of happiness, and to secure these - not grant them but secure them - "governments are instituted among men, deriving their just powers from the consent of the governed." Butchers' Union Co. v. Crescent City Co:, 111 U.S. 746, at 756-757.

"It may be said that the Constitution executes itself. This expression may be allowed; but with as much propriety, these may be said to be laws which the People have enacted themselves, and no laws of Congress can either take from, add to, or confirm them. They are Rights, privileges, or immunities which are granted by the People, and are beyond the power of Congress or State Legislatures..." It may be laid down as a universal rule, admitting to no exception, that when the Constitution has established a disability or immunity, a privilege or a Right, these are precisely as that instrument has fixed them, and can neither be augmented nor curtailed by any act or law either of Congress or a State Legislature. We are more particular in stating this because it has sometimes been forgotten both by Legislatures and theoretical expositors of the Constitution." Bouvier's Law Dictionary, 1870 pp 622-625.

"No white person born within the limits of the United States and subject to their jurisdiction.., or born without those limits, and subsequently naturalized under their laws, owes his status of citizenship to the recent amendments to the Federal Constitution. The purpose of the 14th Amendment... was to confer the status of citizenship upon a numerous class of persons domiciled within the limits of the United States who could not be brought within the operation of the naturalization laws because native born, and whose birth, though native, at the same time left them without citizenship. Such persons

were not white persons, but in the main were of African blood, who had been held in slavery in this country..." Van Valkenburg v. Brown. 43 Cal 43, 47 (1872).

"When the Constitution was adopted, the people of the United States were the citizens of the several states for whom and for whose posterity the government was established." Perkins v. Elg, 99 F. 2d 408, 410 (1938).

"The privileges and immunities clause of the 14th Amendment protects very few rights because it neither incorporates the Bill of Rights nor protects all rights of individual citizens (See Slaughter House cases, 83 US (16 Wall) 36, 21 L Ed 394 (1873) Instead this provision protects only those rights peculiar to being **a citizen of the federal government**. It does not protect those rights which relate to state citizenship." Jones v. Temmer. 829 F. Supp. 1226.

3A Am Jur 1420. Aliens and Citizens. "A Person is born subject to the jurisdiction of the United States, for purposes of acquiring citizenship at birth, **if this birth occurs in a territory over which the United States is sovereign**..."

This territory does NOT include the 50 united States.

3. **I am a sovereign, independent, sui juris human being, NOT having allegiance to the "United States" corporate structure NOR to federal jurisdiction, and not to "state" jurisdictional powers not afforded it by the organic Constitution**.

sui juris: "One who has all the rights to which a freeman is entitled; one who is not under the power of another, as a slave, a minor, and the like." Bouvier's Law

sui juris: "Every one of full age is presumed to be sui juris. Of full capacity. In his own right; capable of entering into a contract. Ballentine's Law Dictionary.

"In common usage, the term person does not include the Sovereign. Statutes employing the word person (See attachment A) are ordinarily construed to exclude the Sovereign." Wilson v. Omaha Tribe, 442 U. S. 653, 667 (1979) (quoting United States v. Cooper Corp., 312 U. S. 600, 604 (1941)). See also United States v. Mine Workers, 330 U. S. 258, 275 (1947).

Supreme Court Case quotes:

"The idea that the word 'person' ordinarily excludes the Sovereign can also be traced to the familiar principle that the King is not bound by any act of Parliament unless he be named therein by special and particular words." Dollar Savings Bank v. United STATEs, 19 Wall. 227, 239 (1874).

Maxim - Homo vocabulum est naturae; persona juris civilis 'man' is a term of nature; '**person' is a term of civil law**. "PERSON" Term may include artificial beings, as corporations relating to taxation and the revenue laws, People v. McLean, 80 N.Y. 254.

“A person is such, not because he is human, but because rights and duties are ascribed to him. The person is a legal subject or substance of which the rights and duties are attributes.” Black's Law Dictionary, Revised Fourth Edition

As this passage suggests, however, this interpretive principle applies only to "the enacting Sovereign." United States v. California, 297 U. S. 175, 186 (1936). See also Jefferson County Pharmaceutical Assn., Inc. v. Abbott Laboratories, 460 U. S. 150, 161, n. 21 (1983).

Furthermore, as explained in United States v. Herron, 20 Wall. 251, 255 (1874), even the principle as applied to the enacting Sovereign is not without limitations:

"Where an act of Parliament is made for the public good, as for the advancement of religion and justice or to prevent injury and wrong, the king is bound by such act, though not particularly named therein; but where a statute is general, and thereby any prerogative, Right, title, or interest is divested or taken from the king, in such case the king is not bound, unless the statute is made to extend to him by express words."

"A Sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that **there can be no legal Right as against the authority that makes the law on which the Right depends.**"
Kawananakoa v. Polyblank, 205 U. S. 349, 353, 27 S. Ct. 526, 527, 51 L. Ed. 834 (1907).

"**The majority of American States fully embrace the Sovereign immunity theory as well as the federal government**. See Restatement (Second) of Torts 895B, comment at 400 (1979)."

"I shall have occasion incidentally to evince, how true it is, that States and governments were made for man; and at the same time how true it is, that his creatures and servants have first deceived, next vilified, and at last oppressed their master and maker."

"... A STATE, useful and valuable as the contrivance is, is the inferior contrivance of man; and from his native dignity derives all its acquired importance. ... "

"**Let a STATE be considered as subordinate to the people**: But let everything else be subordinate to the STATE. The latter part of this position is equally necessary with the former. For in the practice, and even at length, in the science of politics there has very frequently been a strong current against the natural order of things, and an inconsiderate or an interested disposition to sacrifice the end to the means. As the STATE has claimed precedence of the people; so, **in the same inverted course of things, the government has often claimed precedence of the STATE; and to this perversion in the second degree, many of the volumes of confusion concerning Sovereignty owe their existence**. The ministers, dignified very properly by the appellation of the magistrates, have wished, and have succeeded in their wish, to be considered as the Sovereigns of the STATE. This second degree of perversion is confined to the old world, and begins to diminish even there: but the first degree is still too prevalent even in the several STATEs, of which our union is composed. **By a STATE I mean, a complete body of free persons united together for their common benefit, to enjoy peaceably what is their own, and to do justice to others**. It is an artificial person. It has its affairs and its interests: It has its rules: It has its Rights: and it has its obligations. It may acquire property distinct from that of its members. It may incur debts to be discharged out of the public stock, not out of the private fortunes of individuals. **It may be bound by contracts; and for damages arising from the breach of those contracts.** In all our contemplations, however, concerning this feigned and artificial person, we should never forget, that, in truth and nature, those who think and speak and act, are men. Is the foregoing description of a STATE a true description? It will not be questioned, but it is. ..."

"It will be sufficient to observe briefly, that the Sovereignties in Europe, and particularly in England, exist on feudal principles. That system considers the prince as the Sovereign, and the people as his subjects; it regards his person as the object of allegiance, and excludes the idea of his being on an equal footing with a subject, either in a court of justice or

elsewhere. That system contemplates him as being the fountain of honor and authority; and from his grace and grant derives all franchise, immunities and privileges; it is easy to perceive that **such a Sovereign could not be amenable to a court of justice, or subjected to judicial control and actual constraint**. It was of necessity, therefore, that suability, became incompatible with such Sovereignty. Besides, the prince having all the executive powers, the judgment of the courts would, in fact, be only monitory, not mandatory to him, and a capacity to be advised, is a distinct thing from a capacity to be sued. The same feudal ideas run through all their jurisprudence, and constantly remind us of the distinction between the prince and the subject."

"No such ideas obtain here (speaking of America): at the revolution, **the Sovereignty devolved on the people; and they are truly the Sovereigns of the country**, but they are Sovereigns without subjects (unless the African slaves among us may be so called) and have none to govern but themselves; **the citizens of America are equal as fellow citizens, and as joint tenants in the Sovereignty.**" Chisholm v. Georgia (February Term, 1793) 2 U. S. 419, 2 Dall. 419, 1 L. Ed 440.

"Under our system the people, who are there [in England] called subjects, are here the sovereign... Their rights, whether collective or individual, are not bound to give way to a sentiment of loyalty to the person of a monarch. The citizen here [in America] knows no persons, however near to those in power, or however powerful himself to whom he need yield the rights which the law secures to him..." United States v. Lee, 106 U.S. 196, at 208.

"Here [in America] sovereignty rests with the people." Chisholm, Ex'r. V. Georgia 1 L.ed (2 Dall) 415, 472.

"The words 'People of the United States' and 'citizen' are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form sovereignty... They are what we familiarly call the 'sovereign people,' and every citizen is one of this people, and a constituent member of the sovereign..." Wong Kim Ark, P. 914, quoting Dred Scott v. Sandford, 60 U.S. 393, 19 How. 577.

"People of a state are entitled to all rights which formerly belonged to the King by his prerogative." Lansing v. Smith, (1829) 4 Wend. 9, 20.

"It is true that at [English} common law the duty of the Attorney general was to represent

the King, he being the embodiment of the state. But under the democratic form of government now prevailing the People are King so the Attorney general's duties are to that sovereign rather than to the machinery of government." Hancock v. Terry Elkhorn Mining Co., Inc., Ky., 503 S.W. 2d 710. Hancock v. Paxton. Ky., 516 S.W. 2d Pg. 867 [2] Cl 3.

Sovereign: "It has been justly thought a matter if importance to determine from what source the United States derives its authority... The question here proposed is whether our bond of union is a compact entered into by the states, or whether the Constitution is an organic law established by the People. To this we answer: 'We, the People... ordain and establish this Constitution'... The government of the state had only delegated power (from the People)... and even if they had a inclination, they had no authority to transfer the authority of the Sovereign People. The People in their capacity as Sovereigns made and adopted the Constitution; and it binds the state governments without the state's consent. The United States, as a whole, therefore, emanates from the People and not from the state, and the Constitution and the laws of the states, whether made before or since the adoption of that Constitution of the United States, are subordinate to the United States Constitution and the laws made in pursuance of it. The People are the fountain of Sovereignty. The whole was originally with them as their own. The state governments are but trustees acting under a derived authority, and had no power to delegate what is not delegated to them. But the People, as the original fountain, might take away what they have lent and intrust to whom they please. They have the whole title and as absolute proprietors have the right of using or abusing.-jus utendi et abutendi. It is a maxim consecrated in public law as well as common sense and the necessity of the case that a sovereign is answerable for his acts only to his God and his own conscience... There is no authority above a sovereign to which an appeal can be made." 4 Wheat, 402 (Bovier's 14th Ed. Law Dictionary.

Supremacy: "Sovereign dominion, authority, and pre-eminence; the highest state. In the United States the supremacy resides in the people..." Bovier's Law Dictionary.

"The People, or the Sovereign are not bound by general words in statutes, restrictives of prerogative right, title or interest, unless expressly named. Acts of limitation do not bind the King nor the People. The People have been ceded all the Rights of the King, the former Sovereign... It is a maxim of the common law that when an act of parliament is made for the public good, the advancement of religion and justice, and to prevent injury and wrong, the king shall be bound by such an act, thought not named; but when a statute is general,

and any prerogative right, title or interest would be divested or taken from the King (or the People as Sovereigns) in such case he shall not be bound." The People v. Herkimer 15 Am Dec 379, 4 Cowen (N.Y. 345, 348 (1825))

"There is no such thing as a power of inherent Sovereignty in the government of the United States. In this country sovereignty resides in the People, and Congress can exercise no power which they have not, by their Constitution entrusted to it: All else is withheld." Julliard v. Greenman, 110 U.S. 421.

"In Europe, the executive is synonymous with the sovereign power of a state... where it is too commonly acquired by force or fraud, or both... In America, however, the case is widely different. Our government is founded upon compact (contract). Sovereignty was, and is, in the people." Glass v. The Sloop Betsy, 3 Dall 6.

"..."Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts." Yick Wo vs Hopkins and Woo Lee Hopkins, 118 U.S. 356.

My right of expatriation from "United States nationality" for recovery of my de jure several united states nationality is covered in Title 8 USC 1481 (a) and Title 8 USC 1502 which I hereby claim.

****

4. I am NOT a "resident" of Colorado, as described in IR code or statutory law, but a sovereign, (alien to the U.S. but not alien to my nation/state), momentarily domiciled in the sovereign Colorado nation/state, and alien to it alone per my Iowa nationality.

Alien: "Owing political allegiance to **another** country or government; (Other than allegiance to Iowa nation/state or Colorado nation/state, or wherever I may be domiciled, I owe no allegiance to any other entity save God alone.) foreign; alien residents. An unnaturalized foreign resident of a country; also called non-citizen." American Heritage Dictionary.

"Alien, persons. One born out of the jurisdiction of the United States, who has not since

been naturalized under "**their**" constitution and laws." Bouvier's Law, 1856.

"Their" constitution, meaning the several states' constitution and laws. All citizenship or naturalization prior to the 14th amendment was done exclusively by the several States.

"The term "naturalization" means the conferring of nationality of a state upon a person after birth, by any means whatsoever." Title 8 USC 1101 (2)(23).

Resident, persons: "A person coming into a place with intention to establish his domicile or permanent residence, and who is consequence actually remains there. **Residents are distinguished from citizens**; **residents are aliens** (I am NOT alien to my nation/state of Iowa or Colorado) who are permitted to take up permanent abode in a country." Bouvier's law, 1856.

"Residents, as distinguished from citizens, are aliens who are permitted to take up permanent abode in the country." Vattel-Law of Nations.

United States government Styles manual (1984), chapters 5.22 and 5.23 clearly define American nationals. "The term "national" means a person owing permanent allegiance to a state." (The several states) Title 8 USC 1101 (a)(21).

5. **I am NOT a "person" as described in IR code or statutory law**. (See Attachment F, line 59-97).

"SINCE IN COMMON USAGE, THE TERM PERSON DOES NOT INCLUDE THE **SOVEREIGN**, (See line 906 above) STATUTES EMPLOYING THE PHRASE ARE ORDINARILY CONSTRUED TO EXCLUDE IT." - 1 U.S.C.S l, n 12, United States V. Fox. 94 U.S. 315.

TITLE 26 Subtitle F CHAPTER 79 7701

Definitions

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof-

(1) **Person**

The term "person" shall be construed to mean and "**include**" (See Attachment F, line 59-92) an **individual**, (See attachment F, line 21) a trust, estate, partnership, association, company or **corporation**.

(30) **United States person**

The term "United States person" means-

(A) a **citizen or resident** of the United States, (**The corporate U.S., NOT the sovereign 50 states making up the U.S. union**).

26 CFR 1.1-1. (c) Every "person" born or naturalized in the United States and subject to its jurisdiction is a citizen.

I neither chose to be a U.S. resident or citizen, nor do I accept it now. I was made a de facto "U.S. citizen" through the 14th Amendment, involuntarily, through fraud, and unwitting *tacit* acquiescence, which I now rescind to claim my full de jure nationality of the America sovereign nation/state which I was born, (Iowa) or at any time, be domiciled in, presently the sovereign Colorado nation/state. Law of Nations, Title 8 USC 1481 (a).

Tacit: "Existing, inferred, or understood without being openly expressed or stated; implied by silence or silent acquiescence, as a tacit agreement or a tacit understanding. 2. Done or made in silence, implied or indicated, but not actually expressed. Manifested by the **refraining from contradiction or objection; inferred from the situation and circumstances, in the absence of express matter**." Blacks Law, 6th edition.

6. **I am NOT an "individual" as described in IR code or statutory law**.

Title 5 USC 552a. Records maintained on individuals.

(a) Definitions. For purposes of this section -

(2) The term "**individual**" (see Attachment F, line 20) means a **citizen of the United**

States or an “alien” (see below) lawfully admitted for permanent residence.

I am neither a statutory “individual,” or “alien.”

Sec. 1.1-1 Income tax on individuals.

(a) General rule. (1) Section 1 of the Code imposes an income tax on the income of every **individual** who is a **"citizen"** or "**resident** of the United States" (**a citizen of US, but an alien...**

Title 8 USC 1101. Definitions.

(a) As used in this chapter - [chapter 12 of Title 8] **(3)** The term "**alien**" means any person not a citizen or national of the "United States..." **(someone living in one of the 50 nations/states**) and, to the extent provided by section 871(b) or 877(b), on the income of a **nonresident alien "individual**."

TITLE 22 CHAPTER 9 SUBCHAPTER II 456

Definitions

(f) The term "**citizen**" shall “include” any "**individual**" **owing allegiance to the "United States**," a partnership, company, or association composed in whole or in part of **"citizens" of the "United States,"** and **any corporation** organized and existing under the laws of the "United States" as defined in subsection (a) of this section.

I owe no such allegiance to the United States which encumbers me in any way or separates me from my de jure allegiance to Iowa, or the nation/state of my domicile and the common law and organic Constitution under which I am held.

I am a **non-resident alien** with respect to the United States Government, and not “liable” for income taxes.

TITLE 26 7701:

(b) Definition of resident alien and nonresident alien.

(1) In general. For purposes of this title (other than subtitle (b);

(A) Resident alien. An alien **individual** shall be treated as a resident of the United States with respect to any calendar year if (and only if) such individual meets the requirements of clause (i), (ii) or (iii):

(i) Lawfully admitted for permanent residence. Such **individual** is a lawful permanent *resident of the United States* at any time during such calendar year.

(ii) Substantial presence test. Such **individual** meets the substantial presence test of paragraph (3) (omitted).

(iii) First year election. Such **individual** makes the election provided in paragraph (4) (omitted).

(B) **Nonresident alien**. An **individual** is a *nonresident alien* if such **individual** is neither a citizen of the United States nor a resident of the United States (within the meaning of subparagraph (A)).

26 CFR 7701 (31) FOREIGN ESTATE OR TRUST.- The terms "foreign estate" and "foreign trust mean an estate or trust, as the case may be, the income of which, from sources **without** the United States (the 50 states) which is not effectively connected with the conduct of a "trade or business" within the United States, is **not includable in gross income under subtitle A**.

((IRC 26 - Section 22 - Definitions - **Trade or business**: term "trade or business" **includes** the performance of the functions of a public office.")

26 USC 864. DEFINITIONS AND SPECIAL RULES AT (b) (1) (A).- "The term '**trade or business within the United States'** “includes” the performance of personal services [as a public servant) **within the United States, but it does** not **include** performance of personal services for a foreign employer.' [ie. Employer in the 50 states].

26 CFR 1.871-1. "...(b) Classes of non-resident aliens -

(1) *In general. For purposes of the income tax,* nonresident alien individuals are divided into

the following classes...

(i) Nonresident **alien** individuals **who at no** time during the **taxable** year, engaged in a "**trade or business**" in the United States."

CFR 1.871-7 Taxation of **nonresident alien** individuals not engaged in trade or U.S. business.- (a) Imposition of tax. (1) "... a nonresident alien individual ... is NOT subject to the tax imposed by section 1 [Subtitle A]..."

26 IRC 2(d):

2(d) **NONRESIDENT ALIENS** - In the case of a nonresident alien individual, the taxes imposed by 1 [graduated income tax] and 55 [alternative minimum tax] shall apply only as provided by 871 or 877.

871 (a) imposes a flat 30% tax on nonresident aliens for amounts received only from sources within the [District] United States. 871(b) imposes a "graduated" tax only on income which is effectively connected with “trade or business” [as federal government employee] within the [District] United States.

26 IRC 872:

(a) GENERAL RULE.- In the case of a nonresident alien individual Gross Income “includes” ONLY:

(1) gross income which is derived from sources WITHIN the [District] United States.

(2) gross income which is effectively connected with the conduct of a "trade or business" WITHIN the [District] United States.

Title 8 USC 1101. Definitions

(a)(20) The term "lawfully admitted for permanent residence" means the status of having been **lawfully accorded the privilege of residing permanently in the United States** as an immigrant in accordance with the immigration laws, such status not having changed.

7. "Original jurisdiction. (B) The Supreme Court shall have original but not exclusive

jurisdiction of: (3) All actions or proceedings by a State against the citizens of another State or against **aliens**." Title 28 USC 1251.

8. Further confusing and misleading words and definitions in the IR Code:

Title 26 USC 877. Expatriation to avoid tax

(a) Treatment of expatriates. **(1)** In general. Every *nonresident alien* individual who, within the 10-year period immediately preceding the close of the taxable year, lost United States citizenship, unless such loss did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle B, shall be taxable for such taxable year. . ."

Title 8 USC 1101. Definitions

(a) As used in this chapter - [chapter 12 of Title 8] **(29)** The term "outlying possessions of the United States" means American Samoa and Swains Island.

Title 8 USC 1408. Nationals but not citizens of the United States at birth

Unless otherwise provided in section 1401 of this title, the following shall be nationals, but not citizens, of the United States at birth: **(1)** A person born in an outlying possession of the United States on or after the date of formal acquisition of such possession.

Title 8 USC 1401. Nationals and citizens of United States at birth

The following shall be *nationals and citizens of the United States* at birth: A "person" born in the "United States," **and subject to the "jurisdiction" thereof**.

Title 8 USC 1101. Definitions

(a) As used in this chapter - [chapter 12 of Title 8] **(22)** The term "national of the United States" means a citizen of the United States.

I was neither born in any possession of the "United States" as defined above, nor IN the "United States" (see definition of United States under point 2), and am NOT a citizen or national of the United States government.

9. Invito beneficium non datur. No one is obliged to accept a benefit against his consent. But if he does not dissent, he will be considered as assenting.

I do dissent, and do NOT accept forced obligations or contracts with the "United States government," nor do I accept any benefits which would place me under any contracts or obligations to the "United States government," unless such benefits are freely provided with no obligations of any kind, or are a matter of right and law, and NO jurisdictional authority over me beyond the intent of the Constitution and Common Law, or NO loss of personal sovereignty, and not limited to these alone.

U.C.C. 1-103.6 "The Code is complimentary to the Common Law, which remains in force, except where displaced by the code. A statute should be construed in harmony with the Common Law, unless there is a clear legislative intent to abrogate the Common Law...THE CODE CANNOT BE READ TO PRECLUDE [PREVENT OR EXCLUDE] COMMON LAW ACTION."

UCC Effect of Reservation of Rights 1-207:7 states: "The making of a valid Reservation of Rights preserves whatever rights the person then possesses and prevents the loss of such rights by application of concepts of waiver or estoppel."

UCC 1-207:5 Form of Reservation, states: "The Code does not impose any requirement as to the form of the reservation, other than it be explicit..."

UCC 1-207:6 Reservation by conduct, states: "Although UCC 1-207 authorizes the making of an express reservation, is not to be deduced that there is no reservation of rights unless that section is followed. To the contrary, when the conduct of party clearly shows that he has not waived any rights, the fact that there was no express reservation as authorized by UCC 1-207 is not significant."

Petitioner has filed a UCC 1, and attachments, with Colorado State and Iowa State, both being accepted.

Petitioner maintains that, given all the statutes, case law and Constitutional law regarding jurisdiction, and the misapplication of much of the “citizenship” issue, that there is NO valid, legal or Constitutional authority Respondent has over Petitioner.

Attachment C

16th Amendment Clarification!

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

The 16th Amendment does NOT say, "without apportionment." The "apportionment" that was eliminated was the "apportionment among the several States," Up until the passage of the 16th Amendment, the congress could only levy a direct apportioned tax on the "several States" and those States were the source of "income." The proof of that is in the Pollock (1894), Brushaber (1916), and Stewart (1937) cases, when all those courts ruled that all direct taxes must be apportioned. The rule of "apportionment" was never abandoned in any of those cases, but was most vociferously reaffirmed in the STEWART case in 1937, 24 years after passage of the 16th Amendment.

BRUSHABER (1916) and STEWART (1937) corrected some assumptions that came out of HYLTON. Those can be seen in the following rulings:

"Indeed, from another point of view, the Amendment demonstrates that no such purpose was intended, and on the contrary shows that it was drawn with the object of maintaining the limitations of the Constitution and harmonizing their operation. We say this because it is to be observed that although from the date of the Hylton Case, because of statements made in the opinions in that case, it had come to be accepted that direct taxes in the constitutional sense were confined to taxes levied directly on real estate because of its ownership, the Amendment contains nothing repudiation or challenging the ruling in the Pollock Case that the word 'direct' had a broader significance, since it embraced also taxes levied directly on personal property because of its ownership, and therefore the Amendment at least impliedly makes such wider significance a part of the Constitution..."Brushaber v Union Pacific, 240 US 1, 19 (1916).

The 16th Amendment overturned the Pollock Decision by way of a constitutional amendment allowing income taxes on net income from real estate and personal property to be levied according to the rule of uniformity instead of the rule of apportionment.

"Indeed, in light of the history which we have given and of the decision in the Pollock Case, and the ground upon which the ruling in that case was based, there can be no escape from the conclusion that the (16th) Amendment was drawn for the purpose of doing away from the future with the principle upon which the Pollock Case was decided." Brushaber v. Union Pac. R.R. Co., 240 U.S. 1, 18 (1916).

"We are of opinion, however, that the confusion is not inherent, but rather arises from the conclusion that the 16th Amendment provides for a hitherto unknown power of taxation; (That of being able to tax people outside direct and indirect, as they are being taxed today - JTM) that is, a power to levy an income tax which, although direct, should not be subject to the regulations of **apportionment** applicable to all other direct taxes. And the far-reaching effect of this **erroneous assumption** will be made clear by generalizing the many contentions advanced in argument to support it..."

Here the Brushaber Court states that it is an erroneous assumption to conclude that there is a hitherto unknown form of taxation. Brushaber confirms that all taxes fall into the four authorized taxation powers: direct apportioned taxes, and indirect by uniformity - excises, imposts, and duties. Was the apportionment requirement abrogated? It is impossible for the Court to change the Constitution. Did the amendment do away with the apportionment requirement? The Brushaber Court said that such a result would bring irreconcilable and radical and destructive changes in the Constitution.

It was reaffirmed in BRUSHABER and in STEWART that all taxes must of necessity, fall under the two all-embracing categories: direct and indirect. Read the following paragraph from Brushaber carefully:

"But it clearly results that the proposition and the contentions under it -(the 16th Amendment), if acceded to, would cause one provision of the Constitution to destroy another; that is, they would result in bringing the provisions of the (16th) Amendment exempting a direct tax from apportionment into **irreconcilable conflict** with the general requirement that **all direct taxes be apportioned**. Moreover, the tax authorized by the Amendment, being direct, would not come under the rule of uniformity applicable under the Constitution to other than direct taxes, and thus it would come to pass that the result of the Amendment would be to authorize a particular direct tax not subject either to apportionment or to the rule of geographical uniformity, thus giving power to impose a different tax in one state or states than was levied in another state or states. This result, instead of simplifying the situation and making clear the limitations on the taxing

power, which obviously the Amendment must have been intended to accomplish, would create radical and destructive changes in our constitutional system and multiply confusion." Brushaber v. Union Pacific R. Co., 240 U.S. 1, 11 (1916)

"Indeed, from another point of view, the Amendment demonstrates that no such purpose was intended, and on the contrary shows that it was drawn with the object of maintaining the limitations of the Constitution and harmonizing their operation. We say this because it is to be observed that although from the date of the Hylton Case, because of statements made in the opinions in that case, it had come to be accepted that direct taxes in the constitutional sense were confined to taxes levied directly on real estate because of its ownership, the Amendment contains nothing repudiation or challenging the ruling in the Pollock Case that the word 'direct' had a broader significance, since it embraced also taxes levied directly on personal property because of its ownership, and therefore the Amendment at least impliedly makes such wider significance a part of the Constitution..."

Thus, instead of abrogating the necessity of apportionment, Brushaber reaffirmed the necessity for apportionment just as was stated in POLLACK.

Now, if you didn't carefully read the above paragraph from Brushaber, you might have missed a very important statement: "**the tax authorized by the Amendment, being direct". ** And didn't the Court state in BRUSHABER (1916) and confirmed in CHAS. C. STEWARD MACH. CO. v. DAVIS, 301 U.S. 548 (1937) - 24 years AFTER the so-called ratification of the 16th Amendment): **"If the tax is a direct one, it shall be apportioned according to the census or enumeration. If it is a duty, impost, or excise, it shall be uniform throughout the United States. Together, these classes include every form of tax appropriate to sovereignty."**

The understanding of the clause, "**collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration"**, can only be seen as a reasoned ruling by the High Court if all these other propositions are held to. First, the Amendment did away with the requirement of **apportionment among the several states** and did away with the requirement of **census or enumeration**. The key to understanding how the Court's rulings were perfectly logical and without manifest flaw, is the Amendment's "whole purpose", i.e., to relieve the necessity of source from direct apportioned taxes.

BRUSHABER: **"but that the whole purpose of the Amendment was to relieve all income**

taxes when imposed from apportionment from a consideration of the source whence the income was derived."

If the tax is apportioned, it is direct, and it therefore is relieved from the necessity of requirement of "sources", i.e., the several states. The Amendment DOES NOT relieve a direct tax from the requirement of "apportionment" when imposed on an individual. That is a false assumption that has long been carelessly put forth by the establishment. The requirement to apportion among the several states, was dismissed by the 16th Amendment, and direct apportioned taxes could henceforth be levied on individuals directly, when apportioned.

"'Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons..." POLLOCK v FARMERS? LOAN & TRUST CO., 157 US 429, 436 - 441 (1895).

In EISNER v MACOMBER, 252 US 189, 205 - 206 (1920), among the many other consistent rulings, the High Court confirmed that the effects and limitations must be maintained.

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

Some have also made arguments that there is some other taxing power that does not fall under the two all-embracing categories, but that was rejected in BRUSHABER (1916) and STEWART (1937).

"'Although there have been, from time to time, intimations that there might be some tax which was not a direct tax, nor included under the words 'duties, imposts, and excises,' such a tax, for more than 100 years of national existence, has as yet remained undiscovered..."

In any case, considering the above rulings, it could hardly be argued that the 16th Amendment did away with "apportionment requirement" on direct taxes or affected any thing other than relieve direct apportioned taxes from the sources (the states).

So there remains left one other possibility; that the tax levied on the individual is an excise tax. It could hardly be argued that it might be an Impost or Duty.

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

"Duties and imposts are terms commonly applied to levies made by governments on the importation or exportation of commodities. Excises are 'taxes laid upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges.' Cooley, Const. Lim. 7th ed. 680."

The Court accepted the definition of "excise" as was listed in "Cooley, Const. Lim. 7th ed. 680." A person or his property does not fall under these definitions of an excise.

Knowlton v. Moore, 178 US 41, 47 (1900), "Direct Taxes bear upon persons, upon possessions and the enjoyment of rights."

Brushaber also addressed that contention.

Brushaber at page 16," Moreover, in addition, the conclusion reached in the Pollock Case did not in any degree involve holding that income taxes generically and necessarily came within the class [240 U.S. 1, 17] of direct taxes on property, but, on the contrary, recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct taxation was adopted to prevent"

The Brushaber Court ruled that the adoption of "Direct Taxation" was adopted to prevent direct taxation of individuals and property of individuals.

The excise tax on corporate "income" was passed in 1909 and avoided the necessity of "apportionment" by taxing, not the income of the corporation, but the privilege of incorporation, measured by size of the corporate income. The "privilege" was a legitimate object of taxation. Private firms or individuals did not come under that tax on the "privilege".

"In the case at bar we have already discussed the limitations which the Constitution imposes upon the right to levy excise taxes, and it could not be said, even if the principles of the 14th Amendment were applicable to the present case, that there is no substantial difference between the carrying on of business by the corporations taxed, and the same business when conducted by a private firm or individual. The thing taxed is not the mere dealing in merchandise, in which the actual transactions may be the same, whether conducted by individuals or corporations, but the tax is laid upon the privileges which exist in conducting business with the advantages which inhere in the corporate capacity of those taxed, and which are not enjoyed by private firms or individuals." FLINT v. STONE TRACY CO., 220 U.S. 107, 162 (1911).

This ruling on the corporate excise tax was not affected by the 16th Amendment since the Amendment only applied to direct taxes when they were apportioned.

"As has been repeatedly remarked, the corporation tax act of 1909 was not intended to be and is not, in any proper sense, an income tax law. This court had decided in the Pollock Case that the income tax law of 1894 amounted in effect to a direct tax upon property, and was invalid because not apportioned according to populations, as prescribed by the Constitution. The act of 1909 avoided this difficulty by imposing not an income tax, but an excise tax upon the conduct of business in a corporate capacity, measuring, however, the amount of tax by the income of the corporation. Flint v. Stone Tracy Co. 220 U.S. 107 , 55 L. ed. 389, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B, 1312; McCoach v. Minehill & S. H. R. Co. 228 U.S. 295, 57 L. ed. 842, 33 Sup. Ct. Rep. 419; United States v. Whitridge (decided at this term, 231 U.S. 144 , 58 L. ed. --, 34 Sup. Ct. Rep. 24." STRATTON'S INDEPENDENCE, LTD. v. HOWBERT, 231 U.S. 399, 414 - 415 (1913).

Two years after the passage of the Amendment, the Court also stated that the legislature cannot infringe on contracts without violating the letter and spirit of the Constitution. The Amendment would need to be viewed in light of such a ruling.

The right, therefore, to contract cannot be infringed by the legislature without violating the letter and spirit of the Constitution. Every citizen is protected in his right to work where and for whom he will. He may select not only his employer, but also his associates." COPPAGE v. STATE OF KANSAS, 236 U.S. 1, 23 -24 (1915).

The radical confusion and destruction of the Constitution has thus come to pass as the BRUSHABER Court warned. We have millions of lawyers but are left without the "rule of law".

BRUSHABER v UNION PACIFIC R. CO., 240 US 1, 11 (1916): "But it clearly results that the proposition and the contentions [240 U.S. 1, 12] under it, if acceded to, would cause one provision of the Constitution to destroy another; that is, they would result in bringing the provisions of the Amendment exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned. Moreover, the tax authorized by the Amendment, being direct, would not come under the rule of uniformity applicable under the Constitution to other than direct taxes, and thus it would come to pass that the result of the Amendment would be to authorize a particular direct tax not subject

either to apportionment or to the rule of geographical uniformity, thus giving power to impose a different tax in one state or states than was levied in another state or states. This result, instead of simplifying the situation and making clear the limitations on the taxing power, which obviously the Amendment must have been intended to accomplish, would create radical and destructive changes in our constitutional system and multiply confusion."

I ask you to also consider the logical impossibilities inherent in some assumptions that often are made.

1) If the Supreme Court ruled in several cases that the 16th Amendment granted no new taxation powers to the federal government (in one case, even the government made such admission), and brought no new subjects under the taxing authority of the federal government, then it could not be said that the 16th Amendment was the source of authority to claim that every individual was newly subjected to a direct un-apportioned tax. It could, however, be legitimately claimed that the 16th Amendment authorized a direct apportioned tax, relieved of the requirement of "sources" (the several states).

2) If, as the Supreme Court has ruled, that no new subjects were brought under the taxing powers, ("... It manifestly disregards the fact that by the previous ruling it was settled that the provisions of the 16th Amendment conferred no new power of taxation." Evans vs. Gore, 253 US 245, 263 (1920) and, "It was not the purpose or effect of that Amendment to bring any new subject within the taxing power." Bowers vs. Kerbaugh-Empire, 271 US 170, 174 (1926)) then it would be a logical impossibility that millions of new wage earners or non-incorporated business (See Flint v. Stone Tracey, 1911) were newly brought under the taxing powers by the 16th Amendment.

Material below is by Phil Hart, Constitutional Income: Do You Have Any? page 10, (Alpine Press, 2001).

Fact #1: "In examining the history of the debate and ratification of the 16th Amendment, this book will show that there is no evidence upon which the government can rely for their claim that the American People desired to have their wages and salaries taxed. No evidence can be found in the law journals of the time, not in the journals on political economy or economics, not in the Congressional Record nor other Congressional documents, nor in any of the newspapers of record of the time. In other words, the government's position that wages and salaries equals income within the meaning of the 16th Amendment is 'wholly

without foundation.'"

Fact #2: A tax on wages payable by the wage earner is a Capitation Tax. So says the premier authority on the issue, Adam Smith author of the timeless work Wealth of Nations. Ibid. pp. 141-145.

Fact #3: Capitation Taxes are direct taxes and are required by the Constitution to be apportioned among the 50 States. The 16th Amendment had nothing to do with Capitation Taxes. Ibid. pp. 250 - 253.

Fact #4: In the few hours just prior to the Senate's passage of the 16th Amendment the morning of July 5, 1909, the Senate twice by vote rejected two separate proposals to include direct taxes within the authority of the 16th Amendment. Ibid. pp. 193-200.

Fact #5: In briefs and argument before the Supreme Court in the case of Brushaber v. Union Pacific Railroad, both Brushaber and the Government claimed that the 16th Amendment provided for a direct tax exempted from the Constitutional apportionment rule. The High Court called this claim an "erroneous assumption...wholly without foundation." Ibid. pp. 204-210.

Fact #6: Just weeks after the Brushaber Case was decided, Mr. Stanton, in the case of Stanton v. Baltic Mining Co. again claimed (35 times) that the 16th Amendment created a new class of constitutional tax, that being a direct tax exempted from the apportionment rule. The High Court said in this case that the 16th Amendment created "no new tax." Ibid. pp. 212-220.

Fact #7: In the Stanton and Brushaber Cases, the Supreme Court ruled correctly by excluding direct taxes from the 16th Amendment. The intent of the American People and that of Congress was never to directly tax the American People, but only to tax income severed from accumulated wealth. Ibid. pp. 244 - 270.

Fact #8: When the Supreme Court stated in the Eisner, Stanton, and Doyle Cases that "Income may be derived from capital, or labor or from both combined" all these cases dealt with corporations and had nothing to do with the "Are wages income?" question. Ibid. pp. 239-244 and 272-274.

Fact #9: The genesis of the 16th Amendment was the income tax plank of the Democrat

Party's Presidential Platform of 1908 which clearly reveals the intent of that Amendment: "We favor an income tax as part of our revenue system, and we urge the submission of a constitutional amendment specifically authorizing Congress to levy and collect a tax upon individual and corporate incomes, to the end that wealth may bear its proportional share of the burdens of the federal government." Ibid. p. 48.

Fact #10: There is not, and never has been, any delegation of authority from We the People to the government for the collection of an unapportioned direct tax on the wages and salaries of the American People. It has been a maxim of English Law since the Magna Carta of 1215, that the People must consent to all taxation. "We are being taxed without our Consent!"

Conclusion:

The IRS is guilty of the following minimum illegal activities:

- **18 U.S.C. 241: Conspiracy against rights. Collusion by all of the revenue agents to interfere with the First Amendment, free speech, right to assemble, and right to petition our government.**
- **18 U.S.C. 242: Deprivation of rights under the color of law. I have clearly and repeatedly stated that I am being forced, if I comply with the IRS' demands, to go contrary to my religious beliefs by lying, and personally committing fraud.**
- **18 U.S.C. 872: Extortion by officers or employees of the United States.**
- **18 U.S.C. 876: Mailing threatening communications. This includes all the threatening notices regarding levies, liens, and idiotic letters that refuse to justify why they think I am liable for income tax.**
- **18 U.S.C. 880: Receiving the proceeds of extortion. Any money collected from Americans through illegal enforcement actions and for which the contributors are not "liable" under the law is extorted money, and the IRS is in receipt of the proceeds of illegal extortion.**
- **18 U.S.C. 1581: Peonage, obstructing enforcement. They are obstructing the proper enforcement of the tax laws, which require that they respect those who choose NOT to volunteer to participate in the federal donation program identified under subtitle**

A of the I.R.C.

18 U.S.C. 1583: Enticement into slavery. They are trying to enlist me to rejoin the ranks of other peons who pay taxes they aren't demonstrably liable for, which amounts to slavery, plain and simple.

18 U.S.C. 1589: Forced labor. Being forced to expend my personal time (valued at 100 silver dollars per hour and amounting to date of approximately 500 hours since 1980) responding to IRS demands for 1040 forms under the color of law, requesting answers to volumes of questions, (which have yet to be answered) answering the IRS' frivolous notices and other correspondence, and paying taxes on my labor that I am not liable for. (total taxes extracted fraudulently since 1980 unknown at this time, not counting interest and civil and criminal penalty.)

It is another violation of law for the IRS to be using the U.S. Mail system to commit fraud.

TITLE 18
CHAPTER 63 1341
1341. Frauds and swindles
Release date: 2004-08-06
Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation affects a financial institution, such

person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

TITLE 18
CHAPTER 63 1349
1349. Attempt and conspiracy
Release date: 2004-08-06
Any person who attempts or conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

Given the above IR Code discussion, case law, Congressional record, and laws violated, is it any wonder that Americans of average intelligence are questioning their legal and constitutional requirements to pay "income" taxes? All these issues and more have been presented respectfully, over the past 5 years, to the IRS, the President, the Vice President, every member of the House and Senate, the U.S. Attorney General, many State AG's, the media, including Rush Limbaugh, Bill O'Reilly, civil and religious leaders and countless tax "experts" and there have been NO answers forthcoming to date.

This is why there is now a class action law suit, "We The People vs The United States Government, et al," on these and other unconstitutional issues. To date these questions have been resisted, ignored, and condemned for over 5 years and the People have no recourse but to bring a "Redress of Grievance" to the government, which is our constitutional right and duty.

Be sure to join the class action law suit in progress at the site above and lend your voice to truth! Read about the details - PDF file.

This material is supplied "as is." It is NOT legal advice nor is it meant to be relied upon as sole evidence for the premise being made. You are a sovereign individual and responsible for your own education and actions. We highly advise you to research this material and the related books, as well as the other sources of information so you can make a firm, convicted decision on these matters.

Attachment D

Laws and related Case law against Respondent actions;

The IR Code is **NOT POSITIVE LAW (See Attachment T)**, but is acting under the color of law, and does not have jurisdiction over most Americans who do NOT work for the federal government.

Supreme Court Justice Brande spoke, in the case of Olmstead v United States when he said: "Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will he imperiled if it fails to observe the laws scrupulously. Our government is the potent omnipresent teacher. For good or ill, it teaches the whole people by it's example. Crime is contagious. If the government becomes a law breaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of criminal laws the end justifies the means to declare that the government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face. ...And so should every law enforcement student, practitioner, supervisor, and administrator."

"The question is not what power the federal government ought to have, but what powers, in fact, have been given by the people. . . . The federal union is a government of delegated powers. It has only such as are expressly conferred upon it, and such as are reasonably to be implied from those granted. In this respect, we differ radically from nations where all legislative power, without restriction of limitation, is vested in a parliament or other legislative body subject to no restrictions except the discretion of its members." See: U.S. v. William M. Butler, 297 U.S. 1.

The IRS has repeatedly ignored all questions and requests for verification,

documentation and other facts under FOIA. **Silence**, or lack of responding to good faith questions, requests and responses can ONLY equate to attempted fraud, deceit and theft. (See Attachment F, line 267-286).

"The judicial power of the United States is limited by the doctrine of precedence." Anastoff v. United States (8th Circuit, 2000).

"Keeping in mind the well settled rule, that the citizen is exempt from taxation, unless the same is imposed by clear and unequivocal language, and that where the construction of a tax is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid." Spreckles Sugar Refining Co. vs. McLain: 192 US 397

"As men whose intentions require no concealment, generally employ the words which most directly and aptly express the ideas they intent to convey; the enlightened patriots who framed our constitution and the people who adopted it must be understood to have employed the words in their natural sense, and to have intended what they have said." See: Gibbons v. Ogden, 27 U.S. 1

“But it cannot be assumed that the framers of the Constitution and the people who adopted it did not intent that which is the plain import of the language used. When the language of the Constitution is positive and free from all ambiguity, all courts are not at liberty, by a resort to the refinements of legal learning, to restrict its obvious meaning to avoid hardships of particular cases, we must accept the Constitution as it reads when its language is unambiguous, for it is the mandate of the sovereign powers.” See: State v. Sutton, 6.3 Minn. 147, 65 W.X. N.W., 262, 101, N.W. 74; Cook v. Iverson, 122, N.M. 251.

Treasury Order 150-1, Paragraph 5 States:

"US Territories and Insular Possessions. "The commissioner shall, to the extent of authority otherwise vested in him, provide for the administration of the United States internal revenue law [small i] in the U.S. territories and insular possessions (See

Attachment B) and OTHER AUTHORIZED AREAS OF THE WORLD."

Treasury Order's 150-1 thru 150-29 are the Delegation of authority orders for the IRS from the Dept. Of Treasury. No section or paragraph is found in any of these which authorize the Commissioner to administer the internal revenue laws anywhere other than the above paragraph.

Bente v. Bugbee 137 A. 552, 553, 103 N. J. Law 608 . In that case the court held: A tax is a legal imposition exclusively of statutory origin (37 Cyc.724, 725), and, naturally, liability to taxation must be read in the statute, or it does not exist.

"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." Boathe v. Terry, 713 F.2d 1405, at 1414 (1983).

"In view of other settled rules of statutory construction, which teach that... if doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer..." 1938: Hassett v. Welch, 303 U.S. 303.

"The people themselves have it in their power effectually to resist usurpation, without being driven to an appeal in arms. An act of usurpation is not obligatory: It is not law; and any man may be justified in his resistance. Let him be considered as a criminal by the general government; yet only his fellow citizens can convict him. They are his jury, and if they pronounce him innocent, not all powers of congress can hurt him; and innocent they certainly will pronounce him, if the supposed law he resisted was an act of usurpation." See: 2 Elliot's Debates, 94; 2 Bancroft, History of the Constitution, 267.

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

This checklist provides a list of provisions of the Code that the Respondent is ignoring in its day-to-day administration of the Code.

26 USC 6020
26 USC 6201
26 USC 6065
26 USC 6212
26 USC 6303
26 USC 6330
26 USC 6331(a)
26 USC 6331(h)
26 USC 6331(d)

It is another violation of law for the IRS to be using the U.S. Mail system to commit fraud.

Title 18 United States Code 245 Provides:

"Whoever whether or not acting under color of law, intimidates or interferes with any person from participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States; [or] applying for or enjoying employment, or any perquisite thereof, by any agency of the United States; shall be fined under this title, or imprisoned not more than one year or both."

Title 18 United States Code 1983 Provides:

"Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper

proceeding for redress."

TITLE 18, U.S.C. CHAPTER 63 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice **to defraud, or for obtaining money or property by means of false or fraudulent pretense**, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, **places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service**, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, **shall be fined under this title or imprisoned not more than 20 years, or both.** If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

TITLE 18, U.S.C. CHAPTER 63 1349. Attempt and conspiracy

Any person who attempts or conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

IRS Audit Manual and The Handbook For Agents IRS Supplement published on 1/10/79 in Section 6 states: *"...A summons of a taxpayers books and records for return of information **is not recommended"***

"It does not require the actual entry upon premises and search for a seizure of papers to

constitute an unreasonable search and seizure within the meaning of the Fourth Amendment. A compulsory production of a party's private books and records, to be used against himself or his property in a criminal penal proceeding or a forfeiture, is within the spirit or meaning of the Amendment." - Boyd vs. U.S., 116 U.S. 616.

Petitioner's 5th Amendment rights are attacked in filing a 1040 form, especially one that is unofficial and facially void (as described above):

"The information revealed in the preparation and filing of an income tax return is, for the purposes of Fifth Amendment analysis, the testimony of a witness." Government compels the filing of a return much as it compels, for example, the appearance of a 'witness' before a grand jury." 1975: Garner v. United States, 424 U.S. 648.

(b)Fifth Amendment - "No person shall be held to answer for a capital, or otherwise infamous crime, unless by a presentment or indictment of a Grand Jury. except in cases arising in the land or naval forces, (xi the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; **nor shall he be compelled in any criminal case to be a witness against himself**, nor be deprived of life, liberty or property, without due process of law nor shall private property be taken for public use without just compensation.."

"There can be no question that one who files a return under oath is a witness within the meaning of the Amendment." Sullivan v. U.S.. 274 U.S. 259.

*** TITLE 18 PART I CHAPTER 13 241 Conspiracy against rights**

"If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same;

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death."

"Purpose of Congress was not to protect rights and privileges under 14th amendment but to protect rights and privileges of citizens under Constitution and laws of the U.S." Williams v U.S. (1950, CA5 Fla) 179 F2d 656.

"**Constitutional Liberty or Freedom**. Such freedom as is enjoyed by the citizen of a country or state under the protection of its constitution (state/federal). The aggregate of those personal, civil, and political rights of the individual which are guaranteed by the Constitution (state/federal) and secured against invasion by the government or any of its agencies." Blacks Law Dictionary, sixth edition.

TITLE 18 PART I CHAPTER 13 242. Deprivation of rights under color of law

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death."

Color of Law. The appearance or semblance, without the substance, of legal right. The misuse of power, possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state, is action taken under 'color of law.'" Blacks Law Dictionary, sixth edition.

Implementing Regulations: (No Implementing Regulations are found in IR Code or elsewhere)

26 USC 780 5(a) "...the Secretary shall prescribe all needful rules and regulations for the enforcement of this title."

"For federal tax purposes, federal regulations govern." Dodd v. United States, 223 F Supp 785, Lyeth v. Hoey. 305 US 188, 59 S. Ct 155.

"... the Act's civil and criminal penalties attach only upon violation of regulation promulgated* by the Secretary; if the Secretary were to do nothing, the Act itself would impose no penalties on anyone...The Government urges that since only those who violate these regulations (not the Code-JTM) may incur civil or criminal penalties, it is the actual regulation issued by the Secretary of the Treasury and not the broad authorizing language of the statute, which is to be tested against the standards of the 4th Amendment." Calif. Bankers Assoc. v. Shultz. 416 US 25,44, 39 L Ed 2d 812, 94 S Ct 1494. *Promulgate - to put into action.

7201 Tax Evasion, 7203 Willful failure to file, 6020 Substitute for Return, 6201 Assessment Authority, 6301 Collection Authority, 6303 Notice and Demand Authority, 7602 Summons Authority, 6321 Lien Authority, 6331-~6343 Levy and Distraint Authority, 6601 Interest on Under payments, 667 1 Assessment Penalties, ALL have NQ implementing Regulations pertaining to Individual Income Taxes (Part 1 taxes)! All implementing regulations are for mandatory alcohol, tobacco and firearms taxes!

"Although the relevant statute authorized the Secretary to impose such a duty, **his implementing regulations did not do so**. Therefore we held that there was no duty to

disclose..." United States v. Murphy, 809 F.2d 142, 1431.

"The reporting act is not self-executing; it can impose no duties until implementing regulations have been promulgated." California Bankers Ass'n v Schultz, 416 U.S. 21, 26, 94 S. Ct. 1494, 1500, 39 L. Ed. 2d 812.

"Failure to adhere to agency regulations [by the IRS or other agency-JTM] may amount to denial of due process if regulations are required by constitution or statute..." Curley V. United States, 791 F. Supp.52.

"An Individual Cannot be Prosecuted for Violating the Act Unless He Violates Implementing Regulations.'- United States v. Reinis, 794 F. 2d 506, 508 (9th Cir. 1986) United States v. Murphy, 809 F.2d 1427 (9th Cir. 1987)

"Criminal penalties ...can attach only upon violation of regulations promulgated by the Secretary." U.S. v. Reinis, 794 F.2d 506

Conspiracy. Key 33(2). "Where regulations...did not impose duty to disclose information, failure to disclose was not conspiracy to defraud government." 18 USCA, 31 USCA~5311

United States. Key 34. "Individual cannot be prosecuted for violating Currency Reporting Act unless he violates implementing regulations." 31 U.S.C.A. 5311 et. seq.

"Because Congress has delegated to the Commissioner the power to promulgate "all needful rules and regulations for the enforcement of (the Internal Revenue Code) 26 U.S.C. 7805(a), we must defer to his regulatory interpretations of the Code so long as they are reasonable." National Muffler Dealers Assn.. Inc. United States, 440 U.S. 472, 476-477, 99 S. Ct. 1304, 1306-1307, 59 L. Ed. 2d 519

Internal Revenue. Key 3947. "Internal Revenue manual does not have force and effect

of law..."

Because the Internal Revenue Code is broad and general in scope, the regulations provide the clarity that give the statute the force of law. Otherwise such statutes could be voided for vagueness.

"Due process requires that penal statutes define criminal offenses with sufficient clarity that ordinary person can understand what conduct is prohibited." U.S.C.A Const. Amend 5

Without the statute there is no authority for implementing a regulation and without the regulation, no civil or criminal penalties can be imposed. Further Regulations cannot change the statute but only clarify it.

"To the extent that the regulations implement the statute, they have the force and effect of law... The regulation implements the statute and cannot vitiate or change the statute..." Spreckles v. C.I.R. 119 F.2d, 667.

The Court's decision in Bivens v. 6 unknown named federal agents 403 US 388, 91 SCT 1999, 29 LE2d 619(1971) that **a violation of a specific constitutional amendment** by a Federal employee was recognized as a **cause of action for monetary damages**.

INTERNAL REVENUE MANUAL

CURLEY V U.S. 791 F. Supp 52 (E.D.N.Y. 1992), at 55

(6) "Plaintiff relies heavily on the **Internal Revenue Manual ("IRM")** in her argument that the assessment is procedurally invalid. However, **the IRM does not have the force and effect of law."** United States v. New York Telephone Co. 644 F. 2d 953 959 n. 10 (2d Cir. 1981). Since the IRM is not law, any alleged failure to adhere to its provisions

will not necessarily result in an invalid assessment. See Foxman v. Renison 449 U.S. 993, 101 S. Ct. 530, 66 L.Ed. 2d 290 (1980). 449 U.S. 1119 101 S. Ct. 932, 66 L. Ed. 2d 848 (1981) Kopunek v Director of Internal Revenue, 528 F.Supp. 134, 137 (1981).

(7) However, failure to adhere to agency regulations may amount to a denial of due process if the regulations are required by the constitution or statute. Arzanipour v Immigration and Naturalization Service, 866 F. 2d 743, 746 (5th Cir. 1989).

In Bothke v. Fluor Engineers, 713, F.2d 1405 (1983), the U.S. Court of Appeals ruled that if a taxpayer has informed an IRS agent that he believes that there is an error in assessment and the agent continues levy action without first determining if the taxpayer's argument has merit, such agent losses immunity from a suit. Most IRS agents do not realize that if they act without authority, they are personally liable!

Respondent claims Petitioner was required to file 1040 returns for stated years, which is a self assessment:

Assessment of tax is entirely a government function. The law makes no provision allowing people to assess themselves a tax. Girard Trust Bank v. U.S., 643 F.2d 725, 727

Electing the option of estimating a speculated tax and sending accompanying deposit via use of Form 1040, or should surmised assessment not be made by appropriate authority within the time restraints of three (3) years, reasonable assumption exists a tax is not owing. 26 USC Section 6501.

"We believe that the holding of the court that money paid to the Internal *Revenue* Service prior to the imposition of a valid **assessment** is a deposit rather than a payment, should have the same meaning regardless whether it is the Government who seeks to preclude suit by the taxpayer or whether it is the taxpayer who seeks to recover a refund." Estate of M. Karl GOETZ v US. 286 F. Supp 128, 131 (WD. MO. 1968).

IRS Restructuring and Reform Act of 1998 - Tax Regs in Plain English

3102 - Civil Damages for Collection Action

A. Provision covered: Section 3102 Civil Damages for Collection Action (LR.C. §~ 7433, 7430, 7426)

B. Background: Under prior law,. taxpayers could recover damages up to $1,000,000 under section 7433 for reckless or intentional disregard of the Code and regulations. Third parties and debtors in bankruptcy could not recover damages under section 7433. Also, under prior law, there was no exhaustion of administrative remedies requirement, although the courts could reduce the damages award if administrative remedies were not exhausted. Congress believed that expansion of the circumstances in which damages could be obtained from the Service was appropriate.

C. Change(s): The provision allows taxpayers to recover up to $100,000 in damages as the result of the negligent disregard of the Code or regulations by Service personnel. This provision also amends section 7426, regarding actions for wrongful levy, and allows third parties to recover damages up to $1,000,000 for reckless or intentional disregard of the Code or regulations, or up to $100,000 for negligent disregard of the Code or regulations.

1203 - Termination of Employment for Misconduct

A. Provision(s) covered: Section 1203, Termination of Employment for Misconduct

B. Background: This new provision was enacted in response to the widespread perception that IRS employees are not held fully accountable for improper conduct affecting taxpayers. The section provides that **IRS employees must be charged with misconduct and terminated** if there has been a judicial or final administrative determination that the employee committed any of the following acts or omissions:

1. **willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business asset**;

2. providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative;

3. with respect to a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, the **violation of any right under the Constitution of the United States**;

The IRS has recently been corrected on the issue of all administrative orders it issues WITHOUT A COURT ORDER, which is virtually every order it issues:

"...absent an effort to seek enforcement through a federal court, IRS summonses apply no force to "taxpayers," and no consequence whatever can befall a taxpayer who refuses, ignores, or otherwise does not comply with an IRS summons until that summons is **backed by a federal court order** [a taxpayer] cannot be held in contempt, arrested, detained, or otherwise punished for refusing to comply with the original IRS summons, no matter the taxpayer's reasons, or lack of reasons for so refusing." (*Schulz v. IRS, Case No. 04-0196-cv)*

"We do not overlook those constitutional limitations which, for the protection of personal rights, must necessarily attend all investigations conducted under the authority of Congress. Neither branch of the legislative department, still less any merely administrative body, established by Congress, possesses, or can be invested with, a general power of making inquiry into the private affairs of the citizen." Kilbourn v. Thompson, 103 U. S. 168, 196 (26: 377, 386).

In conjunction with this, the Court included **ALL** administrative actions by the IRS:

"It will be noted that our decision here is based upon our holding the Government's lien was irregular, insufficient and valueless from a procedural standpoint for failure to serve the statutory notice and demand in connection therewith and for failure to comply with required procedures."

"In developing that conclusion many circumstances tend to show that not only were these required procedures not complied with, but that Coson was not a taxpayer and not “liable” for the tax to begin with..." At 37, *United States v. Coson, 286 F.2d 453 (9th Cir. 1961)*.

While this addressed a lien, the law backing the Court’s decision on “procedure” stands in this issue. (See Attachment D). Also, In *Schulz v. IRS,* Case No. 04-0196-cv, and subsequent ruling from the U.S. Court of Appeals for the Second Circuit, the Court upheld its original ruling against any Respondent Summons as having power over citizens without a Federal Court order.

Most significantly, the Court held, relying on a 1920 decision by the United States Supreme Court, that the principles of due process apply to ALL IRS administrative orders, and all Summons, levies or liens are all "administrative orders" and therefore NOT judicial actions. Petitioner takes that to mean the Court's order applies not only to Respondent first party summonses, but also to Respondent third party summonses.

Continuing in *Schulz v. IRS*:

"...the IRS summons is administratively issued but its enforcement is only by Federal Court authority in an adversary proceeding affording the opportunity for challenge and *complete protection* to the witness." [page 9] (italics emphasis in the original).

"Any legislative scheme that denies subjects an opportunity to seek judicial review of **administrative orders** except by refusing to comply, and so put themselves in immediate jeopardy of possible penalties 'so heavy as to prohibit resort to that remedy,'

Oklahoma Operating Co. v. Love, 252 U.S. 331, 333 (1920), **runs afoul of the due process requirements of the Fifth and Fourteenth Amendments**." Schulz v. IRS and Anthony Roundtree.

"... and what we hold here ... involved plaintiff may attack the Government lien for taxes as irregular or valueless 'from a procedural standpoint, and may raise the question whether the Government 'complied with required procedure' or whether by error the assessment was made against a taxpayer other than the one intended."

"In holding as we do that the lack of proper notice or demand was fatal to acquisition of the government's lien against Cohon, the emphasis here is somewhat different than that employed by the trial judge who held that the assessment itself was void as against Coson because the taxes were never assessed as to Coson, the record of assessment in the office of the Bureau making no reference whatever to Coson. The government argues that there is no requirement that an assessment be made against any person. Although our decision as to the lack of proper notice or demand is sufficient to dispose of this case, it would appear that the trial court was right in holding the **assessment was insufficient, for failure to comply with statutory requirements**." (n. 17, page 464) U.S. v Coson, 286 F.2d 453 (9th, 1961) See also Hans Bothke v. Flour Engineers Construction, Inc, and Terry, 713 F.2d 1405 (9th, 1983).

Petitioner reiterates... the "administrative summons" is facially void, as stated in Petitioner's Petition to Quash and demands no compliance by Aurora Loan Service. Petitioner also points out that to grant the Summons in this case "by Federal Court Order," at THIS point, is to condone the Respondent's lawless first attempt to bring about submission by Aurora Loan Service to Summons WITHOUT the required Federal Court Order, and, thereby, acting under the color of law, would have caused Aurora Loan Service to break its fiduciary duty to Petitioner, which would have occurred had Petitioner NOT filed the Petition to Quash the initial illegal Summons.

"We think it clear that the term '**assessment**' referred to in this section of the Internal Revenue Code of 1954 has a **technical meaning** spelled out in the code and that meaning is binding on the court." U.S. v. Miller, C.A. Ind. 1963, 318 F. 2d 637, at 638,

639.

"Tax liability is a condition precedent to the demand. Merely demanding payment, even repeatedly, **does not cause liability**. For the condition precedent of liability to be met, **there must be a lawful <u>assessment...</u>** (Section 301.6203-1, title 26 CFR. Assessment... either a **voluntary one by the taxpayer (See Attachment A)** or one **procedurally proper by the IRS...**" Bothke v. Flour, 713 F. 2d 1405, pg 1414, [14, 15]

Section 6203: "The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary. Upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of the assessment."

Said request has been made with no response forthcoming from the IRS or Secretary.

Attachment E - Doctrine of Precedent

Precedent case law is vital to the correct adjudication of any given case. Precedent ignored, or unknown, or “misplaced” through time and traditions, cannot be dismissed, especially precedent that is antecedent to subsequent rulings that counter then unknown or unconsidered precedent. Petitioner contends that Respondent’s position and longstanding arguments and case law cites against all positions in this Motion fall into gross violation of Faye Anastasoff vs. United States of America as precedent provides shows throughout.

If such subsequent cases (subsequent to antecedent principles and original intent clearly laid out in the past) are utilized by Respondent against Petitioner’s position and case law, we have violence being done to the Rule of Law, the Constitution, and our Framer’s intent as proven with case law sited by Petitioner:

Faye Anastasoff vs. United States of America states, in part...

“The doctrine of precedent was well-established by the time the Framers gathered in Philadelphia. Morton J. Horwitz, The Transformation of American Law: 1780-1860 8-9 (1977); J.H. Baker, An Introduction to English Legal History 227 (1990); Sir William Holdsworth, Case Law, 50 L.Q.R. 180 (1934). See, e.g., 1 Sir William W. Blackstone, Commentaries on the Laws of England *69 (1765) ("it is an established rule to abide by former precedents").“

“To the jurists of the late eighteenth century (and thus by and large to the Framers), the doctrine seemed not just well established but an immemorial custom, the way judging had always been carried out, part of the course of the law. In sum, the doctrine of precedent was not merely well established; it was the historic method of judicial decision-making, and well regarded as a bulwark of judicial independence in past struggles for liberty.”

“...the judge's duty to follow precedent derives from the nature of the judicial power itself. 1 Coke, Institutes 51 (1642) ("[i]t is the function of a judge not to make, but to declare the law, according to the golden mete-wand of the law and not by the crooked

cord of discretion."); Sir Matthew Hale, The History of The Common Law of England 44-45 (Univ. of Chicago ed., 1971) ("Judicial Decisions [have their] Authority in Expounding, Declaring, and Publishing what the Law of this Kingdom is . . .") In addition to keeping the law stable, this doctrine is also essential, according to Blackstone, for the separation of legislative and judicial power. In his discussion of the separation of governmental powers, Blackstone identifies this limit on the "judicial power," i.e., that judges must observe established laws, as that which separates it from the "legislative" power and in which "consists one main preservative of public liberty." 1 Blackstone, Commentaries *258-59.

“If judges had the legislative power to "depart from" established legal principles, "the subject would be in the hands of arbitrary judges, whose decisions would be then regulated only by their own opinions . . .." Id. at *259. Hamilton, like Blackstone, recognized that a court "pronounces the law" arising upon the facts of each case. Like Blackstone, he thought that "[t]he courts must declare the sense of the law," and that this fact means courts must exercise "judgment" about what the law is rather than "will" about what it should be. The Federalist No. 78 507-08.”

“Like Blackstone, he recognized that this limit on judicial decision-making is a crucial sign of the separation of the legislative and judicial power. Id. at 508. Hamilton concludes that "[t]o avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them . . .." Id. at 510. “

“Hamilton anticipated that the record of federal precedents "must unavoidably swell to a very considerable bulk. . . ." Id. But precedents were not to be recorded for their own sake. He expected judges to give them "long and laborious study" and to have a "competent knowledge of them." Id. The duty of courts to follow their prior decisions was understood to derive from the nature of the judicial power itself and to separate it from a dangerous union with the legislative power. The statements of the Framers indicate an understanding and acceptance of these principles. We conclude therefore that, as the Framers intended, the doctrine of precedent limits the "judicial power" delegated to the courts in Article III.”

“The question presented here is not whether opinions ought to be published, but

whether they ought to have precedential effect, whether published or not. We point out, in addition, that "unpublished" in this context has never meant "secret." So far as we are aware, every opinion and every order of any court in this country, at least of any appellate court, is available to the public."

"It is often said among judges that the volume of appeals is so high that it is simply unrealistic to ascribe precedential value to every decision. We do not have time to do a decent enough job, the argument runs, when put in plain language, to justify treating every opinion as a precedent. If this is true, the judicial system is indeed in serious trouble, but the remedy is not to create an underground body of law good for one place and time only."

"...rules like our Rule 28A(i) assert that courts have the following power: to choose for themselves, from among all the cases they decide, those that they will follow in the future, and those that they need not. Indeed, some forms of the non-publication rule even forbid citation. Those courts are saying to the bar: "We may have decided this question the opposite way yesterday, but this does not bind us today, and, what's more, you cannot even tell us what we did yesterday." As we have tried to explain in this opinion, such a statement exceeds the judicial power, which is based on reason, not fiat. (Insofar as it (Rule 28A(i)) limits the precedential effect of our prior decisions, the Rule is therefore unconstitutional. Cited earlier in case)"

"If the reasoning of a case is exposed as faulty, or if other exigent circumstances justify it, precedents can be changed. When this occurs, however, there is a burden of justification. The precedent from which we are departing should be stated, and our reasons for rejecting it should be made convincingly clear. In this way, the law grows and changes, but it does so incrementally, in response to the dictates of reason, and not because judges have simply changed their minds."

Faye Anastasoff vs. United States of America, 8th Circuit Court, 2000

Attachment F - Jeffrey Thomas Maehr

Constitutional and IR Code Issues: (See also Attachment FF).

"The United States is entirely a creature of the Constitution. Its power and authority have no other source. It can only act in accordance with all the limitations imposed by the Constitution." - Reid v Covert 354 US l, 1957.

Sec. 6011. General requirement of return, statement, or list.
TITLE 26, Subtitle F, CHAPTER 61, Subchapter A, PART II, Subpart A, Sec. 6011.
STATUTE

(a) General rule
When required by regulations prescribed by the Secretary any person “made liable” for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person “required to make a return or statement” shall include therein the information required by such forms or regulations.

In research of the IR Code, and after repeated requests to the IRS, Petitioner has found NO code section or law which makes me personally liable for income taxation or to make a return as the IR Code states.

Title 5 USC 552a. Records maintained on "individuals;"

(a) Definitions. For purposes of this section -

(2) The term "**individual**" *means* a **"citizen of the United States" (**See attachment B) or an "alien" (See below) lawfully admitted for permanent "residence." (See Attachment B)

Treasury regulations make a distinction between "citizens" and "residents" of the United States, and define a "citizen" as every person born or naturalized in the United States AND subject to its jurisdiction.. 26 C.F.R. Section 1.1-1(a)-(c).

Sec. 6020. - Returns prepared for or executed by Secretary

(a) Preparation of return by Secretary

If any "person" (defined as "U.S. person" in IRC 7701 (30) below) shall fail to make a return **required** by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case the Secretary may prepare such return, which, **being signed by such "person**," may be received by the Secretary as the return of such person.

ONLY what someone signs and confirms as their "income" can legally and

Constitutionally be used to validate any "income" and any Tax on said "income."

3401(c) "Employee: For purposes of this chapter, the term "employee" includes* an officer, employee, or elected official of the United States, a State, or any political subdivision hereof 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.

I am not an "employee, per the IR Code, and signing a 1040 form is to commit perjury and falsify a document.

3401(d) **Employer**: For purposes of this chapter, the term "employer" means the person for whom an "**individual**" performs or performed any services, of whatever nature, as the "**Employee**" (as defined above) of such "person"...),

(IRC 26 - Section 22 - Definitions) **Trade or business**: term "trade or business" **includes** the performance of the functions of a public office."

I am not performing any function of a public office, and therefore NOT involved in any "trade or business" taxable under IR Code.

3121)(e) **United States**: The term "United States" when used in a geographical sense **includes** the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.)

I am NOT within the jurisdiction of this defined "United States," but a sovereign of the "Several United states."

These definitions state clearly that ONLY people working for the government as a government or state official... or performing the function of a public office... are possibly liable for "income" taxes. I am none of the above.

It also must be understood that once a law or statute is defined or explained ONCE, anywhere in the IR Code, subsequent words do NOT have to be defined again, and can, thereby, mislead one in the "common" understanding of everyday terms used in the IR Code.

* The word **"includes"** in the above definitions does NOT mean "what is written and anything else you might imagine to be a part of this clause." It means what it says...

"**Include**," or the participial form thereof is defined to comprise within "to hold," "to contain," "to shut up," and synonyms are "contain," "enclose," "comprehend," "embrace." U.S. Supreme Court, Mandalay Salt co. v. Utah, 221 U.S. 452, at 466.

"Inclusion units est exclusio alterius. **The inclusion of one is the exclusion of another**. The certain designation of one person is an absolute exclusion of all others. ...

This doctrine decrees that where law expressly describes [a] particular situation to which it shall apply, an **irrefutable inference** must be drawn that **what is omitted or excluded was intended to be omitted or excluded**." Black's Law Dictionary, 6th edition...

"Where Congress includes particular language in one section of a statute but omits it in another..., it is generally presumed that **Congress acts intentionally and purposely in the disparate inclusion or exclusion**. "Russello v. United States, 464 US 16, 23, 78 L Ed 2d 17, 104 S Ct. 296 (1983)

But it cannot he assumed that the framers of the Constitution and the people who adopted it did not intent that which is the plain import of the language used. When the language of the Constitution is positive and free from all ambiguity, all courts are not at liberty, by a resort to the refinements of legal learning, to restrict its obvious meaning to avoid hardships of particular cases, we must accept the Constitution as it reads when its language is unambiguous, for it is the mandate of the sovereign powers. See: State v. Sutton, 6.3 Minn. 147, 65 W.X. N.W., 262, 101, N.W. 74; Cook v. Iverson, 122, N.M. 251.

"The united States Supreme Court cannot supply **what Congress has studiously omitted in a statute**." Federal Trade Com. v. Simplicity Pattern Co., 360 US SS, p. 55, 475042/56451 (1959)

"**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**'."

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."

"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.*

In other words, "includes" means ONLY what is stated in the code section as defined and DOES NOT presume to include those things which are NOT specifically stated. These definitions clearly show who is subject to the "income" tax and who is NOT. So we are left to wade through case law precedent to try to understand what is actually legally taxable "income."

In fact, the term **"income" is NOT defined in the entire IR code** - (See Attachment A)

Further misdirection takes place with the following:

"We have tolerantly permitted the habitual misuse of words to serve as a vehicle to abandon our foundations and goals." House Congressional Record, June 13, 1967, Pg. 15641.

Sec. 3401. - Definitions

(a) **Wages**: For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services **performed by an** "**employee" (see above definition for employee)** for his **"employer**,"... c) (see 3401(c) and 3401(d))

Sec. 3121. - **Definitions (a) Wages**.

For purposes of this chapters the term "wages" means all remuneration for **employment**, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include ... [various pre-tax deductions]

3401(c) "**Employee**: For purposes of this chapter, the term "employee" **includes** (see above definition of "includes") an officer, employee, or elected official of the United States, a State, or any political subdivision hereof 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.

(b) **Employment**

For purposes of this chapters the term "employment" means any services of whatever nature, performed (A) by an **"employee"** for the person employing him, irrespective of the citizenship or residence of either, (I) within the **"United States**," or (ii) on or in connection with an American vessel or American aircraft.. . or (B) outside the United States by a citizen or resident of the United States as an employee for an American employer (as defined in subsection (h)), ... (e) State, United States, and [Puerto Rican] citizen

IRC 3121 - For purposes of this chapter,

(e) State, United States, and citizen For purposes of this chapter -

(1) **State**: The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) **United States:** The term "United States" when used in a geographical sense includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. An individual who is a citizen of the Commonwealth of Puerto Rico shall be considered, for purposes of this section, as a "citizen" of the United States...(the corporate entity, NOT the United several states of America, a distinctly different entity).

h) **American employer**

For purposes of this chapters the term "American employer" means an **"employer"** which is

(1) the **United States** or any instrumentality thereof

(2) an "individual" who is a "resident" of the **United States**, a partnership, if two-thirds or more of the partners are "residents" of the **United States**,

(4) a trust, if all of the trustees are residents of the **United States**, or a corporation organized under the laws of the **United States** or of any **State**.

IRC 7701

(30): **United States person**

The term "**United States person**" means:

(A) a **citizen or resident** of the **United States**, (the corporate entity, NOT a citizen of the United several states - which are sovereign "...a Sovereign is not a "person" [United Mine Workers vs. United States, 330 U.S. 258 (1947)]).

(B) a domestic partnership,

(C) a **domestic <u>corporation</u>**.

(D) any estate (other than a foreign estate, within the meaning of paragraph (31)), and

(E) any trust if

(I) a court within the United States is able to exercise primary supervision over the administration of the trust, and

(ii) one or more United States pennons have the authority to control all substantial decisions of the trust.),'

(10) **State**

The term "State" shall be construed to **include (See definition of "include" above)** the District of Columbia, where such construction is necessary to carry out provisions of this title.

"Income" taxation is a valid and Constitutional form of taxation **when applied Constitutionally and legally, without fraud and deception**. This jurisdiction is ONLY within the legally and constitutionally defined "borders" of the "United States," and subject to the other provisions of the Constitution for legal taxation.

There are a number of legal definitions used to allude to a possible tax being required by the IR Code on income taxes, discussed below, but are deceptive in application and intent.

Sec. 6012. - **"Persons"** required to make returns of income

(a) General rule

Returns with respect to income taxes under subtitle A shall be made by the following:

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

The definition of "person" at IRC 7701(a)(1) makes it very clear that this term embraces BOTH human beings AND other things which are NOT human beings.

Person: "An entity (such as a corporation-JTM) that is recognized by law as having the rights and duties of a human being." Black's Law Dictionary, 7th ed., def. (2):

Form 1040 is not for "individuals" in general (sovereigns) but for "U.S. individuals." Those are **defined to be federal citizens and resident aliens**. "U.S. individuals" are the living, breathing variants of "U.S. persons."

"U.S. person" is defined at IRC 7701(a)(30); as such, this definition further qualifies and LIMITS the scope of "person." Note that **some "U.S. persons" are also artificial, juristic entities - (corporations**.) So, some "U.S. persons" are human beings, and other "U.S. persons" are NOT human beings.

The "individual" kind of "U.S. person" ONLY embraces federal citizens and resident aliens, both of whom are human beings and neither of which are artificial, juristic entities.

TITLE 26 Subtitle F CHAPTER 79 7701

Definitions

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof-

(1) **Person**

The term "person" shall be construed to mean and include an **individual**, a trust, estate, partnership, association, company or **corporation**.

The above states clearly that ONLY people working for the government as a government or state official... or performing the function of a public office... are liable for "income" taxes. It also must be understood that once a law or statute is defined or explained ONCE in the IR Code, subsequent "elaboration" of the definitions does NOT have to continue the same definition and can, thereby, mislead in the "common" understanding of common terms used in the IR Code.

Who is actually subject to prosecution for willful failure to file income taxes?

26 USC 7203 [Willful Failure to File]:

Any **"person" "required**" under this title to pay any estimated tax or tax, or **required by this title or by regulations made under authority thereof to make a return**, keep any records, or supply any information, who **willfully fails** to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $25,000 ($100,000 in the case of a corporation), or imprisoned not more than 1 year, or both.

7203 is a part of Chapter 75 of the Internal Revenue Code (IRC). While most IRC chapters contain between 3 and 10 sections, Chapter 75 [entitled, "Crimes, Other Offenses, & Forfeiture"] has 59 sections! 7203 is the third section of the chapter - right up at the front. So where might we find the definition of "person" as used within the third section of the chapter? Where else - in the 58th section of the chapter - 55 sections after the offense statute!

26 USC 7343 [Definition of the term "Person"]:

The term 'person' as used in this chapter [chapter 75] "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.

Based on this definition, an ordinary American Citizen who is under no duty to perform any act on behalf of another, under the internal revenue laws of the United States, is not a "person" for the purposes of Willful Failure to File [7203].

Constitutional Issues:

"Waivers of Constitutional rights not only must be voluntary, they must be knowingly intelligent acts done with sufficient awareness of the relevant circumstances and consequence." Brady v. U.S. 397 U.S. 742 at 748.

The law is clear that anything repugnant to the constitution is NOT a law and cannot be forced upon any sovereign individual or can said individual be penalized for NOT obeying such a law. It is up to each of us to know what the law says and requires:

"Whatever the form in which the government functions, anyone entering into an arrangement with the government takes the risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority, **even though the agent himself may be unaware of limitations upon his authority**." The United States Supreme Court, Federal Crop Ins. Corp, v. Merrill, 332 US 380-388 {1947)

"Persons dealing with the government are charged with knowing government statutes and regulations, and they assume the risk that government agents may exceed their authority and provide misinformation." Ninth Circuit Court of Appeals, Lavin v Marsh, 644 f.2D 1378, (1981).

"All persons in the United States are chargeable with knowledge of the Statutes-at-Large... It is well established that anyone who deals with the government assumes the risk that the agent acting in the government's behalf has exceeded the bounds of his authority." Bollow v. Federal Reserve Bank of San Francisco, 650 F.2d 1093, 9th Cir., (1981)

Let's now go to the Constitution of the United States of America and Case Law to see what it tells us about law:

"UNCONSTITUTIONAL." That which is contrary to the constitution.

"When an act of the legislature is repugnant or contrary to the constitution, it is, ipso facto, void." 2 Pet. R. 522; 12 Wheat. 270; 3 Dall. 286; 4 Dall. 18.

"[p]owers not granted (to any government) are prohibited." United States v. Butler, 297 U.S 1, 68 (1936).

"INSOFAR AS A STATUTE RUNS COUNTER TO THE FUNDAMENTAL LAW OF THE LAND, IT IS SUPERSEDED THEREBY." (16 Am Jur 2d 177, Late Am Jur 2d. 256).

"The courts have the power, and it is their duty, when an act is unconstitutional, to declare it to be so;" 9 Pet. 85. Vide 6 Cranch, 128; 1 Binn. 419; 5

Binn. 355; 2 Penns 184; 3 S. & R. 169; 7 Pick. 466; 13 Pick. 60; 2 Yeates, 493; 1 Virg.

Cas. 20; 1 Blackf. 206 6 Rand. 245 1 Murph. 58; Harper, 385 1 Breese, 209 Pr. Dee. 64, 89; 1 Rep.

Cons. Ct. 267 1 Car. Law Repos. 246 4 Munr. 43; 5 Hayw. 271; 1 Cowen, 550; 1 South. 192; 2 South. 466; 7 N H. Rep. 65, 66; 1 Chip, 237, 257; 10 Conn. 522; 7 Gill & John. 7; 2 Litt. 90; 3 Desaus. 476. Bouvier's Dictionary

"It may be said that the Constitution executes itself. This expression may be allowed; but with as much propriety, these may be said to be laws which the People have enacted themselves, and no laws of Congress can either take from, add to, or confirm them. They are Rights, privileges, or immunities which are granted by the People, and are beyond the power of Congress or State Legislature... It may be laid down as a universal rule, admitting to no exceptions, that when the Constitution has established a disability or immunity, a privilege or a Right, these are precisely as that instrument has fixed them, and can neither be augmented nor curtailed by any act or law of Congress or a State Legislature. We are more particular in stating this because it has sometimes been forgotten both by legislatures and theoretical expositors of the Constitution." Bovier's Law Dictionary, 1870 pp 622-625

"But whenever the judicial power is called into play, it is responsible directly to the fundamental (constitutional) law and no other authority can intervene to force or authorize the judicial body to disregard it." Yakus v. U.S. 321 U.S. 414 pg 468 (1944).

The US House of Representatives' Office of the Law Revision Counsel observes that of the 50 titles in the US Code, only 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 36, 37, 38, 39, 44, 46, and 49 have been enacted as **positive law**, leaving a 27 title majority both **un-enacted, and often lacking published rules** for significant sections. This means it is **NOT actual law, and title 26, the "income tax" title, is NOT positive law**! (Also see Attachment T).

TITLE 26

Subtitle F > CHAPTER 80 > Subchapter B > 7851 7851. Applicability of revenue laws

(6) Subtitle F (A) General rule

The provisions of subtitle F shall take effect on the day after the date of enactment of this title and shall be applicable with respect to any tax imposed by this title.

And

(C) Taxes imposed under the 1939 Code

After the date of **enactment** of this title, the following provisions of subtitle F shall apply to the taxes imposed by the Internal Revenue Code of 1939,

Since Title 26 was NEVER enacted as positive law, this clearly means that the IRS is acting illegally and without authority or jurisdiction, under the color of law.

Notice these Supreme Court rulings:

"The general rule is that an unconstitutional statute, though **having the form and name of law**, is in reality no law, **but is wholly void and ineffective for any purpose**, since its unconstitutionality dates from the time of its enactment... **In legal contemplation, it is as inoperative as if it had never been passed**... Since an unconstitutional law is void, the general principles follow that it **imposes no duties, confers no right, creates no office, bestows no power or authority on anyone, affords no protection and justifies no acts performed under it.**.. A void act cannot be legally consistent with a valid one. An unconstitutional law cannot operate to supersede any existing law. Indeed insofar as a statute runs counter to the **fundamental law of the land, (the Constitution** JTM) it is superseded thereby. **No one is bound to obey an unconstitutional law and no courts are bound to enforce it."** Bonnett v. Vallier, 116 N.W. 885, 136 Wis. 193 (1908); NORTON v. SHELBY COUNTY, 118 U.S. 425 (1886). See also Bonnett v Vallier, 136 Wis 193, 200; 116 NW 885, 887 (1908); State ex rel Ballard v Goodland, 159 Wis 393, 395; 150 NW 488, 489 (1915); State ex rel Kleist v Donald, 164 Wis 545, 552-553; 160 NW 1067, 1070 (1917); State ex rel Martin v Zimmerman, 233 Wis 16, 21; 288 NW 454, 457 (1939); State ex rel Commissioners of Public Lands v Anderson, 56 Wis 2d 666, 672; 203 NW2d 84, 87 (1973); and Butzlaffer v Van Der Geest & Sons, Inc, Wis, 115 Wis 2d 539; 340 NW2d 742, 744-745 (1983).

Congress shall have the power to lay and collect the taxes..." Article 1. 8. Cli. U.S. Constitution

In a system of law, such as we have in the United States of America, the lawful authority to perform an act is an essential element to the legitimacy of the law. The authority for imposing indirect taxes was given to Congress, a 'Legislative" branch of government by Article I, 8, Cl. 1, of our Constitution, as previously quoted. Because of the "separation of powers" within the Constitution, the powers granted to Congress could not be delegated to another Branch of government. The House of Representatives in the legislative branch of the government was granted the power to tax because they were a body of government elected "by the people." Therefore, if the people were unhappy with the tax laws, they could vote the members of the House who were responsible for such laws out of office after only two years. On September 14, 1787, a motion was proposed in Congress to "strike out" the power of Congress to impose and collect taxes and, instead, delegate that authority to the Secretary of the Treasury. The Secretary of the Treasury is not elected but appointed by the President in the Executive Branch of Government. This motion was denied because it was a direct violation of the Constitutional "Separation of Power" protections for the American Citizens. Therefore, the Secretary of the Treasury has never been delegated the Constitutional Authority to collect any type of tax from the Citizens of the 50 states.

SEC. 172 TEMPORARY INCOME TAX ON INDIVIDUALS

(a) The Internal Revenue Code [1939 Code] is amended by inserting at the end of Chapter 1, the following new subchapter:

SUBCHAPTER D - VICTORY TAX ON INDIVIDUALS

"There shall be levied, collected and paid for each taxable year, beginning after December 31, 1942, Victory Tax of 5 per centum upon the victory tax net income of every “individual” [government employee] subject to the tax imposed by section 211(a)].

FOLLOWING IS A REPRODUCTION OF THE TOP OF THE 1943 1040 FORM (emphasis added).

The U.S Constitution Article 1 8 Clause 12, states: Article I: The Congress shall have power to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States:

Article 1 Section 5, Clause 12: To support Armies but no appropriation of money to that use shall be a longer term than two years:

FORM 1040
Treasury Department
Internal Revenue Service
1943

UNITED STATES

INDIVIDUAL INCOME AND VICTORY TAX RETURN

476 of the Victory Tax Act stated: **"The taxes imposed by this subchapter shall not apply with respect to any taxable year after the date of** cession of hostilities in **the present War** [WW II]."

On May 29, 1944 (58 Statutes at Large, Chap 210, pg 234) the Victory Tax and Withholding tax were repealed! There is no longer a law making a Citizen of the 50 states liable for paying “income” taxes on their compensation! There is no memorialized law authorizing an employer to withhold, and turn over to the government, a significant portion of compensation earned by a Citizen of the 50 states.

Sec. 6 REPEAL OF VICTORY TAX.

(a) IN GENERAL-Subchapter D of Chapter 1 (relating to the Victory Tax) is repealed."

Americans are STILL paying this tax 50 years after its repeal!

"THE CLAIM AND EXERCISE OF A CONSTITUTIONAL RIGHT CANNOT BE CONVERTED INTO A CRIME." - Miller v U.S., 230 F 2d 486. 489.

"It could hardly be denied that a tax laid specifically on the exercise of those freedoms would be unconstitutional... A state [or federal government] may not impose a charge for the enjoyment of a right granted by the federal Constitution." - Murdock v Pennsylvania, 319 US 105, at 113; 480-487; 63 S Ct at 875; 87 L Ed at 1298 (1943).

"...all laws which are repugnant to the Constitution are null and void" Marbury v Madison, 5 US 1803 (2 Cranch) 137, 174, 170.

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; ...shall be the supreme Law of the Land; and the judges in every State shall be bound thereby, **any** Thing in the Constitution or Laws of any State to the Contrary not withstanding." *Article six of the U.S. Constitution.*

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." - *Miranda v. Arizona, 384 U.S. 436, 491.*

"There can be no sanction or penalty imposed upon one because of this exercise of Constitutional rights."- *Sherar v. Cullen, 481 F. 945.*

"The construction of a statute by those charged with its execution should be followed **unless** there are **compelling indications** that it is wrong, especially when Congress has refused to alter the administrative construction, and such deference is particularly appropriate where an agency's interpretation involves issues of considerable public controversy and Congress has not acted to correct any misperception of its statutory objectives." *CBS, INC. v. FCC, 453 US 367 (1981)*

There are countless "compelling" indications that the income tax system, as being implemented and enforced, is not only "wrong," but illegal, and thus far, no corrections to this have been forthcoming, despite years of repeated attempts to bring the law and facts to Congress and the IRS.

"A statute which either forbids or requires the doing of act in terms **so vague** that men of common intelligence must necessarily **guess at its meaning** and differ as to its application violates the first essential of due process of law." *United States Supreme Court, Connally v. General Const. Co,. 269 U.S. 385 (1926)*

The government's own official publication No. 21 "UNDERSTANDING TAXES", issued by the Internal Revenue Service (1982) states that "you must make the decision if you are required to make a return and liable for the tax."

I have done so and found that I am NOT liable according to the IR Code, and the Supreme Law of the land, the Constitution.

How can the IRS demand taxes and penalties when its own manual states it is up to us to determine if we owe taxes?

“A statute must be set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest." See *Arnett v. Kennedy, 416 U.S. 134, 159, 40 L. Ed. 2d 15, 94 S. Ct. 1633 (1974) (quoting United States Civil Serv. Commission v. National Association of Letter Carriers, 413 U.S. 548, 579, 37 L. Ed. 2d 796, 93 S. Ct. 2880 (1973)*.

Even the Government’s own personnel verify this, and yet Respondent claims to have authority to enforce what they don’t even likely understand themselves, and which evidence Petitioner presents herein to affirm this conclusion:

"Eight decades of amendments...to [the] code have produced a virtually impenetrable maze...The rules are unintelligible to most citizens...The rules are equally mysterious to many government employees who are charged with administering and enforcing the law." Shirley Peterson, former IRS Commissioner, April 14, 1993 at Southern Methodist University.

In *ROBERT C. MCKEE v. COMMISSIONER OF INTERNAL REVENUE No. 04 74846 IRS No. 4036 03*, the Tax Court held the Respondent was not liable for their calculation blunders on the basis that the Tax Court, in its discretion, claimed the regulations written by the Respondent and codes were so complex that the Respondent could not be held liable for its failure to understand them. On December 4, 2006, the 9th Circuit reversed the United States Tax Court. The Commissioner of the Internal Revenue asked the 9th Circuit not to make the decision public.

"The IRS at all times must use the enforcement authority in good faith pursuit of the authorized purposes of Code." *U.S. v. La Salle N.B., 437 U.S. 298 (1978)*

The income tax laws are so vague and contradictory, that it has become an impossibility for a law person to comprehend in order to abide by under penalty of perjury. One can not be bound to do what is impossible. Even tax experts can no longer positively ascertain a proper amount due.

Commissioner Roscoe Egger, Jr., IRS, admitted to an audience on November 30, 1984, in Baltimore, that he didn't understand the IR Code:

"Any tax practitioner, any tax administrator, any taxpayer who has worked with the Internal Revenue Code knows that it is probably the biggest "mish-mash" of statutes imaginable. Congress, various Administrations and all the special interest groups have tinkered with it over the years, and now a huge assortment of special interest and pet economic theories have been woven into the great 'hodgepodge' that is today's Internal Revenue Service." IR-840123, 11-3-.84.

And the common citizen of America is expected to know what it says? Are we to take what the IRS says it is when the IRS itself doesn't know what it says and can't help us to understand the law?

An article published in the Anchorage Daily News, Thursday March 22, 1993 , was brought to my attention, the heading of the article was, "IRS Demand Letters Are Wrong Nearly Half of the Time." The article states "Nearly half the 36 million letters the IRS mailed to taxpayers last year demanding additional tax and penalties were erroneous." The article went on to say, "Taxpayers confused by the law and afraid of challenging the Internal Revenue Service forked over $7 billion that they did not owe. Clearly, individuals are caving into questionable demands for more money that would propel them to the phone in a second if the bill came from some bank or credit-card company."

Former President Reagan, while he was president, attested to the fact that the Code is impossible to understand. The President said in a 1984 Associated Press (AP) release:

"The government has the nerve to tell the people of the country, 'you figure out how much you owe us - and we can't help you because our people don't understand it either and if you make a mistake, we'll make you pay a penalty for making the mistake.'"

The income tax laws contradistinctions exist throughout. The complete Internal Revenue Code, January 1993 Edition, contains 2115 pages. Thus, fundamental fairness requires that, "no man be held responsible for conduct which he could not reasonably understand to be proscribed." (Schull v Virginia, 359 US 3448.)

"The Constitution does not require impossible standards." United States v Petrillo, 332 US 1, 1591 L ed 1877, 67 S Ct 1538.

"The law does not compel impossibility." Boyden v Untied States. 13 Wass 17.

"No man can be obliged to perform an impossibility." Jones v United States, 96 US 24.

"Contracts against public policy or morality or contrary to statute as to consideration or thing to be done, are unenforceable." Burke v child 21 Wall 441. 22 L Ed 623.

In publication #334, I read where the IRS states, "We follow Supreme Court decisions."

In the Legal Reference Guide for Revenue Officers, at 332, Constitutional Limitations, it states in part... "However, it cannot be emphasized too strongly that constitutional guarantees and individual rights must not be violated."

I am attempting to apply law and the Constitution in the very best way I can given the convoluted, deceptive and misleading code as written. I have ONLY the constitution to tell me what the laws say about income taxation.

"The revenue laws are a code or system in regulation of tax **assessment** (See Attachment

D) and collection. They relate to taxpayers and **not to non-taxpayers**. The latter are without their scope. **No procedure is prescribed for non-taxpayers 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. Persons who are not taxpayers are not within the system and can obtain no benefit by following the procedures prescribed for taxpayers, such as the filing of claims for refunds." United States Court of Claims, Economy Plumbing and Heating v. United States, 470 Fwd 585, at 589 (1972); Long v. Rasmussen, 281 F. 236, at 238

"The legal right of an individual to decrease or ALTOGETHER AVOID his/her taxes by means which the law permits cannot be doubted" --Gregory v. Helvering, 293 U.S. 465

In the year 1992 *A.D.*, Paul Mitchell authored a popular classic book entitled "The Federal Zone: Cracking the Code of Internal Revenue." The following comes from this source:

TITLE 28-JUDICIARY AND JUDICIAL PROCEDURE

The term "USA" is mentioned only once in Title 28 at section 1746 and there it is *clearly* distinguished from the "United States" the proper legal term that is used for the federal government throughout Title 28:

The DOJ is *pretending* to represent the "USA" in all civil and criminal cases, intentionally to *avoid* exercising the judicial power of the United States. This includes IRS issues.

To make matters worse, the U.S. Supreme Court has also erred by ruling that the term "Party" as used in Article III means "Plaintiff" but not "Defendant". See Williams v. United States, 289 U.S. 553 (1933). In Bouvier's Law Dictionary, the term "Party" embraces both plaintiffs and defendants.

By substituting the "USA" as Plaintiffs (plural), the DOJ has perpetrated a fraud by switching to *legislative* courts where fundamental Rights are not guaranteed, but merely privileges granted (or denied) at the discretion of arbitrary judges, sitting on legislative tribunals. Mitchell describes these courts as operating in legislative mode as opposed to constitutional mode.

Glaring proof of this fraud can be seen at section 132 of Title 28. In this section, Congress attempted to broadcast into all 50 States a *territorial* tribunal -- the United States District Court ("USDC"). Congress did this under another pretense, namely, that those States could be treated as if they were all federal territories, and come under the “United States” jurisdiction.

More than a century ago, the U.S. Supreme Court invented a false doctrine by which the U.S. Constitution did not extend into U.S. Territories and Possessions. Mitchell later refuted this doctrine, after discovering two Acts of Congress that expressly extended the U.S. Constitution into the District of Columbia in 1871, and then into all federal Territories in 1873. See 16 Stat. 419, 426, Sec. 34; and 18 Stat. 325, 333, Sec. 1891, respectively.

Attachment FF - Jeffrey Thomas Maehr

The income tax law does not "plainly and clearly" lay any tax upon Petitioner, or his “income!”

The absence, or near absence, of a statutory provision specifying exactly who is liable for a tax imposed is not customary. 26 U.S.C. 2032A and 2056A specifically state who is liable for the Estate Tax; 26 U.S.C. 3102(b) specifically states who is liable for the FICA tax;: 26 U.S.C. 3202 specifically states who is liable for the Railroad Retirement Tax; 26 U.S.C. 3505 specifically imposes liability for Employment Taxes;

26 U.S.C. 4002 and 4003 specify not only who is primarily liable, but who is secondarily liable for the Luxury Passenger Automobile Excise Tax. See also: 26 U.S.C. 4051 and 4052 (Heavy Trucks and Trailers Excise Tax); 26 U.S.C. 4071 (Tire Manufacture Excise Tax); 26 U.S.C. 4219 (Manufacturers Excise Tax); 26 U.S.C. 4401 (Tax on Wagers); 26 U.S.C. 4411 (Wagering Occupational Tax); 26 U.S.C. 4483 (Vehicle Use Tax); 26 U.S.C. 4611 (Tax on Petroleum); 26 U.S.C. 4662 (Tax on Chemicals); 26 U.S.C. 4972 (Tax on Contributions to Qualified Employer Pension Plans); 26 U.S.C. 4980B (Excise Tax on Failure to Satisfy Continuation Coverage Requirements of Group Health Plans); 26 U.S.C. 4980D (Excise Tax on Failure to Meet Certain Group Health Plan Requirements); 26 U.S.C. 4980F (Excise Tax on Failure of Applicable Plans Reducing Benefit Accruals to Satisfy Notice Requirements); 26 U.S.C. 5005 (Gallonage Tax on Distilled Spirits); 26 U.S.C. 5043 (Gallonage Tax on Wines); 26 U.S.C. 5232 (Storage Tax on Imported Distilled Spirits); 26 U.S.C. 5364 (Tax on Wine Imported in Bulk); 26 U.S.C. 5418 (Tax on Beer Imported in Bulk); 26 U.S.C. 5703 (Excise Tax on Manufacture of Tobacco Products); and 26 U.S.C. 5751 (Tax on Purchase, Receipt, Possession or Sale of Tobacco Products), to name a few.

Considering the "standard in the drafting of taxation laws industry," particularly in view of the requirement of strict construction, the limitation of liability to those five instances cannot be assumed to have been an oversight. In this instance the only ones liable are those specifically named as liable, just as in any other tax provision.

Tax laws are clearly in derogation of personal rights and property interests and are, therefore, subject to strict construction, and any ambiguity must be resolved against imposition of the tax.

In *Billings v. U.S.*, 232 U.S. 261, 34 S.Ct. 421 (1914), the Supreme Court clearly acknowledged this basic and long-standing rule of statutory construction:

"Tax statutes . . . should be strictly construed, and, if any ambiguity be found to exist, it must be resolved in favor of the citizen." *Eidman* v. *Martinez*, 184 U.S. 578, 583; *United States* v. *Wigglesworth*, 2 Story, 369, 374; *Mutual Benefit Life Ins. Co*. v. *Herold*, 198 F. 199, 201, aff'd 201 F. 918; *Parkview Bldg. Assn*. v. *Herold*, 203 F. 876, 880; *Mutual Trust Co*. v. *Miller*, 177 N.Y. 51, 57." (Id at p. 265,)

Again, in *United States v. Merriam*, 263 U.S. 179*,* 44 S.Ct. 69 (1923), the Supreme Court clearly stated at pp. 187-88: "On behalf of the Government it is urged that taxation is a practical matter and concerns itself with the substance of the thing upon which the tax is imposed rather than with legal forms or expressions. But in statutes levying taxes the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the government and in favor of the taxpayer. *Gould* v. *Gould*, 245 U.S. 151, 153."

This rule of strict construction against the taxing authority was reiterated in *Tandy Leather Company v. United States,* 347 F.2d 693 (5th Cir. 1965), where Judge Hutcheson of our 5th Circuit eloquently and unequivocally proclaimed at p. 694-5:

". . . In ruling as he did, that the *taxpayer had the obligation to show that sales of the articles in suit were not subject to the excise taxes collected,* the district judge was misled by the erroneous contention of the tax collector into misstating the rule of proof in a tax case. This is: **that the burden in such a case is always on the collector to show, in justification of his levy and collection of an excise tax, that the statute**

plainly and clearly lays the tax; that, in short, the fundamental rule is that taxes to be collectible must be clearly laid. "The Government's claim and the judge's ruling come down in effect to the proposition that the state of construction of appellants' kits had reached such an advanced level that the tax levied on the finished products could be collected on their sale, though none had been clearly laid thereon by statute. Shades of Pym and John Hampden, of the Boston tea party, and of Patrick Henry and the Virginians! There is no warrant in law for such a holding. *Gould v. Gould*, 245 U.S. 151, at p. 153, 38 S.Ct. 53, 62 L.Ed. 211.

In 51 American Jurisprudence, "Taxation", Sec. 316, "Strict or Liberal Construction," supported by a great wealth of authority, it is said: 'Although it is sometimes broadly stated either that tax laws are to be strictly construed or, on the other hand, that such enactments are to be liberally construed, this apparent conflict of opinion can be reconciled if it is borne in mind that the correct rule appears to be that where the intent of meaning of tax statutes, or statutes levying taxes, is doubtful, they are, unless a contrary legislative intention appears, to be construed most strongly against the government and in favor of the taxpayer or citizen. Any doubts as to their meaning are to be resolved against the taxing authority and in favor of the taxpayer. "The judgment was wrong. It is, therefore, reversed and the cause is remanded with directions to enter judgment for plaintiffs and for further and not inconsistent proceedings." (emphasis is the Court's) See also: *Gould v. Gould*, 245 U.S. 151, 38 S.Ct. 53, 153 (1917); *Royal Caribbean Cruises v. United States*, 108 F.3d 290 (11th Cir. 1997); *B & M Company v. United States,* 452 F.2d 986 (5th Cir. 1971); *Kocurek v. United States*, 456 F. Supp. 740 (1978)*; Norton Manufacturing Corporation v. United States,* 288 F. Supp. 829 (1968)*; Grays Harbor Chair and Manufacturing Company v. United States*, 265 F. Supp. 254 (1967); *Russell v. United States*, 260 F. Supp. 493 (1966).

When the letter of the law is subject to more than one interpretation, it must be construed against the imposition of the tax, the rule of interpretation of taxes being that the burden in such a case is always on the collector to show, in justification of his levy and collection of an excise tax, that the statute plainly and clearly lays the tax; that, in short, the fundamental rule is that taxes to be collectible must be clearly laid." *Tandy Leather Company, supra,* at 694.

Tax laws are clearly in derogation of personal rights and property interests and are, therefore, subject to strict construction, and any ambiguity must be resolved against imposition of the tax. In Billings v. U.S., 232 U.S. 261, 34 S.Ct. 421 (1914), the Supreme Court clearly acknowledged this basic and long-standing rule of statutory construction:

"Tax statutes . . . should be strictly construed, and, if any ambiguity be found to exist, it must be resolved in favor of the citizen. *Eidman v. Martinez , 184 U.S. 578, 583; United States v. Wigglesworth , 2 Story, 369, 374; Mutual Benefit Life Ins. Co. v. Herold , 198 F. 199, 201, aff'd 201 F. 918; Parkview Bldg. Assn. v. Herold, 203 F. 876, 880; Mutual Trust Co . v. Miller, 177 N.Y. 51, 57*." (Id at p. 265).

Again, in *United States v. Merriam, 263 U.S. 179, 44 S.Ct. 69 (1923)*, the Supreme Court clearly stated at pp. 187-88:

"On behalf of the Government it is urged that taxation is a practical matter and concerns itself with the substance of the thing upon which the tax is imposed rather than with legal forms or expressions. But in statutes levying taxes the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the Government and in favor of the taxpayer. *Gould* v. *Gould*, 245 U.S. 151, 153."

Shades of Pym and John Hampden, of the Boston tea party, and of Patrick Henry and the Virginians! There is no warrant in law for such a holding.

Gould v. Gould, 245 U.S. 151, at p. 153, 38 S.Ct. 53, 62 L.Ed. 211. In 51 American Jurisprudence, "Taxation", Sec. 316, "Strict or Liberal Construction", supported by a great wealth of authority, it is said:

When the letter of the law is subject to more than one interpretation, it must be construed against the imposition of the tax, the rule of interpretation of taxes being: "that

the burden in such a case is always on the collector to show, in justification of his levy and collection of an excise tax, that the statute plainly and clearly lays the tax; that, in short, the fundamental rule is that taxes to be collectible must be clearly laid." Tandy Leather Company, supra, at 694.

Respondent cannot define words such as “individual” in any other way than what is in the IR Code, as discussed in Attachment F.

Examples of confusing code and obfuscation of facts and words:

The Income Tax Law, Subtitle A of Title 26, United States Code, imposes a tax on the taxable income of certain individuals in 1:

"26 U.S.C. 1. Tax Imposed.

"(a) Married individuals filing joint returns and surviving spouses

"There is hereby imposed on the taxable income of

"(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

"(2) every surviving spouse (as defined in section 2(a)), a tax determined in accordance with the following table:

"(b) Heads of households

"There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

"(c) Unmarried individuals (other than surviving spouses and heads of households)

"There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

"(d) Married individuals filing separate returns

"There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table: . . ." (emphasis added) but this section does not designate anyone as liable for the payment of the tax.

It should be noted at this point that **titles and headings**, such as "Married individuals and surviving spouses filing joint returns" and "Heads of households" **are not part of the law and have absolutely no legal effect. 26 U.S.C. 7806**. Therefore, the actual statute commences with "There is hereby imposed . . ." The imposition of the tax is on taxable income, only, not on any person or entity. In contrast, see 26 U.S.C. 884, discussed more fully infra, which does impose a tax on an entity.

Subtitle A does, however, designate partners as liable for the taxes on income of a partnership, but only in their "individual" capacities (26 U.S.C. 701) while certain partnerships are declared liable for excess recapture of credits (26 U.S.C. 704).

Foreign corporations are specifically designated as the party liable for payment of the "Branch profits tax" imposed by 26 U.S.C. 884 (which, incidentally, does impose the tax on "any foreign corporation.").

The only other party that is identified in the income tax law as liable for the payment of any income tax is revealed in 26 U.S.C. 1461:

Sec. 1461. Liability for withheld tax

"Every person ‘required’ (This is the lawful point, and who is ‘required,’ and HOW are they required by law?) to deduct and withhold any tax under this chapter is hereby made “liable” for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter."

"This chapter" is "Chapter 3 - Withholding Tax on Nonresident Aliens and Foreign Corporations." Thus the liable party in this instance is anyone withholding tax on nonresident aliens and foreign corporations.

There are no other references in Subtitle A (the income tax law) to anyone being liable for the tax imposed by 26 U.S.C. 1 other than those: partners (but only in their "individual" capacity); certain large partnerships in certain excess credit situations; foreign corporations; and those withholding taxes on nonresident aliens and foreign corporations.

There is only one other party that is identified as being liable for the income tax, but to find that party we have to journey outside the realm of the income tax law to "Subtitle C

- Employment Taxes", where we find:

Sec. 3403. Liability for tax

"The “employer” shall be liable for the payment of the tax required to be deducted and withheld under this chapter. ["Subtitle C - Employment Taxes; Chapter 24 - Collection of Income Tax at Source on Wages"], and shall not be liable to any person for the amount of any such payment."

Thus, the only persons being assigned any liability for the income tax imposed by 26 U.S.C. 1 are those five instances — partners, certain large partnerships, foreign corporations, withholders of taxes on nonresident aliens and foreign corporations and those employers required by Chapter 24 of Subtitle C to withhold taxes on employees.

Therefore, there is NO law or code provisions making Petitioner personally liable for the "income" tax.

Attachment G

"Fraud On The Court By An Officer Of The Court" And "Disqualification Of Judges, State and Federal"

Brief and Memorandum of Law

1. Who is an "officer of the court"?

A judge is an officer of the court, as well as are all attorneys. A state judge is a state judicial officer, paid by the State to act impartially and lawfully. A federal judge is a federal judicial officer, paid by the federal government to act impartially and lawfully. State and federal attorneys fall into the same general category and must meet the same requirements. *A judge is not the court.* People v. Zajic, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980).

2. What is "fraud on the court"?

Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". In Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated;

"Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or **where the judge has not performed his judicial function** --- thus where the impartial functions of the court have been directly corrupted."

"Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is **a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication**." Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

3. What effect does an act of "fraud upon the court" have upon the court proceeding?

"Fraud upon the court" makes void the orders and judgments of that court.
It is also clear and well-settled Illinois law that any attempt to commit "fraud upon the court" **vitiates the entire proceeding**. The People of the State of Illinois v. Fred E. Sterling, 357 Ill. 354; 192 N.E. 229 (1934)

("The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions."); Allen F. Moore v. Stanley F. Sievers, 336 Ill. 316; 168 N.E. 259 (1929)

("The maxim that fraud vitiates every transaction into which it enters ..."); In re Village of

Willowbrook, 37 Ill.App.2d 393 (1962)

("It is axiomatic that fraud vitiates everything."); Dunham v. Dunham, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896); Skelly Oil Co. v. Universal Oil Products Co., 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949); Thomas Stasel v. The American Home Security Corporation, 362 Ill. 350; 199 N.E. 798 (1935).

Under Illinois and Federal law, when any officer of the court has committed "fraud upon the court", the orders and judgment of that court are void, of no legal force or effect.

4. What causes the "Disqualification of Judges?"

Federal law requires the automatic disqualification of a judge under certain circumstances.

In 1994, the U.S. Supreme Court held that "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." [Emphasis added]. Liteky v. U.S., 114 S.Ct. 1147, 1162 (1994).

Courts have repeatedly held that **positive proof of the partiality of a judge is not a requirement, only the appearance of partiality**. Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 108 S.Ct. 2194 (1988) (what matters is not the reality of bias or prejudice but its appearance); United States v. Balistrieri, 779 F.2d 1191 (7th Cir. 1985) (Section 455(a) "**is directed against the appearance of partiality, whether or not the judge is actually biased**.") ("Section 455(a) of the Judicial Code, 28 U.S.C. §455(a), is not intended to protect litigants from actual bias in their judge but rather to promote public confidence in the impartiality of the judicial process.").

That Court also stated that Section 455(a) "**requires a judge to recuse himself in any proceeding in which her impartiality might reasonably be questioned**." Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989). In Pfizer Inc. v. Lord, 456 F.2d 532 (8th Cir. 1972), the Court stated that "It is important that the litigant not only actually receive justice, but that he believes that he has received justice."

The Supreme Court has ruled and has reaffirmed the principle that "justice must satisfy the appearance of justice", Levine v. United States, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954). A judge receiving a bribe from an interested party over which he is presiding, does not give the appearance of justice.

"Recusal under Section 455 is self-executing; **a party need not file affidavits in support of recusal and the judge is obligated to recuse herself sua sponte under the stated circumstances**." Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989).

Further**, the judge has a legal duty to disqualify himself even if there is no motion asking for his disqualification**. The Seventh Circuit Court of Appeals further stated that "**We think that this language [455(a)] imposes a duty on the judge to act sua sponte, even**

if no motion or affidavit is filed." Balistrieri, at 1202.

Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as required by law, then the judge has given another example of his "appearance of partiality" which, possibly, further disqualifies the judge. Should another judge not accept the disqualification of the judge, then the second judge has evidenced an "appearance of partiality" and has possibly disqualified himself/herself. **None of the orders issued by any judge who has been disqualified by law would appear to be valid. It would appear that they are void as a matter of law, and are of no legal force or effect**.

Should a judge not disqualify himself, then the judge is in violation of the Due Process Clause of the U.S. Constitution. United States v. Sciuto, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.").

Should a judge issue any order after he has been disqualified by law, and if the party has been denied of any of his / her property, then the judge may have been engaged in the Federal Crime of "interference with interstate commerce" (RICO). **The judge has acted in the judge's personal capacity and not in the judge's judicial capacity**. It has been said that this judge, acting in this manner, has no more lawful authority than someone's next-door neighbor (provided that he is not a judge). However some judges may not follow the law.

If you were a non-represented litigant, and should the court not follow the law as to non-represented litigants, then the judge has expressed an "appearance of partiality" and, under the law, it would seem that he/she has disqualified him/herself.

However, since not all judges keep up to date in the law, and since not all judges follow the law, it is possible that a judge may not know the ruling of the U.S. Supreme Court and the other courts on this subject. Notice that it states "disqualification is required" and that a judge "must be disqualified" under certain circumstances.

The Supreme Court has also held that **if a judge wars against the Constitution, or if he acts without jurisdiction, he has engaged in treason to the Constitution. If a judge acts after he has been automatically disqualified by law, then he is acting without jurisdiction, and that suggest that he is then engaging in criminal acts of treason, and may be engaged in extortion and the interference with interstate commerce**.

Courts have repeatedly ruled that judges have no immunity for their criminal acts. Since both treason and the interference with interstate commerce **(RICO)** are criminal acts, no judge has immunity to engage in such acts.

Attachment H -Presumption

Respondent uses presumptions upon which to base Summons and draws conclusions based on these presumptions. Without proof, presumptions hold no weight in law. "Presumption," in fact, is the OPPOSITE of "due process," as the definition of "due process" admits in Black's Law Dictionary...

Due process of law. "Law in its regular course of administration through courts of justice. Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. A course of legal proceedings according to those roles and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution — that is, by the law of the creation — to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance. Pennoyer v. Neff 96 US. 733, 24 L.Ed. 565. Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard by testimony or otherwise, and to have the right of controverting, by proof every material fact which bears on the question of right in the matter involved. **If any question of fact or liability be conclusively be presumed against him, this is not due process of law and in fact is a VIOLATION of due process.**" [Black's Law Dictionary, Sixth Edition, p. 500;].

"The power to create [false] presumptions is not a means of escape from constitutional restrictions" Heiner v. Donnan 285, US 312 (1932) and New York Times v. Sullivan 376 US 254 (1964).

"This court has never treated a presumption as any form of evidence. See, e.g.,A.C. Aukerman Co. v. R.L. Chaides Const. Co., 960 F.2d 1020, 1037 (Fed. Cir. 1992) "[A] presumption is not evidence."); see also.: Del Vecchio v. Bowers, 296 U.S. 280, 286, 56 S.Ct. 190, 193, 80 L.Ed. 229 (1935) ("[A presumption] cannot acquire the attribute of evidence..."); New York Life Ins. Co. v. Gamer, 303 U.S. 161, 171, 58 S.Ct. 500, 503, 82 L.Ed. 726 (1938) ("[A] presumption is

not evidence and may not be given weight as evidence.“).

“Conclusive presumptions affecting protected interests: A conclusive presumption may be defeated where its application would impair a party’s constitutionally-protected liberty or property interests. In such cases, conclusive presumptions have been held to violate a party’s due process and equal protection rights. [Viandis v. Kline (1973) 412 U.S.441, 449, 93 S.Ct 2230, 2235; Cleveland Bed, of Ed. v. LaFleur (1974) 414 U.S. 632, 639-640, 94 S.Ct. 1208, 1215.

"But where the conduct or fact, the existence of which is made the basis of the statutory presumption, itself falls within the scope of a provision of the Federal Constitution, a further question arises. It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create Presumptions is not a means of escape from constitutional restrictions. And the state may not in this way interfere with matters withdrawn from its authority by the Federal Constitution, or subject an accused to conviction for conduct which it is powerless to proscribe.” [Bailey v. State ofAlabama, 219 U.S. 219 (1911)].

Attachment I - Jeffrey Thomas Maehr

IRS/U.S. GOVERNMENT TERRITORIAL JURISDICTION

In the United States, there are two separate and distinct jurisdictions, such being the jurisdiction of the States within their own territorial boundaries and the other being federal jurisdiction. Broadly speaking, state jurisdiction encompasses the legislative power to regulate, control and govern real and personal property, individuals and enterprises within the territorial boundaries of any given State. In contrast, federal jurisdiction is extremely limited, with the same being exercised only in areas external to state legislative power and territory. Notwithstanding the clarity of this simple principle, the line of demarcation between these two jurisdictions and the extent and reach of each has become somewhat blurred, due to popular misconceptions and the efforts expended by the federal government to conceal one of its major weaknesses. Only by resorting to history and case law can this obfuscation be clarified and the two distinct jurisdictions be readily seen.

The original thirteen colonies of America were each separately established by charters from the English Crown. Outside of the common bond of each being a dependency and colony of the mother country, England, the colonies were not otherwise united. Each had its own governor, legislative assembly and courts, and each was governed separately and independently by the English Parliament.

The political connections of the separate colonies to the English Crown and Parliament descended to an unhappy state of affairs as the direct result of Parliamentary acts adopted in the late 1760's and early 1770's. Due to the real and perceived dangers caused by these various acts, the First Continental Congress was convened by representatives of the several colonies in October, 1774, the purpose of which was to submit a petition of grievances to the British Parliament and Crown. By the Declaration and Resolves of the First Continental Congress, dated October 14, 1774, the colonial representatives labeled these Parliamentary acts of which they complained as "impolitic, unjust, and cruel, as well as unconstitutional, and most dangerous and destructive of American rights," and the purpose of which were designs, schemes and plans "which demonstrate a system formed to enslave America." Revolution was assuredly in the formative stages absent conciliation between the mother country and colonies.

Between October, 1775, and the middle of 1776, each of the colonies separately

severed their ties and relations with England, and several adopted constitutions for the newly formed States. By July, 1776, the exercise of British authority in any and all colonies was not recognized in any degree. The capstone of this actual separation of the colonies from England was the more formal Declaration of Independence.

The legal effect of the Declaration of Independence was to make each new State a separate and independent sovereign over which there was no other government of superior power or jurisdiction. This was clearly shown in M'Ilvaine v. Coxe's Lessee, 8 U.S. (4 Cranch) 209, 212 (1808), where it was held:

"This opinion is predicated upon a principle which is believed to be undeniable, that the several states which composed this Union, so far at least as regarded their municipal regulations, became entitled, from the time when they declared themselves independent, to all the rights and powers of sovereign states, and that they did not derive them from concessions made by the British king. The treaty of peace contains a recognition of their independence, not a grant of it. From hence it results, that the laws of the several state governments were the laws of sovereign states, and as such were obligatory upon the people of such state, from the time they were enacted." And a further expression of similar import is found in Harcourt v. Gaillard, 25 U.S. (12 Wheat.) 523, 526, 527 (1827), where the Court stated:

"There was no territory within the United States that was claimed in any other right than that of some one of the confederated states; therefore, there could be no acquisition of territory made by the United States distinct from, or independent of some one of the states. "Each declared itself sovereign and independent, according to the limits of its territory. "[T]he soil and sovereignty within their acknowledged limits were as much theirs at the declaration of independence as at this hour." Thus, unequivocally, in July, 1776, the new States possessed all sovereignty, power, and jurisdiction over all the soil and persons in their respective territorial limits.

This condition of supreme sovereignty of each State over all property and persons within the borders thereof continued notwithstanding the adoption of the Articles of Confederation. In Article II of that document, it was expressly stated:

"Article II. Each state retains its sovereignty, freedom, and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled." As the history of the confederation government demonstrated, each State was indeed sovereign and independent to the

degree that it made the central government created by the confederation fairly ineffectual. These defects of the confederation government strained the relations between and among the States and the remedy became the calling of a constitutional convention.

The representatives which assembled in Philadelphia in May, 1787, to attend the Constitutional Convention met for the primary purpose of improving the commercial relations among the States, although the product of the Convention produced more than this. But, no intention was demonstrated for the States to surrender in any degree the jurisdiction so possessed by the States at that time, and indeed the Constitution as finally drafted continued the same territorial jurisdiction of the States as existed under the Articles of Confederation. The essence of this retention of state jurisdiction was embodied in Art. I, Sec. 8, Cl. 17 of the U.S. Constitution, which read as follows:

"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."

The reason for the inclusion of this clause in the Constitution was and is obvious. Under the Articles of Confederation, the States retained full and complete jurisdiction over lands and persons within their borders. The Congress under the Articles was merely a body which represented and acted as agents of the separate States for external affairs, and had no jurisdiction within the States. This defect in the Articles made the Confederation Congress totally dependent upon any given State for protection, and this dependency did in fact cause embarrassment for that Congress. During the Revolutionary War, while the Congress met in Philadelphia, a body of mutineers from the Continental Army surrounded the Congress and chastised and insulted the members thereof. The governments of both Philadelphia and Pennsylvania proved themselves powerless to remedy the situation, and the Congress was forced to flee first to Princeton, New Jersey, and finally to Annapolis, Maryland. Thus, this clause was inserted into the Constitution to give jurisdiction to Congress over its capital, and such other places as Congress might purchase for forts, magazines, arsenals, and other needful buildings wherein the State ceded jurisdiction of such lands to the federal government. Other than in these areas, this clause of the Constitution did not operate to cede further jurisdiction to the federal government, and jurisdiction over unceded areas

remained within the States.

While there had been no real provisions in the Articles which permitted the Confederation Congress to acquire property and possess exclusive jurisdiction over such property, the above clause filled an essential need by permitting the federal government to acquire land for the seat of government and other purposes from certain of the States. Such possessions were deemed essential to enable the United States to perform the powers conveyed by the Constitution, and a cession of lands by any particular State would grant exclusive jurisdiction of such lands to Congress. Perhaps the most cogent reasons and explanations for this clause in the Constitution were set forth in Essay No. 43 of The Federalist:

"The indispensable necessity of complete authority at the seat of government carries its own evidence with it. It is a power exercised by every legislature of the Union, I might say of the world, by virtue of its general supremacy. Without it not only the public authority might be insulted and its proceedings interrupted with impunity, but a dependence of the members of the general government on the State comprehending the seat of the government for protection in the exercise of their duty might bring on the national councils an imputation of awe or influence equally dishonorable to the government and dissatisfactory to the other members of the Confederacy. This consideration has the more weight as the gradual accumulation of public improvements at the stationary residence of the government would be both too great a public pledge to be left in the hands of a single State, and would create so many obstacles to a removal of the government, as still further to abridge its necessary independence. The extent of this federal district is sufficiently circumscribed to satisfy every jealousy of an opposite nature. And as it is to be appropriated to this use with the consent of the State ceding it; as the State will no doubt provide in the compact for the rights and the consent of the citizens inhabiting it; as the inhabitants will find sufficient inducements of interest to become willing parties to the cession; as they will have had their voice in the election of the government which is to exercise authority over them; as a municipal legislature for local purposes, derived from their own suffrages, will of course be allowed them; and as the authority of the legislature of the State, and of the inhabitants of the ceded part of it, to concur in the cession will be derived from the whole people of the State in their adoption of the Constitution, every imaginable objection seems to be obviated.

"The necessity of a like authority over forts, magazines, etc., established by the general government, is not less evident. The public money expended on such places, and the public property deposited in them, require that they should be exempt from the authority

of the particular State. Nor would it be proper for the places on which the security of the entire Union may depend to be in any degree dependent on a particular member of it. All objections and scruples are here also obviated by requiring the concurrence of the States concerned in every such establishment." Since the time of the ratification and implementation of the present U.S. Constitution, the U.S. Supreme Court and all lower courts have had many opportunities to construe and apply the above provision of the Constitution. And the essence of all these decisions is that the States of this nation have exclusive jurisdiction of property and persons located within their borders, excluding such lands and persons residing thereon which have been ceded to the United States.

Perhaps one of the earliest decisions on this point was United States v. Bevans, 16 U.S. (3 Wheat.) 336 (1818), which involved a federal prosecution for a murder committed on board the Warship, Independence, anchored in the harbor of Boston, Massachusetts. The defense complained that only the state had jurisdiction to prosecute and argued that the federal Circuit Courts had no jurisdiction of this crime supposedly committed within the federal government's admiralty jurisdiction. In argument before the Supreme Court, counsel for the United States admitted as follows:

"The exclusive jurisdiction which the United States have in forts and dock-yards ceded to them, is derived from the express assent of the states by whom the cessions are made. It could be derived in no other manner; because without it, the authority of the state would be supreme and exclusive therein," 3 Wheat., at 350, 351. In holding that the State of Massachusetts had jurisdiction over the crime, the Court held:

"What, then, is the extent of jurisdiction which a state possesses? "We answer, without hesitation, the jurisdiction of a state is co-extensive with its territory; co-extensive with its legislative power," 3 Wheat., at 386, 387.

"The article which describes the judicial power of the United States is not intended for the cession of territory or of general jurisdiction... Congress has power to exercise exclusive jurisdiction over this district, and 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."

“It is observable that the power of exclusive legislation (which is jurisdiction) is united with cession of territory, which is to be the free act of the states. It is difficult to compare the two sections together, without feeling a conviction, not to be strengthened by any commentary on them, that, in describing the judicial power, the framers of our

constitution had not in view any cession of territory; or, which is essentially the same, of general jurisdiction," 3 Wheat., at 388. Thus in Bevans, the Court established a principle that federal jurisdiction extends only over the areas wherein it possesses the power of exclusive legislation, and this is a principle incorporated into all subsequent decisions regarding the extent of federal jurisdiction. To hold otherwise would destroy the purpose, intent and meaning of the entire U.S. Constitution.

The decision in Bevans was closely followed by decisions made in two state courts and one federal court within the next two years. In Commonwealth v. Young, Brightly, N.P. 302, 309 (Pa. 1818), the Supreme Court of Pennsylvania was presented with the issue of whether lands owned by the United States for which Pennsylvania had never ceded jurisdiction had to be sold pursuant to state law. In deciding that the state law of Pennsylvania exclusively controlled this sale of federal land, the Court held:

"The legislation and authority of congress is confined to cessions by particular states for the seat of government, and purchases made by consent of the legislature of the state, for the purpose of erecting forts. The legislative power and exclusive jurisdiction remained in the several states, of all territory within their limits, not ceded to, or purchased by, congress, with the assent of the state legislature, to prevent the collision of legislation and authority between the United States and the several states."

A year later, the Supreme Court of New York was presented with the issue of whether the State of New York had jurisdiction over a murder committed at Fort Niagara, a federal fort. In People v. Godfrey, 17 Johns. 225, 233 (N.Y. 1819), that court held that the fort was subject to the jurisdiction of the State since the lands therefore had not been ceded to the United States. The rationale of its opinion stated:

"To oust this state of its jurisdiction to support and maintain its laws, and to punish crimes, it must be shown that an offense committed within the acknowledged limits of the state, is clearly and exclusively cognizable by the laws and courts of the United States. In the case already cited, Chief Justice Marshall observed, that to bring the offense within the jurisdiction of the courts of the union, it must have been committed out of the jurisdiction of any state; it is not (he says,) the offence committed, but the place in which it is committed, which must be out of the jurisdiction of the state." The case relied upon by this court was U.S. v. Bevans, supra.

At about the same time that the New York Supreme Court rendered its opinion in Godfrey, a similar fact situation was before a federal court, the only difference being that

the murder committed in the case occurred on land which had been ceded to the United States. In United States v. Cornell, 25 Fed.Cas. 646, 648 No. 14,867 (C.C.D.R.I. 1819), the court held that the case fell within federal jurisdiction, describing such jurisdiction as follows:

"But although the United States may well purchase and hold lands for public purposes, within the territorial limits of a state, this does not of itself oust the jurisdiction or sovereignty of such State over the lands so purchased. It remains until the State has relinquished its authority over the land either expressly or by necessary implication. "When therefore a purchase of land for any of these purposes is made by the national government, and the State Legislature has given its consent to the purchase, the land so purchased by the very terms of the constitution ipso facto falls within the exclusive legislation of Congress, and the State jurisdiction is completely ousted."

Almost 18 years later, the U.S. Supreme Court was again presented with a case involving the distinction between State and federal jurisdiction. In New Orleans v. United States, 35 U.S. (10 Pet.) 662, 737 (1836), the United States claimed title to property in New Orleans likewise claimed by the city. After holding that title to the subject lands was owned by the city, the Court addressed the question of federal jurisdiction and stated:

"Special provision is made in the Constitution for the cession of jurisdiction from the States over places where the federal government shall establish forts or other military works. And it is only in these places, or in the territories of the United States, where it can exercise a general jurisdiction."

In New York v. Miln, 36 U.S. (11 Pet.) 102 (1837), the question before the Court involved the attempt by the City of New York to assess penalties against the master of a ship for his failure to make a report as to the persons his ship brought to New York. As against the master's contention that the act was unconstitutional and that New York had no jurisdiction in the matter, the Court held:

"If we look at the place of its operation, we find it to be within the territory, and, therefore, within the jurisdiction of New York. If we look at the person on whom it operates, he is found within the same territory and jurisdiction," 36 U.S., at 133. "They are these: that a State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits, as any foreign nation, where that jurisdiction is not surrendered or restrained by the Constitution of the United States. That, by virtue of this, it is not only the right, but the bounden and solemn duty of a

State, to advance the safety, happiness and prosperity of its people, and to provide for its general welfare, by any and every act of legislation which it may deem to be conducive to these ends; where the power over the particular subject, or the manner of its exercise is not surrendered or restrained, in the manner just stated. That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not thus surrendered or restrained; and that, consequently, in relation to these, the authority of a State is complete, unqualified and exclusive," 36 U.S., at 139.

Some eight years later, in Pollard v. Hagan, 44 U.S. (3 How.) 212 (1845), the question of federal jurisdiction was once again before the Court. This case involved a contest of the title to real property, with one of the parties claiming a right to the disputed property via a U.S. patent; the lands in question were situated in Mobile, Alabama, adjacent to Mobile Bay. In discussing the subject of federal jurisdiction, the Court held:

"We think a proper examination of this subject will show that the United States never held any municipal sovereignty, jurisdiction, or right of soil in and to the territory, of which Alabama or any of the new States were formed," 44 U.S., at 221. "[B]ecause, the United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain, within the limits of a State or elsewhere, except in the cases in which it is expressly granted," 44 U.S., at 223. "Alabama is therefore entitled to the sovereignty and jurisdiction over all the territory within her limits, subject to the common law," 44 U.S., at 228, 229.

The single most important case regarding the subject of federal jurisdiction appears to be Fort Leavenworth R. Co. v. Lowe, 114 U.S. 525, 531, 5 S.Ct. 995 (1885), which sets forth the law on this point fully. There, the railroad company property which passed through the Fort Leavenworth federal enclave was being subjected to taxation by Kansas, and the company claimed an exemption from state taxation. In holding that the railroad company's property could be taxed, the Court carefully explained federal jurisdiction within the States:

"The consent of the states to the purchase of lands within them for the special purposes named, is, however, essential, under the constitution, to the transfer to the general government, with the title, of political jurisdiction and dominion. Where lands are acquired without such consent, the possession of the United States, unless political jurisdiction be ceded to them in some other way, is simply that of an ordinary proprietor. The property in that case, unless used as a means to carry out the purposes of the

government, is subject to the legislative authority and control of the states equally with the property of private individuals."

In order to have Jurisdiction, any "federal territory," "federal enclave," "federal area," "federal district," "within this State," "In this State," "in the State" or within a federal "State" over which the [Federal] "United States" must have been (1) ceded jurisdiction. The "Constitution for the united States of America" article 1, section 8, clause 17, or (2) federal reservation of jurisdiction when the Republic of Colorado became a state of the Union, or (3) the Republic of Colorado ceded the land and jurisdiction to the Federal government under Article IV, section 3, clause 2. ["federal area" 4 U.S.C. 110(e), definition of "States" 4 U.S.C. 103 & 110(d)] [The Federal Reserve districts and the Internal Revenue Districts are "new states," which have been established within the jurisdiction of legal states of the Union. See Constitution for the united States of America Article 4, Section 3, Clause 1 "New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress."] [see Fort Leavenworth R. R. v. Lowe, 114 U. S. 525;]

Thus, the cases decided within the 19th century clearly disclosed the extent and scope of both State and federal jurisdiction. In essence, these cases, among many others, hold that the jurisdiction of any particular State is co-extensive with its borders or territory, and all persons and property located or found therein are subject to such jurisdiction; this jurisdiction is superior. Federal jurisdiction results only from a conveyance of state jurisdiction to the federal government for lands owned or otherwise possessed by the federal government, and thus federal jurisdiction is extremely limited in nature. And there is no federal jurisdiction if there be no grant or cession of jurisdiction by the State to the federal government. Therefore, federal territorial jurisdiction exists only in Washington, D.C., the federal enclaves within the States, and the territories and possessions of the United States.

The above principles of jurisdiction established in the last century continue their vitality today with only one minor exception. In the last century, the cessions of jurisdiction by States to the federal government were by legislative acts which typically ceded full jurisdiction to the federal government, thus placing into the hands of the federal government the troublesome problem of dealing with and governing scattered, localized federal enclaves which had been totally surrendered by the States. With the advent in this century of large federal works projects and national parks, the problems regarding

management of these areas by the federal government were magnified. During the last century, it was thought that if a State ceded jurisdiction to the federal government, the cession granted full and complete jurisdiction. But, with the ever increasing number of separate tracts of land falling within the jurisdiction of the federal government in this century, it was obviously determined by both federal and state public officers that the States should retain greater control over these ceded lands, and the courts have acknowledged the constitutionality of varying degrees of state jurisdiction and control over lands so ceded.

Perhaps one of the first cases to acknowledge the proposition that a State could retain a degree of jurisdiction over property ceded to the federal government was Surplus Trading Co. v. Cook, 281 U.S. 647, 50 S.Ct. 455 (1930). In this case, a state attempt to assess an ad valorem tax on Army blankets located within a federal army camp was found invalid and beyond the state's jurisdiction. But, in regards to the proposition that a State could make a qualified cession of jurisdiction to the federal government, the Court held:

"[T]he state undoubtedly may cede her jurisdiction to the United States and may make the cession either absolute or qualified as to her may appear desirable, provided the qualification is consistent with the purposes for which the reservation is maintained and is accepted by the United States. And, where such a cession is made and accepted, it will be determinative of the jurisdiction of both the United States and the state within the reservation," 281 U.S., at 651, 652.

Two cases decided in 1937 by the U.S. Supreme Court further clarify the constitutionality of a reservation of any degree of state jurisdiction over lands ceded to the jurisdiction of the United States. In James v. Dravo Contracting Company, 302 U.S. 134, 58 S.Ct. 208 (1937), the State of West Virginia sought to impose a tax upon the gross receipts of the company arising from a contract which it had made with the United States to build some dams on rivers. One of the issues involved in this case was the validity of the state tax imposed on the receipts derived by the company from work performed on lands to which the State had ceded "concurrent" jurisdiction to the United States. In the Court's opinion, it held that a State could reserve and qualify any cession of jurisdiction for lands owned by the United States; since the State had done so here, the Court upheld this part of the challenged tax notwithstanding a partial cession of jurisdiction to the U.S.

A similar result occurred in Silas Mason Co. v. Tax Commission of State of Washington,

302 U.S. 186, 58 S.Ct. 233 (1937). Here, the United States was undertaking the construction of several dams on the Columbia River in Washington, and had purchased the lands necessary for the project. Silas Mason obtained a contract to build a part of the Grand Coulee Dam, but filed suit challenging the Washington income tax when that State sought to impose such tax on the contract proceeds. Mason's argument that the federal government had exclusive jurisdiction over both the lands and such contract was not upheld by either the Supreme Court of Washington or the U.S. Supreme Court. The latter Court held that none of the lands owned by the U.S. were within its jurisdiction and thus Washington clearly had jurisdiction to impose the challenged tax; see also Wilson v. Cook, 327 U.S. 474, 66 S.Ct. 663 (1946).

Some few years later in 1943, the Supreme Court was again presented with similar taxation and jurisdiction issues; the facts in these two cases were identical with the exception that one clearly involved lands ceded to the jurisdiction of the United States. This single difference caused directly opposite results in both cases.

In Pacific Coast Dairy v. Department of Agriculture of California, 318 U.S. 285, 63 S.Ct. 628 (1943), the question involved the applicability of state law to a contract entered into and performed on a federal enclave to which jurisdiction had been ceded to the United States. During World War II, California passed a law setting a minimum price for the sale of milk, which law imposed penalties for sales made below the regulated price. Here, Pacific Coast Dairy consummated a contract on Moffett Field, a federal enclave within the exclusive jurisdiction of the United States, to sell milk to such federal facility at below the regulated price. When this occurred, California sought to impose a penalty for what it perceived as a violation of state law. But, the U.S. Supreme Court refused to permit the enforcement of the California law, holding that the contract was made and performed in a territory outside the jurisdiction of California and within the jurisdiction of the United States, a place where this law didn't apply. Thus, in this case, the existence of federal jurisdiction was the foundation for the ruling.

However, in Penn Dairies v. Milk Control Commission of Pennsylvania, 318 U.S. 261, 63 S.Ct. 617 (1943), an opposite result was reached on almost identical facts. Here, Pennsylvania likewise had a law which regulated the price of milk and penalized sales of milk below the regulated price. During World War II, the United States leased some land from Pennsylvania for the construction of a military camp; since the land was leased, Pennsylvania did not cede jurisdiction to the United States. When Penn Dairies sold milk to the military facility for a price below the regulated price, the Commission sought to impose the penalty. In this case, since there was no federal jurisdiction, the

Supreme Court found that the state law applied and permitted the imposition of the penalty. Thus, these two cases clearly show the different results which can occur with the presence or absence of federal jurisdiction.

A final point which must be made regarding federal jurisdiction involves the point as to when such jurisdiction ends or ceases. This point was considered in S.R.A. v. Minnesota, 327 U.S. 558, 66 S.Ct. 749 (1946), which involved the power of a State to tax the real property interest of a purchaser of land sold by the United States. Here, a federal post office building was sold to S.R.A. pursuant to a real estates sale contract, which provided that title would pass only after the purchase price had been paid. In refuting the argument of S.R.A. that the ad valorem tax on its equitable interest in the property was really an unlawful tax on U.S. property, the Court held:

"In the absence of some such provisions, a transfer of property held by the United States under state cessions pursuant to Article I, Section 8, Clause 17, of the Constitution would leave numerous isolated islands of federal jurisdiction, unless the unrestricted transfer of the property to private hands is thought without more to revest sovereignty in the states. As the purpose of Clause 17 was to give control over the sites of governmental operations to the United States, when such control was deemed essential for federal activities, it would seem that the sovereignty of the United States would end with the reason for its existence and the disposition of the property. We shall treat this case as though the Government's unrestricted transfer of property to non-federal hands is a relinquishment of the exclusive legislative power," 327 U.S., at 563, 564. Thus, it appears clearly that once any property within the exclusive jurisdiction of the United States is no longer utilized by that government for governmental purposes, and the title or any interest therein is conveyed to private interests, the jurisdiction of the federal government ceases and jurisdiction once again reverts to the State.

The above principles regarding the distinction between State and federal jurisdiction continue through today; see Paul v. United States, 371 U.S. 245, 83 S.Ct. 426 (1963), and United States v. State Tax Commission of Mississippi, 412 U.S. 363, 93 S.Ct. 2183 (1973). And what was definitely decided in the beginning days of this Republic regarding the extent, scope, and reach of each of these two distinct jurisdictions remains unchanged and forms the foundation and basis for the smooth workings of state governmental systems in conjunction with the federal government. Without such jurisdictional principles which form a clear boundary between the jurisdiction of the States and the United States, our federal governmental system would have surely met its demise long before now.

In summary, jurisdiction of the States is essentially the same as that possessed by the States which were leagued together under the Articles of Confederation. The confederated States possessed absolute, complete and full jurisdiction over property and persons located within their borders. It is hypocritical to assume or argue that these States, which had absolved and banished the centralized power and jurisdiction of the English Parliament and Crown over them by the Declaration of Independence, would shortly thereafter cede comparable power and jurisdiction to the Confederation Congress. They did not and they closely and jealously guarded their own rights, powers and jurisdiction. When the Articles were replaced by the Constitution, the intent and purpose of the States was to retain their same powers and jurisdiction, with a small concession of jurisdiction to the United States for lands found essential for the operation of that government. However, even this provision did not operate to instantly change any aspect of state jurisdiction, it only permitted its future operation wherein any State, by its own volition, should choose to cede jurisdiction to the United States.

By the adoption of the Constitution, the States jointly surrendered some 17 specific and well defined powers to the federal Congress, which related strictly to external affairs of the States. Any single power, or even several powers combined, do not operate in a fashion as to invade or divest a State of its jurisdiction. As against a single State, the remainder of the States under the Constitution have no right to jurisdiction within the single State absent its consent.

The only provision in the Constitution which permits jurisdiction to be vested in the United States is found in Art. I, Sec. 8, Cl. 17, which provides the mechanism for a voluntary cession of jurisdiction from any State to the United States. When the Constitution was adopted, the United States had jurisdiction over no lands within the States, possessing jurisdiction only in the lands encompassed in the Northwest Territories. Shortly thereafter, Maryland and Virginia ceded jurisdiction to the United States for Washington, D.C. As time progressed thereafter, the States at various times ceded jurisdiction to federal enclaves within the States. Today, the territorial jurisdiction of the United States is found only in such ceded areas, which encompass Washington, D.C., the federal enclaves within the States, and such territories and possessions which may be now owned by the United States.

The above conclusion is not the mere opinion of the author of this brief, but it is likewise that of the federal government itself. (See Attachment B, Lines 30-51). Thus, from an abundance of case law, buttressed by the lengthy and definitive government treatise on

this issue, the "jurisdiction of the United States" is carefully circumscribed and defined as a very precise portion of America.

FEDERAL CRIMINAL JURISDICTION

“It is a well established principle of law that all federal legislation applies only within the territorial jurisdiction of the United States unless a contrary intent appears.”
Foley Brothers. Inc. V. Filardo, 336 U.S. 281 (1948)

“The laws of Congress in respect to those matters [outside of Constitutionally delegated powers] do not extend into the territorial limits of the states. but have force ONLY in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government.” Caha V. US, 152 U.S. 211

The following comes from Jurisdiction Over Federal Areas Within the States , Part II pg 107 printed by the U. S. Government Printing Office:

“The federal government has power to take criminal action against the Citizens of the 50 states ONLY for the following crimes against the united States of America.

(1) Espionage ● (2) Sabotage ● (3) Interference with the mails ● (4) Destruction of federal property ● (5) Frauds on the federal government.”

“Criminal jurisdiction of the federal courts is restricted to federal reservations over which the Federal Government has exclusive jurisdiction, as well as to forts, magazines, arsenal, dockyards or other needful buildings.” United States Code, Title 18 §45 1, Par. 3d.

TITLE 28 § 1746 US Code: Unsworn Declarations Under Penalty of Perjury

1. If executed **without** the United States: “I declare under penalty of perjury under the united States of America that the foregoing is true and correct. Executed on (date). (Signature)

(“Without the United States” means the 50 sovereign states which are “outside” the territorial jurisdiction of the U.S. Government).

(2) If executed **within** the United States, its territories, possessions, or commonwealths:

"I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date)." (Signature).

The above clearly shows that territorial jurisdiction of the federal government does NOT include the 50 sovereign states except for specific areas such as federal banks, forts, magazines, arsenal, dockyards or other needful buildings. This jurisdiction does NOT include sovereign state citizens in ANY other capacity beyond the 5 areas stated in the government's own documents.

Public Law No. 8177 - 76th Congress, entitled the "Buck Act," found in Title 4 USC, Chapter 4, §101 -**113, The** States, redefines the words "the States" as "Words of Art" which include only the "territorial States" (DC, Guam, Puerto Rico, etc.) and the "federal enclaves" and "instrumentalities" **within** the 50 states. The "inhabitants" of **those** federal areas are defined in the Buck Act as "subject to the jurisdiction" of the United States. "The States" are the federal enclaves and reservations that exist inside the 50 states of the Union!

"In this State" or "in the State" means within the **exterior [outside] limits of the** [Sovereign] state of California and includes [only] **all territory within these** limits **owned by or ceded to the United States."** §6017 of the Revenue and Taxation Code.

"...the United States never held any municipal sovereignty, jurisdiction, or right of soil in Alabama or any of the new states which were formed...The United States has no Constitutional capacity to exercise municipal jurisdiction, sovereignty or eminent domain, within the limits of a state or elsewhere. except in the cases I which it is expressly granted...Alabama is therefore entitled to the sovereignty and jurisdiction over al territory within her limits, subject to the common law." Pollard v. Hagan, 44 U.S. 213, 221, 223

Title 18 USC at §7 specifies that the "territorial jurisdiction" of the United States extends only OUTSID1 the boundaries of lands belonging to any of the 50 states.

"States are separate sovereigns with respect to the federal government.." Heath v. Ala. 474 U.S. 187

"There is a canon of legislative construction which teaches Congress that, unless a contrary intent appears legislation is meant to apply on1y within the territorial jurisdiction

of the United States." U.S. v. Spelar, 338 U.S. 217 at 222

"All legislation is prima facie territorial." American Banana Co. vs. U.S. Fruit, 213, U.S. 347 at 357-358

New Orleans v. United States. 35 U.S. (10 Pet.) 662 (1836), the supreme Court stated: "Special provision is made in the Constitution for the cession of jurisdiction from the states over places where the federal government shall establish forts or other military works. And it is only in these places. or **in** territories of **the** United States. where it can exercise a general jurisdiction." 10 Pet., at 737

"See also Caha v. United States, 152 U.S. 211, 215, 14 S.Ct. 513 (1894); American Banana Company v. United Fruit Company, 213 U.S. 347, 357, 29 S.Ct. 511 (1909); United States v. Bowman, 260 U.S. 94, 97, 98, 43 S.Ct. 39 (1922); Blackmer v. United States, 284 U.S. 421, 437, 52 S.Ct. 252 (1932); Foley Bros. v. Filardo, 336 U.S. 281, 285, 69 S.Ct. 575 (1949); United States v. Spelar, 338 U.S. 217, 222, 70 S.Ct. 10 (1949); and United States v. First National City Bank, 321 F.2d 14, 23 (2nd Cir. 1963). And this principle of law is expressed in a number of cases from the federal appellate courts; see McKeel v. Islamic Republic of Iran, 722 F.2d 582, 589 (9th Cir. 1983) (holding the Foreign Sovereign Immunities Act as territorial); Meredith v. United States, 330 F.2d 9, 11 (9th Cir. 1964) (holding the Federal Torts Claims Act as territorial); United States v. Cotroni, 527 F.2d 708, 711 (2nd Cir. 1975) (holding federal wiretap laws as territorial); Stowe v. Devoy, 588 F.2d 336, 341 (2nd Cir. 1978); Cleary v. United States Lines, Inc., 728 F.2d 607, 609 (3rd Cir. 1984) (holding federal age discrimination laws as territorial); Thomas v. Brown & Root, Inc., 745 F.2d 279, 281 (4th Cir. 1984) (holding same as Cleary, supra); United States v. Mitchell, 553 F.2d 996, 1002 (5th Cir. 1977) (holding marine mammals protection act as territorial); Pfeiffer v. William Wrigley, Jr., Co., 755 F.2d 554, 557 (7th Cir. 1985) (holding age discrimination laws as territorial); Airline Stewards & Stewardesses Assn. v. Northwest Airlines, Inc., 267 F.2d 170, 175 (8th Cir. 1959) (holding Railway Labor Act as territorial); Zahourek v. Arthur Young and Co., 750 F.2d 827, 829 (10th Cir. 1984) (holding age discrimination laws as territorial); Commodities Futures Trading Comm. v. Nahas, 738 F.2d 487, 493 (D.C.Cir. 1984) (holding commission's subpoena power under federal law as territorial); Reyes v. Secretary of H.E.W., 476 F.2d 910, 915 (D.C.Cir. 1973) (holding administration of Social Security Act as territorial); and Schoenbaum v. Firstbrook, 268 F.Supp. 385, 392 (S.D.N.Y. 1967) (holding securities act as territorial).

This was perhaps stated best in Caha v. United States, 152 U.S., at 215, where the Supreme Court stated as follows:

"The laws of Congress in respect to those matters do not extend into the territorial limits of the states, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government." But, because of statutory language, certain federal drug laws operate extra-territorially; see United States v. King, 552 F.2d 833, 851 (9th Cir. 1976).

The United States has territorial jurisdiction only in Washington, D.C., the federal enclaves within the States, and in the territories and insular possessions of the United States. However, it has no territorial jurisdiction over non-federally owned areas inside the territorial jurisdiction of the States within the American Union. And this proposition of law is supported by literally hundreds of cases.

As a general rule, the power of the United States to criminally prosecute is, for the most part, confined to offenses committed within "its jurisdiction". This is born out simply by examination of Title 18, U.S.C. Section 5 thereof defines the term "United States" in clear jurisdictional terms. Section 7 contains the fullest statutory definition of the "jurisdiction of the United States." The U.S. District Courts have jurisdiction of offenses occurring within the "United States" pursuant to Title 18, U.S.C., Sec. 3231.

Examples of this proposition are numerous. In Pothier v. Rodman, 291 F. 311 (1st Cir. 1923), the question involved whether a murder committed at Camp Lewis Military Reservation in the State of Washington was a federal crime. Here, the murder was committed more than a year before the U.S. acquired a deed for the property in question. Pothier was arrested and incarcerated in Rhode Island and filed a habeas corpus petition seeking his release on the grounds that the federal courts had no jurisdiction over an offense not committed in U.S. jurisdiction. The First Circuit agreed that there was no federal jurisdiction and ordered his release. But, on appeal to the U.S. Supreme Court, in Rodman v. Pothier, 264 U.S. 399, 44 S.Ct. 360 (1924), that Court reversed; although agreeing with the jurisdictional principles enunciated by the First Circuit, it held that only the federal court in Washington State could hear that issue. In United States v. Unzeuta, 35 F.2d 750 (8th Cir. 1929), the Eighth Circuit held that the U.S. had no jurisdiction over a murder committed in a railroad car at Fort Robinson, the state cession statute being construed as not including railroad rights-of-way. This decision was reversed in United States v. Unzeuta, 281 U.S. 138, 50 S.Ct. 284 (1930), the court holding that the U.S. did have jurisdiction over the railroad rights-of-way in Fort

Robinson. In Bowen v. Johnson, 97 F.2d 860 (9th Cir. 1938), the question presented was whether jurisdiction over an offense prosecuted in federal court could be raised in a petition for habeas corpus. The denial of Bowen's petition was reversed in Bowen v. Johnston, 306 U.S. 19, 59 S.Ct. 442 (1939), the Court concluding that such a jurisdictional challenge could be raised in a habeas corpus petition. But, the Court then addressed the issue, found that the U.S. both owned the property in question and had a state legislative grant ceding jurisdiction to the United States, thus there was jurisdiction in the United States to prosecute Bowen. But, if jurisdiction is not vested in the United States pursuant to statute, there is no jurisdiction; see Adams v. United States, 319 U.S. 312, 63 S.Ct. 1122 (1943).

And the lower federal courts also require the presence of federal jurisdiction in criminal prosecutions. In Kelly v. United States, 27 F. 616 (D.Me. 1885), federal jurisdiction of a manslaughter committed at Fort Popham was upheld when it was shown that the U.S. owned the property where the offense occurred and the state had ceded jurisdiction. In United States v. Andem, 158 F. 996 (D.N.J. 1908), federal jurisdiction for a forgery offense was upheld on a showing that the United States owned the property where the offense was committed and the state had ceded jurisdiction of the property to the U.S. In United States v. Penn, 48 F. 669 (E.D.Va. 1880), since the U.S. did not have jurisdiction over Arlington National Cemetery, a federal larceny prosecution was dismissed. In United States v. Lovely, 319 F.2d 673 (4th Cir. 1963), federal jurisdiction was found to exist by U.S. ownership of the property and a state cession of jurisdiction. In United States v. Watson, 80 F.Supp. 649, 651 (E.D.Va. 1948), federal criminal charges were dismissed, the court stating as follows:

"Without proof of the requisite ownership or possession of the United States, the crime has not been made out."

In Brown v. United States, 257 F. 46 (5th Cir. 1919), federal jurisdiction was upheld on the basis that the U.S. owned the post-office site where a murder was committed and the state had ceded jurisdiction; see also England v. United States, 174 F.2d 466 (5th Cir. 1949); Krull v. United States, 240 F.2d 122 (5th Cir. 1957); Hudspeth v. United States, 223 F.2d 848 (5th Cir. 1955); and Gainey v. United States, 324 F.2d 731 (5th Cir. 1963). In United States v. Townsend, 474 F.2d 209 (5th Cir. 1973), a conviction for receiving stolen property was reversed when the court reviewed the record and learned that there was absolutely no evidence disclosing that the defendant had committed this offense within the jurisdiction of the United States. And in United States v. Benson, 495 F.2d 475, 481 (5th Cir. 1974), in finding federal jurisdiction for a robbery committed at

Fort Rucker, the court stated:

"It is axiomatic that the prosecution must always prove territorial jurisdiction over a crime in order to sustain a conviction therefor." In two Sixth Circuit cases, United States v. Tucker, 122 F. 518 (W.D.Ky. 1903), a case involving an assault committed at a federal dam, and United States v. Blunt, 558 F.2d 1245 (6th Cir. 1977), a case involving an assault within a federal penitentiary, jurisdiction was sustained by finding that the U.S. owned the property in question and the state involved had ceded jurisdiction. In re Kelly, 71 F. 545 (E.D.Wis. 1895), a federal assault charge was dismissed when the court held that the state cession statute in question was not adequate to convey jurisdiction of the property in question to the United States. In United States v. Johnson, 426 F.2d 1112 (7th Cir. 1970), a case involving a federal burglary prosecution, federal jurisdiction was sustained upon the showing of U.S. ownership and cession. And cases from the Eighth and Tenth Circuits likewise require the same elements to be shown to demonstrate the presence of federal jurisdiction; see United States v. Heard, 270 F.Supp. 198 (W.D.Mo. 1967); United States v. Redstone, 488 F.2d 300 (8th Cir. 1973); United States v. Goings, 504 F.2d 809 (8th Cir. 1974) (demonstrating loss of jurisdiction); Hayes v. United States, 367 F.2d 216 (10th Cir. 1966); United States v. Carter, 430 F.2d 1278 (10th Cir. 1970); Hall v. United States, 404 F.2d 1367 (10th Cir. 1969); and United States v. Cassidy, 571 F.2d 534 (10th Cir. 1978).

Of all the circuits, the Ninth Circuit has addressed jurisdictional issues more than any of the rest. In United States v. Bateman, 34 F. 86 (N.D.Cal. 1888), it was determined that the United States did not have jurisdiction to prosecute for a murder committed at the Presidio because California had never ceded jurisdiction; see also United States v. Tully, 140 F. 899 (D.Mon. 1905). But later, California ceded jurisdiction for the Presidio to the United States, and it was held in United States v. Watkins, 22 F.2d 437 (N.D.Cal. 1927), that this enabled the U.S. to maintain a murder prosecution; see also United States v. Holt, 168 F. 141 (W.D.Wash. 1909), United States v. Lewis, 253 F. 469 (S.D.Cal. 1918), and United States v. Wurtzbarger, 276 F. 753 (D.Or. 1921). Because the U.S. owned and had a state cession of jurisdiction for Fort Douglas in Utah, it was held that the U.S. had jurisdiction for a rape prosecution in Rogers v. Squier, 157 F.2d 948 (9th Cir. 1946). But, without a cession, the U.S. has no jurisdiction; see Arizona v. Manypenny, 445 F.Supp. 1123 (D.Ariz. 1977).

The above cases from the U.S. Supreme Court and federal appellate courts set forth the rule that in criminal prosecutions, the government, as the party seeking to establish the existence of federal jurisdiction, must prove U.S. ownership of the property in

question and a state cession of jurisdiction. This same rule manifests itself in state cases. State courts are courts of general jurisdiction and in a state criminal prosecution, the state must only prove that the offense was committed within the state and a county thereof. If a defendant contends that only the federal government has jurisdiction over the offense, he, as proponent for the existence of federal jurisdiction, must likewise prove U.S. ownership of the property where the crime was committed and state cession of jurisdiction.

Examples of the operation of this principle are numerous. In Arizona, the State has jurisdiction over federal lands in the public domain, the state not having ceded jurisdiction of that property to the U.S.; see State v. Dykes, 114 Ariz. 592, 562 P.2d 1090 (1977). In California, if it is not proved by a defendant in a state prosecution that the state has ceded jurisdiction, it is presumed the state does have jurisdiction over a criminal offense; see People v. Brown, 69 Cal. App.2d 602, 159 P.2d 686 (1945). If the cession exists, the state has no jurisdiction; see People v. Mouse, 203 Cal. 782, 265 P. 944 (1928). In Montana, the state has jurisdiction over property if it is not proved there is a state cession of jurisdiction to the U.S.; see State ex rel Parker v. District Court, 147 Mon. 151, 410 P.2d 459 (1966); the existence of a state cession of jurisdiction to the U.S. ousts the state of jurisdiction; see State v. Tully, 31 Mont. 365, 78 P. 760 (1904). The same applies in Nevada; see State v. Mack, 23 Nev. 359, 47 P. 763 (1897), and Pendleton v. State, 734 P.2d 693 (Nev., 1987); it applies in Oregon (see State v. Chin Ping, 91 Or. 593, 176 P. 188 (1918) and State v. Aguilar, 85 Or.App. 410, 736 P.2d 620 (1987)); and in Washington (see State v. Williams, 23 Wash.App. 694, 598 P.2d 731 (1979)).

In People v. Hammond, 1 Ill.2d 65, 115 N.E.2d 331 (1953), a burglary of an I.R.S. office was held to be within state jurisdiction, the court holding that the defendant was required to prove existence of federal jurisdiction by U.S. ownership of the property and state cession of jurisdiction. In two cases from Michigan, larcenies committed at U.S. post-offices which were rented were held to be within state jurisdiction; see People v. Burke, 161 Mich. 397, 126 N.W. 446 (1910) and People v. Van Dyke, 276 Mich. 32, 267 N.W. 778 (1936); see also In re Kelly, 311 Mich. 596, 19 N.W.2d 218 (1945). In Kansas City v. Garner, 430 S.W.2d 630 (Mo.App. 1968), state jurisdiction over a theft offense occurring in a federal building was upheld, and the court stated that a defendant had to show federal jurisdiction by proving U.S. ownership of the building and a cession of jurisdiction from the state to the United States. A similar holding was made for a theft at a U.S. missile site in State v. Rindall, 146 Mon. 64, 404 P.2d 327 (1965). In Pendleton v. State, 734 P.2d 693 (Nev. 1987), the state court was held to have jurisdiction over a

D.U.I. committed on federal lands, the defendant having failed to show U.S. ownership and state cession of jurisdiction.

In People v. Gerald, 40 Misc.2d 819, 243 N.Y.S.2d 1001 (1963), the state was held to have jurisdiction of an assault at a U.S. post-office since the defendant did not meet his burden of showing presence of federal jurisdiction; and because a defendant failed to prove title and jurisdiction in the United States for an offense committed at a customs station, state jurisdiction was upheld in People v. Fisher, 97 A.D.2d 651, 469 N.Y.S.2d 187 (A.D. 3 Dept. 1983). The proper method of showing federal jurisdiction in state court is demonstrated by the decision in People v. Williams, 136 Misc.2d 294, 518 N.Y.S.2d 751 (1987). This rule was likewise enunciated in State v. Burger, 33 Ohio App.3d 231, 515 N.E.2d 640 (1986), in a case involving a D.U.I. offense committed on a road near a federal arsenal.

In Kuerschner v. State, 493 P.2d 1402 (Okl.Cr.App. 1972), the state was held to have jurisdiction of a drug sales offense occurring at an Air Force Base, the defendant not having attempted to prove federal jurisdiction by showing title and jurisdiction of the property in question in the United States; see also Towry v. State, 540 P.2d 597 (Okl.Cr.App. 1975). Similar holdings for murders committed at U.S. post-offices were made in State v. Chin Ping, 91 Or. 593, 176 P. 188 (1918), and in United States v. Pate, 393 F.2d 44 (7th Cir., 1968). Another Oregon case, State v. Aguilar, 85 Or.App. 410, 736 P.2d 620 (1987), demonstrates this rule. And finally, in Curry v. State, 111 Tex. Cr. 264, 12 S.W.2d 796 (1928), it was held that, in the absence of proof that the state had ceded jurisdiction of a place to the United States, the state courts had jurisdiction over an offense.

The IRS lacks territorial jurisdiction. The current system of enforcement of the Internal Revenue Code, Subtitle A and C is repugnant to and violative of Article 1, Section 8, Clause 17 of the Constitution and its implementing statute, 40 USC 255.

The Constitution is unambiguous about defining WHAT Congress is authorized to do and WHERE they can do it. The IRS cannot tax where the US cannot legislate. Specifically with respect to "where" Congress enjoys legislative, i.e., police/taxing jurisdiction.

The Department of Justice's own Criminal Resource Manual documents the true limits of the DOJ's police authority:

664 Territorial Jurisdiction

Of the several categories listed in 18 U.S.C. § 7, Section 7(3) is the most significant, and provides:

The term "special maritime and territorial jurisdiction of the United States," as used in this title, includes: . . . (3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

As is readily apparent, this subsection, and particularly its second clause, bears a striking resemblance to the 17th Clause of Article I, Sec. 8 of the Constitution.

This clause provides:

"The Congress shall have power.. . 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."

The constitutional phrase "exclusive legislation" is the equivalent of the statutory expression "exclusive jurisdiction." See James v. Dravo Contracting Co., 302 U.S. 134, 141 (1937), citing, Surplus Trading Co. v. Cook, 281 U.S. 647, 652 (1930).

Until the decision in Dravo, it had been generally accepted that when the United States acquired property with the consent of the state for any of the enumerated purposes, it acquired exclusive jurisdiction by operation of law, and any reservation of authority by the state, other than the right to serve civil and criminal process, was inoperable. See Surplus Trading Co. v. Cook, 281 U.S. at 652-56. When Dravo held that a state might reserve legislative authority, e.g., the right to levy certain taxes, so long as that did not interfere with the United States' governmental functions, it became necessary for Congress to amend 18 U.S.C. § 7(3), by adding the words "so as," to restore criminal

jurisdiction over those places previously believed to be under exclusive Federal legislative jurisdiction. See H.R. Rep. No. 1623, 76th Cong., 3d Sess. 1 (1940); S. Rep. No. 1788, 76th Cong., 3d Sess. 1(1940).

Dravo also settled that the phrase "other needful buildings" was not to be strictly construed to include only military and naval structures, but was to be construed as "embracing whatever structures are found to be necessary in the performance of the function of the Federal Government." See James v. Dravo Contracting Co., 302 U.S. at 142-43. It therefore properly embraces courthouses, customs houses, post offices and locks and dams for navigation purposes.

The "structures" limitation does not, however, prevent the United States from holding or acquiring and having jurisdiction over land acquired for other valid purposes, such as parks and irrigation projects since Clause 17 is not the exclusive method of obtaining jurisdiction.

The United States may also obtain jurisdiction by reserving it when sovereign title is transferred to the state upon its entry into the Union or by cession of jurisdiction after the United States has otherwise acquired the property. See Collins v. Yosemite Park Co., 304 U.S. 518, 529-30 (1938); James v. Dravo Contracting Co., 302 U.S. at 142; Surplus Trading Co. v. Cook, 281 U.S. at 650-52; Fort Leavenworth R.R. Co. v. Lowe, 114 U.S. 525, 526-27, 538, 539 (1885).

The United States may hold or acquire property within the borders of a state without acquiring jurisdiction. It may acquire title to land necessary for the performance of its functions by purchase or eminent domain without the state's consent. See Kohlv. United States19l U.S. 367, 371, 372 (1976). But it does not thereby acquire legislative jurisdiction by virtue of its proprietorship. The acquisition of jurisdiction is dependent on the consent of or cession of jurisdiction by the state. See Mason Co. v. Tax Commission, 302 U.S. 97 (1937); James v. Dravo Contracting Co., 302 U.S. at 14 1-42.

State consent to the exercise of Federal jurisdiction may be evidenced by a specific enactment or by general constitutional or statutory provision. Cession of jurisdiction by the state also requires acceptance by the United States. See Adams v. United States, 319 U.S. 312 (1943); Surplus Trading Co. v. Cook, 281 U.S. at 651-52.

Whether or not the United States has jurisdiction is a Federal question. See Mason Co. v. Tax Commission, 302 U.S. at 197.

Prior to February 1,1940, it was presumed that the United States accepted jurisdiction whenever the state offered it because the donation was deemed a benefit. See Fort Leavenworth R.R. Co. ie. Lowel 114 U.S. at 528. This presumption was reversed by enactment of the Act of February 1, 1940, codified at 40 U.S.C. § 255. This statute requires the head or authorized officer of the agency acquiring or holding property to file with the state a formal acceptance of such "jurisdiction, exclusive or partial as he may deem desirable," and further provides that in the absence of such filing "it shall be conclusively presumed that no such jurisdiction has been acquired." See Adams v. United States, 319 U.S. 312 (district court is without jurisdiction to prosecute soldiers for rape committed on an army base prior to filing of acceptance prescribed by statute). The requirement of 40 U.S.C. § 255 can also be fulfilled by any filing satisfying state law. United States v. Johnson, 994 F.2d 980, 984-86 (2d Cir. 1993). The enactment of 40 U.S.C. § 255 did not retroactively affect jurisdiction previously acquired. See Markham v. United States, 215 F.2d 56 (4th Cir.), cert. denied, 348 U.S. 939 (1954); United States v. Heard, 270 F. Supp. 198, 200 (W.D. Mo. 1967).

In summary, the United States may exercise plenary criminal jurisdiction over lands within state borders:

A. Where it reserved such jurisdiction upon entry of the state into the union;

B. Where, prior to February 1, 1940, it acquired property for a purpose enumerated in the Constitution with the consent of the state;

C. Where it acquired property whether by purchase, gift or eminent domain, and thereafter, but prior to February 1, 1940, received a cession of jurisdiction from the state; and

D. Where it acquired the property, and/or received the state's consent or cession of jurisdiction after February 1, 1940, and has filed the requisite acceptance. U.S. DOJ Criminal Resource Manual, October 1997 Section 664.

The police power is vested in the States and not the federal government. See Wilkerson v. Rahrer, 140 U.S. 545, 554, ii S.Ct. 865, 866 (1891) (the police power "is a power originally and always belonging to the States, not surrendered to them by the general government, nor directly restrained by the constitution of the United States, and essentially exclusive"); Union National Bank v. Brown, 101 Ky. 354, 41 S.W. 273 (1897); John Woods &Sons v. Carl, 75 Ark. 328, 87 S.W. 621, 623 (1905); Southern Express

Co. v. Whittle, 194 Ala. 406, 69 So.2d 652, 655 (1915); Shealey v. Southern Ry. Co., 127 S.C. 15, 120 S.E. 561, 562 (1924) ("The police power under the American constitutional system has been left to the states. It has always belonged to them and was not surrendered by them to the general government, nor directly restrained by the constitution of the United States ... Congress has no general power to enact police regulations operative within the territorial limits of a state"); and Mclnerney v. Ervin, 46 So.2d 458, 463 (Fla. 1950)

"No sanction can be imposed absent proof of jurisdiction." Standard v Olson, 74 S.Ct. 768. "It has also been held that jurisdiction must be affirmatively shown and will not be presumed." Special Indem.. Fund v Prewitt, 205 F2d 306, 201 OK. 308 Even the IRS's own CID manual shows it does not have jurisdiction inside the fifty states:

"The Criminal Investigative Division enforces the criminal statutes applicable to income, estate, gift, employment, and excise tax laws involving United States citizens residing in foreign countries and non-resident aliens subject to federal income tax filing requirements."

IRS Criminal Investigation Division

The Supreme Court says citizens have an obligation to ascertain bona fide authority:

"Anyone entering into an arrangement with the government takes the risk of having accurately ascertained that he who purports to act for the government stays within the bounds of this authority." Federal Crop Insurance v. Merrill, 33 U.S. 380 at 384 (1947).

The Federal Rules of Civil Procedure even states there is no jurisdiction inside the States:

"Act of Congress" includes any act of Congress locally applicable to and in force in the District of Columbia, in Puerto Rico, in a territory or in an insular possession." See 18 USC, Rule 54 of the Federal Rules of Criminal Procedure. Note: There is NO reference to the 50 "states."

The IRS must establish jurisdiction or it will be sanctioning FRAUD.

The USC codifies the Constitutional requirement at Article I, Section 8, Clause 17 and proscribes the procedure and required documentation for the federal government to successfully assert jurisdiction inside one of the fifty states. To wit: 40 U SCS § 255

(now 3111 and 3112) clearly and specifically requires that a "notice of acceptance" is to be filed "with the Governor of such State or in such manner as may be prescribed by the laws of the State where such lands are situated." "Such lands," of course, referring to those lands that the federal government, through its agents, is claiming exclusive or concurrent jurisdiction over the people living thereon.

The text of § 255 concludes with the statement "Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted."

Obviously, if the requirements of Article 1, Section 8, Clause 17 of the Constitution of the United States are not complied with, and/or if the procedural requirements of 40 USCS § 255 are not complied with, then no public servant who is acting as an agent of the United States, i.e. the federal government has any bona fide authority whatsoever to attempt to force compliance with any federal law, rule, code, statute, etc. on anyone living in such an area that is not subject to any bona fide jurisdiction of the federal government.

In support of this rather obvious conclusion, the second paragraph of interpretive note 14 of 40 USCS § 255 says: "In view of 40 USCS § 255, no jurisdiction exists in United States to enforce federal criminal laws, unless and until consent to accept jurisdiction over lands acquired by United States has been filed in behalf of United States as provided in said section, and fact that state has authorized government to take jurisdiction is immaterial. Adams V. United States (1943) 319 US 312, 87 L Ed 1421,63 S Ct 1122."

[Federal jurisdiction]" ...must be considered in the light of our dual system of government and may not be extended. . .in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government." United States v. Lopez, 514 U.S. 549, 115 S.Ct.l624 (1995).

Attachment J - Jurisdiction must be proven

"There is no discretion to ignore that lack of jurisdiction." Joyce v. US, 474 F2d 215. (1973)
"The burden shifts to the court to prove jurisdiction." Rosemond v. Lambert, 469 F2d 416.
"Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted." Lantana v. Hopper, 102 F2d 188; Chicago v. New York, 37 F Supp 150.

"Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action." Melo v. US, 505 F2d 1026.

"The burden shifts to the court to prove jurisdiction." Rosemond v. Lambert, 469 F2d 416.

"Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted." Lantana v. Hopper, 102 F2d 188; Chicago v. New York, 37 F Supp 150.

"A universal principle as old as the law is that a proceedings of a court without jurisdiction are a nullity and its judgment therein without effect either on person or property." Norwood v. Renfield, 34 C 329; Ex parte Giambonini, 49 P. 732.

"Jurisdiction is fundamental and a judgment rendered by a court that does not have jurisdiction to hear is void ab initio." In Re Application of Wyatt, 300 P. 132; Re Cavitt, 118 P2d 846.

"Thus, where a judicial tribunal has no jurisdiction of the subject matter on which it assumes to act, its proceedings are absolutely void in the fullest sense of the term." Dillon v. Dillon, 187 P 27.

"A court has no jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and a court must have the authority to decide that question in the first instance." Rescue Army v. Municipal Court of Los Angeles, 171 P2d 8; 331 US 549, 91 L. ed. 1666, 67 S.Ct. 1409.

"A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an excess of jurisdiction." Wuest v. Wuest, 127 P2d 934, 937.

"Where a court failed to observe safeguards, it amounts to denial of due process of law, court is deprived of juris." Merritt v. Hunter, C.A. Kansas 170 F2d 739.

See also:

Hagans v. Lavine, 415, U.S. 533
Main v. Thiboutot, 100 S.Ct. 2502 (1980)
Badsso v> Utah Power and Light Co, 495 F2d 906, 910
Hill top Developers v. Holiday Pines Service Corp., 478 So. 2d. 368, (1985)

ATTACHMENT 2

PAT DANNER
6TH DISTRICT, MISSOURI

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEES
SURFACE TRANSPORTATION
AVIATION

COMMITTEE ON INTERNATIONAL RELATIONS
SUBCOMMITTEE
INTERNATIONAL ECONOMIC POLICY AND TRADE

Congress of the United States
House of Representatives
Washington, DC 20515-2506

WASHINGTON OFFICE:
1323 LONGWORTH BUILDING
WASHINGTON, DC 20515
(202) 225-7041
FAX: (202) 225-8221

DISTRICT OFFICES:
U.S. POST OFFICE, ROOM 330
201 SOUTH 8TH STREET
ST. JOSEPH, MO 64501-2240
(816) 233-9818
FAX: (816) 233-9848

5754 NORTH BROADWAY
BUILDING 3, SUITE 2
KANSAS CITY, MO 64118-3998
(816) 455-2256
FAX: (816) 455-2153

September 12, 1996

[redacted]
[redacted]
Trenton, MO 64683-9610

Dear [redacted]:

Thank you for contacting regarding the establishment of the Internal Revenue Service (IRS). I appreciate having the benefit of your thoughts on this issue.

You are quite correct when you state that an organization with the actual name "Internal Revenue Service" was not established by law. Instead, in 1862, Congress approved 26 U.S.C. 7802. This statute established the office of "Commissioner of Internal Revenue." As the act states, "The Commissioner of Internal Revenue shall have such duties and powers as may be prescribed by the Secretary of the Treasury." In modern times these duties and powers flow to the Commissioner who implements appropriate policy through the IRS.

In addition to Section 7802, Section 7803 authorizes the Secretary of Treasury to employ such number of persons deemed proper for the administration and enforcement of the internal revenue laws. It is these employees who comprise the IRS.

I have enclosed the appropriate section of the U.S. Code for your information. I hope you find it helpful.

Thank you again for contacting me. Please feel free to do so again with further questions on this or any other matter important to you.

Best regards,

Pat Danner
Member of Congress

PD/hhm

Attachment M - Jeffrey Thomas Maehr

Unauthorized use of 1040 forms by IRS:

Under the Paperwork Reduction Act, (PRA), each and every government form that is used to collect information from the general public under law must be linked to its authorizing statutes and implementing regulations** and have a valid Office of Management and Budget "OMB" Form number. This requirement of law provides an orderly means to identify which statutes, regulations and forms are related.

In Section 3512 of the Act, titled "Public Protection," it says that no person shall be subject to any penalty for failing to comply with an agency's collection of information request (such as a 1040 form), if the request does not display a valid control number assigned by the Office of Management and Budget (OMB) *in accordance with the requirements of the Act*, or if the agency fails to inform the person who is to respond to the collection of information that he is not required to respond to the collection of information request unless it displays a valid control number.

In Section 3512 Congress went on to authorize that the protection provided by Section 3512 may be raised in the form of a complete defense at any time during an agency's *administrative* process (such as a Summons, an IRS Tax Court or Collection and Due Process Hearing) or during a *judicial* proceeding.

IRS Form 1040 violates the federal Paperwork Reduction Act (PRA) and is therefore a legally invalid form. Under the Public Protection clause of the PRA, no person can be penalized for failing to file a 1040 if the IRS fails to fully comply with the PRA. The PRA statutes explicitly provide that a PRA challenge is a complete defense and can be raised in any administrative or judicial proceeding. The IRS Individual Form 1040 has not and cannot comply with the requirements of the PRA because no existing statute authorizes the IRS to impose or collect the federal income tax from individuals. That lack of *bona fide* authority makes it impossible for IRS to avoid violating the PRA.

In U.S. v. Dawes, 951 F.2d 1189 (10th Cir. 1991) the Court said: "Where an agency fails to follow the PRA [Paperwork Reduction Act] in regard to an information collection request that the agency promulgates via regulation, at its own discretion, and without express prior mandate from Congress, a citizen may indeed escape penalties for failing to comply with the agency's request." Id. (citing United States v. Hatch, 919 F.2d 1394 (9th Cir. 1990); United States v. Smith, 866 F.2d 1092 (9th Cir. 1989)).

"...You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number." ...

44 U.S.C. 3512. (4) prohibits agencies from penalizing those who fail to respond to Federal collections of information that do not display valid OMB control numbers. The Act also prohibits agencies from penalizing those who have not been informed that a response is not required unless the collection of information displays a valid control number. Both of these public protections "may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto."

The wording of Subsection 3512, "Public Protection," is as follows:

§ 3512. Public protection

(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this subchapter if -

(1) the collection of information does not display a valid control number assigned by the Director in accordance with this subchapter; or

(2) the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.

(b) The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto.

Also, the following case law is taken from 919 F.2d 1394, UNITED STATES of America, Plaintiff-Appellee, v. Richard K. HATCH, Defendant-Appellant. No. 89-10233. United States Court of Appeals, Ninth Circuit. Argued and Submitted July 16, 1990. Decided Nov. 29, 1990.

"The Senate Report analysis of Sec. 3512 states that 21 [i]nformation collection requests which do not display a current control number or, if not, indicate why not are to be considered 'bootleg' requests and may be ignored by the public.... These are the only circumstances under which a person may justify the failure to maintain information for or provide information to any agency otherwise required, by reliance on this Act.

S.Rep. No. 930, 96th Cong., 2d Sess. 52, reprinted in 1980 U.S.Code Cong. & Admin.News 6241, 6292.

See also 5 C.F.R. Sec. 1320.5(c) ("Whenever a member of the public is protected from imposition of a penalty under this section for failure to comply with a collection of information, such penalty may not be imposed by an agency directly, by an agency through judicial process, or by any other person through judicial or administrative process.").

Another item of evidence; a stamped copy of a 1987 Treasury Department document entitled, "Request for OMB Review" which is required by the Paperwork Reduction Act. The request was for IRS Form "1040-NR", the tax form used by Non-Resident Aliens to report their "income."

PRA Section 3507(g) and 5 CFR Section 1320.8(b)(1). Those sections mandate that OMB control numbers **must expire after three years**, even if the IRS made no changes to its 1040 form during that time. Form 1040 has had the same OMB control number for 24 years. Under Section 3507(g), every OMB control number must expire every three years, or sooner. OMB approves a 1040 for only a three year period so as to ensure that at least once every three years the IRS reviews the 1040 form, publishes its review in the Federal Register, and seeks public input. Apparently, the IRS has not submitted a certification to OMB with an explanation of why it would be inappropriate for OMB to issue a control number with an expiration date.

Several things about this document are noteworthy:

1. The form used for the request is OMB Form "83."

2. On line 5 of Form 83, the administrative requester is **required to cite the statutes actually authorizing** the collection of the information. The authorizing statutes are, in fact, cited.

3. On line 27 of Form 83, the administrative requester is **required to cite the regulations actually authorizing** the collection of the information. The authorizing regulations are, in fact, cited.

The "Challenge of Authority" document *also* contains a similar Treasury PRA request from 1996, but this one is for the "regular" IRS Individual Form 1040 that millions of Americans file each year.

This Treasury administrative request is **not** made on OMB "Form 83" ---- but rather using an alternate OMB form, "**83-1**" titled, "Paperwork Reduction Act Submission".

Several very important differences between the OMB request forms need to be noted:

1. OMB Form 83-1 does **NOT require** any specific citation of statutory authority.

2. OMB Form 83-1 does **NOT require** any specific citation of regulatory authority.

3. In the "Certification" box found on page 2 of Form 83-1, there are specific references to both PRA Regulations "5 CFR 1320.9" and "5 CFR 1320.8(b)(3)."

4. The attachments to this OMB Form 83-1 request consist primarily of a list of Title 26 (Income Tax) regulations and statutes that are merely (quoting) "***associated***" with IRS Form 1040.

IRS Form 1040-NR (for Non-Resident Aliens) is certified as complying with the requirements of the PRA found at regulation 5 CFR 1320.8. In its request to the OMB for IRS Form "1040-NR", the Department of Treasury (IRS) clearly cites both the statutory and regulatory authorities authorizing the use of the form to collect information and certifies its request as such. Please specifically note that for the Treasury's request using alternative OMB Form 83-1 for IRS Individual Form 1040, the Treasury has formally certified the request under regulation 5 CFR 1320.9, which is explicitly reserved for "PROPOSED" government forms.

[Code of Federal Regulations] [Title 5, Volume 3] [Revised as of January 1, 2005]

From the U.S. Government Printing Office via GPO Access [CITE: 5 CFR 1320.9] [Page 155]

TITLE 5--ADMINISTRATIVE PERSONNEL

CHAPTER III--OFFICE OF MANAGEMENT AND BUDGET

PART 1320_CONTROLLING PAPERWORK BURDENS ON THE PUBLIC--

Sec. 1320.9 Agency certifications for **proposed** collections of information.

As part of the agency submission to OMB of a **proposed** collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify and provide a record supporting such certification) that the proposed collection of

information [...]

If IRS Individual Form 1040 *was* actually authorized under U.S. law, the Department of Treasury would have submitted it for OMB certification using OMB "Form 83" which requires explicit citation of the Form's authorizing statutes and regulations.

Instead, the IRS used alternative OMB Form "83-1" -- which is designated ONLY for "*proposed*" government forms - and which does *NOT require* any formal citation of legal authority allowing its use.

Furthermore, even though an attachment to the Treasury's request for IRS Form 1040 (on OMB Form 83-1) contains a lengthy list of statutes and regulations, and "Box 12" on the form is marked indicating the form is "mandatory", a careful reading of the submission to OMB will make it clear that the Department of Treasury is **ONLY** certifying that:

-Form 1040 is a "proposed form" and that, **IF** authorized, it would meet the collection criteria established by regulation 5 CFR 1320.9, and

-That Form 1040 is only "***associated***" with the statutes and regulations cited in the 1040 request, and If Form 1040 *were* actually authorized by law, it would be "mandatory."

As a final observation, it should be noted that both the 1987 Form 1040-NR request as well as the 1996 Form 1040 request were signed by the same IRS officials, one Garrick R. Shear, the IRS Reports Clearance Officer and one Lois K. Holland as/for the Departmental Reports Management Officer.

In short, the Department of Treasury's clear and willful intent to use OMB Form 83-1 (rather than OMB Form 83) to legally certify IRS Individual Form 1040 as a valid government document, is compelling proof establishing that IRS Form 1040 is merely a PROPOSED tax form, and that there is *NO* LEGAL AUTHORITY that authorizes its use.

Examples of IRS violations of the PRA and its implementing regulations that invalidate Form 1040 include these:

1. IRS has continually violated PRA Section 3506(c)(1)(B)(iii). The section mandates that the 1040 form must inform the recipient of:

(I) the reasons the information is being collected;

(II) the way such information is to be used;

(III) an estimate, to the extent practicable, of the burden of the collection;

(IV) whether responses to the collection of information are voluntary, required to obtain a benefit, or mandatory; and (V) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a 1040 form unless it displays a valid control number (i.e., issued in accordance with the requirements of PRA).

2. Respondent has continually violated of PRA Section 3507(a)(1)(C). The section mandates that the IRS shall *not* conduct or sponsor the collection of information via a 1040 unless in advance of the adoption or revision of the 1040 the IRS has submitted to OMB the proposed 1040 form along with copies of pertinent statutory authority and regulations authorizing the IRS to collect the information on the 1040 form. The clearance packages that the IRS submits to the OMB make no mention of IRC Section 1, 61, 63, 6011, 6012, 6091, 7203 or any of the other sections federal judges alternately cite as "the" authority that authorizes IRS to collect information via the 1040.

3. The Respondent and OMB have continually violated PRA Section 3507(g) and 5 CFR Section 1320.8(b)(1). Those sections mandate that OMB control numbers must expire after three years, even if the IRS made no changes to its 1040 form during that time. Form 1040 has had the same OMB control number for 24 years. Under Section 3507(g), every OMB control number must expire every three years, or sooner. OMB approves a 1040 for only a three year period so as to ensure that at least once every three years the IRS reviews the 1040 form, publishes its review in the Federal Register, and seeks public input. Apparently, the IRS has not submitted a certification to OMB with an explanation of why it would be inappropriate for OMB to issue a control number with an expiration date.

4. The Respondent has continually violated PRA Section 3512 ("Public Protection"). This section prohibits the IRS from penalizing any person for failing to file a "bootleg" 1040. The 1040 form falls into the "bootleg" class if it does not display a valid OMB control number and the disclaimer that no response is required without such a control number. The 1995 amendments strengthened this provision by making clear that IRS victims can invoke this protection "***in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto.***" In spite of this, the IRS routinely penalizes and prosecutes people for failing to file the 1040 tax return. Although required by law, IRS never informs people about the bootleg nature of the 1040 form, nor the fact that its hapless victims have no

legal obligation to file such bootleg forms.

1040 forms and Respondent Summons to third parties are "information collection requests" which contain NO OMB number and are facially void, therefore IRS summons has no authority. Based on Respondent's own testimony in the Motion for Summary Denial, Page 1, that the 1040 forms were required to be filed by Petitioner, and for which they are seeking personal financial information, they are in violation, once again, of legal standing and procedures.

Attachment P - Jeffrey Thomas Maehr

Unrebutted or uncontested affidavit is Prima Facie Evidence - facts deemed admitted!

Case law:

"The law creates a presumption, where the burden is on a party to prove a material fact peculiarly within his knowledge and he fails without excuse to testify, that his testimony, if introduced, would be adverse to his interests." Meier v CIR, 199 F 2d 392, 396 (8th Cir. 1952) quoting 20 Am Jur, Evidence Sec 190, page 193.

Non Rebutted Affidavits are "Prima Facie Evidence in the Case", United States vs. Kis, 658 F.2d, 526, 536-337 (7th Cir. 1981);

Cert Denied, 50 U.S. L.W. 2169; S.Ct. March 22, 1982. "Indeed, no more than (Affidavits) is necessary to make the Prima Facie Case."

Seitzer v. Seitzer, 80 Cal. Rptr. 688 "Uncontested Affidavit taken as true in support of Summary Judgment."

Melorich Builders v. The SUPERIOR COURT of San Bernardino County (Serbia) 207 Cal.Rptr. 47 (Cal.App.4 Dist. 1984) "Uncontested Affidavit taken as true in Opposition of Summary Judgment."

"Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading. . . We cannot condone this shocking behavior... This sort of deception will not be tolerated and if this is routine it should be corrected immediately." U.S. v. Tweel, 550 F.2d 297, 299. See also U.S. v. Prudden, 424 F.2d 1021, 1032; Carmine v. Bowen, 64 A. 932.

“Silence is a species of conduct, and constitutes an implied representation of the existence of facts in question. When silence is of such character and under such

circumstances that it would become a fraud, it will operate as an Estoppel." Carmine v. Bowen, 64 U.S. 932.

"Fraud in its elementary common law sense of deceit… includes the deliberate concealment of material information in a setting of fiduciary obligation. A public official is a fiduciary toward the public,… and if he deliberately conceals material information from them he is guilty of fraud." McNally v. U.S., 483 U.S. 350, 371-372, Quoting U.S. v Holzer, 816 F.2d. 304, 307.

"Uncontested affidavit" moved the court to hear the case. United States v. Lopez, No. 07-3159 (10th Cir. 03/04/2008).

..."finding uncontested affidavit of debtor's attorney that he provided telephonic notice of debtor's bankruptcy case sufficient to hold creditor in violation of § 362(h)." Johnson, No. 05-8089 (10th Cir. 08/28/2007).

"Based on that uncontested affidavit, the court found that Col. Hardesty had personally and properly appointed Lt. Col. Harmon to Pvt. Wright's court-martial." Wright v. Commandant, USDB, No. 03-3214 (10th Cir. 04/09/2004).

"According to the uncontested affidavit of Dennis Farrington, Vice President/Management Supervisor at Hill, Holliday, the commercial became obsolete as of September 30, 1984, when the new model Fords were introduced, and would not be "aired in any form after that date." Kazmaier's prayer for injunctive relief is therefore moot." Kazmaier v. Wooten, 761 F.2d 46 (1st Cir. 04/30/1985).

"Whether or not Thrift now has the original prescription forms submitted to UPA for reimbursement, Thrift submitted an uncontested affidavit stating that, as with Thrift's other claims, UPA failed to pay for the $3,456.07 owed to Thrift upon Thrift's submission of the original claim forms." Thrift Drug Inc. v. Universal Prescription Administrators, 131 F.3D 95 (2d Cir. 12/11/1997)

..."the government conceded that a single sale was the only connection between the property and the predicate offense; on the day of the transaction the drugs were brought to the claimant's home at the insistence of the government informant; the uncontested affidavit of the claimant indicated that the drugs were present in the home for no more

than a few hours; and there was no evidence that the house was used to store drugs. Id. at 1065. On these facts, the court found that there was no "substantial connection" between the claimant's home and the predicate offense." United States v. Premises and Real Property at 4492 South Livonia Road, 889 F.2d 1258 (2nd Cir. 11/17/1989)

"The district court relied on the uncontested affidavit of Robert A. Michlik, the PBGC case officer responsible for processing the termination of the Plan, for the finding that 74 Plan participants were eligible for pension benefits as of September 20, 1978." In re Syntex Fabrics Inc., 698 F.2d 199 (3rd Cir. 01/19/1983).

"This motion was supported by an uncontested affidavit detailing that de Santibanes had essentially no contacts with Virginia or with the plaintiffs, including that he had never resided in Virginia, did not own any property in the State, does not receive income from any business with operations in the State, and has never sent nor received correspondence from the State. The plaintiffs did not contest the information in the affidavit by way of affidavit or testimony." Lolavar v. Santibanes, 430 F.3d 221 (4th Cir. 12/01/2005).

"According to their uncontested affidavit... Carmichael simply cannot demonstrate any causal connection between Price Waterhouse's conduct and his prolonged imprisonment or torture." Carmichael v. United Technologies Corp., 835 F.2d 109 (5th Cir. 01/07/1988).

"The city responded to appellant's motion for attorney's fees with an (uncontested) affidavit from City Secretary Gorsline. That affidavit, together with the other factors identified in the chronology contained in the district court's opinion, established that as early as March 20, 1985, the city had decided to reword its election ballots." Sorola v. City of Lamesa, 808 F.2d 435 (5th Cir. 01/27/1987).

"On the basis of this uncontested affidavit, we can take it as established, for summary judgment purposes, that the bank records were reasonably available." Barrett v. United States and Internal Revenue Service, 795 F.2d 446 (5th Cir. 07/28/1986).

"The uncontested affidavit of Stevenson's vice-president established that..." Albertson v. Stevenson, 749 F.2d 223 (5th Cir. 12/26/1984).

" The uncontested affidavit establishing appellant's reform or cure was made by appellant's wife at approximately the same time as the affidavits of the other employees. The case for discharge presented to the Merit Systems Review Board for decision, therefore, included an uncontested showing that Bonet was totally reformed or cured." Bonet v. United States Postal Service, 712 F.2d 213 (5th Cir. 08/19/1983).

"The unrebutted affidavit of a MetLife representative establishes..." Justofin v. Metropolitan Life Insurance Co., 372 F.3d 517 (06/25/2004).

"The court's decision on the second summary judgment motion parallels its decision on the first. Again, it held that plaintiff had failed to comply with Rule 56(c)(2) when he filed new material in response to the motion and held, as a result, that defendant's statement of undisputed facts was deemed admitted." Gallipo v. City of Rutland (2004-041)

"Motion a request that the CT order something such as dismissing the case, not same as a pleading.

Dismissal on other grounds i.e. when facts are undisputed and DF is entitled to JGT as a matter of law (Summary JGT under R56) statute of limitation, claim or issue preclusion, etc.

Answer - a pleading that responds to allegations of the complaint and may add new matter as well. R8(b)(c)(d)

Admissions allegations not denied are deemed admitted.

Denials: those allegations properly denied are joined, meaning they are in dispute and ripe for adjudication." CIVIL PROCEDURE SPRING 2003 - Professor Von Creel, OCU Law School.

Eddie Kohn

Attachment R-1

U.S. Department of Justice

Criminal Division

Washington, D.C. 20530

JAN 11 2000

CRM-199901416F

Michael Bufkin, Esq.
825-A4 Village Qtr. Road
Dundee, Illinois 60118

Dear Mr. Bufkin:

This is in response to your Freedom of Information Act request of September 21, 1999, for access to "...records that evidence the authority of the U.S. Attorney General's Office to defend Internal Revenue Service agents in civil and criminal court proceedings."

We have conducted a search of the appropriate indices to Criminal Division records and did not locate any records responsive to your request.

You have a right to an administrative appeal of this determination. Department regulations provide that such appeals must be filed within sixty days of your receipt of this letter. 28 C.F.R. 16.9. Your appeal should be addressed to: The Office of Information and Privacy, United States Department of Justice, Flag Building, Suite 570, Washington, D.C. 20530. Both the envelope and the letter should be clearly marked with the legend "FOIA Appeal." If you exercise this right and your appeal is denied, you also have the right to seek judicial review of this action in the federal judicial district (1) in which you reside, (2) in which you have your principal place of business, (3) in which the records denied are located, or (4) for the District of Columbia.

Sincerely,

Thomas J. McIntyre

for Thomas J. McIntyre, Chief
Freedom of Information/Privacy Act Unit
Office of Enforcement Operations
Criminal Division

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Attachment R-2

Mr. Michael Bufkin
825-A4 Village Qtr. Road
Dundee, IL 60118

Contact Person: Ms. Leslie Haywood
Contact Number: 202-622-3196
Badge Number: 50-03172
Refer Reply to: 99-1651
Date: August 2, 1999

Dear Mr. Bufkin:

This is in further response to your Freedom of Information Act request dated December 18, 1998, for documents that evidence the authority of the U. S. Attorney General's Office to defend IRS agents in a civil or criminal matter.

A search was performed with the Office of Tax Crimes (Criminal Investigation) and with the Assistant Chief Counsel (Disclosure Litigation) and we have no documents responsive to your request. However, you may forward a copy of your request to the U. S. Attorney General's Office within the Department of the Justice.

Notice 393 is enclosed explaining your appeal rights. It has been our pleasure to assist you with this matter.

Sincerely,

Leslie Haywood

Leslie Haywood
Disclosure Program Assistant
Freedom of Information

Enclosure
As stated

Attachment 5-1

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

To all to whom these presents shall come. Greeting:

By virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf, that the seal of the National Archives and Records Administration, that the attached reproduction(s) is a true and correct copy of documents in his custody.

SIGNATURE

for

NAME Steven M. Edwards	APR -6 2000
TITLE Regional Administrator, Pacific Alaska Region	
NAME AND ADDRESS OF DEPOSITORY National Archives & Records Admin. 6125 Sand Point Way NE Seattle, WA 98115-7999	

NA FORM 13040 (10-88)

BETTY M. RICHARDSON
United States Attorney
United States Attorney's Office
Box 32
Boise, Idaho 83707
Telephone: (208) 334-1211

RICHARD R. WARD
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044-0683
Telephone: (202) 307-5867

Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF IDAHO

DIVERSIFIED METAL PRODUCTS, INC., Plaintiff, v. I-BOW COMPANY TRUST, INTERNAL REVENUE SERVICE, and STEVE MORGAN, Defendants.	Civil No. 91-405-E-EJL UNITED STATES' ANSWER AND CLAIM

The United States of America, through undersigned counsel hereby responds to the numbered paragraphs of plaintiff's complaint as follows:

1. The United States is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 1 and, on that basis, denies the allegations.

2. The United States is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 2 and, on that basis, denies the allegations.

3. The United States is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 3 and, on that basis, denies the allegations.

4. Denies that the Internal Revenue Service is an agency or the United States Government but admits that the United States of America would be a proper party to this action. Admits that the IRS has served a Notice of Levy on plaintiff for funds owed to defendant Steve Morgan.

5. Admits that the IRS has made a demand on plaintiff for payment of funds owed to Steve Morgan. The United States is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations, and, on that basis, denies the remaining allegations.

6. Admits that Exhibits A and B are attached and are respectively, a copy of a letter from Lonnie Crockett and a copy of a Notice of Levy served by the IRS.

7. The United States is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 7 and, on that basis, denies the allegations.

Attachment S
IR Code (IRC) is not positive law **(See Attachment T)**

It is a violation of due process to "assume" or "**presume**" that anything is "law" unless it was enacted into positive law and evidence is entered on the record of same. Positive law is the ONLY legitimate or admissible evidence that the people ever consented to the enforcement of an enactment, and without such explicit consent, no enactment is enforceable nor may it adversely affect a person's rights. The Declaration of Independence says that all just powers derive from "consent," which implies that any compulsion by government absent consent is unjust. The only exception to this rule is the criminal laws, which could not function properly if consent of the criminal was required.

"Presumption," in fact, is the OPPOSITE of "due process," as the definition of "due process" admits in Black's Law Dictionary...(See attachment H).

Code Discussion:

There have been three major versions of the Internal Revenue Code since its inception: 1939; 1954, 1986. If you trace the history of the current Internal Revenue Code, you will find that it began with the 1939 code. All revenue laws prior to the 1939 I.R.C. were repealed when the 1939 code was enacted, as evidenced by 53 Stat. 1, Section 4. In addition to repealing all the previous revenue laws, the 1939 code repealed itself!

1939 code: (Supported by 1954 and 1986 Acts);

AN ACT

To consolidate and codify the internal revenue laws of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the laws of the United States hereinafter codified and set forth as a part of this act under the heading "Internal Revenue Title" are hereby enacted into law.

SEC. 2. CITATION—This act and the internal revenue title incorporated herein shall be known as the Internal Revenue Code and may be cited as “I. R. C."

SEC. 3. EFFECTIVE DATE—Except as otherwise provided herein, this act shall take effect on the day following the date of its enactment.

SEC. 4. REPEAL AND SAVINGS PRO VISIONS.—(a) The Internal Revenue Title, as hereinafter set forth, is intended to include all general laws of the United States and parts of such laws, relating exclusively to internal revenue, in force on the 2d day of January 1939 (1) of a permanent nature and (2) of a temporary nature if embraced in said Internal Revenue Title. In furtherance of that purpose, all such laws and parts of laws codified herein, to the extent they relate exclusively to internal revenue, are repealed, effective, except as provided in section 5, on the day following the date of the enactment of this act.

(b) Such repeal shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal, but all rights and liabilities under said acts shall continue, and may be enforced in the same manner, as if said repeal had not been made; nor shall any office, position, employment, board, or committee, be abolished by such repeal, but the same shall continue under the pertinent provisions of the Internal Revenue Title.

© All offenses committe4 and all penalties or forfeitures incurred under any statute hereby repeale4 may be prosecuted and punished in the same manner and with the same effect as if this act had not been passed.

(d) All acts of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, hereby repealed shall not be affected thereby, but all suits, proceedings or prosecutions, whether civil or criminal, for causes arising, or acts done or committed, prior to said repeal, may be commenced and prosecuted within the same time as if this act had not been passed

(e) The authority vested in the President of the United States, or in any officer or officers of the Treasury Department, by the law as it existed immediately prior to the enactment of this act,

hereafter to give publicity to tax returns required under any internal revenue law Enforce immediately prior to the enactment of this act or any information therein contained, and to furnish copies thereof and to prescribe the terms and conditions upon which such publicity may be given or such copies furnished, and to make rules and regulations with respect to such publicity, is hereby preserved And the provisions of law authorizing such publicity and prescribing the terms, conditions, limitations, and restrictions upon such publicity and upon the use of the information gained through such publicity and the provisions of law prescribing penalties for unlawful publicity of such returns and for unlawful use of such information are hereby preserved and continued in full force and effect.

SEC. 5. CONTINUANCE OF EXISTING LAW,—Any provision of law in force on the 2d day of January 1939 corresponding to a provision contained in the Internal Revenue Title shall remain in farce until the corresponding provision under such Title takes effect

SEC. 6. ARRANGEMENT, CLASSIFICATION, AND CROSS REFERENCES.— The arrangement and classification of the several provisions a/the Internal Revenue Title have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore, no inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion thereof nor shall any out- line, analysis, cross reference, or descriptive matter relating to the contents a/said Title be given any legal effect

SEC. 7. EFFECT UPON SUBSEQUENT LEGISLATION.—The enactment of this act shall not repeal nor affect any act of Congress passed since the 2nd day of January 1939, and all acts passed since that date shall have full effect as if passed after the enactment of this act; but, so far as such acts vary from, or conflict with, any provision contained in this act, they are to have effect as subsequent statutes, and as repealing any portion of this act inconsistent therewith.

SEC. 8. COPIES AS EVIDENCE OF ORIGINAL—Copies of this act printed at the Government Printing Office and bearing its imprint shall be conclusive evidence of the original Internal Revenue Code in the custody of the Secretary of State.

SEC. 9. PUBLICATION—The said Internal Revenue Code shall be published as a separate part of a volume of the United States Statutes at Large, with an appendix and index, but without

marginal references; the date of enactment, bill number, public and chapter number shall be printed as a headnote.

SEC. 10. INTERNAL REVENUE TITLE.—The Internal Revenue Title, heretofore referred to, and hereby and herein enacted into law, is as follows:.. [Internal Revenue Code of 1939. 53 Stat. 1].

1986 Code

"Of the 50 titles, only 23 have been enacted into positive (statutory) law. These titles are 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 36, 37, 38, 39, 44, 46, and 49. When a title of the Code was enacted into positive law, the text of the title became legal evidence of the law. Titles that have not been enacted into positive law are only prima fade evidence of the law. In that case, the Statutes at Large still govern." [United States Government Printing Office Website].

“Certain titles of the Code have been enacted into positive law, and pursuant to section 204 of title I of the Code, the text of those titles is legal evidence of the law contained in those titles. The other titles of the Code are prima facie evidence of the laws contained in those titles. The following titles of the Code have been enacted into positive law: 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18,23, 28, 31, 32, 35, 36, 37, 38, 39, 40, 44, 46, and 49.” [United States House of Representatives Office of the Law Revision Counsel].

Titles in the intro pages to any Title of the United States Code, as officially published by West shows that Title 26, U.S.C., has no asterisk ("*"), thus indicating that Title 26 has NOT been enacted into positive law. As a consequence, the Title as such is only prima facie evidence of the Statutes at Large.

In Title 28 (where it matters most) the statute at IRC 7851(a)(6)(A) states:
"The provisions of subtitle F shall take effect on the day after the date of enactment of this title ...."

Since Title 26 has not yet been enacted into positive law (i.e., it is still only prima facie and not conclusive evidence of the underlying Statutes at Large), the obvious conclusion is that subtitle F has not yet taken effect. This is crucial, because subtitle F contains ALL the enforcement

provisions in the Internal Revenue Code ("IRC").

Section 4 of the 1939 Internal Revenue Code itself, located in 53 Stat. 1, shows that the code repealed all prior revenue laws as well as itself, and therefore is unenforceable. Also, 1 U.S.C. §204 shows that it is not “law” or “positive law”, but is “presumed to be law.” Since all presumption (See attachment H) which prejudices Constitutional rights is a violation of due process, then the code cannot be used as a substitute for real positive law evidence.

It is still a matter of federal law that Title 26 and the IRC are NOT one and the same., EVEN IF Title 26 is verbatim identical to the IRC. The one has the force of law, whereas the other is rebuttable solely by reason of the fact that it (Title 26) has NEVER been enacted into positive law.

Those codes within the U.S. code which are “positive law,” such as the Internal Revenue Code, are described simply as “prima facie evidence” of law. 1 U.S.C. §204 and the notes thereunder describe the I.R.C. as a “code” or a “title”, but NEVER as a “law.”

1 U.S.C. §204 Codes and supplements as evidence of laws of United States and District of Columbia; citation of codes and supplements.

In all courts, tribunals, and public offices of the United States, at home or abroad of the District of Columbia, and of each State, Territory, or insular possession of the United States—

(a) United States Code.—

[1] The matters set forth in the edition of the Code of Laws of the United States (defined in 4 U.S.C. 72; (2)) current at any time shall together with the then current supplement, if any, establish prima facie the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included:

[2] Provided however, That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States.

The term “prima facie evidence” simply means “presumed to be law until rebutted with substantive evidence.” “Prima facie” means “presumed:”

“Prima facie. Lat. At first sight; on the first appearance; on the face of it: so far as can be judged from the first disclosure; presumably; a fact presumed to be true unless disproved by some evidence to the contrary. State ex rel. Herbert v. Whims, 68 Ohio App. 39, 28 N.E.2d 596, 599, 22 O.O. 110. See also Presumption” [Black’s Law Dictionary, Sixth Edition, p. 1189]

It will therefore be observed that title 26 is not an enacted title, either when it was first codified in 1939 or in any enactment since.

The conclusion of this is that the IR Code is NOT positive law, and therefore is “private” or “special” law which cannot force Petitioner into a contract with the Respondent in any form, **(See Attachment T)** unless Petitioner agrees to the contractual arrangements.

Possible Respondent Argument:

FALSE STATEMENT #1: “Everything in the Statutes at Large is ‘positive law’. The IRC was published in the Statutes at Large. Therefore, the I.R.C. MUST be positive law.”

REBUTTAL TO FALSE STATEMENT #1: Not everything in the Statutes at Large is “positive law”, in fact. Both the current Social Security Act and the current Internal Revenue Code (the 1986 code) were published in the Statutes at Large and 1 U.S.C. §204, indicate that NEITHER Title 26 (the I.R.C.) nor Title 42 (the Social Security Act) of the U.S. Code are “positive law.” Therefore, this is simply a false statement. If you would like to see the evidence for yourself.

FALSE STATEMENT #2: “The Statutes at Large, 53 Stat. 1, say the 1939 Internal Revenue Code was ‘enacted.’ Anything that is ‘enacted’ is ‘law’. Therefore, the 1939 I.R.C. and all subsequent versions of it MUST be positive law.”

REBUTTAL TO FALSE STATEMENT #2: A repeal of a statute can be enacted, and it produces no new “law.” Seeing the word “enacted” in the Statutes of Law does not therefore necessarily imply that new “law” was created. In fact, you can go over both the current version of I U.S.C. §204 and all of its predecessors all the way back to 1939 and you will not find a single instance

where the Internal Revenue Code has ever been identified as “positive law.”

FALSE STATEMENT #3: “The Internal Revenue Code does not need to be ‘positive law’ in order to be enforceable. Federal courts and the I.R.S. call it ‘law’ so it must be ‘law’.”

REBUTTAL TO FALSE STATEMENT #3: The federal courts are a foreign jurisdiction with respect to a state national domiciled in his state on land not subject to exclusive federal jurisdiction under Article 1, Section 8, Clause 17 **(See Attachment I)** and who has no contracts or fiduciary relationships with the federal government. Such a statement represents an abuse of case law for political rather than legal purposes as a way to deceive people.

Because the Internal Revenue Code has no liability statute under Subtitle A, then the only way a person can become a “taxpayer” is by consenting to abide by the Code. If he consented, then the code becomes “law” for him. This is why even the U.S. Supreme Court itself refers to the income tax as “voluntary” in Flora v. United States, 362 U.S. 145 (1960). Consent is the ONLY thing that can produce “law.” The I.R.C. is private law, special law, and contract law that only applies to those who explicitly consent by signing a contract vehicle, such as Forms W-4, an SS-5, or a 1040. Since all of these forms produce an obligation, then all of them are contracts. The obligation cannot exist without signing them, nor can the IRS lawfully or unilaterally assess a person on a 1040 form under 26 U.S.C. §6020(b) who does not first consent.

Nohting in the IR Code or other U.S. Law clearly defines IR Code law as valid, and Petitioner challenges that such law, in Fact, exists as a law, and not simply as “presumed” law.

Attachment W-1

Provisions of the Internal Revenue Code

Sec. 7602. Examination of books and witnesses

(a) Authority to Summon, etc. - For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized -

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry.

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons **and to produce such books, papers, records, or other data, and to give such** testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(b) Purpose may include inquiry into offense. - The purposes for which the Secretary may take any action described in paragraph (1), (2), or (3) of subsection (a) include the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws.

(c) Notice of contact of third parties. -

(1) General Notice. - An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer without providing reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made.

(2) Notice of specific contacts. - The Secretary shall periodically provide to a taxpayer a record of persons contacted during such period by the Secretary with respect to the determination or collection of the tax liability of such taxpayer. Such record shall also be provided upon request of the taxpayer.

(3) Exceptions. - This subsection shall not apply-

(A) to any contact which the taxpayer has authorized,

(B) if the Secretary determines for good cause shown that such notice **would jeopardize collection of any tax or such notice may involve** reprisal against any person, or

(C) with respect to any pending criminal investigation.

(d) No administrative summons when there is Justice Department referral.-

(1) Limitation of authority. - No summons may be issued under this title, and the Secretary may not begin any action under section 7604 to enforce any summons, with respect to any person if a Justice Department referral is in effect with respect to such person.

(2) Justice Department referral in effect. - For purposes of this subsection-

(A) In general. - A Justice Department referral is in effect with respect **to any person if-**

(i) the Secretary has recommended to the Attorney General a grand jury investigation of, or the criminal prosecution of, such person for any offense connected with the administration or enforcement of the internal revenue laws or

(ii) any request is made under section 6103(h)(3)(B) for the **disclosure of any return or return information (within the** meaning of section 6103(b)) relating to such person.

(B) Termination. - A Justice Department referral shall cease to be in effect with respect to a person when-

(i) the Attorney General notifies the Secretary, in writing, that -

(I) he will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws,

(II) he will not authorize a grand jury investigation of such person with respect to such an offense, or

(III) he will discontinue such a grand jury investigation.

(ii) a final disposition has been made of any criminal proceeding pertaining to the enforcement of the internal revenue laws which was instituted by the Attorney General against such person, or

(iii) the Attorney General notifies the Secretary, in writing, **that he will not prosecute such person for any offense connected with the administration or enforcement of the** internal revenue laws relating to the request described in sub paragraph (A)(ii).

(3) Taxable years, etc., treated separately. - For purposes of this subsection, each taxable period (or, if there is no taxable period, each taxable event) and each tax imposed by a separate chapter of this title shall be treated separately.

(e) Limitation on examination on unreported income. - The Secretary shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Secretary has a reasonable indication that there is a likelihood of such unreported income.

Authority to examine books and witness is also provided under sec. 6420 (e)(2) - Gasoline used on farms: sec. 6421(g)(2) - Gasoline used for certain nonhighway purposes by local transit systems, or sold for certain exempt purposes; and sec. 6427(j)(2) - Fuels not used for taxable purposes.

---

* * * * *

Sec. 7603. Service of summons

(a) In general - A summons issued under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 shall be served by the Secretary, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty

(b) Service by mail to third-party recordkeepers. -

(1) In general. - A summons referred to in subsection (a) for the production of books, papers, records, or other data by a third-party recordkeeper may also be **served by certified or registered mail to the last known address of such** recordkeeper.

(2) Third party record keeper. - For purposes of paragraph (1), the term *third-party recordkeeper* means -

(A) any mutual savings bank, cooperative bank, domestic building and loan association, or other savings institution chartered and supervised as a savings and loan or similar association under Federal or State law, any bank (as defined in section 581), or any credit union (within the meaning of section 501 (c)(14)(A));

(B) any consumer reporting agency (as defined under section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681 a(f));

(C) Any person extending credit through the use of credit cards or similar devices;

(D) any broker (as defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4));

(E) any attorney;

(F) any accountant;

(G) any barter exchange (as defined in section 6045(c)(3));

(H) any regulated investment company (as defined in section 851) and any agent of such regulated investment company when acting as an agent thereof;

(I) any enrolled agent; and

(J) any owner or developer of a computer software source code (as defined in section 7612(d)(2)). Subparagraph (J) shall apply only with **respect to a summons requiring the production of the source code** referred to in subparagraph (J) or the program and data described in section 7612(b)(1)(A)(ii) to which source code relates.

Sec. 7604. Enforcement of summons

(a) Jurisdiction of District Court. - If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, records, or other data, the United **States district court for the district in which such person resides or is found shall have** jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, records, or other data.

(b) Enforcement. - Whenever any person summoned under section 6420(e)(2), 6421 (g)(2), 6427(j)(2), or 7602 neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the Secretary may apply to the judge of the district court or to a United States Commissioner[1] for the district within which **the person so summoned resides or is found for an attachment against him as for a** contempt, it shall be the duty of the judge or commissioner[1] to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the **case; and upon such hearing the judge or the United States Commissioner[1] shall have** power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

---

[1]Or United States magistrate, pursuant to P L. 90-578.

* * * * *

Sec. 7605. Time and place of examination

(a) Time and place. - The time and place of examination pursuant to the provisions of section 6420(e)(2), 6421 (g)(2), 6427(j)(2), or 7602 shall be such time and place as may be fixed by the Secretary and as are reasonable under the circumstances. In the case of a summons under authority of paragraph (2) of section 7602, or under the corresponding authority of section 6420(e)(2), 6421 (g)(2) or 6427(j)(2), the date fixed for appearance before the Secretary shall not be less than 10 days from the date of the summons.

Sec. 7610. Fees and costs for witnesses

(a) In general. - The secretary shall by regulations establish the rates and conditions under which payment may be made of -

(1) fees and mileage to persons who are summoned to appear before the Secretary, and

(2) reimbursement for such costs that are reasonably necessary which have been **directly incurred in searching for, reproducing, or transporting books, papers,** records, or other data required to be produced by summons.

(b) Exceptions. - No payment may be made under paragraph (2) of subsection (a) if -

(1) the person with respect to whose liability the summons is issued has a proprietary interest in the books, papers, records or other data required to be produced, or

(2) the person summoned is the person with respect to whose liability the summons is issued or an officer, employee, agent, accountant, or attorney of such person who, at the time the summons is served, is acting as such.

(c) Summons to which section applies. - This section applies with respect to any summons authorized under section 6420(e)(2), 6421 (g)(2), 6427(j)(2), or 7602.

Sec. 7210. Failure to obey summons

Any person who, being duly summoned to appear to testify, or to appear and produce books, accounts, records, memoranda or other papers, as required under sections 6420(e)(2), 6421(g)(2), 6427(j)(2), 7602, 7603, and 7604(b), neglects to appear or to produce such books, accounts, records memoranda, or other papers, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with costs of prosecution.

Attachment W-2

Sec. 7609. Special procedures for third-party summons

(a) Notice-

(1) In general. - If any summons to which this section applies requires the giving of testimony on or relating to, the production of any portion of records made or kept on or relating to, or the production of any computer software source code (as defined in 7612(d)(2)) with respect to, any person (other than the person summoned) who is identified in the summons, then notice of the summons shall be given to any person so identified within 3 days of the day on which such service is made, but no later than the 23rd day before the day fixed in the summons as the day upon which such records are to be examined. Such notice shall be accompanied by a copy of the summons which has been served and shall contain an explanation of the right under subsection (b)(2) to bring a proceeding to quash the summons.

(2) Sufficiency of notice. - Such notice shall be sufficient if, on or before such third day, such notice is served in the manner provided in section 7603 (relating to service of summons) upon the person entitled to notice, or is mailed by certified or registered mail to the last known address of such person, or, in the absence of a last known address, is left with the person summoned. If such notice is mailed, it shall be sufficient if mailed to the last known address of the person entitled to notice or, in the case of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, to the last known address of the fiduciary of such person, even if such person or fiduciary is then deceased, under a legal disability, or no longer in existence.

(3) Nature of summons. - Any summons to which this subsection applies (and any summons in aid of collection described in subsection (c)(2)(D)) shall identify the taxpayer to whom the summons relates or the other person to whom the records pertain and shall provide such other information as will enable the person summoned to locate the records required under the summons.

(b) Right to intervene; right to proceeding to quash. -

(1) Intervention. - Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to intervene in any proceeding with respect to the enforcement of such summons under section 7604.

(2) Proceeding to quash. -

(A) In general. - Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to begin a proceeding to quash such summons not later than the 20th day after the day such notice is given in the manner provided in subsection (a)(2). In any such proceeding, the Secretary may seek to compel compliance with the summons.

(B) Requirement of notice to person summoned and to Secretary. - If any person begins a proceeding under subparagraph (A) with respect to any summons, not later than the close of the 20-day period referred to in subparagraph (A) such person shall mail by registered or certified mail a copy of the petition to the person summoned and to such office as the Secretary may direct in the notice referred to in subsection (a)(1).

(C) Intervention, etc. - Notwithstanding any other law or rule of law, the person summoned shall have the right to intervene in any proceeding under subparagraph (A). Such person shall be bound by the decision in such proceeding (whether or not the person intervenes in such proceeding).

(c) Summons to which section applies. -

(1) In general. - Except as provided in paragraph (2), this section shall apply to any summons issued under paragraph (2) of section 7602(a) or under sections 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7612.

(2) Exceptions. - This section shall not apply to any summons

(A) served on the person with respect to whose liability the summons is issued, or any officer or employee of such person;

(B) issued to determine whether or not records of the business transaction or affairs of an identified person have been made or kept;

(C) issued solely to determine the identify of any person having a numbered account (or similar arrangement) with a bank or other institution described in section 7603(b)(2)(A);

(D) issued in aid of the collection of-

(i) an assessment made or a judgment rendered against the person with respect to whose liability the summons is issued, or

(ii) the liability at law or in equity of any transferee or fiduciary of any person referred to in clause (i).

(E) - (i) issued by a criminal investigator of the Internal Revenue Service in connection with the investigation of an offense connected with the administration or enforcement of the internal revenue laws, and

(ii) served on a person who is not a third-party recordkeeper (as defined in section 7603(b)), or

(F) described in subsection (f) or (g).

(3) Records. - For purposes of this section, the term records includes books, papers, and other data.

(d) Restriction on examination of records. - No examination of any records required to be produced under a summons as to which notice is required under subsection (a) may be made -

(1) before the close of the 23rd day after the day notice with respect to the summons is given in the manner provided in subsection (a)(2), or

(2) where a proceeding under subsection (b)(2)(A) was begun within the 20-day period referred to in such subsection and the requirements of subsection (b)(2)(B) have been met, except in accordance with an order of the court having jurisdiction of such proceeding or with the consent of the person beginning the proceeding to quash.

(e) Suspension of Statute of Limitations. -

(1) Subsection (b) action. - If any person takes any action as provided in subsection (b) and such person is the person with respect to whose liability the summons is issued (or is the agent, nominee, or other person acting under the direction or control of such person), then the running of any period of limitations under section 6501 (relating to the assessment and collection of tax) or under section 6531 (relating to criminal prosecutions) with respect to such person shall be suspended for the period during which a proceeding, and appeals therein, with respect to the enforcement of such summons is pending.

(2) Suspension after 6 months of service of summons. - In the absence of the resolution of the summoned party's response to the summons, the running of any period of limitations under section 6501 or under section 6531 with respect to any person with respect to whose liability the summons is issued (other than a person taking action as provided in subsection (b)) shall be suspended for the period-

(A) beginning on the date which is 6 months after the service of such summons, and

(B) ending with the final resolution of such response.

(f) Additional requirements in the case of a John Doe summons. -

Any summons described in subsection (c)(1) which does not identify the person with respect to whose liability the summons is issued may be served only after a court proceeding in which the Secretary establishes that -

(1) the summons relates to the investigation of a particular person or ascertainable group or class of persons,

(2) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law, and

(3) the information sought to be obtained from the examination of the records or testimony (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources.

(g) Special exception for certain summonses. -

A summons is described in this subsection if, upon petition by the Secretary, the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

(h) Jurisdiction of district court; etc. -

(1) Jurisdiction. - The United States district court for the district within which the person to be summoned resides or is found shall have jurisdiction to hear and determine any proceedings brought under subsection (b)(2), (f), or (g). An order denying the petition shall be deemed a final order which may be appealed.

(2) Special rule for proceedings under subsections (f) and (g) .- The determinations required to be made under subsections (f) and (g) shall be made ex parte and shall be made solely on the petition and supporting affidavits.

(i) Duty of summoned party. -

(1) Recordkeeper must assemble records and be prepared to produce records- On receipt of a summons to which this section applies for the production of records, the summoned party shall proceed to assemble the records requested, or such portion thereof as the Secretary may prescribe, and shall be prepared to produce the records pursuant to the summons on the day on which the records are to be examined.

(2) Secretary may give summoned party certificate. - The Secretary may issue a certificate to the summoned party that the period prescribed for beginning a proceeding to quash a summons has expired and that no such proceeding began within such period, or that the taxpayer consents to the examination.

(3) Protection for summoned party who discloses. - Any summoned party, or agent or employee thereof, making a disclosure of records of testimony pursuant to this section in good faith reliance on the certificate of the Secretary or an order of a court requiring production of records or the giving of such testimony shall not be liable to any customer or other person for such disclosure.

(4) Notice of suspension of statue of limitations in the case of a John Doe summons. - In the case of a summons described in subsection (f) with respect to which any period of limitations has been suspended under subsection (e)(2), the summoned party shall provide notice of such suspension to any person described in subsection (f).

(j) Use of summons not required. -

Nothing in this section shall be construed to limit the Secretary's ability to obtain information, other than by summons, through formal or informal procedures authorized by sections 7601 and 7602.

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

September 11, 2008

Jeffret T. Maehr
924 E. Stollsteimer Rd
Pagosa Springs, CO 81147

Dear Mr. Maehr:

This responds to your Freedom of Information Act (FOIA) request of August 20, 2008, received in our office on September 10, 2008.

You asked for documentation clarifying some words used in the IR Code.

The Freedom of Information Act does not require agencies to respond to interrogatories. It also does not require agencies to conduct research to answer substantive tax questions or decide which resolution, decision, or statutes you are seeking. Furthermore, the Act does not require an agency to respond to statements that may be more appropriately addressed in judicial proceedings. The Act does not require agencies to provide explanations and/or correct the requester's misinterpretation of information.

To the extent you are seeking records that establish the authority of the Internal Revenue Service to assess, enforce, and collect taxes, the Sixteenth Amendment to the Constitution authorized Congress to impose an income tax. Congress did so in Title 26 of the United States Code, commonly known as the Internal Revenue Code (IRC). The IRC may contain information responsive to portions of your request. It is available at many bookstores, public libraries and on the Internet at www.irs.gov.

Income tax filing requirements are supported by statute and implementing regulations, which may be challenged through the judicial system, not through the FOIA. It is not the policy of the Internal Revenue Service to engage in correspondence regarding the interpretation and enforcement of the IRC. We will not reply to future letters concerning these issues.

If you have any questions please call me at (801) 620-7635 or write to: Internal Revenue Service, Disclosure Office 12, M/S 7000, PO Box 9941 Ogden, UT 84409. Please refer to case number RM08-3485.

Sincerely,

Robert Maestas ID # 29-81692
Disclosure Specialist
Disclosure Office 12

Attachment Y

IRS mission statements: (With my comments)

1.2.1.2.1 (Approved 12-18-1993)
P-1-1

1. Mission of the Service: Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

Response:

(I have personally sought to understand the IR Code, and made repeated requests for answers to various code and other questions sent to the IRS. To date, NO answer to ANY question has been forthcoming. This suggests that the IRS is not being sincere about it's mission).

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

"Silence is a species of conduct, and constitutes an implied representation of the existence of facts in question. When silence is of such character and under such circumstances that it would become a fraud, it will operate as an Estoppel." Carmine v. Bowen, 64 U.S. 932

"Fraud in its elementary common law sense of deceit… includes the deliberate concealment of material information in a setting of fiduciary obligation. A public official is a fiduciary toward the public,… and if he deliberately conceals material information from them he is guilty of fraud." McNally v. U.S., 483 U.S. 350, 371-372, Quoting U.S. v Holzer, 816 F.2d. 304, 307.

"Fraud destroys the validity of everything into which it enters," Nudd v. Burrows, 91 U.S 426;

Fraud and deceit may arise from silence where there is a duty to speak the truth, as well as from speaking an untruth. Morrison v. Coddington, 662 P. 2d. 155, 135 Ariz. 480 (1983).

"Fraud vitiates everything", Boyce v. Grundy, 3 Pet. 210;

"Fraud vitiates the most solemn contracts, documents and even judgments," U.S. v. Throckmorton, 98 U.S. 61.

Since IRS silence on these issues and previous documentation requests is deafening, it can only be reasonably presumed that fraud is involved, and this vitiates any relationship between myself and the Respondent.

Mission Statement, Continued;

2. Tax matters will be handled in a manner that will promote public confidence. All tax matters between taxpayers and the Internal Revenue Service are to be resolved within established administrative and judicial channels. Service employees, in handling such matters in their official relations with taxpayers **(that is NOT me)** or the public, **(that would be me)** will conduct themselves in a manner that will promote public confidence in themselves and the Service. Employees will be impartial and will not use methods which are threatening or harassing in their dealings with the public.

4.10.7.2 (05-14-1999)
Researching Tax Law

1. Conclusions reached by examiners must reflect correct application of the law, regulations, court cases, revenue rulings, etc. Examiners must correctly determine the meaning of statutory provisions and not adopt strained interpretation.

Petitioner's Response; **The Attachments to this Affidavit provide ample legal, court case and other evidence that proves that the IRS is NOT "reflecting correct application."**

Mission Statement, Continued;

1.2.1.6.2 (Approved 11-26-1979)
P-6-10

1. The public impact of clarity, consistency, and impartiality in dealing with tax problems must be given high priority: In dealing with the taxpaying public, Service officials and employees will explain the position of the Service clearly and take action in a way that will enhance voluntary compliance. Internal Revenue Service officials and employees must bear in mind that the public impact of their official actions can have an effect on respect for tax law and on voluntary compliance far beyond the limits of a particular case or issue.

Petitioner's Response; "**Voluntary" compliance is based on public MISUNDERSTANDING of said IR Code... a misunderstanding which the IRS does all it can to perpetuate at any costs. I have NOT volunteered to continue paying income taxes BECAUSE of the law.**"

Mission Statement, Continued;

1.2.1.6.4 (Approved 03-14-1991)
P-6-12

1. Timeliness and Quality of Taxpayer Correspondence: The Service will issue quality responses to all taxpayer correspondence.

Petitioner's Response; **I'm still waiting for such a response, even after 5 years...**

Mission Statement, Continued;

2. Taxpayer correspondence is defined as all written communication from a taxpayer or his/her representative, excluding tax returns, whether solicited or unsolicited. This includes taxpayer requests for information, as well as that which may accompany a tax return; responses to IRS requests for information; and annotated notice responses.

Petitioner's Response; **I've only received IRS unsigned form letters with no named individual or signature taking personal responsibility, only meant to threaten, intimidate and continue the ignorance of the public**.

Mission Statement, Continued;

3. A quality response is timely, accurate, professional in tone, responsive to taxpayer needs (i.e., resolves all issues without further contact).

Petitioner’s Response; **Again, no such response to my sincere and legitimate questions has been forthcoming...**

Mission Statement, Continued;

1.2.1.6.7 (Approved 11-04-1977)P-6-20

1. Information provided taxpayers on the application of the tax law: The Service will develop and conduct effective programs to make available to all taxpayers comprehensive, accurate, and timely information on the requirements of tax law and regulations.

Petitioner’s Response; **I'd be VERY happy, as would millions of others, to help the IRS with this portion of their "Mission."**

The IRS claims its "mission" is to help us to understand and comply with the tax laws. This has been, in and of itself, conclusively dis-proven, and the IRS is failing in that mission miserably.