UNITED STATES TAX COURT

Jeffrey T. Maehr, Petitioner	))	
v.	)	Docket No. 10758-11
COMMISSIONER OF INTERNAL REVENUE Respondent	))	

REPLY TO MOTION TO DISMISS

Comes now, Jeffrey T. Maehr, Pro Se before the United States Tax Court in response to Respondent's Motion to Dismiss.

Petitioner refutes any alleged "conceded" elements of alleged deficiency, and made it clear he refutes ALL of the said deficiency based on substantive and other law, as well as failure to prove Standing in the Record. In addition, Petitioner objects to the apparent complete ignoring of all Facts of Record provided in Petition.

In light of not having received any response to Petitioner's Request for Clarification, Petitioner filed subsequent documents explaining the apparent non-filed second request for clarification, and filed a request for enlargement of time, and filed the second request for clarification.

Since the 21st is the date the Court initially gave me to file a response to the Motion to Deny, Petitioner is filing this Reply without having all the necessary information requested. If the Court responds to the additional time request and provides clarification as requested, Petitioner would want to possibly file an amended Reply, and possibly an amended Petition as well.

Since Petitioner doesn't have the necessary information to file an amended Petition without proper clarification, he therefore stands on his original Petition as is since there is nothing new to add.

Petitioner reminds this Honorable Court of Jurisdiction elements:

"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. (See Exhibit X below).

Petitioner also stands on previous pleadings and attachments in original Petition as part of this record and response.

Argument To Deny Motion to Dismiss:

Petitioner responds to these issues below, and maintains his stand in the initial, original Petition, and is still seeking legal, proper and lawful adjudication of issues responded to by Respondent, and to all other issues raised by Petitioner in first Petition, before any attention can be drawn to the frivolous Deficiency.

A. Respondent, at Page 3, #4 of Motion to Dismiss states... “petitioner advances a number of frivolous arguments in attempt to show that he is not subject to the Internal Revenue Code and that income is not taxable.”

Respondent appears to be stating, in previous Pleading of P. 1-3, that the issue before the Court is the actual assessment, and any “error” which Petitioner should have listed (thus “Failure to State a Claim...”). Petitioner made it quite clear in previous Motion that he contested the entire assessment and that the assessment itself is in error, which is a “claim.” How much more of a claim can Petitioner make? (See Exhibit B). Specific “assignments of error” are an impossibility

since the entire assessment is in error and is being contested in its entirety as frivolous and under color of law, not to mention the Standing issue, a threshold issue.

Respondent, then, however, proceeds to address "some" of the many constitutional and case precedent issues raised by Petitioner, calling them "frivolous," while quoting various cases in support of Respondent's position. Petitioner refutes the unethical misquoting and misuse of void case law, (for unconstitutionality and conflict with standing precedent) and ignoring self-authenticating, superior, and never overturned, case law and Congressional Testimony which clearly supercedes all case laws quoted in Motion to Dismiss dealing with the alleged "frivolous" issues raised by Petitioner... to be discussed below.

B. Page 3, #4 of Motion, Respondent states... "if the Tax Court lacks jurisdiction in this case, then clearly no relief can be granted. Moreover, the Tax Court has rejected the general argument that respondent lacks standing and the Court lacks jurisdiction as frivolous and without merit."

Petitioner would first state that relief was sought in the original Petition. Second, this argument was in no way "general." It was specific and to the point on a number of issues. Petitioner also would remind this Honorable Court, which Petitioner clearly elucidated in original Petition, that if the court lacks jurisdiction, since there is no proof in the record of STANDING (the U.S. Tax Court being a Court of Record) by Respondent, then the deficiency claims have no standing in this Court, and thus any required response by Petitioner to frivolous Deficiency is moot. Moreover, if the issue of Standing can be "hearsayed" into evidence, then the Rule of Law has been circumvented. Respondent has provided NO Record in Evidence refuting any of the elements raised by Petitioner, per original Petition and Exhibits.

"The party invoking federal jurisdiction bears the burden of alleging facts sufficient to establish the elements of jurisdiction." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). C. The Court ruled similarly in Goodrich v Edwards, 255 U.S. 527 (1921).

In the same section of Motion to Dismiss, Respondent falsely states that Petitioner is claiming that "income is not taxable." Petitioner doubts Respondent's counsel actually read the material to be stating such a claim. Petitioner has never stated "income is not taxable." Petitioner states that he HAS no "income" that can be legally taxed as defined in case law and Congressional Testimony.

"Income" as defined by the courts for 100 years clearly shows it is NOT "wages, salary or compensation..." and thus, all claims by Respondent to the contrary are also moot. Using said "wages, salary or compensation..." as criteria for this frivolous assessment and deficiency allegation is counter to law, and apparently Respondent is either unaware of such existing, longstanding law, or willfully and wantonly ignoring it. This issue has been obfuscated for almost 100 years... so it is understandable that such misperception may exists, but the law is the law, and is on the Record.

C. Respondent on Page 4, C continued, cites Chang v. Commissioner. Petitioner denies that any cited case can provide "standing" in this case. Standing is not legislated through any court, but

through Evidence of Record, as previously provided in first Petition. (See page 4, (1) of original Petition). The Rules of Evidence to prove standing have NOT been met by Respondent, and creating "law" that counters Constitutional laws is void:

All government employees (Federal or State) and all legislated laws are subject to the Constitution and are legally bound to uphold it in all activities:

"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... The Senators and Representatives and members of the State legislature, and all executive and judicial officers of the United States and the several States, shall be bound thereby, **anything in the Constitution or laws of any State to the contrary notwithstanding**." The Constitution of the united States of America, Article VI, Cl 2, 3. (Emphasis added).

"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.

If Petitioner sent Respondent an "Assessment" and "Notice of Deficiency" like in this case, would this Honorable Court simply accept the hearsay of this assessment and deficiency, or would Petitioner be required by law to provide proof of standing and jurisdiction, and then evidence that the assessment was lawfully based? Would petitioner be required to support this assessment and deficiency with anything other than "because I said so" and even be allowed to ignore or deny counter precedent evidence and law evidence to the contrary?

This would clearly be a bias and prejudice against Petitioner. (See Exhibit D below).

D. Respondent on Page 4, (d) states... "petitioner states that the Internal Revenue Code is not positive law. This contention has no merit and is frivolous."

Petitioner addressed this in original Petition (See Exhibits S & V below). Once again, Respondent is ignoring evidence presented, and cites a case which is supportive of its contention, but which contradicts Respondent's own Code.

Is Respondent expecting this Honorable Court to ignore contradicting evidence in favor of Respondent, when Petitioner has provided much more evidence than citing one case?

E. Respondent on Page 4, (e) states... "petitioner argues that the Internal Revenue Service ("I.R.S.") is not a government agency and therefore lacks standing to bring an action against him. This claim is also meritless. See Donaldson v. United States, 400 U.S. 517, 534 (1971).

Petitioner cited Respondent's own self-authenticating evidence in the case of Diversified Metal Products v. IRS et al. CV-93-405E-EJE U.S.D.C.D.I., as well as Public Law 94-564, Senate Report 94-1148 pg. 5967, Reorganization Plan No. 26, Public Law 102-391, which was conveniently ignored.

If this is “meritless,” than Respondent’s own testimony in Diversified (supra), as well as other government documents are also “meritless” and prima facie evidence of bad faith, or even perjury and fraud. Petitioner provides more evidence of the fact that the Respondent is NOT a lawfully created government agency. (See Exhibit S below).

F. Respondent on Page 4, (f) states... “Petitioner's claim in subsection 5, that he is not a "taxpayer" liable for tax, has been roundly rejected as meritless and frivolous.”

Petitioner, once again, refutes any cited case apparently legislating a lawful fact into existence outside Congressional lawmaking:

"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).

If the Supreme Court cannot “create” what does not exist, using the Supreme Court or any other court case to try to “create statutory distinction,” then Respondent cannot stand on the merits of such contradictory verbiage. I have found NO law, NO statute, NO anything that legislates my being a “taxpayer,” as compared to 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**... **The distinction between persons and things within the scope of the revenue laws and those without is vital.**" Long v. Rasmussen, 281 F. 236 (1922) stated at 238: (Referenced in United States Court of Claims, Economy Plumbing and Heating v. United States, 470 Fwd 585, at 589 (1972)). (Emphasis added).

The Internal Revenue Code relates only to those who are "taxpayer(s)" as that term is defined therein, that is, only those who are “subject to or liable for” a revenue tax (26 U.S.C. 1313 (b) and 7701 (a) (14); or who knowingly, with full understanding, volunteer to pay such taxes. I am NOT such a person and no law makes me so.

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...”** Gould v. Gould, 245 U.S. 151, 153." (Emphasis added).

G. Respondent on Page 4, (f) also states... “...wages are not income.”

Petitioner points out that Respondent failed to acknowledge or refute the many cited cases proving that wages are NOT "income." (See original Petition, Page 7, (7) & page 7 (9) through page 9).

"It becomes essential to distinguish between what is, and what is not "income"... Congress (and thus, Respondent-JTM) 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.

"whatever may constitute income, therefore must have the essential feature of gain to the recipient. This was true when the 16th Amendment became effective, it was true at the time of Eisner v Macomber supra, it was true under sect 22 (a) of the Internal Revenue Code of 1938 and it is likewise true under sect 61 (a) of the I.R.S. code of 1954. If there is not gain there is not income ••• **Congress has taxed INCOME and not compensation**." (Emphasis added).

See "Exhibit A-What is Income" below for complete discussion of lawful definition of "income."
Is Respondent expecting this Honorable Court to ignore precedent, especially Supreme Court precedent? How can one read these cited cases and conclude anything else except that "income" is something altogether different than "wages, salary or compensation?"

Is this Honorable Court to ignore self-authenticating evidence that completely refutes respondent's erroneous presumptions?

H. Respondent on page 4, (g) states... "petitioner claims that that (sic) he is not required to fill out a Form 1040."

Petitioner has requested from Respondent, for 9 years, for the actual Code section where Petitioner is made liable for said "income" taxes, and is required to fill out a 1040 form, but Respondent has failed. No such code section exists, like it does for alcohol, tobacco, firearms, etc.

Petitioner provided evidence of the misuse of the 1040 form by Respondent in original Petition. (See Exhibit M below). Once again, Respondent cites a case that defies Gould (supra) & American Tobacco (supra) where no such legislated intent existed or is clear in the least. Petitioner denies the validity of such cites that defy previous precedent, as well as IR Code and other government regulations regarding the proper use of the 1040 form. I just want to see the

law, not a misquote or misunderstanding by previous judgments that have ignored or have not been made aware of precedent the Courts have been defying.

I. Respondent on page 5, (h) states... "petitioner appears to argue that because the Internal Revenue Code contains ambiguities, respondent has no authority to assess taxes. Whatever ambiguities may have existed in those statutes, the courts have plainly resolved them to arrive at the conclusion that individuals may be taxed on their income, including wages."

Petitioner has addressed the erroneous conclusions involving "income," and "wages" above. Ambiguities are extremely relevant, especially where no actual Code can be produced, that makes petitioner liable for filing of said "income" tax form. Why is no Code section provided by Respondent?

"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,).

J. Respondent on page 6, (J) states... "petitioner argues that his wages are not taxable income and that the Sixteenth Amendment does not allow for the taxation of wages. These contentions are also meritless and frivolous. See Brushaber v. Union Pacific R.R., 240 U.S. I, 12-19 (1916) (upholding the constitutionality of the income tax laws under the Sixteenth Amendment); United States v. Collins, 920 F.2d 619, 629 (10 cir, 1990) ("the Sixteenth Amendment authorizes a direct non-apportioned tax..."); Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990) (characterizing as "lacking in legal merit and patently frivolous" the argument that "wages are not income")."

Honestly... Really? Respondent severely misquotes Brushaber (supra), and should be reprimanded for this. (See Exhibit A below). Even if the 16th Amendment was legally ratified, the 16th Amendment did NOT cause the Constitution to be in conflict, as my original Petition clearly elucidated, if Respondent claims what they claim;

"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).

Even for the sake of argument, if Petitioner accepted the validity of the 16th Amendment regarding a tax on "income," Respondent has failed to refute precedent on what this "income" actually is, as well as the obvious unconstitutional application of this taxation... i.e. direct vs indirect. Petitioner denies having such "income" and denies Respondent is constitutionally applying this so-called "income" tax constitutionally as either direct or indirect... the ONLY two forms of taxation allowed. (See Exhibit C below).

K. Respondent on page 6, (j) (5) states... "Petitioner does not assert in the petition that he received income in any amount less than that determined by respondent in the notice of deficiency."

Petitioner states that this a moot point regarding this issue, considering the evidence presented that Respondent DID, in fact, "assert" that he received income in any amount less than..." Respondent clearly denied receiving ANY income at all, which is zero. Clearly Respondent is NOT seriously considering the evidence, and is falling upon worn out responses without doing Due Diligence which is part of their job. Is this a "game" Respondent is playing, or is it serious law? Is digging out the archives of unconstitutional and conflicting law proof of their "Due Diligence" on these issues?

L. Respondent on page 6, (j) (6) states... "Petitioner does not deny in the petition that he failed to timely file income tax returns for the years at issue, nor does he allege that such failures were due to reasonable cause and not willful neglect."

Is Petitioner seriously supposed to provide an answer to such an allegation? Respondent is grasping at straws to attempt to deceive this Honorable Court into accepting a tired, old facade. This is more prima facie evidence that Respondent has NOT done Due Diligence... not even in the least... to arrive at a lawful conclusion. Petitioner challenges the use of the term "willful neglect."

Petitioner has challenged, for years, the belief that he has ANY lawful duty to file a "return," let alone a bootleg "return..." (See Exhibit M below).

"The Senate Report analysis of Sec. 3512 states that [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.

Petitioner denies any "willful neglect" of any lawful duty, and has conclusively proven this over the last 9 years, and 1000+ pages of documents. Petitioner challenges Respondent to deny such proof, and Petitioner states that Respondent is attempting willful, wanton fraud, collusion and coercion in this continued agenda against Petitioner.

In the Supreme Court Case "CHEEK v. UNITED STATES, 498 U.S. 192 (1991), the court states: "Willfulness, as construed by our prior decisions in criminal tax cases, requires the Government to prove that the (1) law imposed a duty on the defendant, (2) that the defendant knew of this duty, and (3) that he voluntarily and intentionally violated that duty." There are three essential elements to the crime of tax evasion, namely (1) willfulness; (2) existence of a tax deficiency; and (3) an affirmative act constituting an evasion or attempted evasion of the tax. Sansone v. United States, 380 U.S. 343, at 351, 85 S.Ct. 1004, at 1010 (1965); United States v. Bishop, 264 F.3d 535 (5th Cir. 2001); United States v. Dack, 747 F.2d 1172, at 1174 (7th Cir. 1984); and United States v. Mal, 942 F.2d 682, at 687 (9th Cir. 1991); United States v. Silkman, 156 F.3d 833 (8th Cir. 1998). See also Lawn v. United States, 355 U.S. 339, at 361, 78 S.Ct. 311 (1958).

Respondent fails at (1), fails at (2) to prove he "knew he had a duty, and fails at (3), that he intentionally violated that duty. No law or laws have been provided that can supercede evidence provided by Petitioner.

M. Respondent on page 6, (j) (7) states... "Petitioner does not deny in the petition that he failed to timely pay **his income taxes** or **estimated income tax** for the years at issue, nor does he allege that such failures were due to reasonable cause and not **willful neglect**."

Petitioner points out that Respondent is making continuous "presumptions" in their "motion to Dismiss." (Underlined and bolded above). Petitioner demands Respondent prove "his income taxes" are lawfully required, and not based on lazy presumption and "company line." Petitioner is extremely puzzled by Respondent's replying that Petitioner "does not allege... willful neglect."

Is Respondent seriously expecting Petitioner would confess "willful neglect" as why he did not file their bootleg form? Would any reasonable person do such a thing in responding to Respondent's claims?

N. Respondent on page 6, (j) (7), states... "by failing to properly assign error to respondent's penalty determination, the petitioner is deemed to have conceded the additions to tax."

Petitioner states this also is a moot point and can be put out of view. Any reasonable, logical, rational thought on this topic would clearly show that this alleged "concession" is moot because of the Evidence of Record already presented. There can be no standing or support on this issue without lawful proof. There is none. Petitioner "properly assigned error" against the very Deficiency itself, and is yet to be rebutted with anything other than conflicting case law.

O. Respondent on page 6, (j) (11) states... "Petitioner objects to the granting of this motion. WHEREFORE, it is prayed that this motion be granted."

Petitioner agrees that he objects to the granting of this motion based on the above facts in evidence.

Conclusion:

The Honorable Court is being provided false, void and misleading "responses" by Respondent. The case precedent quoted by Respondent is void on its face being in conflict with Supreme Court and other court case law which supercedes the error being propagated by Respondent and subsequent courts.

1. Respondent throughout Motion to Dismiss cites various court cases, calling Petitioner's claims "frivolous." Petitioner provides substantial evidence to prove his position. Is Respondent's case quotes to be accepted by this Court as legitimate, but all case quotes and allegations by Petitioner are deemed "frivolous?" What is the criteria for determining this potentially biased and unjust position? What law upholds this position? Where does it authorize Respondent, or this Honorable Court, to ignore precedent, as detailed in original Petition? (Questioned in original Petition, page 3, bottom, "Claims that...").

2. Respondent failed to address the evidence provided by the "IRS" (Respondent), that it is NOT a legally created government entity, and therefore has no standing to be involved with this case, and presents prima facie evidence of identity theft at the least. (See Exhibit S below, as also provided in original Petition).

3. Respondent failed to address the clearly Constitutional issue of "Direct" and "Indirect" taxation, which the Respondent is clearly in violation of in their procedures, and which is supported by Supreme Court Case law. (See Exhibit C below).

4. Respondent failed to address the issues brought out by Petitioner on their failure to comply with their own IR Code rules of Conduct. (See Exhibit E below). At what point does law enter into this case, and hearsay, presumptions (See Exhibit H below) and ignoring of law cast aside?

5. Respondent failed to address the 1040 bootleg form issue which was addressed above and in Exhibit ???

5. Petitioner "states the claim" that Respondent has NO authority, Standing or Jurisdiction over Petitioner, has no lawful basis for this "assessment," has no lawful basis for any "Notice of Deficiency," and is acting under the color of law, without Constitutional authority, and in direct rebellion to the laws of the land and against Petitioner's civil rights. This is nothing short of peonage and involuntary servitude. (See Exhibit J below).

6. Respondent is interfering with Petitioner's religious rights and practice in claiming any requirement to disobey the Constitutional and lawful authority which govern's America. To be forced against my will to comply with unlawful statutes, comply with unconstitutional statutes or codes, or comply with presumptions and hearsay evidence is requiring me to disobey my God, His word the Bible, and to uphold lawlessness, which I cannot and will not do. (See Exhibit N below).

7. Petitioner denies any validity to Respondent's claim that "failure to state a claim..." is valid,

when claims were clearly made, and Petitioner reiterates that the entire deficiency is void, thus there can be no specific or individual points of contention within void deficiency.

Therefore:

Petitioner Moves this Honorable Court to compel Respondent to provide direct and lawful evidence to refute all points introduced into this case to prove Standing and Jurisdiction of the Court, or Deny Respondent's Motion to Dismiss.

Petitioner also moves this Honorable Court, where failure to provide evidence in fact occurs, to dismiss all "Notice of Deficiency" documents, without prejudice, until such evidence can be lawfully substantiated and placed into Record.

Petitioner also moves this honorable Court to uphold his case precedent and render a lawful decision based on the evidence presented by Petitioner that clearly refutes Respondent's claims and cited case law to maintain the high standard of non-bias or non-prejudice against Petitioner.

Petitioner maintains that the law is on his side, and that precedent is clearly established on the elements of his case, and that Respondent is acting outside organic law and under the color of law, and the evidence clearly proves this, or at the very least raises, a substantial element of doubt and question has been raised as to Respondent's standing and authority over Petitioner.

Respectfully submitted to this honorable court.

_____

Jeffrey T. Maehr
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EXHIBITS

Referenced herein Exhibits X, B, D, E, S, V, A, M, C, H, J, N in alphabetical order below:

EXHIBIT 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-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 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 from whatever source *derived* 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 freedom and right to earn a living through any lawful occupation is EXEMPT from taxation by the federal government! U. S. Supreme Court in *Grosjean v. American Press Co.*, 297 U.S. 233 (1936); *Jones* v. *Opelika*, 316 U.S. 584, 56 S.Ct. 444 (1943); *Follett v. McCormick*, 321 U.S. 573 64 S.Ct. 717 (1944); *Harper v. Virginia Bd. Of Elections*, 383 U.S. 663, 86 S.Ct. 1079 (1966).

"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 includes gains, profits, and income derived from 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.

"...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). (Emphasis added).

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

The point being that “income” is something which comes FROM the “tree,” or “wages...” Interest derived FROM wages.

"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). (Emphasis added).

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]. (Emphasis added).

"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. (Emphasis added).

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. (Emphasis added).

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 Respondents' 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.

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 case law and other evidence, Petitioner believes 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.

EXHIBIT B

In re Motion for Dismissal for Failure to State a Claim

FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

"The general rule in appraising the sufficiency of a complaint for failure to state a claim is that a complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." CONLEY VS. GIBSON (1957), 355 U.S. 41, 45, 46, 78 S.Ct. 99, 102, 2LEd 2d 80; SEYMOUR VS. UNION NEWS COMPANY, 7 Cir., 1954, 217 F.2d 168; and see rule 54c, demand for judgment, FEDERAL RULES OF CIVIL PROCEDURE, 28 USCA: "Every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." U.S. V. WHITE COUNTY BRIDGE COMMISSION (1960), 2 Fr Serv 2d 107, 275 F2d 529, 535.

"A complaint may not be dismissed on motion if it states some sort of claim, baseless though it may eventually prove to be, and inartistically as the complaint may be drawn. The complaint is hard to understand but this, with nothing more, should not bring about a dismissal of the complaint, particularly is this true where a defendant is not represented by counsel, and in view of rule 8{f} of the rules of civil procedure, 28 U.S.C., which requires that all pleadings shall be construed as to do substantial justice BURT VS. CITY OF NEW YORK, 2Cir., (1946) 156 F.2d 791.

Accordingly, the complaint will not be dismissed for insufficiency. Since the Federal Courts are courts of limited jurisdiction, a plaintiff must always show in his complaint the grounds upon which that jurisdiction depends. " STEIN VS. BROTHERHOOD OF PAINTERS, DECORATORS, AND PAPER HANGERS OF AMERICA, DCCDJ (1950), 11 F.R.D. 153.

"A complaint will not be dismissed for failure to state a claim, even though inartistically drawn and lacking in allegations of essential facts..." JOHN EDWARD CROCKARD VS. PUBLISHERS, SATURDAY EVENING POST MAGAZINE OF PHILADELPHIA, PA (1956) Fr Serv 29, 19 F.R.D. 511, DCED Pa 19 (1958)

"FRCP 8f: CONSTRUCTION OF pleadings. All pleadings shall be so construed as to do substantial justice." DIOGUARDI VS. DURNING, 2 CIR., (1944) 139 F2d 774.

"Counterclaims will not be dismissed for failure to state a claim, even though inartistically drawn and lacking in allegations of essential facts..." LYNN VS VALENTINE VS. LEVY, 23 Fr 46, 19 FDR, DSCDNY (1956)

EXHIBIT 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 alleged 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 alleged 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 alleged 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, Supra, warned. We have millions of lawyers but are left without the "rule of law."

I ask this honorable Court 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 (alleged-JTM) 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. Plaintiff has clearly and repeatedly stated that Plaintiff is being forced, if Plaintiff complies with the Respondent’s 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 Plaintiff is 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 Plaintiff 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 Plaintiff’s personal time (valued at $100 dollars per hour and amounting to date of approximately 1000 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 Plaintiff is 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 9 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, civil and religious leaders and countless tax "experts" and there have been NO lawful, good faith answers forthcoming to date.

Exhibit D - Bias/prejudice!

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." Liteky v. U.S., 114 S.Ct. 1147, 1162 (1994). (Supreme Court).

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) (Supreme Court)

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., 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), (Supreme Court) citing Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954). (Supreme Court) 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, (supra) 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**.

EXHIBIT E - IR Code - MISSION STATEMENT

(**NOTE**: Petitioner denies he is a "taxpayer" as labeled in this disclosure, but since Respondent is attempting to force this presumptive definition onto Petitioner, Petitioner responds with Respondent's own rules which Respondent has violated in their presumptions about Petitioner for over 9 years now.)

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.

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. (The Attachments to this Affidavit provide ample legal, court case and other evidence that proves that the IRS is NOT "reflecting correct application.")

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. ("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).

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.

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.

(The Petition, and all previous documentation provide ample legal, court case and other evidence that proves that the IRS is NOT "reflecting correct application.")

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.

(I've only received IRS unsigned forms with no named individual taking personal responsibility, meant to threaten, intimidate and continue the ignorance of Plaintiff).

3. A quality response is timely, accurate, professional in tone, responsive to taxpayer needs (i.e., resolves all issues without further contact).

(Again, no such response to my sincere and legitimate, good faith questions have been forthcoming...).

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.

EXHIBIT H -Presumption

The Respondent uses presumptions upon which to base assessment 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 of Alabama, 219 U.S. 219 (1911)].

EXHIBIT J -Involuntary Servitude & Peonage

Violation of TITLE 18 > PART I > CHAPTER 77. PEONAGE, SLAVERY, AND TRAFFICKING IN PERSONS.

INVOLUNTARY SERVITUDE & PEONAGE - a condition of compulsory service or labor performed by one person, against his will, for the benefit of another person due to force, threats, intimidation or other similar means of coercion and compulsion directed against him. Lectric Law Library Lexicon:

Title 18, U.S.C., Sec. 1584, makes it a Federal crime or offense for anyone to willfully hold another person in involuntary servitude.

A person can be found guilty of that offense only if all of the following facts are proved beyond a reasonable doubt:

1. That the person held the victim in a condition of 'involuntary servitude;'
2. That such holding was for a ‘term,’ and
3. That the person acted knowingly and willfully.

It must be shown that a person held to involuntary servitude was so held for a 'term.' It is not necessary, however, that any specific period of time be proved so long as the 'term' of the involuntary service was not wholly insubstantial or insignificant.

Title 18, U.S.C., Sec. 1581(a) is the peonage law cited

The specific facts which must be proved beyond a reasonable doubt in order to establish the offense of peonage include each and all of the three specific factual elements constituting involuntary servitude as previously stated and explained in these instructions, plus a fourth specific fact; namely, that the involuntary servitude was compelled by the person in order to satisfy a real or imagined debt regardless of amount.

In considering whether service or labor was performed by someone against his will or involuntarily, it makes no difference that the person may have initially agreed, voluntarily, to render the service or perform the work. If a person willingly begins work but later desires to withdraw and is then forced to remain and perform work against his will, his service becomes involuntary. Also, whether a person is paid a salary or a wage is not determinative of the question as to whether that person has been held in involuntary servitude. In other words, if a person is forced to labor against his will, his service is involuntary even though he is paid for his work.

However, it is necessary to prove that the person knowingly and willfully took action, by way of force, threats, intimidation or other form of coercion, causing the victim to reasonably believe

that he had no way to avoid continued service, that he was confronted by the existence of a superior and overpowering authority, constantly threatening to the extent that his will was completely subjugated.

Based on the above facts of law, the IRS is clearly guilty of, or potentially guilty of, breaking this law against me personally as follows:

1. That the person held the victim in a condition of 'involuntary servitude';

The IRS has consistently claimed that I was legally required to pay income taxes, when the law and facts prove otherwise. Any continuance of this, based on this "Notice," is clearly forcing me, through threat of financial and criminal penalties, to continue this process of involuntary servitude to the IRS. Previous legal notice went unrebutted, yet the IRS pursued and secured a financial penalty, (See Attachment Q) providing prima facie evidence of condition number one.

2. That such holding was for a "term;"

The IRS has claimed for all my life that all Americans owe income taxes as long as they receive an "income," a term not legally correct in IR Code and not applying to me. This is a definite length of time, and fulfills condition number two.

3. That the person acted knowingly and willfully.

The IRS has been contacted for many years, by myself as well as many others who have sought answers to questions on the legality of income taxation. Along with these questions, case and Constitutional laws have been provided to clearly show that the IRS is breaking the law, and all parties supporting the IRS's illegal tactics are also guilty of knowingly and willing continuing this fraud against Petitioner.

It might be argued that such forced extraction is not “involuntary servitude” since people don’t “have” to work and thus Respondent is clear of complicity. Petitioner refutes this since most people DO have to work to exist and survive, (no choice) and therefore to extract monies under color of law, contrary to the Constitution and Rule of Law, claiming the right to said monies for said supposed “income,” is clearly a slave condition.

EXHIBIT M -

Unauthorized use of 1040 forms by IRS: (Emphasis added).

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.

Petitioner Challenges the mandatory nature of filing a 1040 form:

31 USC 321(d)(2). "For the purposes of the Federal income, estate, and gift taxes, property accepted under paragraph (1) shall be considered as a gift or bequest to or for the use of the

United States."

Because "gifts" and "bequests" are never mandatory, the income tax is VOLUNTARY!

"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. V 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.

Exhibit N - Religious beliefs and obedience to "Caesar."

The God of the Bible brought forth this great nation according to His will. It is He that provides us our inalienable rights to life, liberty and the pursuit of happiness and all other human lawful rights. NO government provides these rights for any sovereign human being. Government is created to PROTECT such rights. The People of this Republic originally agreed to, and by mutual agreement and understanding, all people still agree to, this Constitution which allows the People to rule themselves, through a limited government, as sovereign human beings, under God's sovereignty. This is the system which God allowed us to create and implement. The Constitution is the supreme law of the land, under the Supreme law of God.

Gen 1:26 And God said, Let us make man in our image, after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creeps upon the earth. 27 So God created man in his own image, in the image of God created he him; male and female created he them. 28 And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moves upon the earth.

God created man, provided him authority and power over the Earth, but NOT unlawful authority or power over each other. Nowhere in Genesis does God give man dominion over another man or woman. Man was to subjugate the Earth, and work with it to produce things. He was NOT authorized to subjugate or tread down other people.

God also gave them free will...

Deut 30:19 I call heaven and earth to record this day against you, that I have set before you life and death, blessing and cursing: therefore choose life , that both you and your seed may live:

God established free will for mankind, which we may exercise, legally, within His laws and commands.

Josh 24:15 And if it seem evil to you to serve the LORD, choose you this day whom you will serve; whether the gods which your fathers served that were on the other side of the flood, or the gods of the Amorites, in whose land you dwell: but as for me and my house, we will serve the LORD.

The creation of thousands of statutory laws is simply an attempt to take power from people, remove free will, and to "legislate" manipulated character through mindless responses to these "laws." This is completely counter to God's will for mankind. The entire purpose for mankind's creation is to build godly character through personal choice of right over wrong, cause and effect results, and growth. The creation of the stifling, burdensome statutory legal system is an evil, ungodly agenda.

Christ spoke words that are fitting as warning for all of our government leaders today:

Matt 23:1 Then spoke Jesus to the multitude, and to his disciples,

2 Saying, The scribes and the Pharisees (politicians) sit in Moses' seat: (have Constitutional authority as leaders in America).

3 All therefore whatsoever they bid you observe, that observe and do; (as long as it is legal) but do not you after their works: for they say, and do not.

4 For they bind heavy burdens and grievous to be borne, (Thousands of statutes and laws) and lay them on men's shoulders; but they themselves will not move them with one of their fingers. (How many politicians seem "above the law?" How many hold Americans to the letter, the countless statutes and insane laws, but escape from those same laws?).

5 But all their works they do for to be seen of men: (Great swelling words, and show) they make broad their phylacteries, and enlarge the borders of their garments, (Look sharp and promote a facade to gain popularity).

6 And love the uppermost rooms at feasts, and the chief seats in the synagogues, (full of vanity, pride, ego and self-righteousness).

7 And greetings in the markets, and to be called of men, Rabbi, Rabbi. ("Senator, Senator, "congressman, congresswoman, Mr. President...).

11 But he that is greatest among you shall be your servant. (Public "servants"... not public slave masters).

12 And whosoever shall exalt himself shall be abased; and he that shall humble himself shall be exalted. (This WILL occur).

14 Woe to you, scribes and Pharisees, (politicians-government) hypocrites! for you devour widows' houses, and for a pretence (deceit) make long prayer: (Speeches) therefore you shall receive the greater damnation.

15 Woe to you, scribes and Pharisees, (politicians-government) hypocrites! For you compass sea and land to make one proselyte, (Republican or Democrat... follower) and when he is made, you make him twofold more the child of hell than yourselves.

16 Woe to you, you blind guides... (politicians-government)

17 You fools and blind... (politicians-government)

23 Woe to you, scribes and Pharisees, (politicians-government) hypocrites! for you pay tithe of

mint and anise and cummin, (focus on the smallest letter of the (legal) law on American's heads...) and have omitted the weightier matters of the law, judgment, (right, legal, Constitutional judgment) mercy, and faith: these ought you to have done, and not to leave the other undone.

24 You blind guides, (politicians-government) which strain at a gnat, and swallow a camel.

25 Woe to you, scribes and Pharisees, (politicians-government) hypocrites! for you make clean the outside of the cup and of the platter, but within they are full of extortion and excess. (Look good, sound good, show themselves as being good leaders standing for truth, but are dead leaders).

26 You blind Pharisee, (politicians-government) cleanse first that which is within the cup and platter, that the outside of them may be clean also.

27 Woe to you, scribes and Pharisees, (politicians-government) hypocrites! for you are like whited sepulchres, which indeed appear beautiful outward, but are within full of dead men's bones, and of all uncleanness.

28 Even so you also outwardly appear righteous ("I'm defending the freedoms and Constitution of the American People..." while lying and serving self) to men, but within you are full of hypocrisy and iniquity.

32 Fill you up then the measure of your fathers. (Continue on in the deceit and lies of those politicians who came before you).

33 You serpents, you generation of vipers, (politicians-government) how can you escape the damnation of hell? (You won't unless you change...).

34 Wherefore, behold, I send to you prophets, and wise men, and scribes: (American People standing for truth and freedoms and the Constitution) and some of them you shall kill and crucify; and some of them shall you scourge in your synagogues, (Courts) and persecute them from city to city: (Illegal and unconstitutional tactics of IRS, FBI, CIA, SS, government agendas, causing good people to go to jail...government leaders having little or no conscience, seared minds and hearts, devoid of truth, greedy, selfish and corrupt...).

35 That upon you may come all the righteous blood shed upon the earth, ... (Justice will be had on all who suppress the truth...).

Rom 1:18 The wrath of God is being revealed from heaven against all the godlessness and wickedness of men who suppress the truth by their wickedness,

The Constitution is THE supreme law of the land which all Americans have accepted and support. This Constitution was created with the Common Law of England in mind, which is, in

affect, based on the laws of God...

Rom 13:1 Everyone must submit himself to the (righteous) governing authorities, (Constitution) for there is no authority except that which God has established. The authorities that exist have been established by God. 2 Consequently, he who rebels against the (righteous) authority is rebelling against what God has instituted, and those who do so will bring judgment on themselves.

Luke 6:31 And as you would that men should do to you, do you also to them likewise.

Mark 12:30 And you shall love the LORD your God with all your heart, with all your soul, with all your mind, and with all your strength. This is the first commandment. 31 And the second, like it, is this: You shall love your neighbor as yourself. There is no other commandment greater than these."

If I am to obey these commands, I MUST obey the supreme law of the land, the Constitution for the nnited States of America... the republic of 50 sovereign states, OVER any contrary laws or statutes that men may create otherwise. The IR Code and many other de facto government and de facto State government statutory laws and agendas are being implemented contrary to the Constitution, and therefore are null and void, ("Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the Constitution is void; and the courts, as well as other departments, are bound by that instrument." Marbury v Madison, 5 US 1803 (2 Cranch) 137, 170-180, and NORTON v. SHELBY COUNTY, 118 U.S. 425 (1886), and to submit to these against the Constitution is breaking God's law, supporting a system which harms my fellow man, and is NOT showing love to them.

I am actually breaking the supreme law of the land by conforming to statutory laws which are repugnant to the Constitution, and to the laws of God. To be forced to conform to statutory laws repugnant to the Constitution is violating my sovereign right to practice my religion as I see fit, and is committing (forced-coercion) treason against my country.

Rom 13:7 Render therefore to all their due: taxes to whom taxes are due, customs to whom customs, fear to whom fear, honor to whom honor.

Matt 22:21 Render therefore to Caesar the things which are Caesar's; and to God the things that are God's.

Income taxes being collected to date, NOT provided for in the Constitution, are NOT "Caesar's," or the government's money, it is mine, unless the Constitution says it is not mine. The Constitution does NOT, therefore, I retain my right to hold that which is legally and Constitutionally mine, and all other rights as well.

If I "render" income taxes, or any other "right," to whom it is NOT due, and counter to the

Constitution, I am breaking the law of God, unless I willing and knowingly agree to pay this money for a greater cause, and NOT under duress or coercion but with full knowledge of the agreement. To be supporting such a system which obtains money through fraud, deceit, lies, cheating, theft and other evil methods, and said system then USES that money for evil, ungodly purposes such as unjust and unconstitutional wars of aggression, and many other unconstitutional agendas which harm freedoms and American sovereignty, is to support the agenda of Satan and the creation of his one world government and new world order as clearly described in bible prophecy, brought about by those who serve him through these devices.

2 Cor 2:11 ... for we are not ignorant of his (Satan) devices .

To surrender sovereign, God given and Constitutional rights is a threat to religious freedom and a threat to my supreme belief in the kingdom of God and its laws, and inhibits the education of humanity on the supreme plan of God. Freedom was provided by God to ALL humanity. Anything which takes freedoms away, contrary to the laws of God and the Constitution, is a threat to all humanity, which I must resist. I am commanded to reveal such works of darkness... expose them for all to see.

The "Rule of Law" is meant to provide a guideline for society to interact. Law governs all things in nature, and even governs thought and actions. If laws conflict with other laws, we have confusion. The Constitution is THE law of the land (under God's Law) and all other laws serve it or they are null and void and have NO power over the People.

Exhibit S

PAT DANNER
8TH 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
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5754 NORTH BROADWAY
BUILDING 3, SUITE 2
KANSAS CITY, MO 64118-3998
(816) 455-2258
FAX: (816) 455-2153

September 12, 1996

Bill Petterson
Route 2, Box 37
Trenton, MO 64683-9610

Dear Bill:

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

Exhibit S

PAT DANNER
8TH DISTRICT, MISSOURI

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Pat Danner
Member of Congress

PD/hhm

Attachment S - IRS not created agency

The IRS, besides not being an agency of the Federal Government, verified by prima facie evidence in Attachment S, was also never legally created by Congress. This is more substantial evidence of Respondent acting under the color of law, and therefore has no authority and no jurisdiction over Petitioner.

In 1972, an Internal Revenue Manual 1100 was published in both the Federal Register and Cumulative Bullet; see 37 Fed. Reg. 20960, 1972-2 Cum. Bul. 836. On the very first page of this statement which was published in the Bulletin, the following admission was made: (Emphasis mine throughout).

"(3) By common parlace [sic] and understanding of the time, an office of the importance of the Office of Commissioner of Internal Revenue was a bureau. The Secretary of the Treasury in his report at the close of the calendar year 1862 stated that 'The Bureau of Internal Revenue has been organized under the Act of the last session ...' Also **it can be seen that Congress had intended to establish a Bureau of Internal Revenue, or thought they had**, from the act of March 3, 1863, in which provision was made for the President to appoint with Senate confirmation a Deputy Commissioner of Internal Revenue 'who shall be charged with such duties in the bureau of internal revenue as maybe prescribed by the Secretary of the Treasury, or as may be required by law, and who shall act as Commissioner of Internal Revenue in the absence of that officer, and exercise the privilege of franking all letters and documents pertaining to the office of internal revenue.' In other words, 'the office of internal revenue' was 'the bureau of internal revenue,' and the act of July 1, 1862, is the organic act of today's Internal Revenue Service."

This statement, which again appears in a similar publication appearing at 39 Fed. Reg. 11572, 1974 - 1 Cum. Bul. 440, as well as the current IRM 1100, **essentially admits that Congress never created either the Bureau of Internal Revenue or the Internal Revenue Service**. To conclude that "Congress thought it had created this agency" is an admission that even the government itself cannot even find anything which created either agency. The only office created by the act of July 1, 1862, was the Office of Commissioner; neither the Bureau nor the Service was actually created by any of these acts.

Petitioner has no doubt that when employees of the IRS were researching its origins so that this statement could be included within IRM 1100, those employees must have performed a very thorough investigation. This obviously is the best position that Respondent can develop regarding precisely how the IRS came into being. But besides **the problem that these acts simply did not create either the Bureau or the IRS is the fact that these acts were repealed** by the adoption of the Revised Statutes of 1873. Therefore, it would appear that the IRS has never been created by any act of Congress, and this is a serious flaw.

Without any act or creation by Congress, there can be no "IRS" and thus no "officers" of such, as supported by the following case law:

"An act of legislative body is essential to create a public office. At the state level, it is a well acknowledged rule that a duly constituted office of state government must be created either by the state constitution itself or by some legislative act; see *Patton v. Bd. Of Health*, 127 Ca. 388, 393, 59 P. 702, 704 (1899)

"One of the requisites is that the office must be created by the constitution of the state or it must be authorized by some statute."); *First Nat. Bank of Columbus v. State*, 80 Neb. 597, 114 N.W. 772, 773 (1908); *State ex rel. Peyton v. Cunningham*, 39 Mont. 197, 103 P. 497, 498 (1909); *State ex rel. Stage v. Mackie*, 82 Conn. 398, 74 A. 759, 761 (1909); *State ex rel. Key v. Bond*, 94 W.Va. 255, 118 S.E. 276, 279 (1923)

"a position is a public office when it is created by law."); *Coyne v. State*, 22 Ohio App. 462, 153 N.E. 876, 877 (1926)

"Unless the office existed there could be no officer either de facto or de jure. A de facto officer is one invested with an office; but if there is no office with which to invest one, there can be no officer. An office may exist only by duly constituted law." *State v. Quinn*, 35 N.M. 62, 290 P. 786, 787 (1930); *Turner v. State*, 226 Ala. 269, 146 So. 601, 602 (1933); *Oklahoma City v. Century Indemnity Co.*, 178 Okl. 212, 62 P.2d 94, 97 (1936); *State ex rel. Nagle v. Kelsey*, 102 Mont. 8, 55 P.2d 685, 689 (1936); *Stapleton v. Frohmiller*, 53 Ariz. 11, 85 P.2d 49, 51 (1938); *Buchholtz v. Hill*, 178 Md. 280, 13 A.2d 348, 350 (1940); *Krawiec v. Industrial Comm*, 372 Ill. 560, 25 N.E.2d, 27, 29 (1940); *People v. Rapsey*, 16 Cal.2d 636, 107 P.2d 388, 391 (1940); *Industrial Comm v. Arizona State Highway Comm*, 61 Ariz. 59, 145 P.2d 846, 849 (1943); *State*

ex rel. Brown v. Blew, 20 Wash.2d 47, 145 P.2d 554, 556 (1944); *Martin v. Smith*, 239 Wis. 314, 1 N.W.2d 163, 172 (1941); *Taylor v. Commonwealth*, 305 Ky 75, 202 S.W.2d 992, 994 (1947); *State el rel. Hamblen v. Yelle*, 29 Wash.2d 68, 185 P.2d 723, 728 (1947); *Morris v. Peters*, 203 Ga. 350, 46 S.E.2d 729, 733 (1948); *Weaver v. North Bergen Tp.*, 10 N.J.Super. 96, 76 A.2d 701 (1950); *Tomaris v. State*, 71 Ariz. 147, 224 P.2d 209, 211 (1950); *Pollack v. Montoya*, 55 N.M. 390, 234 P.2d 336, 338 (1951); *Schaefer v. Superior Court in and & for Santa Barbara County*, 248 P.2d 450, 453 (Cal.App. 1951); *Brusnigham v. State*, 86 Ga.App. 340, 71 S.E.2d 698, 703 (1952); *State ex rel. Mathews v. Murray*, 258 P.2d 982, 984 (Nev. 1953); *Dosker v. Andrus*, 342 Mich. 548, 70 N.W.2d 765, 767 (1955); *Hetrich v. County Comm. Of Anne Arundel County*, 222 Md. 304, 159 A.2d 642, 643 (1960); *Meiland v. Cody*, 359 Mich. 78, 101 N.W.2d 336, 341 (1960); *Jones v. Mills*, 216 Ga. 616, 118 S.E.2d 484, 485 (1961); *State v. Hord*, 264 N.C. 149, 141 S.E.2d 241, 245 (1965); *Planning Bd. Of T.p. Of West Milford v. T.p. Council of T.p.. Of West Milford*, 123 N.J.Super. 135, 301 A.2d 781, 784 (1973); *Vander Linden v. Crews*, 205 N.W.2d 686, 688 (Iowa 1973); *Kirk v. Flournoy*, 36 Cap.App.3d 553, 111 Cap.Rptr. 674, 675 (1974); *Wargo v. Industrial Comm*, 58 Ill.2d 234, 317 N.E.2d 519, 521 (1974); *State v. Bailey*, 220 S.E.2d 432, 435 (W.Va. 1975); *Leek v. Theis*, 217 Kan. 784, 539 P.2d 304, 323 (1975); *Midwest Televsion, Inc. v. Champaign-Urbana Communications, Inc.*, 37 Ill.App.3d 926, 347 N.E.2d 34, 38 (1976); and *State v. Pickney*, 276 N.W.2d 433, 436 (Iowa 1979).

The same rule applies at the federal level; see *United States v. Germaine*, 99 U.S. 508 (1879); *Norton v. Shelby County*, 118 U.S. 425, 441, 6 S.Ct. 1121 (1886)

"there can be no officer, either de jure or de facto, if there be no office to fill."; *United States v. Mount*, 124 U.S. 303, 8 S.Ct. 505 (1888); *United States v. Smith*, 124 U.S. 525, 8 S.Ct. 595 (1888); *Glavey v. United States*, 182 U.S. 595, 607, 21 S.Ct. 891 (1901)

"The law creates the office, prescribes its duties." *Cochnower v. United States*, 248 U.S. 405, 407, 39 S.Ct. 137 (1919)

"Primarily we may say that the creation of offices and the assignment of their compensation is a legislative function ... And we think the delegation of such function and the extent of its delegation must have clear expression or implication." *Burnap v. United States*, 252 U.S. 512, 516, 40 S.Ct. 374, 376 (1920); *Metcalf & Eddy v. Mitchell*, 269 U.S. 514, 46 S.Ct. 172, 173 (1926); *N.L.R.B. v. Coca-Cola Bottling Co. of Louiseville*, 350 U.S. 264, 269, 76 S.Ct. 383

(1956)

"'Officers' normally means those who hold defined offices. It does not mean the boys in the back room or other agencies of invisible government, whether in politics or in the trade-union movement." *Crowley v. Southern Ry. Co*., 139 F. 851, 853 (5th Cir. 1905)*; Adams v. Murphy*, 165 F. 304 (8th Cir. 1908); *Scully v. United States*, 193 F. 185, 187 (D.Nev. 1910)

"There can be no offices of the United States, strictly speaking, except those which are created by the Constitution itself, or by an act of Congress: *Commissioner v. Harlan*, 80 F.2d 660, 662 (9th Cir. 1935); *Varden v. Ridings*, 20 F.Supp. 495 (E.D.Ky. 1937); *Annoni v. Blas Nadal's Heirs*, 94 F.2d 513, 515 (1st Cir. 1938); and *Pope v. Commissioner*, 138 F.2d 1006, 1009 (6th Cir. 1943).

Prima Facie and self-authenticating evidence clearly reveal that if there is No legally created IRS, this means there can be no officers, and no officers means no jurisdiction and no one who can legally be acting for a de facto agency and against Petitioner. This is evidence of usurpation, fraud, extortion and racketeering under the color of law. This evidence and case law is not "frivolous" and is extremely relevant to this issue. Without law to support Respondent's position, it is illegally acting and a treasonous, and domestic terrorist group.

Internal Revenue Service — Department of the Treasury

Internal Revenue Service Center — Mid-Atlantic Region Philadelphia, Pa.

P.O. Box 245, Bensalem, Pa 19020

Exhibit T

[redacted] BEACHWOOD CT [redacted]

Person to Contact:

Telephone Number:

Refer Reply to:

Date:

Dear Mrs. Hoverale:

This is in response to your Privacy Act request dated December 12, 1995.

The Internal Revenue Code is not positive law, it is special law. It applies to specific persons in the United States who choose to make themselves subject to the requirements of the special laws in the Internal Revenue Code by entering into an employment agreement within the U.S. Government.

The law is that income from sources not effectively connected with the conduct of a trade or business within the U.S. Government is not subject to any tax under subtitle " A " of the Internal Revenue Code.

This concludes our response to your request.

Sincerely yours,

Cynthia J. Mills

Cynthia J. Mills
Disclosure Officer

Enclosure

Exhibit V - IR Code (IRC) is not positive law

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 Exhibit H).

The IRS is not a U.S. Government Agency. It is an Agency of the I.M.F. (Diversified Metal Products v. IRS, et al. CV-93-405E-EJE ((USDC District of Idaho)., Public Law 94-564, Senate Report 94-1148 pg. 5967, Reorganization Plan No. 26, Public Law 102-391.)

The I.M.F. is an Agency of the United Nations (Black's Law Dictionary, Sixth Edition, Pg. 816)

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.

(c) 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 Exhibit 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 Exhibit 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 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.

Nothing 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.

EXHIBIT X - IRS/U.S. GOVERNMENT TERRITORIAL JURISDICTION

Premise: Respondent has NO jurisdiction in the State of Colorado, and thus, no jurisdiction over Petitioner. The State of Colorado has granted Respondent NO jurisdiction according to law to the Respondent;

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 Mclvaine 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 thecitizens 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 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 (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 comparethe 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 suchjurisdiction; 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 workperformed 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 thepenalty. 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.,

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 ral 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, powersand 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. 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, 319 312, 63 S.Ct. 1122 (1943). And the lower federal courts also require the presence of federal jurisdiction in criminalprosecutions. 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 ofthe 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 51 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 obtainingjurisdiction. 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 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 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 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).

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