

Rebuttal to Congressional Research Service, “Frequently Asked Questions Concerning the Federal Income Tax”

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The document entitled “Frequently Asked Questions Concerning the Federal Income Tax” starting on the following pages was produced by the Congressional Research Service, John R. Luckey. It provides detailed research into some of the more common questions that citizens ask their Congressmen regarding income taxes. As a matter of fact, the first copy of this document we obtained was attached to a letter sent to a constituent by a Congressman in response to a tax question.

The Congressional Research Service is an arm of the Library of Congress and most of the employees work for the U.S. government. Total staff is about 712 people as of 2001. We are told that the employees *do not* like being contacted by the public for legal advice or questions, and are not under obligation to provide reports to the public. Part of the reason for this may have to do with the fact that Congress exempted itself from the Freedom of Information Act, or FOIA (hypocrites). The CRS answers ONLY to Congress and not to the public, even though they are “public servants”...figure that out. Their reports are also not typically published electronically or made available to outside parties. However, you can order copies of their reports from <http://pennyhill.com>. Each report costs \$29.95, and can be requested either as an Acrobat file or in paper form.

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The original text of the CRS publication is in black Garamond font

and our response is in red Garamond font surrounded by an enclosing box and located below the immediate text or paragraph or section being commented on.

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

Should you have any questions or comments relating to this report, then please direct them to the individual above. We do NOT give legal advice, nor do we answer any questions about your specific tax situation. That is your job and the job of your tax attorney, if you have one. Before you ask any questions, we insist that you visit our website at:

Family Guardian
<http://familyguardian.tzo.com/>

and download and read our entire book entitled “The Great IRS Hoax: Why We Don’t Owe Income Tax”. This book should answer most of your questions.

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

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

CRS Report for Congress

Frequently Asked Questions Concerning the Federal Income Tax

Updated May 7, 2001

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Frequently Asked Questions Concerning the Federal Income Tax

Summary

This report addresses some of the frequently asked historical, constitutional, procedural, and legal questions concerning the federal income tax.

The constitutional questions include a discussion of: Congress's taxing power; the difference between a direct and an indirect tax; Fifth Amendment protection against self-incrimination and tax returns; Fourth Amendment protection against unreasonable searches and seizures and tax collection practices; Thirteenth Amendment protections against involuntary servitude and tax withholding; Equal Protection and Due Process questions; and the legality of the ratification of the Sixteenth Amendment.

Other questions addressed include: whether title 26 of the United States Code is positive law; the taxability of wages; the voluntary or involuntary nature of the income tax; what is meant by the income tax "being in the nature of an excise tax;" when was the Internal Revenue Service established; the authority of the Internal Revenue Service to operate outside of the District of Columbia; what is meant by the term United States or United States citizen in the context of the Internal Revenue Code; what is the "Liberty Amendment;" the use of the revenues raised through the federal tax on telephone usage; taxation without representation; the repeal of the original withholding act; and the frivolous tax return penalty.

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Frequently Asked Questions Concerning the Federal Income Tax

1. What Specific Limitations on the Power of Congress to Tax Are Found in the Constitution?

There is only one express exception to federal taxing power found in the United States Constitution. Article 1, Section 9 provides "No tax or duty shall be laid on articles exported from any State."

The Constitution divides all taxes into two classifications: direct taxes and indirect taxes. Direct taxes must be levied according to the rule of apportionment and indirect taxes must be levied according to the rule of uniformity.

It is important to note and emphasize that these are classifications for purposes of how taxes may be levied, not denials of taxing power. The federal government may enact direct taxes, but if it does so, they must be apportioned among the states.

The classification of direct taxes and the rule of apportionment are set forth in Article 1, Section 9, Clause 4 of the Constitution, which states:

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

There are two types of direct taxes that therefore have to be apportioned: taxes on property (real or personal) and "Capitation" taxes (head taxes). Congress has in the past levied taxes on property. In 1813, Congress levied a direct tax on property totaling three million dollars, which the statute apportioned among the 18 states and then among the counties (parishes) of each state.¹ Thus, for example, \$369,018.44 was apportioned to Virginia and \$6,354.50 of that amount apportioned to Fairfax County. Provisions for assessing and collecting the tax were contained in the Act of July 22, 1813.² A direct tax on property totaling \$20 million was levied in 1861, apportioned among the states, territories, and the District of Columbia.³ Congress has never enacted a "head tax."

The classification of indirect taxes and the rule of uniformity are set forth in Article 1, Section 8, Clause 1 of the Constitution, which states:

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

All taxes which are not direct are indirect and subject to the rule of uniformity. The rule of uniformity requires that an indirect tax not discriminate geographically.⁴ For example, it would violate the rule of uniformity to enact a special income tax rate for residents of the State of Texas; however, it does not violate the rule to have a special income tax rate for individuals who make over \$50,000 per year.

The rule of uniformity applies to all *indirect* taxes, which include excises, impost, and duties, but does not

¹ Act of August 2, 1813, 2 Stat. 53.

² 3 Stat. 22 (1813).

³ Act of August 5, 1861, § 8, 12 Stat. 295.

⁴ *United States v. Ptasynski*, 462 U.S. 74 (1983).

apply to direct taxes levied on the states through apportionment. The United States supreme Court has ruled that Subtitle A income taxes are excise taxes (which means they are subject to the rule of uniformity). Here is the ruling in the case of *Stanton v. Baltic Mining* 240 U.S. 103 (1916), which occurred after the ratification of the Sixteenth Amendment in 1913 that supports the conclusion that income taxes are excise taxes:

"..by the previous ruling it was settled that the provisions of the Sixteenth Amendment conferred no new power of taxation but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged and being placed in the category of direct taxation subject to apportionment by a consideration of the sources from which the income was derived, that is by testing the tax not by what it was -- a tax on income, but by a mistaken theory deduced from the origin or source of the income taxed. "

Similar claims are made later in this document that Subtitle A income taxes are excise taxes so we won't further elaborate on this fact. As an indirect excise tax, Subtitle A income taxes must be geographically uniform throughout the states, which means that all persons similarly situated and all property of the same type or class being taxed must be taxed at the same percentage rate, no matter where people live, where the property is, or how much taxable income the person makes. The only constitutionally permissible exceptions to this rule must occur on the basis of compelling public interest (the common good). The case they cite, *United States v. Ptasynski*, 462 U.S. 74 (1983), was an example where an exception to the geographical uniformity requirement was made on the basis of compelling public interest.

The I.R.C. Subtitle A income tax that most individuals (natural persons) pay on their income using the IRS form 1040 as required under 26 U.S.C. Section 871(b), however, is a graduated income tax that is not uniform, either on the basis of geography or on the basis of the property being taxed (labor or profit) or on the basis of the person being taxed. It completely violates the uniformity requirement in every respect, based on the findings of the U.S. supreme Court in the case of *Pollack v. Farmer's Loan and Trust Company*, 157 U.S. 429, 158 U.S. 601, (1895). Graduated Subtitle A income taxes apply a higher percentage tax rate to people with more income, in effect punishing rich people for their success. Is it in the public interest to make an exception to the rule of uniformity by in effect punishing success and the wealthy by making them pay a higher percentage rate of tax, or even having an Alternative Minimum Tax? Here's what Abraham Lincoln said about that:

"You cannot strengthen the weak by weakening the strong. You cannot help small men by tearing down big men. You cannot help the poor by destroying the rich. You cannot lift the wage earner by tearing down the wage payer. You cannot keep out of trouble by spending more than your income. You cannot help men permanently by doing for them what they could and should do themselves."
Abraham Lincoln

Instead, this kind of discrimination sounds like communism and socialism to us. The supreme Court in the case of *Pollack v. Farmer's Loan and Trust Company*, 157 U.S. 429, 158 U.S. 601, (1895), agreed with this conclusion by ruling that this kind of graduated tax was unconstitutional within the states and discriminatory, and this part of its finding has never been overruled(!). Below is a quote from this landmark supreme Court case dealing with the uniformity requirement:

The uniformity thus required is the uniformity throughout the United States of the duty, impost, and excise levied; that is, the tax levied cannot be one sum upon an article at one [157 U.S. 429, 593] place, and a different sum upon the same article at another place. The duty received must be the same at all places throughout the United States, proportioned to the quantity of the article disposed of, or the extent of the business done.

...

⁵ The second plank in Karl Marx's Communist Manifesto states "2. A heavy progressive or graduated income tax."

Congress has the exclusive power of selecting the class. It has regulated that particular branch of commerce which concerns the bringing of alien passengers,' and that taxes shall be levied upon such property as shall be prescribed by law. **The object of this provision was to prevent unjust discriminations. It prevents property from being classified, and taxed as classed, by different rules.** All kinds of property must be taxed uniformly or be entirely exempt. The uniformity must be coextensive with the territory to which the tax applies.

Mr. Justice Miller, in his lectures on the constitution, 1889-1890 (pages 240, 241), said of taxes levied by congress: **'The tax must be uniform on the particular article; and it is uniform, within the meaning of the constitutional requirement, if it is made to bear the same percentage over all the United States.** That is manifestly the meaning of this word, as used in this clause. The framers of the constitution could not have meant to say that the government, in raising its revenues, should not be allowed to discriminate between the articles which it should tax.' In discussing generally the requirement of uniformity found in state constitutions, he said: 'The difficulties in the way of this construction have, however, been very largely obviated by the meaning of the word [157 U.S. 429, 595] 'uniform,' which has been adopted, holding that the uniformity must refer to articles of the same class; that is, different articles may be taxed at different amounts, provided the rate is uniform on the same class everywhere, with all people, and at all times.'

One of the learned counsel puts it very clearly when he says that the correct meaning of the provisions requiring duties, imposts, and excises to be 'uniform throughout the United States' is that the law imposing them should 'have an equal and uniform application in every part of the Union.'

If there were any doubt as to the intention of the states to make the grant of the right to impose indirect taxes subject to the condition that such taxes shall be in all respects uniform and impartial, that doubt, as said by counsel, should be resolved in the interest of justice, in favor of the taxpayer.'

Exemptions from the operation of a tax always create inequalities. Those not exempted must, in the end, bear an additional burden or pay more than their share. A law containing arbitrary exemptions can in no just sense be termed 'uniform.' In my judgment, congress has rightfully no power, at the expense of others, owning property of the like character, to sustain private trading corporations, such as building and loan associations, savings banks, and mutual life, fire, marine, and accident insurance companies, formed under the laws of the various states, which advance no national purpose or public interest, and exist solely for the pecuniary profit of their members.

Where property is exempt from taxation, the exemption, as has been justly stated, must be supported by some consideration that the public, and not private, interests will be advanced by it. Private corporations and private enterprises cannot be aided under the pretense that it is the exercise of the discretion of the legislature to exempt them. *Association v. Topeka*, 20 Wall. 655; *Parkersburg v. Brown*, 106 U.S. 487, 18 U.S. 442; *Barbour v. Board*, 82 Ky. 645, 654, 655; *City of Lexington v. McQuillan's Heirs*, 9 Dana, 513, 516, 517; and *Sutton's Heirs v. City of Louisville*, 5 Dana, 28-31.

...

The income tax law under consideration is marked by discriminating features which affect the whole law. It discriminates between those who receive an income of \$4,000 and those who do not. It thus vitiates, in my judgment, by this arbitrary discrimination, the whole legislation. Hamilton says in one of his papers (the Continentalist): 'The genius of liberty reprobates everything arbitrary or discretionary in taxation. It exacts that every man, by a definite and general rule, should know what proportion of his property the state demands; whatever liberty we may boast of in theory, it cannot exist in fact while [arbitrary] assessments continue.' 1 Hamilton's Works (Ed. 1885) 270. **The legislation, in the discrimination it makes, is class legislation. Whenever a distinction is made in the burdens a law imposes or in the benefits it confers on any citizens by reason of their birth, or wealth, or religion, it is class**

legislation, and leads inevitably to oppression and abuses, and to general unrest and disturbance in society.

It was hoped and believed that the great amendments to the constitution which followed the late Civil War had rendered such legislation impossible for all future time. But the objectionable legislation reappears in the act under consideration.

Interestingly, the attorney arguing on the side of the Citizen in the above case, Joseph H. Choate, actually stated that graduated income taxes were Communistic in their application because the second plank in the Communist Manifesto⁵ advocated a graduated income tax that punishes the rich and wealthy! He was absolutely right, and apparently, the court agreed with him!

In conclusion, indirect taxes must therefore also not discriminate by applying different tax rates for the same type of property to be taxed, unless it is in the public interest, and it is not in the public interest to discriminate against or punish success or the wealthy. Notice that when Mr. Luckey claims above, in effect, that graduated income taxes do not violate the requirement for uniformity, he cites **no** authority, including the Supreme Court, for this faulty conclusion. If he had cited the supreme Court, he would have found out he was wrong. In fact it does violate the rule of uniformity to tax persons who make more than \$50,000 per year (in the 50 states but not on federal territory), if people who make less than 50,000 per year pay no tax or pay less tax as a percentage. There cannot be multiple tax rates that apply to individuals who live in the 50 states with different income. Likewise, there cannot be different percentage rates on the same class of property (profit or labor) to be taxed, because then the tax would no longer be uniform and would discriminate on the basis of the person or their behavior or their income.

2. Is the Federal Income Tax a Direct or Indirect Tax?

The most direct answer to this question is that, since the ratification of the Sixteenth Amendment, it makes no practical difference which classification one gives to the income tax. As stated above, the only distinction between a direct tax and an indirect tax is that the direct tax must be apportioned. As discussed below, the Sixteenth Amendment, without classifying the income tax, empowers Congress to lay and collect taxes on incomes, from whatever source, without apportionment.

Prior to the ratification of the Sixteenth Amendment, the question of classification of the income tax was central to the determination as to its constitutionality. In *Pollock v. Farmers' Loan and Trust Company*,⁶ the Supreme Court struck down the Income Tax Act of 1894.⁷ The 1894 Act imposed a federal income tax on:

the gains, profits, and income received in the preceding calendar year by every citizen of the United States... whether said gains, profits, or income be derived from any kind of property, rents, interest, dividends, or salaries, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere....

After extensive examination of the history of the constitutional provisions dealing with the federal taxing power, the Court found that the Constitution had sought to avoid the levy of a burdening tax on accumulations of property, real or personal, except as subject to the "regulation of apportionment."⁸ The Court concluded that a tax imposed on the rents or income of real estate was not significantly distinct from a tax on the property itself and was, therefore, a direct tax within the meaning of the Constitution.⁹

⁶ 157 U.S. 429, *rehearing* 158 U.S. 601 (1895).

⁷ 28 Stat. 509 (1894).

⁸ 157 U.S. at 581

⁹ *Id.* at 583.

The *Pollock* Court did not, however, hold that all income taxes were direct taxes. Rather, it held that although income taxes are generally indirect taxes in the nature of excises (subject only to the rule of uniformity), income taxes on the gains derived from investments in real or personal property had so substantial an impact on the underlying assets that they should be viewed as direct taxes falling on the property. In this respect, the 1894 tax would have been valid to the extent that it was imposed on "gains, profits, or income ... derived from..., salaries, or from any profession, trade, employment, or vocation..."¹⁰ Nonetheless, on rehearing *Pollock*, the Court struck down the entire 1894 Act because it believed that to void only the tax on income derived from investments in real and personal property and leave the tax burden solely upon wages and other forms of compensation income would be contrary to the congressional intent."¹¹

Some uncertainty followed in the years after *Pollock*. The Court held repeatedly that various taxes imposed by the Congress were indirect in nature and could be levied without regard to the rule of apportionment.¹²

The Sixteenth Amendment to the United States Constitution was ratified in 1913, and provides that:

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 Congress immediately took advantage of this perceived clarification of its power and enacted another federal income tax substantially similar to the 1894 tax.¹³ The 1913 tax was imposed on:

gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever, including the income from but not the value of property acquired by gift, bequest, devise or descent.

In 1916, the Supreme Court examined the new income tax in light of the Sixteenth Amendment and the other constitutional provisions discussed above and found that it was constitutional in its entirety. The review of the 1913 income tax came in *Brushaber v. Union Pacific Railroad Company*,¹⁴ in which a stockholder of the Union Pacific Railroad Company sought to enjoin the corporation from paying the recently-imposed income tax on the grounds that the tax was unconstitutional. The Supreme Court, in a decision written by Chief Justice White, first noted that the Sixteenth Amendment did not authorize any new type of tax, nor did it repeal or revoke the tax clauses of Article I of the Constitution, quoted above. Direct taxes were, notwithstanding the advent of the Sixteenth Amendment, still subject to the rule of apportionment and indirect taxes were still subject to the rule of uniformity. Rather, the Court found that the Sixteenth Amendment sought to restrain the Court from viewing an income tax, because of its close effect on the underlying property, as a direct tax.

The Court noted that the inherent character of an income tax was that of an indirect tax, stating:

¹⁰ 28 Stat. 509.

¹¹ 158 U.S. at 637.

¹² See, *Nicol v. Ames*, 173 U.S. 509 (1899) (tax on certain sales and exchanges of property); *Knowlton v. Moore*, 178 U.S. 41 (1900) (estate tax); *Patton v. Brady*, 184 U.S. 609 (1902) (tax on manufactured tobacco); and *Flint v. Stone Tracy Co.*, 220 U.S. 108 (1911) (tax on corporate franchise).

¹³ 38 Stat. 166.

¹⁴ 240 U.S. 1 (1916).

Moreover in addition the conclusion reached in the *Pollock Case* did not in any degree involve the holding that income taxes generically and necessarily came within the class of direct taxes on property, but on the contrary recognized the fact that taxation on income was in the 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 taxes was adopted to prevent, in which case the duty would arise to disregard form and consider substance alone and hence subject the tax to the regulation as to apportionment which otherwise as an excise would not apply to it.¹⁵

The language of the Sixteenth Amendment, the Court found in *Brushaber*, was solely intended to eliminate:

the principle upon which the Pollock Case was decided, that is, of determining whether a tax on income was direct not by a consideration of the burden placed on the taxed income upon which it directly operated, but by taking into view the burden which resulted on the property from which the income was derived since in express terms the Amendment provides that income taxes, from whatever source derived, shall not be subject to the regulation of apportionment.¹⁶

In some cases, the IRS and the federal circuit and district courts commonly and mistakenly attempt to say that the income tax is a direct tax and that the Sixteenth Amendment authorized direct taxes without apportionment. When doing so, they will commonly quote the Sixteenth Amendment:

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.

Then they will emphasize the “without apportionment” statement. We will now respond to that argument as well just in case the government tries to throw in a red herring to confuse things.

The first response to this argument is that the Sixteenth Amendment did NOT include any enabling clauses, which is to say that it didn't modify *other* parts of the constitution that specifically disallowed direct taxes without apportionment in order to clarify its applicability. For instance, Article 1, Section 2, Clause 3 and Article 1, Section 9, Clause 4 were NOT amended by the Sixteenth amendment, which means that the requirement for apportionment still applies to direct taxes. Otherwise, irreconcilable conflicts would occur within the Constitution itself if the Sixteenth Amendment was read any other way. This very conclusion is what the supreme Court reached in the case of *Brushaber v. Union Pacific Railroad*, 240 U.S. 1, (1916). Here is what the court said about this:

"...the *proposition* and the contentions under [the 16th Amendment]...would cause one provision of the Constitution to destroy another;

That is, they would result in bringing the provisions of the Amendment exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned;

This result, instead of simplifying the situation and making clear the limitations of the taxing power, which obviously the Amendment must have intended to accomplish, would create radical and destructive changes in our constitutional system and multiply confusion...

Here are the two sections of the Constitution that would conflict if the Sixteenth Amendment were interpreted as authorizing direct taxes on individuals without apportionment:

¹⁵ Id. at 16-17.

¹⁶ Id. at 18.

1:2:3: 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, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.

1:9:4: "No Capitation or other direct tax shall be laid unless in proportion to the Census or Enumeration herein before directed to be taken."

We also know that the Constitution forbids direct taxes from *Pollack v. Farmer's Loan and Trust Co.*, 157 U.S. 429, 158 U.S. 601 (1895).

"The Constitution prohibits any direct tax, unless in proportion to numbers as ascertained by the census..... [and] ... prohibits Congress from laying a direct tax on the revenue from property of the citizen without regard to state lines...

"...such tax is a direct tax, and void because imposed without regard to the rule of apportionment; and that by reason thereof the whole law is invalidated."

- **United States Supreme Court** in *Pollack v. Farmers' Loan & Trust Company* (1895)

Incidentally, the attorney who challenged the act of congress that was declared unconstitutional in *Pollack v. Farmer's Loan and Trust Company*, Joseph H. Choate, told the supreme Court about the income tax in questions:

"The act of Congress which we are impugning [challenging as false] before you is Communistic* in its purposes and tendencies."

*NOTE: A progressive "graduated" tax system is one of the planks of the Communist Manifesto. The American direct taxing system is based upon "equal apportionment.

In all the over two hundred years of history of the supreme Court, Subtitle A income taxes have never been declared by the supreme Court to be direct taxes. Instead, Subtitle A income taxes have always been referred to as an indirect excise taxes by the U.S. supreme Court and the conclusions of Mr. Luckey in this report agree with this finding. Amazingly, in their zeal to violate the rights of citizens and plunder their property, some liberal socialist circuit courts have gone so far as to overrule the U.S. supreme Court by saying that the Sixteenth Amendment authorizes direct, unapportioned taxes. Here are just a few examples of that kind of behavior:

"Even if we were to assume that the tax upon Simmons is direct, it comes within the Sixteenth Amendment, which relieved direct taxes upon income from the apportionment requirement."

[*Simmons v. United States*, 308 F.2d 160, 8/28/1962]

"Dickstein's argument that the sixteenth amendment does not authorize a direct, non-apportioned tax on United States citizens similarly is devoid of any arguable basis in law. Indeed, the Ninth Circuit recently noted "the patent absurdity and frivolity of such a proposition." In re **Becraft**, 885 F.2d 547, 548 (9th Cir. 1989). **For seventy-five years, the Supreme Court has recognized that the sixteenth amendment authorizes a direct non-apportioned tax upon United States citizens throughout the nation, not just in federal enclaves**, see **Brushaber v. Union Pac. R.R.**, 240 U.S. 1, 12-19, 60 L. Ed. 493, 36 S. Ct. 236 (1916);"

United States v. Collins, 920 F.2d 619, (10th Cir. 11/27/1990)

The judges in these cases should have been censured and removed from the bench for conflict of interest and clear bias, in accordance with 28 U.S.C. Section 44(b). These monumentally unjust cases are the ones frequently cited by the IRS in their justification for levying Subtitle A income taxes. And they do so in spite of the fact that their own internal revenue manual puts precedent of the U.S. supreme Court rulings over the Circuit court rulings, as they should be. Remember what the IRM says?:

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

There are several reasons why these kind of cases stand and this kind of illogical, hypocritical, and contradictory madness has been allowed to continue. Here are a few:

- The IRS has a self-serving and bad habit of quoting whoever is favorable to their position, regardless of the fact the IRM requires them to quote the supreme court in preference over the Circuit courts.
- The various circuit courts vary widely on their positions on various issues.
- The Supreme Court has denied appeals to it from the lower Circuit Courts and refused to address the issues on appeal (chickened out and looked the other way).

On the subject of denied appeals above, this situation is called "certiorari denied" or simply "cert. denied". Why does the U.S. supreme Court so frequently deny appeals on the subject of direct and indirect taxes?..because the U.S. supreme Court would nonsensically have to contradict its own previous rulings and violate the principle called "stare decisis" and prior precedent to agree with the radical and mistaken and illogical circuit courts. This very situation also happens to be why, in many cases, federal circuit courts will actually financially sanction individuals who bring up the direct tax issue in federal court several thousand dollars in some cases, referring to such issues as "frivolous arguments".

But how can an argument be frivolous on appeal that is consistent with ALL previous supreme Court rulings? Of course, this kind of abuse of power by federal judges amounts to a violation of the First Amendment right to free speech (you can't fine or penalize someone for the exercise of a right guaranteed by the Constitution, and incidentally, the First Amendment also allows individuals to Petition for a redress of grievances against the government *in spite of previous findings of misguided circuit courts*). The federal circuit court judges must think they can pull this kind of crap and get away with it because they are above the law, since they do it so frequently without ever even being questioned or nullified by the manipulated jury.

Why aren't the Circuit Court judges censured by the supreme Court or removed from office by Congress under 28 U.S.C. Section 44(b)? One reason is because the judge would have the lawyer's license pulled (or have him disbarred) who tried this, since that lawyer is both an "officer of the court" and licensed by that judge or a buddy of his in the BAR or the government. It's a vicious cycle. Why shouldn't they do this? They are lawyers. Does anyone trust or like lawyers anymore? Another reason the supreme Court doesn't try to fix this mess is because the justices in the supreme Court were selected from the Circuit courts in many cases by the President and recommended by their

fellow members in the BAR. Why would you want to censure or contradict a golf buddy, former law school companion, former coworker, or fellow BAR member as a new judge who just got the bench? It's a good old boy club, that's perpetuated by:

- Conflict of interest (judges are paid by taxes).
- Arrogance.
- Ignorance of the law by jurists.
- Defense and prosecution lawyers screening out all the informed jurists who know the law from participating in the trial during *voire dir*, leaving ignorant, compliant bimbos behind who are easy prey for a manipulative and shrewd judge

This situation is called the “judicial conspiracy to uphold the income tax” and it clearly shows how a severe conflict of interest has infected our court system, to the detriment of our freedom and liberties. The first step to eliminating this kind of corruption is making ALL federal judges exempt from personal income taxes and requiring them to disclose any conflicts of interest they might have at the beginning of each trial to all of the selected jurors.

Does the fact that the supreme Court refuses to hear an issue on appeal establish or validate the position of a lower circuit court on the issue of direct or indirect taxes? It is an important principle in the legal field that the fact that the supreme Court refuses to hear an issue on appeal does NOT mean that the circuit court **didn't** err, it simply means that the court decided to look the other way and allowed injustice to occur, for whatever reason. This is called a “sin of omission.”, not to mention poor leadership and immorality. Below are a few reasons why they might do this:

- It could be that they are too busy (only a very small percentage of cases in the circuit courts that are appealed ever make it to the supreme Court).
- It could be that they don't want to be politically unpopular for calling Congress or the IRS to task.
- It could be that they have been threatened by an IRS audit (shouldn't federal judges be exempt from income tax for this reason alone?)
- It could be that friends of theirs who did take a stand against this injustice were slandered and destroyed by political opponents. This is quite common.
- It could be that the President, who is responsible for appointing federal judges, stacked the court with liberals. Former President Franklin Delano Roosevelt did exactly this, for instance, in his famous “Supreme Court Packing Plan” he announced on the radio to the public on March 9, 1937.

Any number of the above reasons could explain why the supreme Court refuses to contradict lower circuit courts on appeal and force the circuit courts to be consistent with its rulings. But lets remember some very important facts that might explain this contradiction:

1. The Executive, Legislative, and Judicial branches of the government are ALL tax consumers.
2. Money is the “mother's milk of politics”.
3. Most elected public officials are lawyers and attorneys, and most of them got into this field to make a good living.
4. Most attorneys are member of the American Bar Association (ABA)
5. The only thing balancing out the love of YOUR money by the government is the trial by jury. But this check and balance in most cases is rendered ineffective because judges most commonly will try to keep the law out of the hands of the jury, which makes them easy to manipulate and

circumvent. Since the laws should be written to be clear and easy to understand, and especially for jurors, then the jury needs to see the law and decide in favor of the accused party if the laws are unclear or doubtful. This will provide a built-in incentive for legislators to write clear laws so people aren't hoodwinked by the government or lawyers.

6. Members of the ABA has a vested interest in making exorbitant amounts of money practicing law (usually between \$200-\$300/hour). They make the most money by litigating, and there is no better way to encourage litigation than to:
 - 6.1. Write unclear laws that require interpretation and litigation by lawyers and courts.
 - 6.2. Put property continually at risk by making people think they owe taxes on that property.
 - 6.3. Use their contacts higher up to prolong the litigation.
 - 6.4. Keeping the parties litigating warring and not communicating.
7. Attorneys are license by the government to practice law in specific courts. Do you think that their license might be suspended and they would be disbarred by the court or held in contempt for telling the truth about what the law says and insisting on talking about the nonexistence of any law making Americans liable for Subtitle A income taxes? We do!
8. Attorneys who represent tax cases in court are considered "officers of the court". An officer of the court in effect is part of the court!

Because of all the above factors, attorneys working for private citizens are seldom allowed to tell the full truth about nonliability for Subtitle A income taxes because they can be and often are censured by the court and not allowed to represent clients in that court in the future. Unless all attorneys practicing in federal courts are "politically correct", they will starve!

9. If you hire a tax attorney to defend you on federal tax charges, you in effect have three parties to litigate against and you can't trust any of them:
 - 9.1. The IRS, who want ALL of your money and will lie and deceive and do whatever they have to do get it and make an example out of you to keep the other sheep in line.
 - 9.2. The corrupt district or circuit court judge, whose salary comes from tax money he extorted out of others in previous cases, and who has probably been threatened with an audit he doesn't want if he doesn't rule in the IRS' favor.
 - 9.3. Your attorney, who will lose his license and be thrown in jail for contempt if he litigates too aggressively and successfully in your favor and against liability for federal income taxes.

You are under no obligation to believe us. Check this out for yourself. Exhibit A is the example below that illustrates the kind of thinking we are talking about above and taken from the case of United States v. Dr. Phil Roberts, Case No. 00-20018-001, U.S. District Court, Fort Smith Division. We quote directly from the transcript and the mouth of the judge in his response to Mr. Robert's attorney, Oscar Stilley, when Mr. Stilley insisted on talking about the law that made Dr. Roberts liable for paying income taxes. The thing your should notice is the judge's obvious bias to prevent the law from being discussed. Here are some excerpts from the trial and some alarming evidence of "extortion of under the color of office" by the judge. You can read these very comments and the complete transcript posted on our website at <http://familyguardian.tzo.com/Subjects/Taxes/CaseStudies/PhilRoberts/PhilRoberts.htm>:

80. Court tells defense "**You know, don't argue the law.**" P131, 22-23

83. Court states "**Let's not argue the law...**" "**Don't argue the law!**" P133, 12-14

...

113. Defense asks if the terms "**make**" and "**file**" meant the same thing... OBJECTED

TO AND SUSTAINED BY THE COURT. P193, 14-18

116. Court states **“Let’s not get into the definition of income.”** Orders defense off of the question. P219, 18-23

...

132. Court tells the defense counsel that **“We’re not going to have any questions, you know, about laws and tax returns and whatever.”** P332, 19-21

140. Defense then asks the witness if the IRC, when opened to Section 6012, will show the law that requires a person to file a tax return. OBJECTED to by the prosecution and sustained by the court. P350, 9-13

141. Defense asks the courts permission to approach the witness and the court states, **“No, you may not approach the witness. You can approach the Bench. I want to see you up here right now...”**P350, 15-19

142. Court tells defense counsel **“... I don’t want you to go there...” “... you’re not to go there on this.”**P351, 8-11

146. Court answers by telling the defense that if it asks an improper question, **“... I’m going to clear this courtroom.”** P352, 22-23

149. The defense asks the expert witness that if the jury wanted to see the law, how would they see it. P355, 18-19 Court interrupts saying **“... let’s not go there, sir.”** P355, 20

151. Defense asks the court if he can read part of the IRC Section 6012 to the witness and the court says **“ No, Sir, you may not.” “ No, sir. You cannot. You cannot. You can’t read a snippet, can’t read a word....”** P357, 9-14

152. Court again asks the defense if it is attempting to cause a mistrial (jury is out of the room). Court then tells the defense counsel **“ If you have an objection to it and if you think the Court’s wrong, when this trial is over, it can be appealed...”** P358, 11-18

...

166. Court tells the defense counsel, at sidebar, that the **“... difference between making and filing I think is a matter of semantics that I’m not going to let you go into with this witness.”** P440, 9-12

170. Court tells defense counsel **“ I don’t want to hear the word “LAW” mentioned again from this witness. Do you understand me?”** P444, 15-17

171. Expert witness, Tom Bryan (IRS Agent), states that he doesn’t “... really like to respond to a lot of things in writing.” “... I don’t want to get into a letter writing campaign such as this.” Regarding letters written to him by the defendant. P449, 9-14

172. (Sidebar) Court demands that the defense counsel disclose his questions to the court at sidebar. **“Tell me what questions you’re going to ask.”** P452, 18

173. Court threatens to end the defenses’ cross examination and demands to know what questions counsel will pose to this witness. P452, 22-24

174. **Court again admonishes the defense not to discuss the law.** P453, 19-20

180. Regarding the testimony of defense witness, Brenda Gray, the court tells the defense, “**I don’t doubt you’re trying to lay a foundation. I just wonder if we hadn’t already removed that foundation... .**” P486, 5-7

186. Defendant is asked to whom else he had presented his questions regarding his requirement to file and he asks if he must divulge the name of the US Magistrate. (Magistrate Jones-Stites). The prosecution objects and the court sustains the objection telling the defendant “**... you’ll not be permitted to answer that. Ask your next question.**” P528,13-22

188. Court continues to demand that the defense counsel present its questions for the witness to the court at sidebar for approval or disapproval without the jury hearing any of it. P530, 4-11

189. Prosecutor threatens the defense counsel, “You want to go for sanctions, you just keep it up.” P531, 11-12

190. Court tells the attorneys that, “**We’re not going to introduce anything on the Internal Revenue Code.**” P531, 23-24

...

199. Court continues to insist, at sidebar, that the defense must present all of its Exhibit list for approval/ disapproval by the court before it can be offered in open court before the jury. P541, 14-20

200. Court continues to disallow defense Exhibits at the sidebar. Court states that. “**... we’re not going to talk about statutes to the jury ...**” P544, 11-13

201. Court restates to the defense that “**... you’re not going to be permitted to talk about any statutes, any acts, any law...**” P545, 7-8

...

226. The prosecution’s cross examination of the defendant appear to be irrelevant and most of the questions concern the years outside of the years in question, 1993 and 1994. Defense objections are overruled by the court. P643 - P675 (all)

229. Court interrupts the defendants testimony in order to limit it. The prosecution had raised no objection. P682, 15-17

230. Court tells the defense counsel, “**Mr. Stilley, don’t argue with me.**” P683, 6

232. At sidebar, the Court tells the defense counsel, “**... This is the most improper--this is the worst conduct I’ve ever seen of a lawyer, Mr. Stilley. ...**” “**... (W)e’re going to visit this further at length, Mr. Stilley. The practice of law, sir, is a privilege, especially in Federal Court. You’re close to losing that privilege in this court, Mr. Stilley.**” P685, 5-11

Clearly, this trial, like so many other federal tax trials, was a miscarriage of justice because the judge ignored the First, Fifth, and Fourth Amendment rights of the accused and purposefully kept the jury ignorant about the law so he could use them as a lynch mob. He did this in part because the scoundrels in Congress outlawed Constitutional rights in the federal courtroom! See 28 U.S.C. Section 2201(a), which reads:

United States Code

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE

PART VI - PARTICULAR PROCEEDINGS

CHAPTER 151 - DECLARATORY JUDGMENTS

Sec. 2201. Creation of remedy

(a) **In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986,** a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, **any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration,** whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

This kind of behavior should be declared high treason! Mr. Roberts was consequently sentenced to prison for over 1 1/2 years for not paying a tax he wasn't liable for because the judge was able to illegally manipulate the jury. This allowed the socialist government conspiracy to plunder your property to continue unchecked. The main method that the IRS/DOJ prosecution and the judge won was by: 1. Insisting that the law not be discussed in front of the jury; 2. Insisting that the judge was the only person authorized to read or interpret the law; 3. Refusing to talk about the lack of any law that makes an American not living on federal property and who is not in receipt of any government privileges liable to pay income taxes; 4. Not allowing the defense to present ANY witnesses or even speak. This trial was a kangaroo court and a lynch mob more than an exercise of justice, because the jury has the right to judge both the facts AND the law:

"The law itself is on trial, quite as much as the cause which is to be decided."
HARLAN F. STONE, *The Common Law in the United States*, 50 Harv. L. Rev. 4 (1936).

"It is presumed, that juries are the best judges of facts; it is, on the other hand, presumed that courts are the best judges of law. But still both objects are within your power of decision." (emphasis added) "...you have a right to take it upon yourselves to judge of both, and to determine the law as well as the fact in controversy".
Chief Justice John Jay's Instructions to the jury in the first jury trial before the Supreme Court of the United States.

As recently as 1972, the U.S. Court of Appeals for the District of Columbia said that the jury has an:

"unreviewable and irreversible power... to acquit in disregard of the instructions on the law given by the trial judge.... (*US v. Dougherty*, 473 F 2d 1113, 1139 (1972))

Here are some additional quotes on jury power and responsibility:

"We recognize, as appellants urge, the undisputed power of the jury to acquit, even if its verdict is contrary to the law as given by the judge, and contrary to the evidence. This is a

power that must exist as long as we adhere to the general verdict in criminal cases, for the courts cannot search the minds of the jurors to find the basis upon which they judge. If the jury feels that the law under which the defendant is accused, is unjust, or that exigent circumstances justified the actions of the accused, or for any reason which appeals to their logic of passion, the jury has the power to acquit, and the courts must abide by that decision." (*US v. Moylan*, 417 F 2d 1002, 1006 (1969)).

"The jury has the right to determine both the law and the facts."
Samuel Chase, U.S. supreme Court Justice, 1796, Signer of the unanimous Declaration

"the jury has the power to bring a verdict in the teeth of both law and fact."
Oliver Wendell Holmes, U.S. supreme Court Justice, 1902

"The law itself is on trial quite as much as the cause which is to be decided."
Harlan F. Stone, 12th Chief Justice U.S. supreme Court, 1941

Judges enjoy the tremendous power they wield and want to expand it, and the way they can increase that power is by keeping the jury in the dark about the law and screen the smart ones out, in effect turning themselves into the witch doctor that everyone has to rely on as an absolute authority, which in most cases produces a miscarriage of justice. This, of course, is an arbitrary violation of Fourth, Fifth, and Sixth Amendment due process of law, but how many schools even teach kids about the constitution anymore to the point where we would recognize this kind of an infraction? Some judges will pound their chest in front of juries by insisting that they are the ONLY judge of the law and the jury is the judge of the facts. But the existence of a law and the content of the law establishing the criminal nature of the act upon which the case is based and the jury decides is a fact that the jury must ALSO establish and understand. Jurists must see the law and be informed about the law to reach a rational conclusion, subject to advice (but not censorship) by the judge. Legal ignorance by most jurors gives the judge more power in the courtroom than the founding fathers ever intended, and injustice is increasingly the result, especially in the area of tax law.

It is therefore quite clear why the judge in Dr. Robert's case didn't want the jury to find out about the law: He wanted to prejudicially control the case and bias the trial and the jury to result in a conviction of Roberts so he could uphold the extortion that produces his paycheck. The main reason our tax system continues to be illegally implemented and enforced by the IRS with impunity is because of judicial conspiracies like this one designed to perpetuate judicial conflict of interest, personal income taxes, and the illegal extortion, fraud, and massive violation of constitutional rights that they amount to.

3. What Does the Court Mean When it States That the Income Tax Is in the Nature of an Excise Tax?

An excise tax is a tax levied on the manufacture, sale, or consumption of a commodity or any of various taxes on privileges often assessed in the form of a license or fee. In other words, it is a tax on a property transaction or on an activity, not a tax on the property itself. A sales tax is a clear example of an excise tax. The tax is not on the property directly, but rather it is a tax on the transaction.

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 tax on the transaction of receiving gain from the property or labor. The tax is based upon the amount of the gain, not on the value of the property.

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

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

And the definition of privilege is:

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

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

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

So the questions are:

1. "What 'privilege' are we in receipt of from the government that makes us liable for the excise tax known as the income tax, and how does this privilege exceed those granted to other citizens, based on the definition of privilege above?"
2. "What aspect of our behavior, other than the exercise of constitutionally protected rights of life, liberty, and the pursuit of happiness, causes us to "volunteer" to be liable for the excise tax known as the I.R.C. Subtitle A Income tax?"
3. What "voluntary" behavior must we eliminate to remove liability for paying Subtitle A (excise) income taxes? Don't tell me working, because everyone has an obligation to support themselves.

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

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

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

"Legislature...cannot name something to be a taxable privilege unless it is first a privilege [Taxation West Key 53]...The Right to receive income or earnings is a right belonging to every person and realization and receipt of income, is therefore, not a privilege that can be taxed." [Taxation West Key 533]-*Jack Cole Co. v. MacFarland*, 337 S.W. 2d 453, Tenn.

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

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

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

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

4. Was the Sixteenth Amendment Properly Ratified?

A. Did the President sign the resolution which became the Sixteenth Amendment?

President Taft did not sign the resolution which became the Sixteenth Amendment to the Constitution of the United States.

The Supreme Court ruled in 1798 that resolutions of Congress proposing amendments to the Constitution need not be submitted to the President.¹⁷ Therefore, the failure of President Taft to sign the proposed amendment has no effect upon the constitutionality or legality of the Sixteenth Amendment.

B. Do clerical errors in the ratifying resolutions of the various state legislatures negate the ratification of the Sixteenth Amendment?

The Sixteenth Amendment became part of the Constitution of the United States in 1913 when certified by the Secretary of State, Philander C. Knox.¹⁸ Recently it has been alleged by several defendants in tax litigation that the Sixteenth Amendment is not properly part of the Constitution because it was improperly ratified by a number of states, in that the ratification resolutions of these States contained variations from the resolution enacted by Congress in punctuation, capitalization, and/or spelling.

Secretary Knox certified adoption of the amendment pursuant to Section 205 of the Revised Statutes of the United States which provided:

Whenever official notice is received at the Department of State that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Secretary of State shall forthwith cause the amendment to be published in the newspapers authorized to promulgate the laws, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to intents and purposes, as part of the Constitution of the United States.¹⁹

The Supreme Court has held that certification under this statute is conclusive upon the courts.²⁰ *Leser v. Garnett* involved a challenge to the ratification of the Nineteenth Amendment. The Secretary of State had certified its adoption. It was contended, however, that the ratifying resolutions of Tennessee and West Virginia were inoperative because the resolutions of those states had been adopted in violation of their rules of legislative procedure. In answer to this contention the Court held:

¹⁷ *Hollingsworth v. Virginia*, 3 U.S. 378 (1798). This case involved the Bill of Rights, which had been referred to the States without having been presented to President Washington.

¹⁸ 38 Stat. 785 (1913).

¹⁹ Act of April 20, 1818, ch. 80, § 2, Rev. Stat. § 205 (2d ed. 1878)(amended version codified at 5 U.S.C. § 160 (1940))(repealed Oct. 31, 1951); current version, as amended, at 1 U.S.C. § 106b.

²⁰ *Leser v. Garnett*, 258 U.S. 130 (1922).

The proclamation by the Secretary certified that from official documents on file in the Department of State it appeared that the proposed Amendment was ratified by the legislatures of thirty-six States, and that it "has become valid to all intents and purposes as a part of the Constitution of the United States." As the legislatures of Tennessee and of West Virginia had power to adopt the resolutions of ratification, official notice to the Secretary, duly authenticated, that they had done so was conclusive upon him, and, being certified by his proclamation, is conclusive upon the courts.²¹

In support of this conclusion the Court relied upon the reasoning of *Field v. Clark*.²² In that case the Court held that an enrolled bill was conclusive evidence of statutory enactment. The Court noted that such a bill is signed by the Speaker and the President of the Senate, an attestation that it passed Congress as signed, and when the President signs, it also indicates his attestation that the measure was properly passed by Congress. "The respect due to coequal and independent departments requires the judicial department to act upon the assurance, to accept, as having passed Congress, all bills authenticated in the stated manner."²³ The Court, in *Leser*, felt the same respect must be given the certification by the Secretary of State.²⁴

More recently, in *Baker v. Carr*,²⁵ the Supreme Court set out a list of formulations which may identify the existence of a political question in a given case:

It is apparent that several formulations which vary slightly according to the setting in which the questions arise may describe a political question, although each has one or more elements which identify it as essentially a function of separation of powers. Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.²⁶

Courts of Appeals in several circuits have, within the last few years, considered the question of the ratification of the Sixteenth Amendment and its certification by Secretary Knox. Applying the precedent, discussed above, these courts have uniformly rejected these challenges, holding that correctness of the Secretary's certification is a political question and therefore his certification is conclusive upon the courts.²⁷

5. Do Taxpayers Have the Right, under the Fifth Amendment, Not to Answer Questions on Their Tax Returns?

Yes, taxpayers do have protection of the Fifth Amendment when filing their tax returns. However, this has never been interpreted to permit a blanket refusal to give any information on the return.

The Fifth Amendment states:

No person ... shall be compelled in any criminal case to be a witness against himself

²¹ *Id.* at 137.

²² 143 U.S. 649 (1892).

²³ *Id.* at 672.

²⁴ *Leser v. Garnett*, 258 U. S. 130, 137 (1922).

²⁵ 369 U.S. 186 (1962).

²⁶ *Id.* at 217.

²⁷ See, *United States v. Stahl*, 792 F.2d 1438 (9th Cir.), cert. den., 107 S.Ct. 888 (1986); *United States v. Ferguson*, 793 F.2d 828 (7th Cir.), cert. den., 107 S.Ct. 406 (1986); *United States v. Foster*, 789 F.2d 457 (7th Cir.), cert. den., 107 S.Ct. 273 (1986); *Stubbs v. Commr.* 797 F.2d 936 (11th Cir. 1986); and *Sisk v. Commr.*, 791 F.2d 58 (6th Cir. 1986).

The Supreme Court has held that the privilege against self-incrimination, though founded in the Constitution itself, does not free a taxpayer from the obligation to file an income tax return.²⁸ An individual may, however, refuse to provide a specific item of information if that information would tend to incriminate the individual. For instance, while the amount of income a person received in a year would not be protected, the source of the income might be incriminating and therefore the privilege could be invoked.²⁹

The Court has set out the appropriate procedures to be followed by a taxpayer who wishes to assert the privilege against self-incrimination with respect to an item which should otherwise be reported on an individual's tax return. The taxpayer should assert the privilege on the return, submitting all other information. If the Internal Revenue Service brings criminal charges against the taxpayer for failure to file a complete return, the taxpayer may raise the privilege against self-incrimination in defense. The judge would then determine whether or not the privilege was justified and, if it was justified, the criminal charges would not be permitted to stand. However, the IRS may recompute the income tax of a taxpayer who refuses to provide requested data. If the IRS determines from its own investigation that a taxpayer owes additional taxes, it may assess a deficiency. In this case, the taxpayer has the burden to establish the correct liability. Absent evidence supplied by the taxpayer, the assessment by the IRS will be presumed accurate.³⁰ In this respect, the taxpayer may assert the privilege against self-incrimination to prevent being compelled to give certain information, but one result may be a liability for additional income taxes.

According to the Administrative Procedures Act, if a Citizen exercises his Fifth Amendment right of non-self incrimination and proves his nonliability using the law, and the IRS makes its own independent assessment of the tax liability of the taxpayer, then the IRS, as the moving party, has the obligation to establish and demonstrate *with evidence* of the Citizen's specific case his correct liability:

TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES
PART I - THE AGENCIES GENERALLY
CHAPTER 5 - ADMINISTRATIVE PROCEDURE
SUBCHAPTER II - ADMINISTRATIVE PROCEDURE

Sec. 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

(d) Except as otherwise provided by statute, *the proponent of a rule or order has the burden of proof.*

And of the burden of proof in the Internal Revenue Code itself, it says:

26 U.S.C. Sec. 7491. Burden of proof

(a) Burden shifts where taxpayer produces credible evidence

(1) General rule

If, in any court proceeding, a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax imposed by subtitle A or B, the Secretary shall have the burden of proof with respect to such issue.

Therefore, if a Citizen can document nonliability based on the law with credible citations of the law and

²⁸ *United States v. Sullivan*, 274 U.S. 259 (1926).

²⁹ *Garner v. United States*, 424 U.S. 628 (1976).

³⁰ *Id.*

relevant court cases, then he doesn't have to refute the evidence presented by the IRS about his income with specific information. All he has to show is that it isn't taxable, not how much he made, or where it came from. Never get into an argument about amount of liability with the IRS. Always focus on your nonliability. Once you argue about amount, you have already admitted your liability to pay the tax, which means you lose and you will be defrauded of your money by the government.

6. Is Title 26 of the United States Code (Internal Revenue) Law?

This question stems from the fact that some titles of the United States Code (U.S.C.) have been enacted into what is called "positive law" and others have not. Title 26, Internal Revenue, has not been enacted into positive law.

The U.S.C. is divided into fifty titles. Of these fifty titles, twenty and part of another have been enacted into positive law. If a title has been so enacted, the text of that title constitutes legal evidence of the laws in that title. If the title has not been so enacted, the title is only prima facie evidence of the actual law. The courts could require proof of the statutes underlying the title, which are the positive law when the title has not been enacted into positive law.

The Office of Law Revision Counsel, which has the responsibility for preparing titles for enactment into positive law, states that titles are chosen for enactment into positive law on two bases. Some are chosen because of congressional mandate that the laws be codified. Otherwise, the Office of Law Revision Counsel prefers to select titles which cover areas of minimal legislative activity. The tax laws do not meet either one of these criteria.

The underlying statute, and the positive law, for the tax code is the Internal Revenue Code of 1986³¹ as amended. Title 26 of the U.S.C. is an editorial codification of this act prepared and published under the supervision of the House Judiciary Committee, pursuant to statute.³² The courts, in short, have the discretion to recognize the title 26 as the applicable law, or require proof of the underlying statute.³³

7. Are Wages Taxable as Income?

Yes, wages are taxable as income. The question is usually based on one of two arguments, historical or definitional.

This is technically correct, but it's the **WRONG** question. Sly lawyers, when they want to win an argument, are very good at keeping people arguing about the wrong things to take attention off the right issues. The correct question relating to taxation of wages is: For what circumstance and for whom are wages taxable (incidentally, the answer to these two questions taken together is referred to as a taxable "source" as it relates to excise taxes)? The answer is:

1. Wages are taxable for elected and appointed officials of the U.S. government holding public office and officers of U.S. corporations, because the income tax is an excise tax on the exercise of U.S. government privileges and these people are specifically in receipt of such privileges by the government that they pay the tax to. This is confirmed by the definition of the term "employee" found in 26 U.S.C. Sec. 3401(c) and 26 CFR §31.3401(c).

³¹ P.L. 99-514, 100 Stat. 2085, 99th Cong., 2nd Sess. (1986).

³² See, 1 U.S.C. §202.

³³ *Young v. IRS*, 596 F.2d 141, 149 (N.D. Ind. 1984).

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

2. Wages are taxable whenever a "person" has "income" as defined by the Supreme Court. The word "income" is not defined in the Internal Revenue Code or any of the IRS publications, and according to the Supreme Court, Congress isn't allowed to define it. Only the Constitution can define it. To have taxable "gross income" you must first have "income". Income is defined as "corporate profit" in the Supreme Court Case of *Eisner v. Macomber*, 252 U.S. 189 (1920) and several other cases.

"In order, therefore, that the [apportionment] clauses cited from article I [§2, cl. 3 and §9, cl. 4] of the Constitution may have proper force and effect ...[I]t becomes essential to distinguish between what is an what is not 'income,' ...according to truth and substance, without regard to form. Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution, from which alone, it derives its power to legislate, and within those limitations alone that power can be lawfully exercised... [pg. 207]...After examining dictionaries in common use 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, 34 S.Sup.Ct. 136, 140 [58 L.Ed. 285] and *Doyle v. Mitchell Bros. Co.*, 247 U.S. 179, 185, 38 S.Sup.Ct. 467, 469, 62 L.Ed. 1054..."

[emphasis added]

And then in the cases cited above we find:

"...Whatever difficulty there may be about a precise scientific definition of 'income,' it imports, as used here, something entirely distinct from principal or capital either as a subject of taxation or as a measure of the tax; conveying rather the idea of gain or increase arising from corporate activities."

Doyle v. Mitchell Brothers Co., 247 U.S. 179, 185, 38 S.Ct. 467 (1918):
[emphasis added]

"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."

Stratton's Independence v. Howbert, 231 U.S. 399, 414, 58 L.Ed. 285, 34 Sup.Ct. 136 (1913)

This is because the income tax is an indirect excise tax on privileges and federally chartered corporations are the only entities in receipt of privileges taxable by the national government. Because "income" is "corporate profit", then the definition of "person" within the meaning of all of Title 26, the Internal Revenue Code, can only mean "federal corporation". This is confirmed by the

definition of “person” found in 26 CFR 301.6671-1, which is the section authorizing the imposition of penalties for nonpayment of taxes under subtitle F of the Internal Revenue Code:

*[Code of Federal Regulations]
[Title 26, Volume 17, Parts 300 to 499]
[Revised as of April 1, 2000]
From the U.S. Government Printing Office via GPO Access
[CITE: 26CFR301.6671-1]
[Page 402]
TITLE 26--INTERNAL REVENUE
Additions to the Tax and Additional Amounts--Table of Contents
Sec. 301.6671-1 Rules for application of assessable penalties.*

...

*(b) Person defined. For purposes of subchapter B of chapter 68, **the term “person” includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.***

Applying direct taxes of natural persons on wages on nonfederal property inside the sovereign 50 states would violate Article 1, Section 2, Clause 3 and Article 1, Section 9, Clause 4 of the U.S. Constitution and therefore cannot be enforced in these areas as other than a voluntary “donation” (it can’t be called a tax if it is voluntary, because taxes are always enforced) whose payment cannot be coerced in any way. This very restriction is why I.R.C. Subtitles A through C income taxes are only constitutional when they are indirect excise taxes on federal corporations.

The historical argument derives from the congressional debates on the Sixteenth Amendment in 1909. Most of the debate centered on the taxing of income from capital assets and the taxing of corporations. The proponents of the position that wages are not taxable income claim that the Sixteenth Amendment was therefore only intended to allow taxation of income from capital.

The fallacy of this argument is that taxation of wages had never been found unconstitutional and therefore an amendment to the Constitution was not necessary to permit this type of taxation. The Sixteenth Amendment was enacted in response to the Supreme Court decision in *Pollock v. Farmers' Loan and Trust Company*,³⁴ in which the Income Tax Act of 1894³⁵ was struck down. The 1894 Act imposed a federal income tax on:

the gains, profits, and income received in the preceding calendar year by every citizen of the United States.-whether said gains, profits, or income be derived from any kind of property, rents, interest, dividends, *or* salaries, or from any profession, trade, employment, *or* vocation carried on in the United States or elsewhere....

The Court, in *Pollock*, found that the Constitution had sought to avoid the levy of a burdening tax on accumulations of property, real or personal, except as subject to the "regulation of apportionment."³⁶ The Court concluded that a tax imposed on the rents or income of real estate was not significantly distinct from a tax on the property itself and was, therefore, a direct tax within the meaning of the United States

³⁴ 157 U.S. 429, *rehearing* 158 U.S. 601 (1895).

³⁵ 28 Stat. 509 (1894).

³⁶ 157 U.S. at 581.

Constitution.³⁷

The Pollock Court did not, however, hold that all income taxes were direct taxes. Rather, it held that although income taxes are generally indirect taxes in the nature of excises (subject only to the rule of uniformity), income taxes on the gains derived from investments in real or personal property had so substantial an impact on the underlying assets that they should be viewed as direct taxes falling on the property. In this respect, the 1894 tax would have been valid to the extent that it was imposed on "gains, profits, or income... derived from... salaries, or from any profession, trade, employment, or vocation..."³⁸ Nonetheless, on rehearing Pollock, the Court struck down the entire 1894 Act because it believed that to void only the tax on income derived from investments in real and personal property and leave the tax burden solely upon wages and other forms of compensation income would be contrary to the congressional intent.³⁹ Therefore, since only the taxation of income derived from capital had been found to be unconstitutional unless apportioned, the debate on the Sixteenth Amendment centered on the taxation of this type of income.

The definitional argument concerning the taxation of wages is based on the contention that labor worth a certain amount is exchanged for money worth the same amount and therefore there is no income to be taxed. This argument fails from lack of understanding of the concept of taxable income. There are three basic requirements which must be satisfied before income is considered taxable income. The requirements are gain, realization, and recognition.

The Sixteenth Amendment clarified the power of Congress to lay and collect taxes on income, from whatever source derived.⁴⁰ Income has been defined as gain derived from capital, from labor, or from both combined.⁴¹ The operative word in this definition is gain. Gain, in the tax context, is the surplus when the basis of an item (in many cases basis is synonymous with cost) is subtracted from the item's fair market value. For example: John Doe purchases a piece of real estate with a fair market value of \$5,000 for a cost of \$5,000. One year later the property has appreciated in value to a fair market value of \$6,000. Mr Doe has a gain of \$1,000 (current fair market value, \$6,000 minus \$5,000 basis).

The gain in the example above is not a taxable gain though, because it has not been realized. The Supreme Court has ruled that income is not taxable until it has been realized, i.e., received or the right to receive has been established.⁴² Therefore if Mr. Doe sold his property for \$6,000 he would realize his gain of \$1,000.⁴³

The next question which must be answered is whether Congress has determined that this type of gain should be taxed. In other words, should this gain be recognized. Congress has determined, by enacting Internal Revenue Code (IRC) section 61(a), that every type of gain should be taxed unless it has been specifically excluded in some other part of the tax code. Section 61 (a) provides:

Except as otherwise provided in this subtitle, gross income means all income from whatever source derived....

The "except as otherwise provided" clause anticipates specific nonrecognition provisions. A good

³⁷ *Id.* at 583.

³⁸ 18 Stat. 509.

³⁹ 158 U.S., at 637.

⁴⁰ *Brushaber v. Union Pacific Railroad Co.*, 240 U.S. 1 (1916).

⁴¹ *Eisner v. Macomber*, 252 U. S. 189 (1920).

⁴² *Id.*

⁴³ It should be noted that Mr. Doe does not have to receive money for the property for there to be a realization of his gain. As long as the total value of money, property, and money's worth he receives is greater than his basis, he has realized a gain.

example of a nonrecognition provision is IRC § 103 which excludes the interest from certain state and local bonds from gross income. Interest on these bonds is gain and when paid, or constructively received, it is realized, but Congress has specifically decided not to recognize it.

There are nonrecognition provisions which could affect the transaction in the above example. For instance, if the property was Mr. Doe's principal residence and he sold it and within two years bought another principal residence of comparable value, his gain would not be currently recognized under IRC § 1034.

Wages to be taxable must pass the same type of examination. For example, if John Doe works 5 hours for \$5.00 per hour, is the \$25.00 he receives taxable income to him? As we have seen in the above analysis, we must determine if there has been a gain which is realized and recognized.

To see if there was a gain we do not look only to the fair market value of the labor, but rather we determine the difference between what was received and the basis (cost) in the labor. Generally one has a zero basis in one's own labor. Therefore, Doe's gain is \$25.00 minus 0, or \$25.00. This gain is realized when Doe is paid or has right to receive payment.

The gain is recognized specifically in IRC § 61(x)(1) (compensation for services) and there is no nonrecognition section which is generally applicable to wages. Therefore, John Doe has \$25.00 of taxable income.

The U.S. supreme Court classified labor was property in the case of *Butchers' Union Co. v. Crescent City Co.* (111 U.S. 746):

"Among these unalienable rights, as proclaimed in the Declaration of Independence is the *right* of men to pursue their happiness, by which is meant, the *right* any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give them their highest enjoyment...It has been well said that, **THE PROPERTY WHICH EVERY MAN HAS IS HIS OWN LABOR, AS IT IS THE ORIGINAL FOUNDATION OF ALL OTHER PROPERTY SO IT IS THE MOST SACRED AND INVIOABLE...**"

This property (labor) has value. Even if it hasn't been realized (accomplished), it's still property. Labor isn't produced, it exists because we exist, and we own our bodies, not the government. The production of labor does NOT have a zero basis as indicated above. The cost of producing labor includes the cost of:

- Food (you will die and can't work if you don't eat)
- Clothing (who would go to work naked?)
- Education (to make your labor productive and useful)
- Housing (so that you can sustain yourself and be most productive in the work environment on the job)
- Care for other family members so that you are available to work and don't have to provide that care yourself

Why doesn't the government include these as the cost basis for labor instead of asserting a zero cost basis, because they are certainly legitimate costs? Incidentally, if you file as a nonresident citizen of the "United States" using an IRS form 2555 as described in IRS publication 54, then you get to deduct all of these costs! Why doesn't this exclusion apply to people who file with the 1040 form? Because these people, in effect, are claiming that they are elected or appointed political officers of the government residing in the "United States" (District of Columbia). If you doubt this, look up [26 U.S.C. section 871\(b\)](#), which is the section you have to meet to file a 1040, and then look up the definition of "trade or business" found in 26 U.S.C. Section

7701(a)(26):

26 U.S.C. §871(b)(2) Determination of **Taxable Income**

In determining **taxable income**...gross income includes only gross income **which is effectively connected with the conduct of a trade or business within the United States.**

26 U.S.C. §7701(26)

(26) TRADE OR BUSINESS—The term “trade or business” includes [only] the **performance of functions of public [government] office.**

If you look in IRS Publication 54, year 2000, pages 5 and 6, you will find that when you file a 1040 form, you are claiming to be a “resident” of the “United States” (the District of Columbia).

How To Make the Choice

You generally make this choice when you file your joint return. However, you can also make the choice by filing a joint amended return on Form 1040 or Form 1040A. Be sure to write the word “Amended” across the top of the amended return. If you make the choice with an amended return, you and your spouse must also amend any returns that you may have filed after the year for which you made the choice.

...

Ending the Choice

Once made, the choice to be treated as a resident applies to all later years unless suspended (as explained above) or ended in one of the ways shown in Figure 1–A. If the choice is ended for any of the reasons listed in Figure 1–A, neither spouse can make a choice in any later tax year.

Since, by filing a 1040 form, you are claiming that you live on federal property, then as per the supreme Court, the government is not subject to the constitutional restrictions on taxation applicable elsewhere in the nonfederal areas of the 50 states:

"CONSTITUTIONAL RESTRICTIONS AND LIMITATIONS [Bill of Rights] WERE NOT APPLICABLE to the areas of lands, enclaves, territories, and possessions over which Congress had EXCLUSIVE LEGISLATIVE JURISDICTION"
Downes v. Bidwell, 182 U.S. 244, 1901

The word “gain” is synonymous with “profit”, and this is the meaning ascribed by the supreme Court in determining the meaning of the word “income” and the “source” that may be taxed, as quoted below in the supreme Court case of *Eisner v. Macomber*, 252 U.S. 189 (1920):

"... It becomes essential to distinguish between what is, and what is not 'income' ..." ... the definition of income approved by the 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, [1920] 252 U.S. 189

If labor is property, and wages is an equal exchange of two types of property, “labor” and “wages”, for each other, then wages are not “profit” in the meaning of the word “income”. And even if you want to regard

them as profit, you still must deduct the cost of producing them.

Why does Mr. Luckey say that wages are taxable as income and have a zero basis for some people? Because the Public Salary Tax Act of 1939 (76th Congress, 1st Session, Chap. 59, pgs 574-575), which is a municipal law ONLY for the District of Columbia (and not for the 50 states) taxes “compensation for personal service”:

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.**”

This act is NOT subject to constitutional constraints on taxation and incidentally, is where the requirement for taxing “compensation for personal services” comes from in 26 U.S.C. Section 861(a)(3) for sources within the “United States” (which means federal property only). Why didn’t Congress just call “personal services” “wages” in the code? Because wages are paid as an equal exchange of one kind of property “labor” for another kind, and the excise tax is a tax on profits. The government knows that wages cannot be classified as profit, and therefore can’t be taxed, so the government invented a new word for the term that will obfuscate the issue to fool people into paying Subtitle A (excise) taxes on wages anyway.

8. Do We Have a Voluntary Tax System?

We do not have a voluntary tax system in the sense that payment of taxes is optional. There are specific provisions of law which require the payment of income taxes. There are civil and criminal penalties for failing to pay these taxes or file the required returns. Several rather tenuous arguments have been put forward to support the contention that paying income tax is optional.

This is more government subterfuge and obfuscation. Did you notice that he didn’t say “I.R.C. Subtitle A” income taxes are not voluntary, but instead lumps all income taxes together? This was an intentional means to obfuscate and confuse the typical citizen. There are actually three types of income taxes: “Estate and Gift taxes” found in Subtitle B, Excise taxes found Subtitles D and E of the Internal Revenue Code, and (personal) “Income taxes” found in Subtitle A. Payment of Subtitle D and E income taxes are *mandatory*, not voluntary, and one who is in receipt of government privileges has a *mandatory* obligation to pay for those privileges and the payment can be coerced. Subtitle A (personal) “income taxes” and Subtitle B “Estate and Gift taxes”, on the other hand, are *voluntary* in nature for everyone other than those taxes, which means that *filling out the return and paying the tax are both voluntary acts that cannot be coerced in any way*. You might ask why we call it a “tax” if it is voluntary. Aren’t all taxes “involuntary”? Yes they are! Black’s Law Dictionary, 6th Edition, page 1457 defines “tax” as follows:

“**Tax:** A charge by the government on the income of an individual, corporation, or trust, as well as the value of an estate or gift. The objective in assessing the tax is to generate revenue to be used for the needs of the public.

A pecuniary [relating to money] burden laid upon individuals or property to support the government, and is a payment exacted by legislative authority. In re Mytinger, D.C.Tex. 31 F.Supp. 977,978,979. **Essential characteristics of a tax are that it is NOT A VOLUNTARY PAYMENT OR DONATION, BUT AN ENFORCED CONTRIBUTION, EXACTED PURSUANT TO LEGISLATIVE AUTHORITY.** Michigan Employment Sec. *Commission v. Patt*, 4 Mich.App. 228, 144 N.W.2d 663, 665. ...”

Notice that *you can't call it a "tax" if it is "voluntary"!* You have to call it a "donation", as per Black's Law Dictionary, 6th Edition, page 487:

"Donation: A gift. A transfer of the title of property to one who receives it without paying for it. The act by which the owner of a thing **voluntarily transfers** the title and possession of the same from himself to another person, without any consideration."

"Voluntary: (Black's Law Dictionary, 6th Edition, page 1575) **"Unconstrained by interference; unimpelled by another's influence; spontaneous; acting of oneself.** Coker v. State, 199 Ga. 20, 33 S.E.2d 171, 174. Done by design or intention. **Proceeding from the free and unrestrained will of the person. Produced in or by an act of choice. Resulting from free choice, without compulsion or solicitation.** The word, especially in statutes, often implies knowledge of essential facts. Without valuable consideration; gratuitous, as a voluntary conveyance. Also, having a merely nominal consideration; as, a voluntary deed."

Why do we then identify the name of each subtitle as a "tax" if some are voluntary? The answer is that we don't...*the government does!* Do you think the government might be playing with words to trick us? We call Subtitles A and B "income taxes" instead "voluntary donations" in our book *The Great IRS Hoax: Why We Don't Owe Income Tax* (available free from <http://familyguardian.tzo.com>). Why? Below are some of the many reasons why this is true. Read the book if you want many, many more:

1. The law says that Americans aren't liable for tax:

Internal Revenue Code Section 6654(e)(2)(c) states:...

"no tax liability...if...the individual was a Citizen or resident of the United States throughout the preceding taxable year."

IRS contends the success of the SELF-ASSESSMENT system depends on VOLUNTARY COMPLIANCE -- EVIDENTLY SO! Just how much of the Communist Manifesto has become part of your daily life?

2. We Can't be Coerced to Sign a 1040 Form Because it Is Voluntary

The jurat (signature block at the end) of Form 1040 establishes the premise here defended that the tax return to which the jurat refers is by law (26 U.S.C. § 7206) intended to be *voluntarily* completed and signed under the penalties of perjury. This is a simple observation derived from the text of the jurat and the legal terms herein defined. Clearly, the self-assessment of income taxes by making a Form 1040 return under penalties of perjury is voluntary because the act of signing any affidavit or document that subjects its affiant to the penalties of perjury must by law be *willful*. Obviously, a *coerced* statement though by signed jurat purports it was made under penalties of perjury is nevertheless a fraudulent statement. It is not the rule of law or the payment of taxes that is here protested but a rule of intellectual tyranny invented by corrupt bureaucrats and judges who under color of law (such as 26 U.S.C. §§ 6702, 7203) penalize individuals when they fail or refuse--without being subpoenaed--to testify on Form 1040 and sign its decreed jurat that falsely purports that the form was made and signed willfully (the word means voluntarily) under penalties of perjury.

Thus, it cannot be overly emphasized that the lawful signing of the Form 1040 jurat is premised upon the "knowledge and belief" of the individual who willfully signs it and thereby certifies that he or she understands and agrees with the governmentally prescribed information on the tax return to which the jurat refers. How many people can honestly state that they have read even one page of the Internal Revenue Code

upon which their completed 1040 form is presumably based? The author has studied the tax code for over ten years and has discovered nothing in it that requires any person acting in his or her capacity as an individual to file a completed Form 1040 that must be signed under penalties of perjury. However, the author did discover a statute that prohibits or stops him from making and validating under penalties of perjury the information that the IRS commissioner states must appear on a Form 1040 tax return--that statute is 26 U.S.C. §7206. Simply put, government is not free to dictate to individuals what "we the people" must believe in order to be able to make and verify under penalties of perjury a governmentally prescribed document that is based upon the term "gross income," as defined by Congress in § 61(a) of the tax code.

The common law requires that an oath be meaningful to the witness who takes the oath and this principle underpins Rule 603 of the Fed.R.Evid. See *U.S. v. Ward*, 973 F.2d 730 (9th Cir. 1992). This principle is applicable to jurats as well, i.e., a jurat must be crafted so as to be meaningful to its potential affiant. Thus, an oath or jurat based upon a religious belief in an Almighty God as a test of an atheist's honesty makes no sense at all. Likewise, it is absurd and a corruption of law for the IRS and the courts to force individuals to declare "under penalties of perjury" that they owe taxes which they do not know and believe they owe. It must be obvious to all but the most obtuse or predisposed minds that a Form 1040 jurat that was signed under coercion but which purports it was signed under penalties of perjury is a *fraudulent* document. A statement or Form 1040 jurat signed because of coercion by a federal agency (i.e., the IRS) is no more valid than a confession that was beaten out of a person by the local police. Confessions and affidavits are defined as voluntary documents, and therefore no person acting in his or her own natural capacity may be logically or legally required to make or sign them, by whatever name they are called. The New York Times reported (July 5, 1995) that IRS Commissioner Margaret Milner Richardson said that "in IRS usage, the term 'voluntary compliance' referred to filling out tax forms, not to paying taxes." Having said that and if it reflects what Commissioner Richardson believes, why does she penalize individuals or have them prosecuted as criminals for not filling out tax forms? After explaining to an IRS agent why my knowledge and belief preclude me from conscientiously and legally signing the jurat of a 1988 Form 1040, the agent replied (a promise?) that if I would sign the jurat anyway, the IRS would not prosecute me for perjury. Now that's one for Ripley's *Believe it or Not!*

It is a rule of law that any doubt about the truth of a person's testimony given under oath or by affidavit is a question of fact for a *jury* (not the taxpayer) to decide. The Supreme Court in *Cheek v. United States*, 498 U.S. 192 (1991), stated:

"Knowledge and belief are characteristically questions for the factfinder, in this case the jury." (See also *United States v. Burton*, 737 F.2d 439 (5th Cir. 1984).

Thus, any question about whether testimony by affidavit is the truth is for a jury to decide unless the affiant waives this right. Where testimony of a relevant affidavit is not questioned, it must be accepted in evidence as factually true.

There are only two lawful ways for a person to testify before governmental bodies or agencies such as grand juries, the Internal Revenue Service, courts of law, etc. One way is by command, whether it be by subpoena, subpoena *duces tecum* or by direct command (order) of a court after the court has gained jurisdiction over a party through the operation of a summons. In all such cases the command must name or be directed to the specific person whose testimony is sought. Subpoenas are authoritative, legal commands to persons requiring them to testify as witnesses and subpoenas *duces tecum* are legal commands to persons requiring them to produce "books, papers and other things." The only other lawful way to testify or to produce "books, papers and other things" is to do so voluntarily.

Justice Hugo Black declared in *U.S. v. Kahriger*, 345 U.S. 22 (1953) that, "The United States has a system of taxation by *confession*." (Italics added). Of course compelled confessions are not legal under the Constitution

which is why Congress mandated the inclusion of the jurat on Form 1040, thus informing the jurat's potential affiant that unless he/she knows and believes the governmentally defined and preordained answers to the form's prescribed questions are correct, complete and true, then the individual acting in his/her personal capacity may not be required to sign the jurat under any statute or regulation. Justice Black did not state the nature of the confession by which the self-assessment of income taxes is made but any legal confession must be "voluntary," *Bram v. United States*, 168 U.S. 532 (1897), and "the product of a rational intellect and a free will," *Townsend v. Sain*, 372 U.S. 293 (1963).

Moreover, the Supreme Court in *Flora v. United States*, 362 U.S. 145 (1960), admitted the nature of the tax return confession when it ruled that:

"Our tax system is based upon *voluntary* assessment and payment,
not upon distraint." (Italics added).

Notice they said assessment AND payment, not just assessment? These are not idle words, as the Court ruled in *United States v. Mason*, 412 U. S. 391 (1973), that under the doctrine of *stare decisis*:

"the people have a right to rely upon the decisions of this Court and not be needlessly penalized for such reliance."

Clearly, the federal government's coercing of individuals--through the use of fear, intimidation, threats (mostly via threatening and anonymous mail that is not signed the name of a real individual) of prison sentences and heavy penalties--to get them to complete and sign tax forms that falsely purport they were made and signed under penalties of perjury is as unconstitutional if not quite as brutal as policemen beating signed, involuntary confessions out of people. How valid or credible is testimony when given involuntarily to satisfy public officials and when based upon the tyranny over mind and/or body and/or property? Remembering that the Supreme Court in *Garner* (supra) stated that:

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

It is obvious that absent an individual's having been served a subpoena to testify on a Form 1040 or served a subpoena *duces tecum* to produce a Form 1040 tax return or ordered by a court to file one, the individual is under no legal compulsion or duty to do so. See also *Wigmore on Evidence*, McNaughton. rev., at 378, 379. And just so that we can be sure of the meaning of "voluntary", lets look at the definition below from Black's Law Dictionary, Sixth Edition, page 1575:

"Unconstrained by interference; unimpelled by another's influence; spontaneous; acting of oneself. *Coker v. State*, 199 Ga. 20, 33 S.E.2d 171, 174. Done by design or intention. **Proceeding from the free and unrestrained will of the person. Produced in or by an act of choice. Resulting from free choice, without compulsion or solicitation.** The word, especially in statutes, often implies knowledge of essential facts. Without valuable consideration; gratuitous, as a voluntary conveyance. Also, having a merely nominal consideration; as, a voluntary deed."

It is also obvious that, based on *Flora v. United States*, 362 U.S. 145, *both assessment and payment of Subtitle A income taxes is voluntary and cannot be coerced*, which states:

"...the government can collect the tax from a district court suitor by exercising it's power of distraint..but we cannot believe that compelling resort to this extraordinary procedure is either wise or in accord with congressional intent. Our tax system is based upon voluntary assessment and

payment, not upon distraint.

If the government is forced to use these remedies (distrain) on a large scale, it will affect adversely the taxpayers willingness to perform under our VOLUNTARY assessment system.""

The dictionary defines "distrain" to mean the act or action of distraining, that is, seizing property to distress or taking by force. One way to determine for whom the income tax is mandatory is to look at the section of the code that talks about the types of levy and distraint that are authorized and how they may be instituted. The only section of the entire Internal Revenue Code that talks about levy and distraint is 26 U.S.C. Section. 6331, and it plainly states that only the Secretary of the Treasury (not the IRS) may institute levy and distraint and that he has the authority to do so ONLY on officers or elected officials of the United States on federal property. The Secretary of the Treasury may NOT therefore effect levy or distraint outside of the federal zone or in nonfederal areas in the 50 states on other than its own officers. Here is the law:

(a) Authority of Secretary

If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

The point is, that for everyone other than the above individuals, both the assessment of and payment of Subtitles A and B income taxes is entirely voluntary. The IRS' definition of "employee" is also consistent with the above conclusions of the limitations on liability for paying the federal income tax:

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

26 U.S.C. Sec. 3401(c)

Employee

For purposes of this chapter, the term "employee" includes [is limited to] an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

26 CFR 31.3401(c)-1 Generally, physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are not employees.

IRS Publication 21 is widely distributed to high schools. It acknowledges that compliance with a law that requires the filing of returns is voluntary. Get to those young minds early, and it's easier to wash their brains later on in life.

At the same time, Publication 21 suggests that the filing of a return is mandatory, as follows:

"Two aspects of the Federal income tax system--voluntary compliance with the Law and self-assessment of tax--make it important for you to understand your rights and responsibilities as a taxpayer. Voluntary compliance places on the taxpayer the responsibility for filing an income tax return. You must decide whether the Law requires you to file a return. If it does, you must file your return by the date it is due."

Perhaps one of the most famous quotes on this question of the voluntary nature of income taxes came from Roger M. Olsen, Assistant Attorney General, Tax Division, Department of Justice, Washington, D.C., on Saturday, May 9, 1987, when Olsen told an assemblage of tax lawyers:

"We encourage voluntary compliance by scaring the heck out of you!"

Meaning, "Assess yourself and volunteer to comply or we'll seize your property and you may go to jail" (exercise "distrain", that is, which the Supreme Court said in *Flora v. United States* (362 U.S. 145) was NOT to be used as part of our tax system!)

First, statements by many, including some by past IRS Commissioners, have been taken out of context to support this position. The phrase "voluntary tax system" is commonly used in discussion of our tax compliance system. The United States does have a system of collecting taxes that depends to a certain extent upon voluntary compliance. Although this country does have withholding on certain types of income, much of the income tax revenues come from tax on other sources of income (such as interest, dividends, self-employment, etc.) where the individual must supply the information for the system to function efficiently. Supplying this information is not voluntary in the meaning of optional. However, if a large percentage of the citizenry did not report their income, our system of collection would not work efficiently, leading to the often misunderstood statement that we rely upon voluntary compliance in our tax system.

The above statement is based, in part, on some of the following quotes:

"Our tax system is based on individual self-assessment and voluntary compliance".
-**Mortimer Caplin**, Internal Revenue Audit Manual (1975)

"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."

"Each year American taxpayers voluntarily file their tax returns and make a special effort to pay the taxes they owe." IRS instruction booklet for 1040, 1971

"The mission of the Service is to encourage and achieve the highest possible degree of voluntary compliance with the tax laws and regulations..." Donald C. Alexander, March 29, 1974 issue of the Federal Register

Such statements are actually based on an oxymoron designed to confuse most citizens. We defined "voluntary" above as "without compulsion or solicitation". Compliance means submission or obedience. The IRS would like for you to believe that the obedience is to the law, but how many people really know the

law? In most cases, we rely on word of mouth and the fraudulent IRS publications to form an opinion and formulate a course of action. Or worst yet, we take the path of least resistance and surrender extorted money to the IRS without asking any questions. But what are we being obedient *to*?:

- What the law requires, or
- What the IRS wants, which is ***ALL*** of your money?

In most cases, surprisingly, the answer is #2, because most of us naively trust the IRS to tell us the truth in their publications, which turn out to be an outright fraud. The courts have said we can't rely on any IRS publication or even the advice of an IRS employee. Below are just a few examples of such rulings:

- *Luhring v. Glotzbach*, 304 F.2d 560 (4th Cir. 1962).
- *Einhorn v. DeWitt*, 618 F.2d 347 (5th Cir. 1980).
- *United States v. Goldstein*, 342 F.Supp. 661 (E.D.N.Y. 1972).
- *Boulez v. C.I.R.*, 810 F.2d 209 (D.C. Cir. 1987).
- *United States v. Will*, 671 F.2d 963, 967 (6th Cir. 1982).

Instead, they have said things like the following:

"All persons in the United States are chargeable with knowledge of the Statutes-at-Large....[I]t is well established that anyone who deals with the government assumes the risk that the agent acting in the government's behalf has exceeded the bounds of his authority," *Bollow v. Federal Reserve Bank of San Francisco*, 650 F.2d 1093 (9th Cir. 1981)

And the IRS' own Internal Revenue Manual even says we can't rely on their publications either!:

"IRS Publications, issued by the National Office, explain the law in plain language for taxpayers and their advisors... While a good source of general information, publications should not be cited to sustain a position." [IRM, [4.2]7.2.8 (05-14-1999)]

The only thing we therefore have a legal obligation to comply with is what the law requires, and the law DOES NOT require persons living in the 50 states on nonfederal land and who are not in receipt of special government privileges (such as holding public office or holding corporate office) to pay Subtitle A income taxes on their income. To conclude this matter:

It's easier to promote a lie if your paycheck depends on it.

This very statement epitomizes the entire operation of the IRS.

Another argument which purports to support the optional nature of our tax system is based upon the Privacy Act notice contained in the IRS 1040 Form. The Privacy Act of 1974⁴⁴ requires, among other things, that each agency soliciting information from the public state the authority which authorizes the solicitation, whether the disclosure requested on the form is mandatory or voluntary, and the effect of not providing the information. The Privacy Act notice in the IRS 1040 Form instruction booklet does not use the word mandatory. Therefore, the argument is put forth that filing the return is voluntary.

The Privacy Act notice in the IRS 1040 Form instruction booklet states that the authority to seek the information is found in IRC § 6001 and 6011 and their regulations; that one must file a return, show a Social Security Number, and fill in all parts of the form that apply; and that a criminal or civil penalty may result from failure to do so. The federal courts have specifically found that use of the word "mandatory" is not

⁴⁴ P.L. 93-579, 88 Stat. 1896 (1974).

required and that the notice in the 1040 Form meets the requirements of the Privacy Act.⁴⁵

Another semantic argument put forth in this area revolves around the use of the word "liable" in tax acts. The contention is made that the income tax statute does not use the magic words "individual is made liable" and therefore an individual is not liable for income taxes. The federal courts have not had much time for this argument, characterizing it as "arrogant sophistry"⁴⁶ and "blatant nonsense,"⁴⁷ The first description is perhaps the most apt. The proponent of this argument has set up a standard that all taxes must meet. The income tax does not meet this standard. He, therefore, concludes there is something wrong with the income tax. The problem is not in the income tax, but in the standard. There is no requirement in fact or law that a tax act must use the proponent's magic words.

The federal income tax is imposed, in IRC § 1, on the taxable income of every individual. Taxable income is defined in IRC § 63. Every individual whose gross income exceeds specified amounts is required to file an income tax return under IRC

§ 6012. Gross income is defined in IRC § 61. When a return is required by the IRC, the person required to make such return is required, without assessment or notice and demand of the Secretary, to pay such tax to the internal revenue officer with whom the return is filed under IRC § 6151. These sections, working together, make an individual liable for income taxes.

But WHO is this "individual"? We know from previous discussion that he is a person in receipt of special "privileges" from the government above and beyond those afforded to the ordinary citizen which make him liable for the payment of excise income taxes under Subtitle A. One cannot be liable for income taxes simply by existing, however, because existing is NOT a government-granted privilege, and all excise taxes must be based on receipt of privileges from the government:

"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

9. Do the Internal Revenue Service's Collection and Auditing Procedures Violate the Fourth Amendment?

The Fourth Amendment to the Constitution states:

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

The present procedures followed by the IRS in assessment of income tax deficiencies and the collection of unpaid taxes have generally been sustained by the courts as valid and as not violative of the Fourth Amendment.

The income tax law requires all taxpayers to maintain such records as are deemed by the Treasury

⁴⁵ See, for example, *United States v. Wilber*, 696 F.2d 79 (8th Cir. 1982).

⁴⁶ See, *Done lin v. Cornmr.*, T. C. Memo. 1984-131, and *Schiff v. Commr.*, T. C. Memo. 1884223.

⁴⁷ See, *Newman v. Schiff*, 778 F.2d 460 (8th Cir. 1985).

Department, through the IRS, to be necessary for the determination of the taxpayer's liability.⁴⁸ Furthermore, the IRS is authorized by statute to inspect such records and to demand their presentation in order to determine whether a return is correct and whether a return has been filed.⁴⁹ This summons may be enforced by the IRS by means of an action brought in the United States District Court.⁵⁰

The Supreme Court has held that the use of an administrative summons to obtain a taxpayer's records is not a violation of the Fourth Amendment right to be free from unreasonable searches and seizures.⁵¹ However, the IRS must issue such a summons in "good faith," for use in determining the taxpayer's civil liability for income taxes, rather than the taxpayer's criminal liabilities.⁵²

It is prudent for all Citizens who receive such summons as indicated above to:

- Show up to the summons as requested (this will prevent court actions that will be costly and inconvenient to fight).
- Claim the Fifth Amendment in answer to *every* question.
- Not indicate that they have any records or bring any records.
- Request an "Immunity from Prosecution Letter" under 26 U.S.C. 6002-6003 before they say anything or provide any information to the deposing officer.

Citizens are perfectly within their rights to take any of the above actions without fear of sanction or penalty. Such actions make the collection process extremely labor intensive and high maintenance, and serve to divert attention of the IRS away from the suspect accused Citizen.

The IRS follows a set pattern of procedures for assessing a deficiency in income taxes and collecting those assessed taxes. If a taxpayer is determined to have underpaid his income taxes, the IRS will issue a notice of proposed assessment, giving the taxpayer an opportunity to seek administrative review of the determination within the next thirty days. If the taxpayer fails to request administrative review, or if the review sustains the liability, a notice of deficiency is issued.⁵³ This notice permits the taxpayer to petition the United States Tax Court for a redetermination of the assessed deficiency without first paying the taxes allegedly due. If no petition is filed by taxpayer within the ninety days from the issuance of the notice of deficiency, the Tax Court loses jurisdiction over the case.⁵⁴ At that time, the IRS issues a demand for payment of the tax.⁵⁵ Now the taxpayer must legally pay the tax,⁵⁶ If the taxpayer fails to do so, the IRS may collect the tax through judicial proceedings or through its power of levy and distraint.

The power of levy and distraint gives the IRS the ability to seize the assets of a taxpayer and sell them, applying the proceeds to the outstanding tax liability.⁵⁷ The Supreme Court has held that the exercise of these powers is constitutional and that such extra-judicial seizures and sales do not violate the protections of the Fourth Amendment against unreasonable search and seizures because the taxpayer will already have

⁴⁸ IRC § 6001.

⁴⁹ IRC § 7602

⁵⁰ IRC § 7604.

⁵¹ See, *United States v. Bisceglia*, 420 U. S. 141 (1975).

⁵² *United States v. Sullivan*, 274 U.S. 259 (1926).

⁵³ IRC § 6212.

⁵⁴ IRC § 6213.

⁵⁵ IRC § 6155.

⁵⁶ However, the taxpayer's options for judicial review are not foreclosed. IRC §7422 provides that after the taxpayer has paid the tax in full, a suit for a refund may be brought in either the appropriate United States District Court or in the United States Claims Court.

⁵⁷ See, IRC §§ 6331-6345.

ample opportunity for judicial review of the deficiency.⁵⁸ The Court has referred to the power of the IRS to levy on a taxpayer's property as an "essential part of our self-assessment tax system ...[which] enhances voluntary compliance in the collection of taxes."⁵⁹

The power of levy and distraint may *only* be used against elected or appointed political officers of the United States government, as indicated in 26 U.S.C. Section 6331.

26 U.S.C. Section 6331 Levy and Distraint

(a) Authority of Secretary

If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. **Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official.** If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

For IRS subterfuge about the word "includes" as related to the statute above, see the [rebuttal to question 20](#), where 26 U.S.C. Section 7701(c) is referenced. Persons other than elected or appointed officials of the U.S. government are immune from distraint or force by the IRS. Since all such officers reside ONLY in the District of Columbia per the U.S. Constitution, and since the Bill of Rights and other constitutional limitations do not apply on federal property under the constraints of Article 1, Section 8, Clause 17 of the Constitution and the supreme Court case of *Downes v. Bidwell* (182 U.S. 244, 1901), then it is technically accurate for Mr. Luckey to say that IRS collection policies *do not* violate the Fourth Amendment of the Constitution in these areas only. *However, if collection activities are instituted against other than elected or appointed officers of the U.S. government or on citizens living on nonfederal land within the borders of the sovereign 50 states, then IRS collection activities are illegal and will unavoidably violate the Fourth Amendment to the U.S. Constitution.* Unfortunately, this is precisely the scope of MOST IRS collection activity, and it is this type of collection activity that is clearly and blatantly illegal and unconstitutional.

The Supreme Court has noted some constitutional limitations on the exercise of the Government's power of levy and distraint. In *G.M. Leasing* the Court held that the IRS could not make a forced entry onto the taxpayer's premises in order to seize property without a court order. However, the agents could take the taxpayer's property which was not in an inclosed area.⁶⁰

In some limited circumstances, the IRS will levy upon the property of a taxpayer without first providing the opportunities for administrative or judicial review discussed above. The IRS is authorized by statute to dispense with these procedures and immediately seize the property if it believes that the taxpayer intends to remove or hide himself or his property in order to defeat the collection of the tax.⁶¹ This emergency procedure is known as "jeopardy assessment" and has been sustained by the Supreme Court against a Fourth

⁵⁸ *Phelps v. United States*, 421 U.S. 330 (1975).

⁵⁹ *G.M. Leasing Corp. v. United States*, 429 U.S. 339 (1977).

⁶⁰ *Id.*

⁶¹ See, IRC §§ 6851-6864.

Amendment challenge.⁶²

10. Do Such Aspects of the Federal Income Tax as Graduated Rates, Deductions, and Exemptions Violate the Equal Protection Guarantees of the Constitution?

The Constitution does not contain an express prohibition against the denial by the federal government of a person's equal protection of the laws. The Fifth Amendment does, however, preclude the United States from depriving any person of "life, liberty, or property, without due process of law..." The Supreme Court has determined that this assurance also precludes the United States from denying persons equal protection of the laws.⁶³

The prohibition against denial of equal protection of the laws, however, does not preclude Congress from creating reasonable classifications among taxpayers. The Court has stated that the Congress is to be given wide discretion in classifying taxpayers for purposes of tax deductions, exemptions, rates and other features. Such classifications are to be sustained unless they are arbitrary and capricious.⁶⁴ The Court has, for example, upheld as reasonable classifications within the tax laws the graduated nature of the income tax rates, imposing higher proportionate burdens on more wealthy taxpayers⁶⁵ and the taxation of domestic corporations in a fashion distinct from foreign corporations.⁶⁶

The latitude granted to Congress in tax matters was emphasized in the Supreme Court's decision in *Commissioner v. Kowalski*⁶⁷ in which the Court ruled that highway patrol officers were required to pay tax on meal allowances granted them, even though similar allowances granted military personnel were expressly tax-free by statute. In relation to this disparity of treatment, the Court stated that:

arguments of equity have little force in **construing** the boundaries of exclusions and deductions from income, many of which, to be administrable, must be arbitrary.⁶⁸

11. Has the Withholding Act Been Repealed (Victory Tax Act Questions)?

The original withholding act for withholding on wages was enacted as part of the Victory Tax Act of 1942.⁶⁹ This act was a temporary act and was scheduled to expire at the cessation of hostilities (World War 11). The act did not expire, but was instead repealed by the Income Tax Act of 1944.⁷⁰ Previous to this repealing act, the Withholding Tax Act of 1943⁷¹ had been enacted containing a withholding provision and not subject to an expiration date.

The present withholding provisions were enacted as part of the Internal Revenue Act of 1954⁷² and continued as part of the Internal Revenue Code of 1986. While they have been amended, they have not been

⁶² *Laing v. United States*, 423 U.S. 161 (1976).

⁶³ See, *Buckley v. Valeo*, 424 U.S. 1 (1976); and *Weinberger v. Weisenfeld*, 420 U.S. 636, (1975).

⁶⁴ *Helvering v. Indiana Life Ins. Co.*, 292 U.S. 371 (1934).

⁶⁵ *Brushaber v. Union Pacific Railroad Co.*, 240 U.S. 1 (1916).

⁶⁶ *National Paper Co. v. Bowers*, 266 U.S. 373 (1924).

⁶⁷ 434 U.S. 77 (1977).

⁶⁸ *Id.* at 95-96.

⁶⁹ Ch. 619, 56 Stat. 798, 77th Cong., 2nd Sess (1942).

⁷⁰ Ch. 210, 58 Stat. 231, 78th Cong., 2nd Sess (1944).

⁷¹ Ch. 120, 57 Stat. 126, 78th Cong., 1st Sess. (1943).

⁷² Ch. 736, 65A Stat. 1, 83rd Cong., 2nd Sess. (1954).

repealed.

12. When Was the Internal Revenue Service Established and Where Does it Get its Power to Tax?

The Office of the Commissioner of Internal Revenue was established on July 1, 1862 by act of Congress.⁷³ There was an appropriation for the Bureau of Internal Revenue as early as 1870.⁷⁴ The Bureau's name was officially changed to the Internal Revenue Service in 1953.⁷⁵

The Internal Revenue Service does not have the power to tax. Rather, it has been charged by Congress with the responsibility of administering and enforcing the internal revenue laws and related statutes which have been enacted by Congress.

The Internal Revenue Service was created under the authority of 26 U.S.C. Section 7802. 26 U.S.C. Section 7803 authorizes the Secretary of the Treasury to such number of persons deemed proper for the administration and enforcement of the internal revenue laws. It is these federal employees who comprise the IRS. We also have a signed letter signed by a Congressman that reiterates this statement of fact.

However, if you look in 26 U.S.C. Section 7802, you find that that statute created the "Internal Revenue Service Oversite Board", NOT the IRS itself!

"Public officers have only those powers expressly granted or necessarily implied by statute," 622 P.2d, at 848.

Hoppe v. King County, 95 Wash.2d 332, 622 P.2d 845 (1980)

"Persons dealing with the government are charged with knowing government statutes and regulations, and they assume the risk that government agents may exceed their authority and provide misinformation," 644 F.2d, at 1383.

Lavin v. Marsh, 644 F.2d 1378 (9th Cir. 1981):

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

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

There are no statutes or laws defining the delegated authority of IRS revenue officers. The only thing one can refer to is the Internal Revenue Manual, which isn't law. Therefore, they have NO authority as per the case cites above and many others. This rebuttal document is an attempt to identify the lawful authority possessed by IRS revenue officers and to hold them accountable for the delegated authority that they possess, or the lack thereof.

What Mr. Luckey does NOT point out in documenting the origins of the I.R.S. is that the IRS is actually a part of the Executive Branch of the Government. But we learned earlier in 1:8:1 and 1:8:3 of the U.S. Constitution that Congress, not the Executive Branch, has the authority to lay and collect taxes. The question then is:

Why isn't Congress the one that has to collect the tax? The constitution doesn't authorize the anyone in the Executive Branch to collect taxes. Doesn't this violate the Constitution?

⁷³ Ch. 119, 12 Stat. 432, 37th Cong., 2nd Sess. (1862).

⁷⁴ Ch. 56, 16 Stat. 83, 84, 41st Cong., 2nd Sess. (1870).

⁷⁵ Treasury Department Order 150-29 (July 9, 1953).

The answer is a resounding YES. Furthermore, one branch of government is not allowed by law to delegate its sovereign powers to another branch of government.

The founding fathers made congress responsible for collecting taxes because they wanted these elected representatives to have to face their constituents regularly and answer for any abuses. They did it because Congressmen have to be reelected, and if the Congressman got overly zealous in collecting taxes, the citizens would throw the bastards out and elect someone else! This is at the heart of why we had the revolutionary War...to ensure "taxation with representation", as the founding fathers called it. Do you think that ANY Congressman would ever get reelected if they treated taxpayers the way the IRS does now? NOT!! That's why they created the IRS: to shift blame and responsibility, so they could whine and complain that they are powerless to fix such abuses.

The fact that tax collection has been delegated unconstitutionally to an unauthorized branch of government explains how the IRS gets away with most of their negligent and downright abusive tactics. None of these people are elected or accountable in any way to the Citizens, and there isn't even a law describing their duties or authority we can rely on. In most cases, IRS employees are protected in the courts by the doctrine of "official immunity"⁷⁶ and they hide behind a cloak of anonymity, in which they refuse to disclose to Citizens anything about themselves or even their full name. This simply encourages fraud and abuse that has become commonplace in the IRS and ought to be illegal because of the problems it creates.

13. Does the Internal Revenue Service Have Authority to Operate Outside of the District of Columbia (Seat of Government Act Questions)?

Questions concerning the authority of the Internal Revenue Service to operate outside of the District of Columbia generally are premised upon an incorrect reading of the requirements of the Seat of Government Act.⁷⁷ The Act provides:

All offices attached to the seat of government shall be exercised in the *District of* Columbia, and not elsewhere, except as otherwise expressly provided by law.⁷⁸

This Act was first enacted in 1790 for the purpose of centralizing the national government.⁷⁹ The Act did not (and does not) require that a department or agency only have authority within the seat of government, but rather that the department or agency be physically located at the seat of government. The same Congress which passed the Act set up districts for the collection of tariffs and taxes located outside the seat of government.⁸⁰

The Department of the Treasury is an office attached to the seat of government⁸¹ The IRS is a part of the Department of the Treasury.⁸² Therefore the IRS must have its office in the District of Columbia unless otherwise expressly provided by law. The IRS does have its national headquarters within the District of Columbia.

⁷⁶ See *Westfall Et Al. v. Erwin Et Ux.*, 484 U.S. 292, 1988 for an example of the doctrine of "official immunity".

⁷⁷ 4 U.S.C. §§ 71-73.

⁷⁸ 4 U.S.C. § 72.

⁷⁹ Ch. 28, 1 Stat. 130, 1st Cong., 2nd Sess. (July 16, 1790). The Act established Philadelphia as the temporary seat of government until the first Monday in December of 1800 when the seat of government would become the District of Columbia.

⁸⁰ See, Ch. 35, 1 Stat. 145, 1st Cong., 2nd Sess. (August 4, 1790).

⁸¹ See, 31 U.S.C. § 301(a).

⁸² See, 26 U.S.C. § 7802.

There are several provisions of law which expressly authorize the IRS to operate outside of the District of Columbia. Two of the more general such authorizations are found in sections 7621 and 7803 of the Internal Revenue Code. The first of these provides for the establishment by the President of internal revenue districts throughout the states for the purpose of administering the tax laws.⁸³ In the second, the Secretary of the Treasury is authorized to employ such number of persons as the Secretary deems proper for the administration and enforcement of the tax laws and to designate and determine the posts of duty of such persons inside and outside of the District of Columbia.⁸⁴

14. What Is the Liberty Amendment?

The Liberty Amendment is a proposed amendment to the United States Constitution which has been introduced several times over the past 40 years. The proposal would repeal the Sixteenth Amendment (which authorized Congress to levy an income tax without apportionment among the states) and would preclude Congress from levying taxes on persons, incomes, estates, and/or gifts. It would also preclude the federal government from engaging in any business, professional, commercial, financial, or industrial enterprise except as specified in the Constitution.

15. Is the Federal Telephone Excise Tax Used to Fund the Military?

The revenue from the telephone excise tax⁸⁵ goes into the general revenues of the federal government. It is not specifically earmarked for the military.

This question is based on the fact that this excise tax was increased from 3% to 10% in 1966,⁸⁶ at the request of the Johnson administration, to help meet the expense of the military effort in Vietnam.

Protesters of the war in Vietnam, and later those opposed to military spending in general, have used this tax as a vehicle for their protest because of the above mentioned historical connection with military funding and because it is a tax levied on most of the population which does not have a withholding system of collection. Refusal to pay the tax may, of course, result in the imposition of civil and/or criminal penalties.

16. Does Withholding on Wages Constitute Involuntary Servitude in Violation of the Thirteenth Amendment?

The Thirteenth Amendment provides that "[n]either slavery nor involuntary servitude shall exist in the United States...." Although the Supreme Court has upheld the constitutionality of income tax withholding, in the context of the corporate income tax, as early as 1916,⁸⁷ a few taxpayers have still contended, unsuccessfully, that to require an employer, without compensation, to withhold income taxes from the wages of employees places the employer in involuntary servitude in violation of the Thirteenth Amendment.⁸⁸ The courts have consistently and repeatedly held that a requirement of governmental service of this character does not constitute involuntary servitude. A government has the right to require certain

⁸³ 26 U.S.C. § 7621.

⁸⁴ 26 U.S.C. § 7803.

⁸⁵ IRC §§ 4251-4254. " P.L. 89-368, 80 Stat. 38, 89th Cong., 2nd Sess. (1966).

⁸⁶ P.L. 97-248, 97 Stat. 369, 97th Cong., 2nd Sess. (1982).

⁸⁷ *Brushaber v. Union Pacific Railroad Co.*, 240 U.S. 1 (1916).

⁸⁸ See, for example, *Lorre, Jr. v. United States*, 40 A.F.T.R. 2d 5664 (W.D. Tex. 1977); and *United States v. Averkamp*, 34 A.F.T.R. 2d 5086 (7th Cir. 1974).

actions of its citizens, including income tax withholding, jury service, and military service.⁸⁹

When one considers who the Subtitle A income taxes actually apply to, which is elected or appointed officials of the U.S. Government and officers, their “employer” is actually the U.S. Government, and certainly that government has a right to tell its own administrative employees that they must withhold if their employees volunteer for withholding using the IRS form W-4. It would be hypocritical not to and beyond the authority of an administrative agency of the U.S. government to deny the right of Congress to expect them to withhold.

However, applying the same rules to private employers inside the 50 states on nonfederal land definitely is involuntary servitude, not to mention exceeds the jurisdiction of the U.S. government to assess income taxes. The U.S. supreme Court case of *Yick Wo v. Hopkins*, 118 U.S. 356 (1885) defined what slavery means:

“For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself.” *Yick Wo v. Hopkins*, 118 US 356 (1885)

This definition of slavery doesn’t mean total slavery, and includes simply having one’s time or property or labor usurped or stolen or one’s property rights infringed. We would argue then that compelled withholding by employers definitely amounts to slavery, or involuntary servitude. Even if it doesn’t meet the precise intent of the original purpose of the Thirteenth Amendment (which outlawed slavery), it is still slavery, as revealed in the following definitions of slavery in Merriam Webster’s Collegiate dictionary:

slave 1: a person held in servitude as the chattel of another: **BONDMAN 2:** one that is completely subservient to a dominating influence.⁹⁰

slavery 1: DRUDGERY, TOIL **2: submission to a dominating influence 3 a:** the state of a person who is a chattel of another **b:** the practice of slaveholding.⁹¹

The same dictionary then defines “servitude” as follows:

ser-vi-tude Pronunciation: 's&r-v&- "tüd, - "tyüd

Function: *noun*

Etymology: Middle English, from Middle French, from Latin *servitudo* slavery, from *servus* slave

Date: 15th century

1 : a condition in which one lacks liberty especially to determine one's course of action or way of life

2 : a right by which something (as a piece of land) owned by one person is subject to a specified use or enjoyment by another

From the above definition, you can see that servitude, or slavery, encompasses not only surrendering control of one’s body and time to another, but it also involves the right of use and beneficial enjoyment of one’s property as well. *Servitude is a condition where we have been involuntarily deprived of liberty.* Black’s Law Dictionary, Sixth Edition, on page 1388 defines slavery as follows:

slavery: The condition of a slave; that civil relation in which one man has absolute power over the life, fortune, and liberty of another. The 13th Amendment abolished slavery.

⁸⁹ See, *Arver v. United States*, 245 U.S. 366 (1918); *Butler v. Perry*, 240 U.S. 328 (1916); and *Robertson v. Baldwin*, 165 U.S. 275 (1897).

⁹⁰ Webster’s Ninth New Collegiate Dictionary, 1983, Merriam-Webster, p. 1077.

⁹¹ Webster’s Ninth New Collegiate Dictionary, 1983, Merriam-Webster, p. 1077.

slave: A person who is wholly subject to the will of another; one who has no freedom of action, but whose person and services are wholly under the control of another. One who is under the power of a master, and who belongs to him; so that the master may sell and dispose of his person, of his industry, and of his labor, without his being able to do anything, have anything, or acquire anything, but what must belong to his master. The 13th Amendment abolished slavery.

The condition of slavery is referred to in the U.S. Code, Title 18, Chapter 77 (sections 1581 through 1588) as “peonage”, which is defined as follows:

peonage 1 a: the use of laborers bound in servitude because of debt **b:** a system of convict labor by which convicts are leased to contractors **2:** the condition of a peon.

peon 3 a: a person held in compulsory servitude to a master for the working out of an indebtedness **b:** DRUDGE, MENIAL

Interestingly, would anyone argue that we aren’t peons who are slaves to the Federal Reserve and who owe income taxes to pay off the debts of the U.S. government to the privately owned Federal Reserve? If you look at former President Reagan’s Grace Commission Report, for instance, you find that the income tax doesn’t go to pay the expenses of the government. Instead, it goes mainly to pay interest on the national debt to the Federal Reserve. Isn’t peonage against the law, but that’s what the U.S. Congress legalized when it nearly simultaneously passed the Federal Reserve Act and the Income Tax in 1913. The two are linked together because if you are going to run up a big public debt, then peons are needed to pay it off.

THAT’S RIGHT... YOU’RE A PEON AND YOU DIDN’T EVEN KNOW IT!

However, 18 U.S.C §1581 makes peonage illegal:

Sec. 1581. Peonage; obstructing enforcement

(a) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, shall be fined under this title or imprisoned not more than 10 years, or both.

(b) Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be liable to the penalties prescribed in subsection (a).

Now do you understand why the IRS has no delegated authority directly linked to Congress and why there is no statute directly authorizing the establishment of the IRS? Because if Congress created one, the members of Congress could be held personally liable for violating the above law as well as constructively instituting “extortion under the color of office”:

extortion under the color of office: “...Unlawful taking by any officer by color of his office, of any money or thing of value, that **is not due to him**, or more than is due or before it is due.” 4 Bla.Comm. 141; **Com. v. Saulsbury**, 152 Pa. 554, 25 A. 610; **U.S. v. Denver**, D.C.N.C. 14 F. 595; **Bush v. State**, 19 Ariz. 195, 168 P. 508, 509...”Obtaining property from another, induced by wrongful use of force or fear, OR under color of official right.” See **State v. Logan**, 104 La. 760, 29 So. 336; *In re Rempfer*, 51 S.D. 393, 216 N.W. 355, 359, 55 A.L.R. 1346; **Lee v. State**, 16 Ariz. 291, 145 P. 244, 246, Ann.Cas. 1917B, 131. (Black’s Law Dictionary, Revised 4th Edition)

Notice that the key to being a slave is the absence of property rights, and the most sacred kind of property is one’s labor, as confirmed in the supreme Court case of *Butchers’ Union Co. v. Crescent City Co.*, 111 U.S. 746, 1883. Thomas Jefferson, the author of our Declaration of Independence, confirmed the foundation of our political system is the ownership and complete control over one’s property when he said the following:

"The true foundation of republican government is the equal right of every citizen in his person and property and in their management." --Thomas Jefferson to Samuel Kercheval, 1816. ME 15:36

"Nothing is ours, which another may deprive us of." --Thomas Jefferson to Maria Cosway, 1786. ME 5:440

"He who is permitted by law to have no property of his own can with difficulty conceive that property is founded in anything but force." --Thomas Jefferson to Edward Bancroft, 1788. ME 19:41

How can you really own anything if the IRS can just take or seize anything absent a signature by a judge with and "Notice of Levy" or "Notice of Seizure" that isn't even signed? Are you really free or have you just been tricked into thinking that you are. It's no wonder that some people say:

Did you ever notice?? If you put together the two words of "THE" and "IRS" it spells "THEIRS"?

17. Are Not Individuals Who Are Too Young to Vote or Who Are Residents of the District of Columbia Unconstitutionally Subjected to Taxation Without Representation?

The argument has been suggested that individuals who are not 18 years of age and individuals residing in the District of Columbia should not be subject to federal taxes because they do not have voting representation in Congress. Individuals who are not 18 years of age cannot vote for members of Congress or the President, and residents of the District of Columbia cannot elect voting representatives to Congress, although they may vote in Presidential elections.

The concept of no taxation without representation was a factor in the creation of this country and was embodied in the Declaration of Independence, but it is not an express guarantee of the Constitution.. Rather, the Constitution establishes a representative form of government with elected officials for all adults, except those residing in the District of Columbia. As such, the Constitution permits taxation of both residents of the District and individuals who are disenfranchised because of age. This principle was clearly expressed by the Supreme Court in its decision in *Loughborough v. Blake*⁹² in which Chief Justice Marshall stated:

The difference between requiring a continent, with immense population, to submit to be taxed by a government having no common interest with it, separated from it by a vast ocean, restrained by no principle of apportionment, and associated with it by no common feelings; and permitting the representatives of the American people, under the restrictions of our Constitution, to tax a part of society, which is either in a state of infancy advancing to manhood, looking forward to complete equality as soon as that state of manhood shall be attained, as is the case with the territories; or *which has* voluntarily relinquished the right of representation, and has adopted the whole body of Congress for its legitimate government, as is the case with the district, is too obvious not to present itself to the minds of all.⁹³

18. What Is Meant by the Term United States in the Context of the Internal Revenue Code?

⁹² 18 U.S. 317 (1820).

⁹³ Id. at 324 to 325.

This question has often appeared as a form letter which questions the meaning of the term "United States" as used in the Internal Revenue Code. These letters generally follow the form of. (1) a statement of confusion as to the meaning of the term resulting from their review of the IRC and some court decisions; (2) citation to three definitions of the term from the Supreme Court opinion of *Hooven & Allison Co. v. Evatt*⁹⁴; (3) question as to which of the cited meanings is applicable to an Internal Revenue Service regulation;⁹⁵ (4) citation to a portion of the Supreme Court opinion of *United States v. Cruikshank*⁹⁶ concerning the different obligations and rights stemming from federal and state citizenship; and (5) concluding with a plea for immediate response to end their confusion.

First it should be noted that neither of the Supreme Court opinions cited in the letters have anything to do with the federal income tax. *Hooven* was a case concerning State taxation of imports. The Constitution prohibits states from taxing imports without the consent of Congress except what may be absolutely necessary for executing its inspection laws.⁹⁷ One of the issues in *Hooven* was whether the items which had been taxed by the state had been imported, in that the items in question came from the Philippine Islands, which at that time were a insular possession of the United States. It was in this context that the Court entered into a discussion of the meaning of the term "United States" stating:

The term "United States" may be *used* in any one of several senses. It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in the family of nations. It may designate the territory *over* which the sovereignty of the United States extends, or it may be the collective name of the States which are united under the Constitution.⁹⁸

The Court decided for purposes of this constitutional provision that "United States" did not include the Philippine Islands.

Cruikshank, a case decided 38 years before the ratification of the Sixteenth Amendment and the enactment of the modern income tax, was a criminal case which had nothing to do with taxes of any kind. The quote from the case cited in the letters is part of lengthy section which discusses our federal system of government where individuals are citizens of a state and of the nation and thus have rights and obligations, which may vary, stemming from these two citizenships.⁹⁹ If one insists on applying this passage to the subject of taxes, it could best be summarized by saying that an individual has certain rights and obligations under the federal tax laws and certain rights and obligations under the State tax laws and such rights and obligations may not be identical.

The IRC uses the term "United States" several hundred times. It uses the term in all three of the ways mentioned in the *Hooven* case. For example, the IRC refers to the United States Tax Court.¹⁰⁰ This use of the term is obviously not used in the geographical sense. Rather, it is used to indicate that the court is a part of the federal government. In the unemployment tax provisions of the IRC the term is defined to include the States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.¹⁰¹ The general IRC definition of the term states:

⁹⁴ 324 U.S. 652 (1945).

⁹⁵ 26 C.F.R. § 1.1-1(a)(1).

⁹⁶ 92 U.S. 542 (1875).

⁹⁷ U. S. Const. Art.I, § 10, cl. 2.

⁹⁸ *Hooven*, at 671 and 672. It should be noted that the parentheticals in the letters are not from the Court opinion, but rather appear to be interpretations of the definitions supplied by the author and are not necessarily complete or accurate. It should be also noted that the Court does not state or imply that this list of definitions is exhaustive or exclusive.

⁹⁹ See, *Cruikshank*, 92 U.S. at 549 to 551.

¹⁰⁰ See, e.g., IRC § 7441.

¹⁰¹ IRC § 3306(i).

When used in this title,¹⁰² where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the term "United States" when used *in* a geographical sense includes only the States and the District of Columbia.¹⁰³

The use of the term which the letters specifically inquire about is not from the IRC, but from the IRS regulations. The regulation in question states in pertinent part:

Section I of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States and, to the extent provided by section 871(b) or 877(b), on the income of a nonresident alien individual.¹⁰⁴

The use of the term "United States" in this regulation is that of a modifier of the terms "citizen" and "resident." Further study of this regulation might well have alleviated some of the constituents' confusion. Subsection (b) of this regulation, entitled "Citizens or residents of the United States liable for tax," expands on the discussion quoted above. Subsection (c) of this regulation, entitled "Who is a citizen," goes on to state:

Every person born or naturalized in the United States and subject to its jurisdiction is a citizen. For further rules governing the acquisition of citizenship, see chapters 1 and 2 of title III of the Immigration and Nationality Act (8 U.S.C. §§ 1401-1459). For rules governing loss of citizenship, see sections 349 to 357, inclusive, of such Act (8 U.S.C. §§ 1481-1499), *Schneider v. Rusk*, 377 U.S. 163 (1974), and Rev. Rul. 70-506, C.B. 1970-2, 1, For rules pertaining to persons who are nationals but not citizens at birth, e.g., a person born in American Samoa, see section 308 of such Act (8 U.S.C. § 1408). For special rules applicable to certain expatriates who have lost citizenship with the principal purpose of avoiding certain taxes, see section 877. A foreigner who has become a citizen but who has not yet been admitted to citizenship by a final order of a naturalization court is an alien.¹⁰⁵

Mr. Luckey really dodged this one, which means this is a good one to focus on. What a "lucky" guy he was to get this job! Maybe he didn't even use his real name like most IRS agents, in order to dodge the bullets, which might explain why he might have given himself such a "lucky" name!

The regulation cited relies on the definition of "United States" found in 26 U.S.C. Section 7701(a)(9):

United States

The term "United States" when used in a geographical sense includes only the States and the District of Columbia.

The rules of statutory construction state that the plural of a word may not mean something different than the singular meaning. Since "States" is the plural for State, which was defined in 26 U.S.C. 7701(a)(10) as the District of Columbia, then the plural form of "State" by implication implies other federal properties within the sovereign states, as defined under 4 U.S.C. Section 110:

TITLE 4 - FLAG AND SEAL, SEAT OF GOVERNMENT, AND THE STATES

CHAPTER 4 - THE STATES

Sec. 110. Same; definitions

¹⁰² The IRC is codified in title 26 of the United States Code.

¹⁰³ IRC § 7701(a)(9).

¹⁰⁴ 26 C.F.R. § 1.1-1(a)(1).

¹⁰⁵ 26 C.F.R. § 1.1-1(c).

(d) The term "State" includes any Territory or possession of the United States.

Under this definition, California, for instance, is NOT a State because it is not a territory or possession of the United States. It is, instead, a sovereign entity of its own. California's own revenue and taxation code, ironically, uses the very same definition of the word "State" in two different sections, including 17018 and 6017 (found at <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=rtc&codebody=&hits=20>):

California Revenue And Taxation Code Section 17018:

"State" includes the District of Columbia, and the possessions of the United States.

Rewriting the above definition with the definition for State found in 26 U.S.C. §7701(a)(10), we have the following definition for "United States":

United States

The term "United States" when used in a geographical sense includes only the District of Columbia and the District of Columbia.

This definition agrees with the definition of "United States" found in the California Revenue and Taxation code:

17017. "UNITED STATES," WHEN USED IN A GEOGRAPHICAL SENSE, INCLUDES the states, the District of Columbia, and the possessions of the United States.

17018. "State" includes the District of Columbia, and the possessions of the United States.

17019. "Foreign country" means any jurisdiction other than one embraced within the United States.

It's important to remember that if the California Franchise Tax Board (FTB) 540 income tax form and the Federal 1040 form are to operate together and produce the same results where we can transfer numbers from the 1040 form to the 540 form in preparing our taxes, then the definitions of jurisdiction and income must be synchronized.

The tricky Congressmen and IRS lawyers who wrote the tax code knew they couldn't explicitly define "States" as all of the geographical 50 states in the union, because these states are sovereign, which is why Britain had to sign 13 separate treaties after the War of Independence instead of just one. Therefore, these slick lawyers tried to fool readers of the tax code above into thinking that United States refers geographically to the 50 states, but they would have stated this directly if that is indeed what they meant, and in the absence of a clear statement, the U.S. supreme Court ruled that the tax laws only apply on federal property, which means only in the District of Columbia, federal parks, reservations, military bases, and federal buildings, to name a few:

"All legislation is prima facie territorial."

American Banana Co. v. U.S. Fruit Co., 213 U.S. 347, at 357-358 (1909)

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

[NOTE: The territorial jurisdiction of the United States is identified in the U.S. Constitution, Article 1, Section 8, Clause 17 as it pertains to Subtitle A income taxes]

"The law 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.”

Caha v. United States, 152 U.S. 211 (March 5, 1894)

“The United States government is a foreign corporation with respect to a state.”

N.Y. re: Merriam, 36 N.E. 505, 141 N.Y. 479, Affirmed 16 S.Ct. 1973, 41 L.Ed. 287

“Legislation is presumptively territorial and confined to the limits over which the law making power has jurisdiction.”

N.Y. R.R. v. Chisholm, 268 U.S. 29 at 31-32 (1925)

Perhaps a few definitions will help clarify the points we are trying to make:

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

Foreign Laws: “The laws of a foreign country or sister state.” (Black’s Law Dictionary, 6th Edition)

As we read the above, we should recognize that what makes the federal and the state governments “foreign” with respect to each other is that they are mutually exclusive territorial jurisdictions. Because they are mutually exclusive jurisdictions, that is why the constitution requires the states to collect taxes for the federal government through apportionment in 1:9:4 and 1:2:3 of the U.S. Constitution. Therefore, the Subtitle A Income Tax and Subtitle B Estate and Gift Tax DOES NOT apply to you, as it has jurisdiction only within the District of Columbia and other federal possessions or territories, hereafter referred to as the “federal zone”. This is no accident, but is a direct result of the restrictions imposed on the U.S. Government in Article 1, Section 8, clauses 1 and 3 of the U.S. Constitution.

Even if the IRS wants to assert that you are a citizen of the United States (which most people are not because they were not 14th Amendment citizens born or naturalized on federal property also called in “the federal zone”), they will *still* not be able to extend the jurisdiction of the federal courts or their taxing authority beyond the boundaries of the District of Columbia and foreign lands for the purposes of the Internal Revenue Code because of the above limitations. Incidentally, have you ever asked yourself what the Internal Revenue Code is Internal **TO**? It’s Internal to the [District] United States territories! This may have something to do with why the Internal Revenue Code was never enacted into positive law and still stands only as prima facie evidence of law or special/municipal law..because it has no effect on natural born Citizens of the 50 states living on nonfederal property anyway! The more correct way to refer to yourself is not as a resident or citizen of the United States under the tax laws, but as a natural born Citizen of a state of the United States of America, which DOES NOT include the District of Columbia or the federal zone.

For those of you who STILL don’t believe that the “United States” found in the Internal Revenue Code does NOT include nonfederal areas of the 50 states, one fellow (thanks Bob Conlon!) did an exhaustive and scholarly study of the I.R.C. at the following web address using their search engine:

<http://www4.law.cornell.edu/uscode/26/ch1.html>

Based on his findings, the definition of “United States” (sec.3121) that does not explicitly reference the 50 states is used in 29 different sections of the Internal Revenue Code (other than its own definition), ***however the definition that DOES explicitly refer as the “United States” to mean the 50 states, section 4612, is only used 3 times in the whole of TITLE 26, and the cases where it is used refer to excise taxes on gasoline!!!***

It appears that all the sections that have to do with income tax, self-employment tax, etc. refer to 3121 ***AND NOT*** 4612. This is obviously done to obfuscate and confuse and to cause presumption, but the definition is clear as section 4612 will illustrate. It says :

Title 26
Subtitle D-Miscellaneous Excise Taxes
Chapter 38-Environmental Taxes
Subchapter A- Tax on Petroleum
26 U.S.C. Sec. 4612(a)(4) - United States

(A) In general

The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands

United States Code
TITLE 26 - INTERNAL REVENUE CODE
Subtitle C - Employment Taxes
CHAPTER 21 - FEDERAL INSURANCE CONTRIBUTIONS ACT
Subchapter C - General Provisions
26 U.S.C. Sec. 3121(e)(2) - United States

The term "United States" when used in a geographical sense includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. An individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States.

Based on the above two definitions, it ought to be clear that **Congress knows exactly how to define the term "United States" to include the 50 states when they want to**, and that if they really meant the 50 states in section 3121, they would have said exactly that and eliminated this section and referred to section 4612 instead, BUT THEY DIDN'T by choice and would rather keep you guessing!

Below are the 'hits' our reader found for both sections 3121 and 4612 of the Internal Revenue Code (Title 26) and each gives the number of times references are made to each of the two definitions in all the code sections where these sections were referenced within the I.R.C. **This research has made it very clear that if one doesn't live in a federal area but instead in nonfederal areas of the 50 states, no Subtitle A income tax or Subtitle C FICA tax liability exists!**

Table 1: References to definition of "United States" in I.R.C.

<i>26 U.S.C./I.R.C. Section Where definitions of</i>	<i>Section Title</i>	<i>Number of Section 3121</i>	<i>Number of Section 4612 References</i>	<i>Reason</i>
51	Amount of credit	1	0	Income taxes
162	Trade or business expenses	4	0	Income taxes
176	Payments with respect to employees of	1	0	Income taxes
401	Qualified pension, profit-sharing, and	4	0	Income taxes

	sharing, and stock bonus plans			
403	Taxation of employee annuities	4	0	Income taxes
1402	Definitions a) Net earnings from self-employment	14	0	Income taxes
3101	Rate of tax	4	0	Employment taxes
3102	Deductions of tax from wages	6	0	Employment taxes
3111	Rate of tax	4	0	Employment taxes
3122	Federal service	8	0	Employment taxes
3124	Estimate of revenue reduction	1	0	Employment taxes
3509	Determination of employer liability for certain employment taxes	1	0	Employment taxes
3510	Coordination of collection of domestic service employment taxes with collection of income taxes	1	0	Employment taxes
4132		0	1	Definitions
4662	Definitions and special rules	0	1	<u>Reason: Excise taxes on petroleum authorized under Article 1, Section 8, Clause 1 of the Constitution and applicable in the 50 states.</u>
4682	Definitions and special rules	0	1	
6051	Receipts for employees	6	0	Employment taxes
6413	Special rules applicable to certain employment taxes	6	0	Employment taxes
7701(9)	Definitions	NA	NA	Definitions

As we look at the above table, we should realize that the **ONLY** source of Congressional jurisdiction to tax derives from Article 1, Section 8, Clauses 1 and 3 of the Constitution, which state:

Art. 1, Sect. 8, Clause 1: The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; **but all Duties, Imposts and Excises shall be uniform throughout the United**

States:

Art. 1, Sect. 8, Clause 3: **To regulate Commerce** with foreign Nations, and among the several States, and with the Indian Tribes;

Now if we look at the last sentence in 1:8:1 of the Constitution and then we consider that graduated income taxes are NOT uniform throughout the states, but instead are *highly nonuniform* and most oppressive on the rich, then *the graduated income tax instituted on so-called "resident citizens of the United States" referenced in 26 U.S.C. Sec. 871(b) would be unconstitutional if the definition of "United States" meant the 50 states or the nonfederal areas of the states!* However, that same 26 U.S.C. Section 871(a) applies a 30% flat **UNIFORM** tax on income not connected with a U.S. business, which in reality are businesses in the 50 states on nonfederal land, where the constitutional requires the taxes to be uniform. Try to explain that one away. The U.S. supreme Court agreed that taxes that were not uniform throughout the "United States" (in this case meaning the 50 states) were unconstitutional in the landmark case of **Pollack v. Farmer's Loan and Trust Company**, 157 U.S. 429, 158 U.S. 601, (1895):

Mr. Justice Miller, in his lectures on the constitution, 1889-1890 (pages 240, 241), said of taxes levied by congress: **'The tax must be uniform on the particular article; and it is uniform, within the meaning of the constitutional requirement, if it is made to bear the same percentage over all the United States.** That is manifestly the meaning of this word, as used in this clause. The framers of the constitution could not have meant to say that the government, in raising its revenues, should not be allowed to discriminate between the articles which it should tax.' In discussing generally the requirement of uniformity found in state constitutions, he said: 'The difficulties in the way of this construction have, however, been very largely obviated by the meaning of the word [157 U.S. 429, 595] 'uniform,' which has been adopted, holding that the uniformity must refer to articles of the same class; that is, different articles may be taxed at different amounts, provided the rate is uniform on the same class everywhere, with all people, and at all times.'

One of the learned counsel puts it very clearly when he says that the correct meaning of the provisions requiring duties, imposts, and excises to be 'uniform throughout the United States' is that the law imposing them should 'have an equal and uniform application in every part of the Union.'

If there were any doubt as to the intention of the states to make the grant of the right to impose indirect taxes subject to the condition that such taxes shall be in all respects uniform and impartial, that doubt, as said by counsel, should be resolved in the interest of justice, in favor of the taxpayer.'

Exemptions from the operation of a tax always create inequalities. Those not exempted must, in the end, bear an additional burden or pay more than their share. A law containing arbitrary exemptions can in no just sense be termed 'uniform.' In my judgment, congress has rightfully no power, at the expense of others, owning property of the like character, to sustain private trading corporations, such as building and loan associations, savings banks, and mutual life, fire, marine, and accident insurance companies, formed under the laws of the various states, which advance no national purpose or public interest, and exist solely for the pecuniary profit of their members.

Where property is exempt from taxation, the exemption, as has been justly stated, must be supported by some consideration that the public, and not private, interests will be advanced by it. Private corporations and private enterprises cannot be aided under the pretense that it is the exercise of the discretion of the legislature to exempt them. Association v. Topeka, 20 Wall. 655; Parkersburg v. Brown, 106 U.S. 487, 1S up. Ct. 442; Barbour v. Board, 82 Ky. 645, 654, 655; City of Lexington v. McQuillan's Heirs, 9 Dana, 513, 516, 517; and Sutton's Heirs v. City of Louisville, 5 Dana, 28-31.

...

The income tax law under consideration is marked by discriminating features which affect the whole law. It discriminates between those who receive an income of \$4,000 and those who do not.

It thus vitiates, in my judgment, by this arbitrary discrimination, the whole legislation. Hamilton says in one of his papers (the Continentalist): 'The genius of liberty reprobates everything arbitrary or discretionary in taxation. It exacts that every man, by a definite and general rule, should know what proportion of his property the state demands; whatever liberty we may boast of in theory, it cannot exist in fact while [arbitrary] assessments continue.' 1 Hamilton's Works (Ed. 1885) 270. *The legislation, in the discrimination it makes, is class legislation. Whenever a distinction is made in the burdens a law imposes or in the benefits it confers on any citizens by reason of their birth, or wealth, or religion, it is class legislation, and leads inevitably to oppression and abuses, and to general unrest and disturbance in society.* It was hoped and believed that the great amendments to the constitution which followed the late Civil War had rendered such legislation impossible for all future time. But the objectionable legislation reappears in the act under consideration.

Here are a few more examples of constitutional, UNIFORM taxes imposed on people living outside the "United States" (the federal zone), and ALL of them are exactly 30% and are not graduated:

26 U.S.C. Sec. 881 Tax on income of foreign corporations not connected with United States business

Sec. 1441. Withholding of tax on nonresident aliens

26 U.S.C. Sec. 1442. Withholding of tax on foreign corporations

The authority to regulate commerce defined in 1:8:1 of the constitution implies the authority to tax that commerce, but the only tax authorized on income in that part of the constitution are excise or privilege taxes based on privileges received from the federal government by elected or appointed officers of the U.S.** government or U.S.** registered corporations (not state corporations). This excludes the vast majority of Americans and businesses, and the IRS and the congress are loath to admit this.

Here's another interesting tidbit for the benefit of the reader that makes the definitions even more clear. In 26 U.S.C. Sec. 3121 (FICA contributions tax), the definition of "State" does not include the 50 States but AFTER a person has submitted or filed an income tax return, described in 26 U.S.C. Sec. 6103, the term "State" DOES include the 50 states! Once again, more obfuscation and subterfuge to confuse as to when the 50 states actually apply to the tax code. AFTER you submit a return they gotcha, and then it's o.k. to give the definition that includes the 50 states. So, the tax code even defines specifically what a real state from among the several states is when the authors of the code wanted it to define it clearly.

Sec. 3121. Definitions

(e) State, United States, and citizen _

For purposes of this chapter -

(1) State _

The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) United States _

The term "United States" when used in a geographical sense _ includes the Commonwealth of Puerto Rico, the Virgin Islands, _ Guam, and American Samoa. An individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States.

Sec. 6103. Confidentiality and disclosure of returns and return information

The term "State" means -

- (A) **any of the 50 States**, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and _
- (B) for purposes of subsections (a)(2), (b)(4), (d)(1),
- (i) any of the 50 States, the District of Columbia, the
- (i) with a population in excess of 250,000 (as determined under the most recent decennial United States census data available),
- (ii) which imposes a tax on income or wages, and
- (iii) with which the Secretary (in his sole discretion) has entered into an agreement regarding disclosure.

QUESTION FOR DOUBTERS: If the term "United States" as used in 26 U.S.C. Section 7701(a)(9) includes the nonfederal/private areas of the 50 states, then why does our own federal government call foreigners living in these areas "nonresident aliens" and ask them to fill out a form 1040NR? Shouldn't they be called "resident aliens"?

19. May Congress Tax Occupations of Common Law Right?

Yes, Congress may tax "occupations of common law right" and has done so many times, for example the Social Security tax and the federal income tax.

Wrong question. People intent to deceive love perpetuating arguments about the wrong issues and love using loaded definitions to take attention off the more important issues. The question is *not* "may Congress tax occupations of Common Right", but what is the definition of the word "tax" they are using? Are taxes defined as "voluntary" or "involuntary" in this case? Below is the definition of tax found in Black's Law Dictionary, Sixth Edition, page 1457:

"Tax: A charge by the government on the income of an individual, corporation, or trust, as well as the value of an estate or gift. The objective in assessing the tax is to generate revenue to be used for the needs of the public.

*A pecuniary [relating to money] burden laid upon individuals or property to support the government, and is a payment exacted by legislative authority. In re Mytinger, D.C.Tex. 31 F.Supp. 977,978,979. **Essential characteristics of a tax are that it is NOT A VOLUNTARY PAYMENT OR DONATION, BUT AN ENFORCED CONTRIBUTION, EXACTED PURSUANT TO LEGISLATIVE AUTHORITY.** Michigan Employment Sec. Commission v. Patt, 4 Mich.App. 228, 144 N.W.2d 663, 665. ..."*

So the real question is, may Congress ENFORCE (institute assessment, collection, or penalties for nonpayment of, or can they levy or seize property in payment of a tax absent a court order) an *involuntary* tax (without a W-4 Withholding Allowance Certificate) upon wages (not as defined in 26 U.S.C. §3401(a), which means the income earned by elected or appointed officers of the U.S. government, but in a more general sense on income earned by private "U.S. nationals" as defined in 8 U.S.C. §1408, who are *not* "U.S. citizens" and who reside outside of the federal United States and inside the sovereign 50 states) in connection with an occupation of common law right? The answer it no, but the way Mr. Luckey asked the question, the answer could be yes is they use the dictionary to define the word "tax":

*tax: n. 1. a. A charge usu. of money imposed by authority on persons or property for public purposes.*¹⁰⁶

Congress is the “authority” and 26 U.S.C. §1 “imposes” the income tax in Subtitle A but *no statute* then makes anyone liable for the tax anywhere in Subtitle A of the Internal Revenue Code, and there *must* be a liability in order to institute enforcement for nonpayment!

The conclusions of Mr. Luckey above are very deceptive, as the Social Security tax can’t be legally applied outside of federal property and certainly cant’ be legally applied on nonfederal property inside the sovereign 50 states. This conclusion is based on the definition of “United States” that apply to FICA taxes found in 26 U.S.C. §3507, which is the same as the rest of the Internal Revenue Code and is found in 26 U.S.C. Section 7701(a)(9) and 7701(a)(10).

As a consequence of the limited jurisdiction for the Social Security Tax, which is only the District of Columbia and other federal properties not to include the sovereign 50 states, then under Article 1, Section 8, Clause 17 allows Congress to completely disregard the Bill of Rights and assess whatever tax it wants in these areas.¹⁰⁷ The reason these laws can be applied outside the jurisdiction of the federal properties is because we as sovereign U.S. nationals *volunteer* ourselves to come under the jurisdiction of the U.S. government by fraudulently claiming to be residents and citizens of the District of Columbia by virtue of filing our first 1040 form. Subtitle A income taxes are “voluntary”, and the heart of their voluntary nature begins by you electing to be treated as a “citizen” and a “resident” of the “United States” even though you technically are ***NOT*** and instead are a “U.S. national” as defined in 8 U.S.C. §1408! IRS Publication 54 tells you how to choose to be a resident of the “United States” on pages 5 through 6 of the Year 2000 version:

Nonresident Spouse Treated as a Resident

If, at the end of your tax year, you are married and one spouse is a U.S. citizen or a resident alien and the other is a nonresident alien, you can choose to treat the nonresident as a U.S. resident. This includes situations in which one of you is a nonresident alien at the beginning of the tax year, but a resident alien at the end of the year, and the other is a nonresident alien at the end of the year.

If you make this choice, the following two rules apply.

- 1) You and your spouse are treated, for income tax purposes, as residents for all tax years that the choice is in effect.
- 2) You must file a joint income tax return for the year you make the choice.

This means that neither of you can claim tax treaty benefits as a resident of a foreign country for a tax year for which the choice is in effect. You can file joint or separate returns in years after the year in which you make the choice.

[...]

How To Make the Choice

Attach a statement, signed by both spouses, to your joint return for the first tax year for which the choice applies. It should contain the following:

- 1) A declaration that one spouse was a nonresident alien and the other spouse a U.S. citizen or resident alien on the last day of your tax year, and that you choose to be treated as U.S. residents for

¹⁰⁶ Webster’s Ninth New Collegiate Dictionary, 1983, ISBN 0-87779-509-6, p. 1209.

¹⁰⁷ See *Downes v., Bidwell*, 182 U.S. 244 (1901).

the entire tax year, and 2) The name, address, and social security number (or individual taxpayer identification number) of each spouse. (If one spouse died, include the name and address of the person making the choice for the deceased spouse.)

You generally make this choice when you file your joint return. However, you can also make the choice by filing a joint amended return on Form 1040 or Form 1040A. Be sure to write the word "Amended" across the top of the amended return. If you make the choice with an amended return, you and your spouse must also amend any returns that you may have filed after the year for which you made the choice.

You generally must file the amended joint return within 3 years from the date you filed your original U.S. income tax return or 2 years from the date you paid your income tax for that year, whichever is later.

Suspending the Choice

The choice to be treated as a resident alien does not apply to any later tax year if neither of you is a U.S. citizen or resident alien at any time during the later tax year.

Example. Dick Brown was a resident alien on December 31, 1997, and married to Judy, a nonresident alien. They chose to treat Judy as a resident alien and filed a joint 1997 income tax return. On January 10, 1999, Dick became a nonresident alien. Judy had remained a nonresident alien. Dick and Judy can file joint or separate returns for 1999. Neither Dick nor Judy is a resident alien at any time during 2000 and their choice is suspended for that year. For 2000, both are treated as nonresident aliens. If Dick becomes a resident alien again in 2001, their choice is no longer suspended and both are treated as resident aliens.

Ending the Choice

Once made, the choice to be treated as a resident applies to all later years unless suspended (as explained above) or ended in one of the ways shown in Figure 1–A. If the choice is ended for any of the reasons listed in Figure 1–A, neither spouse can make a choice in any later tax year.

It is very important to note that the above excerpt from IRS Publication 54 indicates that by filing a form 1040 for filing jointly, you are electing to be treated as a resident of the United States (not United States of America or the several states, but the "United States" (federal properties only)) for all other tax years! The only way you can revoke that status is to make a Revocation of Election as described under "Ending the Choice" above. We encourage you to obtain this publication and make your Revocation of Election to be treated as a nonresident alien of the United States for tax purposes if you live in any of the 50 states. There are big tax advantages to doing this! We have included forms and procedures to facilitate making your Revocation of Election easier both on our website and in Chapters 8 and 14 of our Great IRS Hoax book found at <http://familyguardian.tzo.com/>.

The important thing to remember is that you don't have to volunteer for Subtitles A or B federal income taxes. You can unvolunteer by filing the right form and stopping the filing of the form 1040 and instead filing the correct forms. We talk about this in our book.

The argument has been made that earning a living is a right, sometimes called a "God given right" or a "common law right," and not a privilege and therefore it cannot be taxed. Sometimes those presenting this argument would distinguish between natural occupations, i.e., farmer or rancher, and occupations created by the government, i.e., government employee or lawyer, the latter being taxable while the others are not. These types of distinctions have never been recognized in the area of taxing power of the states or the federal government. The Supreme Court has specifically rejected a challenge to the Social Security tax based on this type of argument, stating:

The statute books of the states are strewn with illustrations of taxes laid on occupations pursued of common right. We find no basis for a holding that the power *in* that regard which belongs by accepted practice *to* the legislatures of the states, has been denied by the Constitution to the Congress of the nation.¹⁰⁸

In challenges to the federal income tax, the courts have consistently rejected the claim that Congress may not tax occupations of common law right.¹⁰⁹

20. What Is Meant by the Term "Includes?"

The use of the term "includes" in IRC definitions has given rise to at least two questions concerning the application of the tax code. Does the "State" include the fifty states? Does "employee" include anyone who does not work for the Government or is an officer of a corporation?

The IRC defines "State" to include the District of Columbia.¹¹⁰ There are those who argue that this means that the term "State" only includes the District of Columbia and not the fifty States of the Union. The IRC defines "employee" to include officers, employees or elected officials of the United States, a State, or any political subdivision thereof, or the District of Columbia or an officer of a corporation.¹¹¹ There are those who argue that this means that only those in one of these categories are "employees" for purposes of the income tax.

Each of these arguments displays a basic misunderstanding of the meaning of the term "includes." The term "includes" is inclusive not exclusive. The IRC provides that the terms "includes" and "including" when used in a definition shall not be deemed to exclude other things otherwise within the meaning of the term defined.¹¹²

The courts have not given any credence to arguments that "includes" implicitly excludes. They have been consistently found to be without merit and frivolous,¹¹³

First of all, you will note that ALL of the cases cited are federal circuit court cases, and NOT supreme Court cases. You will probably never see a U.S. supreme Court opinion on this, because it would destroy the income tax system and expose the fraud perpetuated on us all those years since the passage of the 16th Amendment in 1913. It would be political suicide for every Chief Justice that ruled unfavorably against the government on it. The supreme Court is primarily a political court and they are much too smart to get tangled up in this scandalous mess. Consequently, it will undoubtedly deny any and every writ of certiorari (appeal) brought before it that deals with this issue. This reinforces our contention that there is a "judicial conspiracy to protect the income tax" and that it exists primarily at the circuit court level. The reason Subtitle A federal (excise) income taxes can be illegally imposed on American citizens is because of the denial of due process maintained both by the IRS and the federal courts.

The word "includes" is used in several places in the Internal Revenue Code, but it is found most often in the

¹⁰⁸ *Steward Machine Co. v. Davis*, 301 U.S. 548 at 582 to 583 (1937).

¹⁰⁹ See, for example, *United States v. Russell*, 585 F.2d 368 (8th Cir. 1978); *United States v. Silkman*, 543 F.2d 1218 (8th Cir. 1976), cert. denied, 431 U.S. 919 (1977); and *Jones v. United States*, 551 F. Supp. 578 (N.D.N.Y. 1982).

¹¹⁰ IRC § 7701(a)(10).

¹¹¹ IRC § 3401(c).

¹¹² IRC § 7701(c).

¹¹³ See, *U.S. v. Rice*, 659 F.2d 524,528 (5th Cir. 1981), *U.S. v. Latham*, 754 F.2d 813, 815 (1st Cir. 1986), *U.S. v. Ward*, 833 F.2d 1538 (11th Cir. 1987), and *U.S. v. Steiner*, 963 F.2d 381 (9th Cir. 1992).

definitions of key words that circumscribe the jurisdiction of the Internal Revenue Code as follows:

- Definition of the term “State” found in [26 U.S.C. §7701\(a\)\(10\)](#) and [4 U.S.C. §110](#)
- Definition of the term “United States” found in [26 U.S.C. §7701\(a\)\(9\)](#)
- Definition of the term “employee” found in [26 U.S.C. §3401\(c\)](#) and [26 CFR §31.3401\(c\)-1](#) Employee
- Definition of the term “person” found in [26 CFR 301.6671-1](#) (which governs who is liable for penalties under Internal Revenue Code)

As an example of the abuse of the word “includes”, let’s take for example the example we cite [below in question 20](#), where the government abuses the word “includes” to expand the jurisdiction to assess Subtitle A income tax penalties onto everyone, instead of just officers or employees of U.S. corporations. In doing so, however, in effect the courts have invalidated the ruling of the U.S. supreme Court in the case of *Stanton v. Baltic Mining* for instance that the income tax was an indirect excise tax on privileges received by businesses. By applying what was intended as a privilege tax on businesses into a tax on individuals, they have transformed an indirect excise tax into a direct, unconstitutional income tax!

You must realize that this flagrant abuse of our language and of the meaning of the word “includes” is part of an obfuscation approach designed by Congress and the IRS to illegally expand the jurisdiction of the federal government to assess I.R.C. Subtitle A income taxes beyond their clear constitutional limits and beyond federal property or territories and into the 50 sovereign states. It violates common sense, and every other use of the word “includes” in the English language we ever learned throughout our lifetime. It also violates the government’s own definition of the word “includes”:

Treasury Decision 3980, Vol. 29, January-December, 1927, pgs. 64 and 65 defines the words includes and including as:

“(1) To comprise, comprehend, or embrace...(2) To enclose within; contain; confine...But granting that the word ‘including’ is a term of enlargement, it is clear that it only performs that office by introducing the specific elements constituting the enlargement. It thus, and thus only, enlarges the otherwise more limited, preceding general language...The word ‘including’ is obviously used in the sense of its synonyms, comprising; comprehending; embracing.”

The IRS definition of the word includes also violates several court rulings. Below is just one example:

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

As you may know, Black's Law Dictionary is the Bible of legal definitions. Let’s see what it says about the definition of “includes”:

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

In other words, according to Black’s, when INCLUDE is used it expands to take in all of the items stipulated or listed, but is then limited to them.

Such an obfuscating approach by the Congress and the IRS is a clear assault on our liberty, as it undermines

our very language and our means of comprehending precisely and exclusively not only what the law requires of us, but what it doesn't require. Here is what Confucius said about this kind of conspiracy:

“When words lose their meaning, people will lose their liberty.” Confucius, circa 500 B.C.

Such an approach also amounts to a clear violation of due process under the Fourth and Sixth Amendment , in that it causes the law to not specifically define what is or is not required of the citizen:

"A statute which either forbids or requires the doing of an act in terms so vague that men and women of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."
[Connally vs. General Construction Co., 269 U.S. 385 \(1926\)](#)

The above finding gives rise to a doctrine known as the “void for vagueness doctrine”, that was advocated by the U.S. supreme Court. This doctrine is deeply rooted in our right to due process (under the Fifth Amendment) and our right to know the nature and cause of any criminal accusation (under the Sixth Amendment). The latter right goes far beyond the contents of any criminal indictment. The right to know the nature and cause of any accusation starts with the statute which a defendant is accused of violating. A statute must be sufficiently specific and unambiguous in all its terms, in order to define and give adequate notice of the kind of conduct which it forbids.

The essential purpose of the "void for vagueness doctrine" with respect to interpretation of a criminal statute, **is to warn individuals of the criminal consequences of their conduct.** ... Criminal statutes which fail to give due notice that an act has been made criminal before it is done are unconstitutional deprivations of due process of law.

[*U.S. v. De Cadena*, 105 F.Supp. 202, 204 (1952), emphasis added]

If it fails to indicate with reasonable certainty just what conduct the legislature prohibits, a statute is necessarily void for uncertainty, or "void for vagueness" as the doctrine is called. In the *De Cadena* case, the U.S. District Court listed a number of excellent authorities for the *origin* of this doctrine (see *Lanzetta v. New Jersey*, 306 U.S. 451) and for the *development* of the doctrine (see *Screws v. United States*, 325 U.S. 91, *Williams v. United States*, 341 U.S. 97, and *Jordan v. De George*, 341 U.S. 223). Any prosecution which is based upon a vague statute or a vague (or expansive) definition must fail, together with the statute itself. A vague criminal statute is unconstitutional for violating the 5th and 6th Amendments.

The abuse of the word “includes” or its expansive use also violates the rules of statutory construction, which are founded on the Fourth Amendment right of due process of law:

"In view of other settled rules of statutory construction, which teach that a law is presumed, in the absence of clear expression to the contrary, to operate prospectively; that, **if doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer...**"
[Hassett v. Welch., 303 US 303](#), pp. 314 - 315, 82 L Ed 858. (1938) (emphasis added)

This fact only underscores our duty to refrain from reading a phrase into the statute when Congress has left it out. " [W]here Congress includes particular language in one section of a statute but omits it in another ..., it is generally presumed that **Congress acts intentionally and purposely in the disparate inclusion or exclusion.**" *Russello v United States*, 464 US 16, 23, 78 L Ed 2d 17, 104 S Ct 296 (1983) (citation omitted). [Keene Corp. v United States, 508 US 200](#), 124 L Ed 2d 118, 113 S Ct 1993. (emphasis added)

If the act doesn't specifically identify what is forbidden or "included" and we have to rely not on the law, but some judge or lawyer or politician or a guess to describe what is "included", then our due process has been violated and our government has thereby instantly been transformed from a government of laws into a government of men. And in this case, it only took the abuse

of one word in the English language to do so!

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

If the word “includes” can be lawlessly abused to mean other things not specifically identified in the statute, then the whole of the Internal Revenue Code essentially defines NOTHING, because it all hinges on jurisdiction, and 26 U.S.C. Section 7701(a)(9), which establishes jurisdiction uses the word “includes”. How can the code define ANYTHING that uses the word “includes”, based on the definition of “definition” found below:

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

Is the word “United States” defined exactly, if “includes” can mean that you can add whatever you want to the definition?

26 U.S.C. Section 7701(a)(9)

United States

The term "United States" when used in a geographical sense ***includes*** only the States and the District of Columbia.

This clear and flagrant disregard for due process of law strikes at the heart of our liberty and freedom and we ought to boycott the income tax based on this clever ruse by the shysters in Congress and the IRS who invented it. If the word “includes” is used in its expansive sense, we have, in effect, subjected ourselves to the arbitrary whims of however the currently elected politician or judge wants to describe what is “included”. That leads to massive chaos, injustice, and unconstitutional behavior by our courts and our elected representatives, which is exactly what we have today. To put it bluntly, such deceptive actions are treasonable. The abuse also promotes unnecessary litigation over the meaning of the tax laws, to the benefit of lawyers, lawmakers, and the American Bar Association, which is a clear conflict of interest. Here is what the U.S. Supreme Court says about the confusion created by the expansive use of the word “includes”:

In the interpretation of statutes levying taxes, it is THE ESTABLISHED RULE NOT TO EXTEND their provisions, by implication, BEYOND THE CLEAR IMPORT OF THE LANGUAGE USED, OR TO ENLARGE their operations SO AS TO EMBRACE MATTERS NOT SPECIFICALLY POINTED OUT". *Gould v. Gould*, 245 US., 151.

If this ridiculous interpretation of the word “includes” is allowed to stand by the courts and this assault on our liberty by Congress is allowed to continue, then below is the essence of what the government has done to us, represented as a satirical press release by the U.S. supreme Court:

NEW RULES FOR LAW

SMUCKWAP NEWSERVICE, Washington: The Supreme Court ruled today that judges can do whatever the hell they want. In a landmark case, Black-Robed Lawyers vs. Everyone Else, the justices handed down their inestimable judgment that since lawyers in general and judges in particular are such fine examples of humanity, not to mention smart enough to get through law school, judges can do whatever they please.

"The Rule of Law has ended," proclaimed Supreme Court Justice Arrogant B. Astart, "and the Rule of Judges begins!"

Turning their shiny black backs on the rest of America, the justices decided to toss out two hundred years of Constitutional law and indeed, to rid themselves completely of having to heed the Constitution.

"The law is what we say it is," said Justice Whiney I. Diot. "It has been this way for some time now, but with Black-Robed Lawyers vs. Everyone Else, we are coming out of our judicial closet. No more arguments will be allowed from anyone, and we don't want to hear any more of your complaining about your rights. In fact, any mention of so-called rights will guarantee you 100 years, hard labor."

Justice K. Rupt Assin concurred in his opinion that "judicial oligarchy has now fully come into its place in American history and will be fully enforced by an iron rule of law, and remember, law is whatever we say it is."

The Center for People Who Want to Leave This Country Because It Is Beginning to Look Too Much Like Nazi Germany analyzed the justices' decision.

"Judges now legally can put anyone in prison for any reason they want, for as long as they want," states the analysis. "Judges can also put jurors in prison for 'obstructing justice' and for anything else, including not handing the judge whatever money they may have on them at the time. Jurors who don't behave exactly as the judge desired have been persecuted in the past, but "now they can receive prison terms much longer than their own lifespan added to the lifespan(s) of the defendant(s) in any trial.

The report also mentioned the justices' decision that anyone who says anything disagreeable in their courtroom can be immediately arrested and jailed, their property confiscated, and their spouses and children taken as "wards" of the court under the justices own personal pleasure ... or... supervision.

The concept of separation of powers was addressed in the Center's report on the decision.

"There is no separation of powers," it reads, "when not only all the justices are lawyers, so are all Congressmen and the President, his wife, his cabinet, the entire Department of Justice, most lobbyists and almost everyone else in Washington, D.C."

*When questioned about what effect the decision would have on all Americans, the spokesman for the Center said, "I can't be certain. I suspect that emigration rather than immigration will become a major concern. Those Americans who are lawyers will be fine, for the most part. No one will ever again show up for jury duty. But if we thought we had an overcrowded prison problem before, we're in for a *major* shock!"*

21. Do the IRC Source of Income Rules Exempt the Income of U.S. Citizens?

The answer to this question is no. The question is based on the claim that the "sources of income" rules of the IRC only apply to nonresident aliens and foreign corporations.¹¹⁴ This reading of the IRC and regulations contradicts the express language of the IRC and regulations.

¹¹⁴ See, IRC § 861 and its regulations.

The IRC clearly states that "gross income means all income from whatever source derived."¹¹⁵ The regulations specifically state:

In general, all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States.¹¹⁶

The reason that "source of income" rules apply primarily to nonresident aliens and foreign corporations is that they are only taxed on domestic source income. Therefore there is need of rules to determine the source of their income. As stated above, a citizen or resident alien is taxed on all income regardless of the source. Therefore, source rules are unnecessary.

BLATANTLY WRONG. Subtitle A income taxes are not taxes on gross income. They are taxes on taxable "sources" identified in 26 U.S.C. Sections 861 ("sources within the United States" and 862 "sources without the United States", where "United States" means federal property but not nonfederal lands within the 50 sovereign states). The amount of the tax is computed based on income, but the income or items of income identified in 26 U.S.C. Section 61 are *not* the subject of the tax. Since Mr. Lucky admits in his report that the Subtitle A income tax is an excise tax, and since excise taxes are privilege taxes as we alluded to earlier, then we must search for the privileged sources, occupations, and activities that are in receipt of the privilege and can therefore be taxed. Below is a carefully compiled list of all known taxable "sources", activities, and occupations. Any sources of income other than those listed below are, by implication NOT subject to I.R.C. Subtitles A or B (personal) income taxes.

<i>1. Taxable "privileged" or "licensed" occupations</i>			
<i>U.S.C. section(s)</i>	<i>Regulation(s)</i>	<i>Taxable activity or "source"</i>	<i>Notes</i>
26 U.S.C. §3401(c)	26 CFR §31.3401(c)	Acting as an elected or appointed officers of the U.S. government holding political office or is an officer of a U.S. (federally, not state-registered) corporation	<u>26 CFR §31.3401(c) Employee:</u> "...the term [employee] includes officers and employees, <u>whether elected or appointed</u> , of the United States, a [federal] State, Territory, Puerto Rico or any political subdivision, thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term 'employee' also includes an <u>officer of a corporation.</u> "
26 U.S.C. Subtitle F, Subchapter B, Chapter 68 Penalties	26 CFR §301.6671-1	Member of a partnership registered in the U.S. (federal , district of Columbia, not state)	Partnerships can have IRS penalties assessed under Subtitle A income tax. Regulations state: Sec. 301.6671-1 Rules for application of assessable penalties. ... (b) <u>Person defined.</u> For purposes of subchapter B of chapter 68, the term <u>"person" includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.</u>
<i>2. Taxable activities or "sources"</i>			
<i>U.S.C.</i>	<i>Regulation(s)</i>	<i>Taxable activity or "source"</i>	<i>Privilege taxed</i>

¹¹⁵ IRC § 61.

¹¹⁶ Treas. Reg. § 1.1-1(b).

<i>section(s)</i>			
26 U.S.C. §861	26 CFR 1.861-8(f)	Sources “within” the “United States” (which means federal property but not the nonfederal areas of the 50 states	<p>“The operative sections of the Code which require the determination of taxable income of the taxpayer from specific sources or activities and which gives rise to statutory groupings to which this section is applicable include the sections described below.</p> <p>(i) Overall limitation to the foreign tax credit...</p> <p>(ii) [Reserved]</p> <p>(iii) DISC and FSC taxable income... [international and foreign sales corporations]</p> <p>(iv) Effectively connected taxable income. Nonresident alien individuals and foreign corporations engaged in trade or business within the United States...</p> <p>(v) Foreign base company income...</p> <p>(vi) Other operative sections. The rules provided in this section also apply in determining--</p> <p>(A) The amount of foreign source items...</p> <p>(B) The amount of foreign mineral income...</p> <p>(C) [Reserved]</p> <p>(D) The amount of foreign oil and gas extraction income...</p> <p>(E) (deals with Puerto Rico tax credits)</p> <p>(F) (deals with Puerto Rico tax credits)</p> <p>(G) (deals with Virgin Islands tax credits)</p> <p>(H) The income derived from Guam by an individual...</p> <p>(I) (deals with China Trade Act corporations)</p> <p>(J) (deals with foreign corporations)</p> <p>(K) (deals with insurance income of foreign corporations)</p> <p>(L) (deals with countries subject to international boycott)</p> <p>(M) (deals with the Merchant Marine Act of 1936)” [26 CFR § 1.861-8(f)(1)]</p>
26 U.S.C. §862	26 CFR 1.861-8(f)	Sources “without” the “United States” (which means outside of federal property, and including the nonfederal areas of the 50 states and foreign countries.	

NOTES:

1. DISC= Domestic International Sales Corporation.
2. FSC=Foreign Sales Corporation.

Did you notice that *none* of these “sources” or “taxable activities” subject to excise (privilege) taxes apply to most United States of America Citizens who live and work exclusively within the 50 states of the United States of America on nonfederal property. The above list part 2 is the *only* list of “sources” in Part I of Subchapter N, or the regulations thereunder, which (as the regulations say) “*determine the sources of income for*

purposes of the income tax.”

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

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

We can see quite clearly that all of these taxable sources are part of the “federal zone”, which includes t[is limited to] the District of Columbia and all federal possessions that come under Article 1, Section 8, Clause 17 of the constitution. Remember that the 50 states are *not* possessions of the federal government, so they are treated as sources “without the United States” under 26 U.S.C. §862. All of the taxable sources and activities are a direct result of the receipt of some kind of “privilege” received from the United States government by the person or occupation or activity liable for the tax. It is safe to say that any other type of income is not privileged income and is NOT subject to the excise tax known as I.R.C. Subtitle A income taxes.

We challenge the government to demonstrate otherwise.

22. What Is the Frivolous Income Tax Penalty?

As part of the Tax Equity and Fiscal Responsibility Act of 1982,¹¹⁷ Congress enacted a penalty for filing a frivolous income tax return. This penalty is codified at IRC § 6702.

The penalty is \$500.00. It may be imposed on any individual who files any document which purports to be a tax return but fails to contain information from which the substantial correctness of the amount of tax shown on the return can be judged, or contains information which on its face indicates that the amount of the tax shown on the return is substantially incorrect and such conduct arises from a frivolous position taken by the taxpayer or a desire of the taxpayer, which is apparent from the face of the return, to delay or impede the administration of the tax laws.¹¹⁸

The penalty is immediately assessable. The taxpayer need not be given any advance warning before assessment. To challenge this penalty, the taxpayer must pay 15% of the penalty and file for a refund with the IRS. If the refund is denied, the taxpayer may seek review in the Federal District Courts.¹¹⁹ The constitutionality of the frivolous return penalty has been upheld against challenge under the First Amendment¹²⁰ and the Due Process Clause.¹²¹

This kind of FUD (Fear, Uncertainty, Doubt)/scare tactic of threatening IRS penalties is designed by crafty lawyers at the IRS to keep you from looking into patriot or tax freedom arguments and amounts to a threat to assess illegal penalties against anyone who tries them. However, what the IRS simply will NEVER tell you is that they have NO legal authority to assess penalties for Subtitle A income taxes found in the Internal Revenue Code against the vast majority of Americans. For example, below is the section right out of their own regulations found at the government’s own website at <http://frwebgate.access.gpo.gov/cgi->

¹¹⁷ P.L. 97-248, 97 Stat. 369, 97th Cong., 2nd Sess. (1982).

¹¹⁸ IRC § 6702.

¹¹⁹ IRC § 6703.

¹²⁰ *Kahn v. United States*, 753 F.2d 1203 (3rd Cir. 1985).

¹²¹ *Baskin v. United States*, 738 F.2d 975 (8th Cir. 1984).

[bin/getcfr.cgi?TITLE=26&PART=301&SECTION=6671-1&YEAR=2000&TYPE=TEXT](http://www.gpo.gov/bis/getcfr.cgi?TITLE=26&PART=301&SECTION=6671-1&YEAR=2000&TYPE=TEXT) that describes those persons who can be assess penalties related to I.R.C. Subtitle A income taxes:

*[Code of Federal Regulations]
[Title 26, Volume 17, Parts 300 to 499]
[Revised as of April 1, 2000]
From the U.S. Government Printing Office via GPO Access
[CITE: 26CFR301.6671-1]
[Page 402]
TITLE 26--INTERNAL REVENUE
Additions to the Tax and Additional Amounts--Table of Contents
Sec. 301.6671-1 Rules for application of assessable penalties.*

...
*(b) Person defined. For purposes of subchapter B of chapter 68, **the term** ``person'' includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.*

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

Now when the IRS hears this argument, they often try to say that the above definition of "person" uses the word "includes", which is an expansive rather than limiting term. Here is what they will quote, from 26 U.S.C. section 7701(c) in making this statement:

“Sec. 7701(c) INCLUDES AND INCLUDING. - The terms ‘include’ and ‘including’ when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.”

The IRS will say that the phrase in 26 CFR §301.6671-1 “includes an officer or employee of a corporation” does *not exclude* other uses of the term, like *EVERYONE else or ALL Americans*, because of the definition of the word “includes” above. But we know from statements made earlier by Mr. Luckey that Subtitle A income taxes are excise taxes, and that these are the only “persons” in receipt of privileges. Expanding the operation of penalties beyond these people makes the income tax operate effectively as a direct tax rather than an indirect tax, which is clearly unconstitutional.

We answer this issue on the abuse of the word “includes” and “including” by the IRS in [question #20 later](#) on. This is a very common and unscrupulous tactic designed to confuse taxpayers and illegally expand the jurisdiction of the taxing power of the federal government for Subtitle A income taxes beyond its clear limits found in the definition of “United States” in 26 U.S.C. Section 7701(a)(9) and “State” found in 26 U.S.C. Section 7701(a)(10).

It should also be mentioned that the federal courts may impose penalties for frivolous claims brought before them. These claims range from those which have no basis in fact or law (for example, claiming that

payment of income taxes is voluntary) to those which may have been legitimate questions when first raised, but have been so definitively decided by the courts that they are a waste of the courts time to bring them up again (fox example, questioning the constitutionality of taxing wages). The Seventh Circuit Court of Appeals has stated:

The doors of this courthouse are, of course, open to good faith appeals of what are honestly thought to be errors of the lower courts. But we can no longer tolerate abuse of the judicial review process by irresponsible taxpayers who press stale and frivolous arguments, without hope of success on the merits, in order to delay or harass the collection of public revenues or for other nonworthy purposes ... abusers of the tax system have no license to make irresponsible demands on the courts of appeals to consider fanciful arguments put forward in bad faith. In the future we will deal harshly with frivolous tax appeals and will not hesitate to impose even greater sanctions under appropriate circumstances.¹²²

The United States Tax Court has statutory power to assess a penalty of up to \$25,000 on a taxpayer who brings a frivolous claim before it.¹²³

The following is a list of some of the types of returns where IRC § 6702 has been invoked or arguments which have been found to be frivolous by the courts:

- (1) Fifth Amendment returns-taking the Fifth Amendment on all or most of the lines of the return;¹²⁴
- (2) claims of a war tax deduction-reducing the tax due on ones taxable income by the percentage derived by dividing the budget of the Department of Defense by the total Federal budget;¹²⁵
- (3) claims that wages are not taxable;¹²⁶
- (4) gold standard returns-claiming no income because federal reserve notes are not backed by gold or silver;¹²⁷
- (5) claims that the federal income tax is a voluntary tax Privacy Act defects, alleged lack of liability section in the IRC, and misrepresentations of statements concerning voluntary compliance;¹²⁸
- (6) claims of defects in the ratification of the Sixteenth Amendment-fraud by the Secretary of State, mistakes in ratification by the various states, failure of President to sign the proposed amendment, improper admission of Ohio into the Union;¹²⁹
- (7) failure to sign the return, striking out the perjury clause, or in other ways modifying the income tax return;¹³⁰
- (8) claims that the Tax Court system violates the taxpayer's right to trial by jury;¹³¹
- (9) claims that the imposition of an income tax denies the taxpayer the freedom of contract;¹³²
- (10) establishing a "church" for the sole purpose of tax avoidance;¹³³ and

¹²² *Granzow v. Commr.*, 739 F.2d 265 at 268-269 (7th Cir. 1984).

¹²³ IRC § 6673.

¹²⁴ See, question 5 and the cases cited therein.

¹²⁵ See, *Wall v. United States*, 756 F.2d 52 (3rd Cir. 1985), and *Hollingshead v. Commr.*, TC Memo 1984-158 (1984).

¹²⁶ See, *Wardell v. United States*, 757 F.2d 203 (8th Cir. 1985), and question 7 and the cases cited therein.

¹²⁷ See, *O'Brien v. Commr.*, 779 F.2d 50 (6th Cir. 1985).

¹²⁸ See, *Donelin v. Commr.*, TC Memo 1984-131 (1984), and question 8 and the cases cited therein.

¹²⁹ See, *Pollard v. Commr.*, 816 F.2d 603 (11th Cir. 1987), and question 4 and the cases cited therein.

¹³⁰ See, *Mosher v. IRS*, 775 F.2d 1292 (5th Cir. 1985), and *Olson v. United States*, 760 F.2d 1003 (9th Cir. 1985).

¹³¹ See, *Sauers v. Commr.*, 771 F.2d 64 (3rd Cir. 1985).

¹³² *Id.*

(11) claims that the tax laws are not legal because they were not enacted as positive law.¹³⁴

23. Why Can't the Government Follow It's Own Rules?

The area of federal income taxes is rife with hypocrisy and lawlessness. This situation is not new and also existed in the time of Jesus. Here is what Jesus said about this kind of behavior in his time, and keep in mind that the audience for his comments were lawyers and the government. Is it any wonder he was crucified?..and are we next for writing this rebuttal in a free country?:

Woe to you, scribes and Pharisees, hypocrites! For you pay tithes of mint and anise and cummin, and have neglected the weightier matters of the law: justice and mercy and faith. These you ought to have done, without leaving the others undone.

[...]

Woe to you, scribes and Pharisees, hypocrites! For you are like whitewashed tombs which indeed appear beautiful outwardly, but inside are full of dead men's bones and all uncleanness.

Even so, you also outwardly appear righteous to men, but inside you are full of hypocrisy and lawlessness.

[...]

Fill up, then, the measure of your fathers' guilt. Serpents, brood of vipers! How can you escape the condemnation of hell? There fore, indeed, I send you prophets, wise men, and scribes: some of them you will kill and crucify, and some of them you will scourge in your synagogues and persecute from city to city, that on you may come all the righteous blood shed on the earth..."

This kind of lawlessness by our government sets a bad example for the citizenry and only encourages cheating and chaos by our citizenry and civil unrest. Here's what the U.S. supreme Court said about the government as our teacher and our example in this regard:

"Decency, Security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. **In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy.** To declare that in the administration of the criminal law the end justifies the means..would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face." Justice Brandeis, *Olmstead v. United States*, 277 U.S. 438, 485. (1928)

In most cases relating to income taxes, the government has legislated to give itself not only the upper hand, but the only hand, and does so by completely undermining the sovereignty of the people it is there to serve and by ignoring its own laws or making laws with double standards. Below are just a few examples of such despicable hypocrisy in action:

¹³³ See, *Dummler v. Commr.*, TC Memo 1985-224 (1985).

¹³⁴ See, *Young v. IRS*, 596 F. Supp. 141 (N.D. Ind. 1984), and question 6, above.

Table 2: Government Hypocrisy in Action

#	Subject	Applicable Law(s)	Citizen Obligations	IRS (Federal Mafia) Obligations
1	ADMINISTRATIVE	BATTLE		
1.1	IRS Publications	Internal Revenue Manual 4.10.7.2.8.	<p>Told by the IRS that Publications must be followed. Never told by IRS that the Internal Revenue Manual specifically states. Here's what the IRS own IRM says:</p> <p><i>“IRS Publications, issued by the National Office, explain <u>the law</u> in plain language for taxpayers and their advisors... While a good source of general information, publications <u>should not be cited to sustain a position.</u>”</i></p> <p>Did you notice they didn't say “explain the WHOLE law”. They only quote that portion of the law that advantages them (section 61 of the IRC, but not section 861).</p>	<p>Not responsible for what is in the publications. See following district court cases:</p> <ol style="list-style-type: none"> 1. Luhring v. Glotzbach, 304 F.2d 560 (4th Cir. 1962) 2. Einhorn v. DeWitt, 618 F.2d 347 (5th Cir. 1980) 3. United States v. Goldstein, 342 F.Supp. 661 (E.D.N.Y. 1972). 4. Boulez v. C.I.R., 810 F.2d 209 (D.C. Cir. 1987) 5. United States v. Will, 671 F.2d 963, 967 (6th Cir. 1982).
1.2	Complete anonymity of Revenue Agents and IRS employees	None	Citizens are completely vulnerable and not only have NO anonymity, but they also have NO privacy. Once the IRS knows their SSN, they can find out virtually anything they want about the Citizen, violate their due process, and send computerized threatening and harassing emails and correspondence with anonymity and without the need for a signature.	IRS agents will tell you on the phone that they are not required to divulge their full name to you. This allows them to act incompetently and commit fraud with anonymity. It also encourages malfeasance. This anonymity also makes it difficult for Americans who have been wronged to effect service of legal process on them and sue them. IRS also does not provide numbers of individual agents either in the phone book or anywhere else, so that it is impossible to locate a person who works for the IRS if you haven't been provided their phone number by the IRS in advance.
1.3	Verbal or written advice directly to citizens		Have to pay massive penalties and interest for errors reported on tax returns, even if these error were made because the Citizen was following advice of the IRS.	Not legally responsible for advice given to taxpayer, even if it is BLATANTLY wrong.
1.4	Audits	Administrative Procedures Act, 5 U.S.C. Sections 551-559. (See: http://caselaw.lp.findlaw.com/)	Not obligated under the 5 th Amendment to testify against oneself. If claim to have records, the records are not protected from disclosure under the Fifth Amendment. DON'T ADMIT YOU HAVE RECORDS, under <u>any</u> circumstance, unless it would advantage your case! You can't be compelled to admit you have records!	Governed by the Administrative Procedures Act. IRS routinely tries to compel more evidence out of citizens by making false allegations (not founded in any evidence, which should

#	<i>Subject</i>	<i>Applicable Law(s)</i>	<i>Citizen Obligations</i>	<i>IRS (Federal Mafia) Obligations</i>
		casecode/uscodes/5/parts/i/chapters/5/subchapters/ii/toc.html) 5 th Amendment		ALWAYS BE QUESTIONED!) and then requiring the citizen to prove that the allegations AREN'T true by producing records. Then the IRS uses these records later to incriminate the citizen.
1.5	Assessment of tax owed		Must be based on filling out a signed return form, and on all evidence provided. Must provide W-2 forms from all employers, copies of 1099's etc. Complexity of the tax code in effect discourages citizens from doing the research necessary to defend their rights.	Have in the past made up assessments out of "thin air" with no supporting evidence. This is called a "naked assessment", and it becomes prima facie evidence used against the citizen unless they challenge it immediately. Naked assessments provoke so much fear in the minds of most (uninformed) citizens that they will pay anything to get out from it. IRS knows this and exploits it to their advantage.
1.6	Penalties for late payment of taxes or refunds from the IRS	Internal Revenue Manual, Part 20 (see http://www.irs.gov/prod/bus_info/tax_pro/irm-part20.html)	Over 140 different types of penalties that could be arbitrarily assessed on the Citizen by the IRS. Computation techniques for penalties are often not explained by the IRS. Citizens should ALWAYS question the methods and the applicable laws used to compute penalties, or the IRS will abuse them with excessive and unwarranted penalties!	Deliberately pad penalty assessment calculations so that if Citizen doesn't question them, then IRS has added income. Regulations for Subtitle F (Procedures and Administration) DO NOT authorize penalties for Subtitle A income taxes but IRS routinely tries to impose them anyway.
1.7	Correspondence/ documentation	Administrative Procedures Act, 5 U.S.C. Sections 551-559. (See: http://caselaw.lp.findlaw.com/casecode/uscodes/5/parts/i/chapters/5/subchapters/ii/toc.html)	All correspondence is usually authenticated with a signature and a return address. Take "personal responsibility" for everything, even if they didn't prepare it. For instance, if a tax preparer makes a mistake the Citizen assumes full responsibility and liability for the mistake.	Send anonymous and threatening computerized letters harassing Citizens. Citizens often don't even know who sent the letter or who to contact to resolve the problem.
1.8	Signing of income tax returns	26 U.S.C. Sec. 6702 "F frivolous Return" 26 U.S. Code Sec. 7203 "Willful Failure to File"	IRS will attempt to penalize citizens for "frivolous returns" if they file returns that are unsigned, even though the ruling in <i>Lovell v. United States</i> (755 F.2d 517) treated as valid a return that was not signed!	When the IRS files it's own "Substitute for Return" because the Citizen refuses to submit or complete his/her own, it isn't signed!
1.9	Responsibility for	Citizens: 26 U.S.C.	Citizen is completely responsible for everything that he	IRS NOT liable for mistakes of any of its

#	<i>Subject</i>	<i>Applicable Law(s)</i>	<i>Citizen Obligations</i>	<i>IRS (Federal Mafia) Obligations</i>
	misconduct	Secs. 6702, 7201, and 7203 IRS: 26 U.S.C. Sec. 7214	either does personally or which is done in his behalf. For instance, if his tax preparer makes a mistake and Citizen doesn't catch it, the Citizen, not the tax preparer, assumes liability for any penalties that result. Same for citizens who allow the IRS to complete their returns!	agents, even if their advice and conclusions are BLATANTLY wrong. Citizen assumes ALL liability for investigating the accuracy and legality of anything he is told by the IRS.
1.10	Levies and liens	26 U.S.C. Sec. 6331 5 th Amendment to the Constitution	<p>Citizens seldom investigate the approach of their financial institutions towards IRS levies. Because of this, IRS will abuse their power to levy and violate 26 U.S.C. Sec. 6331. The bank will then forfeit the citizens assets, because it was deceived by the IRS into thinking the levy was issued by a court. IRS does not have the authority to directly issue levies.</p> <p>Instead, citizens should ensure that they only do business with financial institutions that follow the proper procedures for complying with levies. They should also ensure that the county recorder, where the deed to their real property is recorded, follows the proper procedures and requires a court to issue the levy instead of honoring a "fake" levy issued directly by the IRS as a "Notice of Levy".</p>	<p>Under 26 U.S.C. Sec. 6331, IRS can only levy officers, elected officials, employees of the federal government. Typically, however, they will attempt to levy on EVERYONE, in violation of the law by sending a "Notice of Levy", which is not an actual levy because it is not signed or stamped by a judge of a court.</p> <p>These kinds of IRS abuses are at the heart of why we say throughout this document that the IRS routinely violates the due process requirement of the 5th Amendment.</p>
2	LEGAL BATTLE			
2.1	Location of service centers	None	District offices of the IRS are within the reach of most Americans, and these offices harass and intimidate people all the time.	IRS locates its service centers outside of the state jurisdiction that it serves, making it more difficult to prosecute individual revenue officers working at those centers in state courts and forcing Americans to use federal courts, which is a conflict of interest. For instance, the Ogden Utah service center services California, but California courts have no jurisdiction in Utah against IRS revenue officers.
2.2	Official immunity	None	Citizens have no official immunity, and can request immunity under 26 U.S.C. 6001-6002 before they file tax returns, but seldom are granted it and instead are prosecuted for "Willful Failure to File" under 26 U.S.C. 7203 if they say they won't submit a signed return without it..	Revenue officers enjoy official immunity provided to them by the federal courts. This immunity protects them from prosecution for wrongdoing and fraud.
2.1	1 st Amendment Freedom of Speech	1 st Amendment to the Constitution	Must litigate all the way up to the Federal Circuit/Appellate courts in order to change IRS behavior	IRS requests protective orders so that cases go "unpublished", which means that the

#	Subject	Applicable Law(s)	Citizen Obligations	IRS (Federal Mafia) Obligations
			(results of district court litigation does not apply to other cases within the IRS).	results aren't released for publication to caselaw databases. This is especially true of controversial cases that advantage citizens over the IRS. Courts routinely support this so that citizens can't learn the truth about income taxes. A famous tax freedom litigator who focused on 5th Amendment issues and litigated several cases, William Conklin, had this done to MOST of his cases by the federal courts. This amounts to censorship and violates the First Amendment right of free speech.
2.2	4 th Amendment Right to Privacy	4 th Amendment to the Constitution	<p>Citizens falsely believe they have 4th Amendment rights to privacy and unlawful search and seizure.</p> <p><u>WARNING:</u> You should never keep sensitive records at your home or at a storage facility that is in your name. The IRS will locate it and get a search warrant, or worst yet, search it without a warrant.</p>	IRS routinely gets a warrant to search citizens house for evidence used to prosecute them for an alleged tax crime. Sometimes the do unauthorized searches without a warrant.
2.3	5 th Amendment Restrictions	5 th Amendment to the Constitution	Foolish Citizens bring all their records to audits and examinations and admit to the existence of the records, even though they are well within their rights to not even admit to the existence of the records.	IRS deposes citizens to ask them to answer questions about their income and tax liabilities. They request that the Citizen bring all "relevant records", but don't identify what records might be relevant. The deposition turns into a "fishing trip" for the IRS, and foolish citizens every day bring all the records they have to these meetings. Once the IRS finds out they have these records, they can compel the Citizen to provide them. When citizens claim the 5 th Amendment and refuse to show up at the depositions, IRS takes them to court to force them to appear. When citizen shows up, he is badgered and tricked into revealing things about himself and his records and isn't told that it is well within his rights to refuse to answer EVERY question and to NOT provide ANY records.
2.4	Training and litigation references		<p>Very few references. But here are some of them:</p> <ol style="list-style-type: none"> 1. <i>The Great IRS Hoax: Why We Don't Owe</i> 	Publish the following documents for internal use by DOJ Criminal Tax Attorneys:

#	Subject	Applicable Law(s)	Citizen Obligations	IRS (Federal Mafia) Obligations
			<p><i>Income Tax</i>, available from http://familyguardian.tzo.com.</p> <p>2. Websites and books referenced in section 12 of <i>The Great IRS Hoax</i>.</p> <p>3. <i>Taxable Income Report</i>, available from http://taxableincome.net.</p> <p>4. <i>Tax Freedom Litigation Manual</i> (currently under development by this author—be on the lookout!).</p>	<p>1. <i>Department of Justice, Tax Division, Criminal Tax Manual</i> (see http://familyguardian.tzo.com for a copy of this document)</p> <p>1. <i>Department of Justice, Tax Division, Judgment Collection Manual</i> (see http://familyguardian.tzo.com for a copy of this document)</p>
2.5	Legal assistance	NA	Tax attorneys cost up to \$300/hour for their services.	Have full-time tax attorneys paid for with taxpayer dollars who work for the Department of Justice. These lawyers are responsible for using the courts to harass and inconvenience Citizens into “volunteering” to pay tax.
2.6	Tax Court		Only place Citizen can go to modify his tax assessment BEFORE he pays the tax. Citizen not warned that Tax Court IS NOT a part of the federal judiciary branch! This is a kangaroo court with a presiding judge who works for the IRS! Procedures are informal and only binding if both parties consent. No jury!	IRS likes this forum because it adds one more hoop that Citizens have to go through before they can get their case up to the Federal Circuit court, and thereby change IRS behavior for ALL Citizens.
2.7	Federal district/appeals court litigation		<p>Costs \$150 to file a Petition. Citizen must hire a lawyer at great expense if he can't or won't litigate himself.</p> <p>Publications available for citizens to litigate their own cases is VERY sparse. Only Nolo Press (http://www.nolo.com) publishes legal self-help books that are suitable for pro per litigants.</p>	<p>IRS requests Social Security Numbers of prospective jurors and only chooses jurors who faithfully pay their taxes and don't “question authority”.</p> <p>All their attorneys are very experienced with tax cases. Use automated case management tools, and refer to the Criminal Tax Manual in prosecuting their tax cases. This document contains detailed points and authorities, jury instructions, and even sample pleadings.</p> <p>IRS DOES NOT publish tax litigation materials to help citizens defend their rights, because they don't want citizens to HAVE rights!</p>

#	<i>Subject</i>	<i>Applicable Law(s)</i>	<i>Citizen Obligations</i>	<i>IRS (Federal Mafia) Obligations</i>
				<p>IRS routinely asks for a legal fee award against citizens who litigate in order to “financially punish and sanction” citizens who want to defend the rights the IRS doesn’t want them to have.</p> <p>IRS colludes with judge to rig jury selection and requests contempt findings against citizens who focus on the tax laws and can demonstrate their lack of tax liability.</p>
2.8	Leverage with/against Federal Judges		<p>Citizens who litigate against the IRS have NO leverage or influence with Federal Judges.</p> <p>If Citizen detects a conflict of interest, the leverage he has is minimal to get the judge dismissed.</p>	<p>IRS maintains files on all federal judges. Threaten audits and fabricated penalties if judges won’t rule or manipulate the case in their favor.</p> <p>The President nominates and the Congress approves the appointment of federal judges. Judges only stay in office as long as they are on “good behavior”.</p>

The question is: “*Why can't government make the playing field level so that the rights of citizens and the government are **at least equal?***” Doesn't the government serve the people. How many servants do you know of who have more power than their masters? Who are they really serving: themselves? According to the U.S. supreme Court, the **Citizens, not the government**, are the sovereigns and the government works for the people and not the other way around:

In the United States the people are sovereign over their civil servants:

Romans 6:16 (NIV): "Don't you know that when you offer yourselves to someone to obey him as slaves, you are slaves to the one whom you obey..."

Spooner v. McConnell, 22 F 939 @ 943:

"The sovereignty of a state does not reside in the persons who fill the different departments of its government, but in the People, from whom the government emanated; and they may change it at their discretion. Sovereignty, then in this country, abides with the constituency, and not with the agent; and this remark is true, both in reference to the federal and state government."

1794 US Supreme Court case *Glass v. Sloop Betsey*:

"... Our government is founded upon compact. Sovereignty was, and is, in the people"

1829 US Supreme Court case *Lansing v. Smith*:

"People of a state are entitled to all rights which formerly belong to the King, by his prerogative."

US Supreme Court in 4 Wheat 402:

"The United States, as a whole, emanates from the people... The people, in their capacity as sovereigns, made and adopted the Constitution..."

US Supreme Court in *Luther v. Borden*, 48 US 1, 12 LEd 581:

"... The governments are but trustees acting under derived authority and have no power to delegate what is not delegated to them. But the people, as the original fountain might take away what they have delegated and intrust to whom they please. ...The sovereignty in every state resides in the people of the state and they may alter and change their form of government at their own pleasure."

US Supreme Court in *Yick Wo v. Hopkins*, 118 US 356, page 370:

"While sovereign powers are delegated to ... the government, sovereignty itself remains with the people.."

US Supreme Court in *Julliard v. Greenman*: 110 US 421:

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

US Supreme Court in *Wilson v. Omaha Indian Tribe* 442 US 653, 667 (1979):

"In common usage, the term 'person' does not include the sovereign, and statutes employing the word are ordinarily construed to exclude it."

US Supreme Court in *U.S. v. Cooper*, 312 US 600,604, 61 SCt 742 (1941):

"Since in common usage the term `person' does not include the sovereign, statutes employing that term are ordinarily construed to exclude it."

US Supreme Court in *U.S. v. United Mine Workers of America*, 330 U.S. 258 67 SCt677 (1947):

"In common usage, the term `person' does not include the sovereign and statutes employing it will ordinarily not be construed to do so."

US Supreme Court in *US v. Fox* 94 US 315:

"Since in common usage, the term `person' does not include the sovereign, statutes employing the phrase are ordinarily construed to exclude it."

U.S. v. General Motors Corporation, D.C. Ill, 2 F.R.D. 528, 530:

"In common usage the word `person' does not include the sovereign, and statutes employing the word are generally construed to exclude the sovereign."

Instead, what we end up with is basically child abuse, if one considers the government as the "parent/teacher" and the citizens as the "children":

How to Teach Your Child About Politics **by: Joseph Sobran**

Because I write about politics, people are forever asking me the best way to teach children how our system of government works. I tell them that they can give their own children a basic civics course right in their own homes. In my own experience as a father, I have discovered several simple devices that can illustrate to a child's mind the principles on which the modern state deals with its citizens. You may find them helpful, too.

For example, I used to play the simple card game WAR with my son. After a while, when he thoroughly understood that the higher ranking cards beat the lower ranking ones, I created a new game I called GOVERNMENT. In this game, I was Government, and I won every trick, regardless of who had the better card. My boy soon lost interest in my new game, but I like to think it taught him a valuable lesson for later in life.

When your child is a little older, you can teach him about our tax system in a way that is easy to grasp. Offer him, say, \$10 to mow the lawn. When he has mowed it and asks to be paid, withhold \$5 and explain that this is income tax. Give \$1 to his younger brother, and tell him that this is "fair". Also, explain that you need the other \$4 yourself to cover the administrative costs of dividing the money. When he cries, tell him he is being "selfish" and "greedy". Later in life he will thank you.

Make as many rules as possible. Leave the reasons for them obscure. Enforce them arbitrarily. Accuse your child of breaking rules you have never told him about. Keep him anxious that he may be violating commands you haven't yet issued. Instill in him the feeling that rules are utterly irrational. This will prepare him for living under democratic government.

When your child has matured sufficiently to understand how the judicial system works, set a bedtime for him and then send him to bed an hour early. When he tearfully accuses you of breaking the rules, explain that you made the rules and you can interpret them in any way that seems appropriate to you, according to changing conditions. This will prepare him for the Supreme Court's concept of the U.S. Constitution as a "living document". Promise often to take him to the movies or the zoo, and then, at the appointed hour, recline in an easy chair with a newspaper and tell him you have changed your plans. When he screams, "But you promised!", explain to him that it was a campaign promise. Every now and then, without warning, slap your child. Then explain that this is defense. Tell him that you must be vigilant at all times to stop any potential enemy before he gets big enough to hurt you. This, too, your child will appreciate, not right at that moment, maybe, but later in life. At times your child will naturally express discontent with your methods. He may even give voice to a petulant wish that he lived with another family. To forestall and minimize this reaction, tell him how lucky he is to be with you the most loving and indulgent parent in the world, and recount lurid stories of the cruelties of other parents. This will make him loyal to you and, later, receptive to schoolroom claims that the America of the postmodern welfare state is still the best and freest country on Earth.

This brings me to the most important child-rearing technique of all: lying. Lie to your child constantly. Teach him that words mean nothing - or rather that the meanings of words are continually "evolving", and may be tomorrow the opposite of what they are today.

Some readers may object that this is a poor way to raise a child. A few may even call it child abuse. But that's the whole point: Child abuse is the best preparation for adult life under our form of GOVERNMENT.