



**From the Freedom of a Republic to the Serfdom and
Tyranny of Socialism**

A Government Without Honor to GOD or It's Own Law

***None are so hopelessly enslaved as those that
falsely believe they
are free, truth has been kept from the depths of
their minds, by
masters who fool them with lies, they feed them
with falsehoods
till wrong seems like right in their minds... '***

***words from the song Jesus, The Way and the Truth and
the Life***

**Tyranny Reigns – You are not Free – We are a Nation of
Men, Not Law**

The ABC's of Government Theft

Revision 10 – January 12, 2008

Comments:

James 5

¹ *Go to now, ye rich men, weep and howl for your miseries that shall come upon you.*

² *Your riches are corrupted, and your garments are motheaten.*

³ *Your gold and silver is cankered; and the rust of them shall be a witness against you, and shall eat your flesh as it were fire. Ye have heaped treasure together for the last days.*

⁴ *Behold, the hire of the labourers who have reaped down your fields, which is of you kept back by fraud, crieth: and the cries of them which have reaped are entered into the ears of the Lord of sabaoth.*

⁵ *Ye have lived in pleasure on the earth, and been wanton; ye have nourished your hearts, as in a day of slaughter.*

⁶ *Ye have condemned and killed the just; and he doth not resist you.*

...the loss of 'constitutional morality,' the weakening of the authority of parents, pastors, priests, the sense of distance between governor and governed, the hopeless feeling that one does not count... We find ourselves, therefore, between those ready and anxious to scrap democracy on the one hand, and on the other, faint hearts unwilling to defend it.

Shall we 'call it a day' and quit? Have we become so soft that we are no longer willing to fight, as our fathers did...? If so, we have sinned beyond absolution. The fault will not be in our leaders, whether statesmen or rabble-rousers. It will be in us. - Samuel Pettengill, a Democratic congressman, 1937

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Revisions and Disclaimer

Revisions

Change	Date	Type and Description of Change
Basic	02/17/2007	Title change from America's Socialist Government to present title.
"	02/17/2007	Added to introduction to include excerpts of Alfred E. Smith speech.
"	02/17/2007	Added coverage concerning Admiralty and Maritime jurisdiction in chapter on Faulted Arguments.
"	02/17/2007	Updated Form 4852 to show the latest revision.
"	02/17/2007	Included background information regarding filing the Form 1040.
"	02/17/2007	Included simple guide on spotting the DOJ/IRS attempting to deceive you concerning court jurisdiction.
"	02/17/2007	Added coverage for the Form W-4 and changed chapter title to "Form W-4, Form 1040, and the IRS".
Rev 1	02-21-2007	Renamed chapter "Form 1040 and the IRS" to "Forms W-2, W-4, 1040, 1099, and the IRS" and inserted information concerning the forms, and the ADP and IDRS Document 6209.
Rev 2	03-03-2007	Reorganized chapters
Rev 2	03-03-2007	Renamed chapter "Forms W-2, W-4, 1040, 1099, and the IRS" to "Forms W-2, 1099, W-4, 941, 1040, and the IRS" and expanded coverage of the forms. To include what True Tax Classes they involve.
Rev 3	03-17-2007	Added paragraph "Be prepared to Fight" in the chapter "Recover by Using the Law" about the frivolous trash the IRS states about the CTC method.
Rev 3	03-17-2007	Added chapter "Debunking IRS Lies and Misinformation" to show how they play word games.
Rev 4	04-20-2007	Explained the origin of "Lasciate Ogni speranze voi chi intrate"
Rev 4	04-20-2007	Added additional information concerning the district courts of the United States and the territorial jurisdiction exercised by congress.
Rev 4	04-20-2007	Updated and verified IRM references.
Rev 5	06-01-2007	Included facts and impact of lumping 195 forms under a single OMB Number.
Rev 5	06-01-2007	Changed cover.
Rev 5	06-01-2007	Inserted the Rowan Cos. v. United States, 452 U.S. 247, 255 (1981) decision where the Supreme Court declared that the meaning of "wages" was the same for FICA and FUTA and Income Tax Withholding.
Rev 5	06-01-2007	Included a brief history of the requirement to withhold taxes.
Rev 5	06-01-2007	Minor changes throughout.
Rev 6	06-13-2007	Inserted chapter on Researching Law Citations
Rev 7	08-04-2007	Added Appendix B - Other Supreme Court Cites that also includes some from the CJS and some concerning the Fifth Amendment
Rev 7	08-04-2007	Updated coverage of sections 6401, 6511, 6513, 7402, and 7405. Stated why 6511, 6513, 7402, and 7405 do not apply to 6401(c).
Rev 7	08-04-2007	Numerous corrections in spelling and grammar.
Rev 8	09-03-2007	Moved the links in "Historical Facts Concerning the 16 th Amendment" to Appendix A and removed chapter.
Rev 8	09-03-2007	Expanded coverage of IRC 6323 to add pertinent and important information tying it to the Uniform Commercial Code.
Rev 8	09-03-2007	Expanded coverage of Section 3 of the Uniform Federal Tax Lien Act in the chapter "The State's Contribution to the Frud" to show where the County Clerk's fail to verify the validity of the lien as given in Title 27 CFR 70.232 and pertinent sections of the Uniform Commercial Code.
Rev 8	09-03-2007	Minor corrections and touch-ups.
Rev 9	10-28-07	Added clarification regarding the "United States of America".
Rev 9	10-28-07	Added paragraph concerning coram non judge in chapter on jurisdiction
Rev 9	10-28-07	Added reason why challenging jurisdiction cannot be done by an attorney in chapter on jurisdiction
Rev 9	10-28-07	Added chapter "Putting it All Together for purposes of a self administered review.

Revisions and Disclaimer

Change	Date	Type and Description of Change
Rev 10	1-11-08	Deleted chapter "Putting it all Together" as it appears few study the document well enough to learn anything. Added chapter "Victories and Humor in it's place."
Rev 10	1-11-08	Added "The IRS and The Church" by By Pastor Jim Phillips to the chapter "GOD Denied by Church and State"

Disclaimer

This document is based on government sources that are continuously in a state of change. For that reason, anyone using this document bears responsibility for verifying the authenticity and date of anything used for other purposes.

Introduction

This document was previously known by other titles, such as the following, but it has been consistent in its purpose, attempting to show others how our federal and state governments have initiated a grand plan of theft in order to deprive you of your rights and property.

Previous titles:

- America's Socialist Government
- Our Fall Into Socialism
- Theft by Hidden Government
- Tyranny Reigns

While those previous titles expressed the truth, they had a problem in that so few understand what tyranny or socialism is. Therefore, since most know what theft is the title is changed to press the point that it details how our federal and state governments have initiated this plan to convert us from the now demolished free Republic we once were into one where we are continuously sliding deeper into socialism.

The plan is not new, but is based on political doctrines that are in keeping with the greed of man as represented by what we call politicians:

"A Nation can survive its fools, and even the ambitious. But it cannot survive treason from within. An enemy at the gates is less formidable, for he is known and he carries his banners openly. But the traitor moves among those within the gate freely, his sly whispers rustling through all the galleys, heard in the very hall of government itself. For the traitor appears not traitor - he speaks in the accents familiar to his victims, and wears their face and their garments, and he appeals to the baseness that lies deep in the hearts of all men. He rots the soul of a nation-he works secretly and unknown in the night to undermine the pillars of a city-he infects the body politic so that it can no longer resist. A murderer is less to be feared." --Cicero 42 B.C.

SPECIAL NOTE

For those from other nations that may have, or are contemplating looking at this document **do not stop doing so**, for the same trickery and theft of our government(s) probably exist in your own. The United States was not the first to devise such trickery to force socialistic ways upon the people. Socialist democratic governments exist in other nations also. Those English-speaking nations that have modeled their law after that of England more than likely use trickery of words and outright lies in order to commit theft on their citizenry. Germany, France and others also have this type of government. Learn the structure of your government's system of laws and investigate.

Again, when he wrote:

"Power and law are not synonymous. In truth they are frequently in opposition and irreconcilable. There is God's Law from which all Equitable laws of man emerge and by which men must live if they are not to die in oppression, chaos and despair. Divorced from God's eternal and immutable Law, established before the founding of the suns, man's power is evil no matter the noble words with which it is employed or the motives urged when enforcing it. Men of good will, mindful therefore of the Law laid down by God, will oppose governments whose rule is by men, and if they wish to survive as a nation they will destroy the government which attempts to adjudicate by the whim of venal judges." - Marcus Tullius Cicero 106-43 B.C

Read the above very carefully for they point out who the traitors are, and identifies them as those corrupted in their quest for power.

Introduction

They are our elected and appointed, they are politicians of all parties, and they are not patriots.

What type of government do they initiate? One far different from the Republic form, which our nation is supposed to be. By referring to the Encyclopedia Britannica, a source recognized and used by the Supreme Court we find the following definition:

Social Democracy

Political ideology that advocates a peaceful, evolutionary transition of society **from capitalism to socialism**, using established political processes.

It rejects Marxism's advocacy of social revolution. Social democracy began as a political movement in Germany in the 1870s. Eduard Bernstein argued (1899) that capitalism was overcoming many of the weaknesses Karl Marx had seen in it (including unemployment and overproduction) and that **universal suffrage would lead peacefully to a socialist government**. After 1945, social-democratic governments came to power in West Germany (see Social Democratic Party), Sweden, and Britain (under the Labour Party). Social-democratic thought gradually came to regard state regulation (without state ownership) as sufficient to ensure economic growth and a fair distribution of income.

It is important to note the following:

- Universal suffrage would lead peacefully to a socialist government
- It is not limited to the United States (After 1945, social-democratic governments came to power in West Germany (see Social Democratic Party), Sweden, and Britain (under the Labour Party)

Using This Document

In previous editions, the sections and regulations were duplicated in whole or in part. A problem with this is maintaining currency, therefore only comments will be shown. If you want to look at a particular section of code, regulation, or an entry in the Federal Register you can go to the Government Printing Office (GPO) home page to access these and other documents. Their home page is at <http://www.gpoaccess.gov/>.

Also, learn to use the navigation buttons on your PDF Reader software. Every time a page number is referred to in this document clicking on it with your mouse will navigate you to that particular page and subject. You can then use the Return navigation button on your reader to return you to the exact spot you left.

If you print out this document it will still be usable, except you must have access to the Internet in order to use the referenced links.

It is recommended, since at times it is helpful to be able to trace a particular section of the Internal Revenue Code back to see which law(s) it was derived from that you get a copy of JCS-1-92 Derivations of Code sections of the Internal Revenue Codes of 1939 and 1954 from the congressional Joint Committee on Taxation at <http://www.house.gov/jct/pubs92.html>. It is free and a scanned version in PDF format can be downloaded there by using your right mouse button.

With that said, the remaining chapters are as shown below:

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Socialist (Communist) Manifesto

You may wonder why the title of this chapter isn't just "Socialist Manifesto", or "Communist Manifesto". It is because there is a difference in the two concepts.

In a communist system, everyone is equal, and each performs equal labor and gets an equal amount in return. In other words, the poorest is as rich as the richest, and visa versa. It is total equality.

Right of the bat, it should be obvious that with the natural greed of many this would be an impossible concept to obtain. Therefore, socialism rears its ugly head. Often people lump the two concepts together as meaning the same but they are worlds apart. The former United Soviet Socialist Republic or U.S.S.R. is a good example. Only the elite card bearers were eligible for government positions, and their benefits and wealth was far greater than the ordinary citizens were. Now our government is embarking down the trail into socialism, and yet most Americans are ignorant of it. It is not that they were not warned, for two lifelong democrats attempted to do so, not to say the republicans are pure for they are not.

Governor Alfred E. Smith, a lifetime democrat on January 25, 1936 made a speech at the Mayflower Hotel in Washington, DC, before an American Liberty League audience of 2000 and a national radio audience.

This is one of the greatest American political speeches. At the time, it was considered the definitive analysis of the New Deal. Al Smith was the 1928 Democrat Presidential nominee, former governor of New York State and the leader of the Democrat Party until Roosevelt and the Communist wing took over in 1932. Smith was the person who gave Roosevelt his second chance in politics and therefore was responsible for FDR becoming President.

An excerpt from that speech tells what he thought of FDR's platform:

LET'S see how it was carried out. Make a test for yourselves. Just get the platform of the Democratic Party, and get the platform of the Socialist Party, and lay them down on your dining room table, side by side, and get a heavy lead pencil and scratch out the word 'Democrat', and scratch out the word 'Socialist,' and let the two platforms lay there.

Then study the record of the present administration up to date. After you have done that, make your mind up to pick up the platform that more nearly squares with the record, and you will put your hand on the Socialist platform. You couldn't touch the Democratic. And, incidentally, let me say that is not the first time in recorded history that a group of men have stolen the livery of the church to do the work of the devil.

Another American that foresaw what was happening was Samuel B. Pettengill, a Democratic Congressman from Indiana, 1930-1938. In 1940 he wrote, "Smoke-screen" to demonstrate that we are moving toward national socialism, and that from now on, we should move away from it." Unfortunately, not many heeded his warning and the transformation to being a socialist nation began. Now a brief look at what he stated. Read it carefully and **think**.

Samuel B. Pettengill, Democratic Congressman from Indiana, 1930-1938, was another kind of Old Right stalwart, a Cleveland Democrat. He was a vocal critic of the New Deal and published a detailed attack on its economic policies and "planning" in 1940. He was clear about the parallels with mercantilism and fascist corporatism, writing, "The second or third New Deal is fundamentally fascist." All such systems of central economic regimentation--fascist, Nazi, Soviet--were antithetical to the American form of government.

The New Dealers were happy to experiment with all of them. He noted the Nazi regime's insistence on breaking down the constituent states of the German Reich and compared this to centralizing trends at home. He wrote: "that we are moving toward some form of National Socialism and away from our form of government seems hard not to believe."

12 points of the Socialist Manifesto

Socialist (Communist) Manifesto

In 1944, he warned that communism wanted America to spend itself into bankruptcy and was striving in every way to get Americans to become very dependent on a centralized government. He gave to his fellow members of the House of Representatives the 12 points of the Socialist Manifesto for the economic destruction of free governments.

In an address given in October 1949, Pettengill denounced the New Deal-Fair Deal program, now using the term "socialism" to describe it. His central theme was the twin evils of high taxation and monetary inflation, which would render people dependent. Inflation was also an engine for eroding genuine federalism: "The federal government has a printing press; the states do not. This easy money route promotes the extension of federal power and subtracts from state and local self-government."

In order to prepare a nation for socialism or communism he said that the 12 Points of the Communist Manifesto must be implemented. These points are covered in the following paragraphs:

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Point 1 - The people must be made to feel their utter helplessness	5
Point 2 - The principle of local self-government must be wiped out	6
Point 3 - The centralized government must dutifully register the will of the leader or group in control	6
Point 4 - Constitutional guarantees must be swept aside	6
Point 5 - Public faith in the legal profession and respect for the courts must be undermined	7
Point 6 - The law-making body must be intimidated and from time to time rebuked	7
Point 7 - Economically, the people must be kept ground down with high taxes	7
Point 8 - A great public debt must be built up	8
Point 9 - A general distrust of private business and industry must be kept alive	8
Point 10 - Government bureaus are set up to control practically every aspect of the citizen's life	9
Point 11 - The education of the youth of the nation is taken under control	9
Point 12 - Steady stream of government propaganda	9

Point 1 - The people must be made to feel their utter helplessness

Point 1 appears as follows:

1. The people must be made to feel their utter helplessness and their inability to solve their own problems. While in this state of mind, there is held up before them a benign and all-wise leader to whom they must look for the cure of all their ills. This state of mind is most readily developed in a time of economic stress or national disaster.

What better way to illustrate that this has been effectively implemented than the event of September 11, 2001? Although earlier events really started this point, it is that event that is recent and still in the memory of most Americans. Hardly a day goes by without it being mentioned in the media along with the government's plans to "save us" from this evil. By this means, they have given birth to a completely new department and implemented such acts as the Patriot's Act. Thereby they have granted themselves new powers to eaves-drop and monitor the activities of almost anyone they choose with or without reason. A tremendous weakening of our rights.

An earlier occurrence is the attack on Pearl Harbor on December 7, 1941. Here it is held by many to be the result of a conspiracy by Franklin Delano Roosevelt (FDR) to get the United States involved in the war. Though not known if this is entirely true it appears that advanced warning of this attack was disregarded. Remembering what Pettengill had to say about FDR though does lend some credibility to the theory. It also illustrates the fact that a large number of American casualties make it easier to arouse the passions of the people. Remember, body count is of no concern to communist government, as Hitler and Stalin so aptly showed.

Even following the start of World War II, such measures were more restricted and carried out without any fanfare. There were no cries of "we are doing this to save you". The effectiveness of such measures as the Patriot Act are greatly weakened as they have been broadcast to those very groups and individuals that the act was supposedly designed to capture. They therefore can plan and implement counter-measures. That should

Socialist (Communist) Manifesto

make it obvious that the real intent was to make the people feel helpless and unable to solve their own problems.

Point 2 - The principle of local self-government must be wiped out

Point two deals with the elimination of the separation of powers of the Constitution. It reads as follows:

2. "The principle of local self-government must be wiped out, so that this leader or group in control can have all political power readily at hand.

Remember, the Constitution only granted the federal government with a few specific rights, with the rest belonging to the States or to the Citizens. To do an end-run around this constitutional roadblock to a strong and overbearing federal government the method of contract was, and is used.

The federal government makes grants of funds to the states and their municipalities. Therefore, these grants impose the requirement that federal law be applied. Examples of this invasion are evident in grants given to state and municipalities in agriculture and transportation. By the constitution, congress is only allowed to legislate in interstate congress, leaving all intrastate matters in the hands of the state:

"The catalogue of means and actions which might be imposed upon an employer in any business, tending to the satisfaction and comfort of his employees, seems endless. **Provision for free medical assistance, nursing, clothing, food, housing, and education of children**, and a hundred other matters might with equal propriety be proposed as tending to relieve the employee of mental strain and worry. **Can it fairly be said that the power of Congress to regulate interstate commerce extends to the prescription of any or all of these things?** It is not apparent that they are really and essentially related solely to the social welfare of the worker and therefore remote from any regulation of commerce as such. We think the answer is plain. These matters obviously lie outside the orbit of congressional power". - **Railroad Retirement Board v. Alton Railroad Co, 295 U.S. 330, 55 S. Ct. 758 1935**),

Notice the wording "**that the power of Congress to regulate interstate commerce**". In regards to agriculture, the federal government has many laws pertaining to the control of certain pest insects. If one checks these laws, and the regulations that implement them they will find that they involve only those agriculture items **being prepared for interstate shipment**. The same concept holds true regarding transportation and access for the handicapped. Such laws and regulations of the federal government apply only to **interstate carriers**. But, if an agriculture company or transportation service of a state or municipality of a state accept federal funding as a loan or grant then a condition of such loan or grant could make them subject to federal law.

Point 3 - The centralized government must dutifully register the will of the leader or group in control

In point three we get to the involvement of politics, primarily regarding the two major parties:

3. The centralized government, while appearing in form to represent the people, must dutifully register the will of the leader or group in control.

The only question here is not the motive of the two parties, as both believe in the socialization of America. It is simply a struggle between them as to who will be allowed to register their will. It is a contest for power and control, over you and your property. Unlike the former Union of Soviet Socialist Republics (USSR), or Nazi Germany under Hitler, a multi-party system is required in the United States in order to deceive the American people that the Constitution still is in force.

Point 4 - Constitutional guarantees must be swept aside

Here, in point four comes the question of constitutional guarantees as follows:

4. Constitutional guarantees must be swept aside. This is accomplished in part by ridiculing them as outmoded and as obstructions to progress.

How often do you hear a politician make the false statement that the constitution is a living document intended to change with the times? That statement is false as the constitution is a document of fixed structure and meaning. The constitution itself gives the one allowable means of change, that by amendment. If we want to know exactly what the founding fathers intended, then it is required that we read the Federalist Papers and other supporting documents prepared by those who constructed the Constitution.

Point 5 - Public faith in the legal profession and respect for the courts must be undermined

Point 5 makes a simple statement as follows:

5. Public faith in the legal profession and respect for the courts must be undermined.

Seeing as how many of our law makers are from the legal profession it is only left to our ears to listen as they debate and make accusations against each other to see that they themselves have worked to destroy public faith.

As for the courts, it will be seen later in this document that the federal, and most state courts no longer judge according to the law but to reach desired verdicts in spite of the law. As they are controlled by the federal Mafia, no one can expect true justice in these courts. Additionally, their recent acts of legalization of gay marriages, acts of sodomy, etc. serve to ban GOD from the moral structure this nation was founded on.

Point 6 - The law-making body must be intimidated and from time to time rebuked

Point 6 follows point 5 in that it is the courts that are used to rebuke the legislative body. In that both are corrupted, the requirements of point 6 are met. It reads as follows:

6. The law-making body must be intimidated and from time to time rebuked, to prevent the development of public confidence therein.

Point 7 - Economically, the people must be kept ground down with high taxes

Point 7 is extremely important to understand:

7. Economically, the people must be kept ground down with high taxes, which, under one **pretext** or another, they are called upon to pay. Thus, they are brought to a common level, and all income above a meager living is taken from them. In this manner, economic independence is kept to a minimum, and the citizen is forced to rely more and more upon the government that controls him. Capital and credits is thus completely within the control of the government.

Notice the use of the word "pretext". In Merriam-Webster's Dictionary, 10th Edition it is defined as follows:

Pronunciation: 'prE-"tekst

Function: *noun*

Etymology: Latin *praetextus*, from *praetexere* to assign as a pretext, screen, extend in front, from *prae-* + *texere* to weave -- more at TECHNICAL

: a purpose or motive alleged or an appearance assumed in order to cloak the real intention or state of affairs

Notice where it states, "in order to cloak the real intention or state of affairs", in other words, the people are fed lies to make them believe that this tax is necessary and must be paid. This started in 1935 with the Railroad Retirement Act as pointed out in the following cite:

"The catalogue of means and actions which might be imposed upon an employer in any business, tending to the satisfaction and comfort of his employees, seems endless. **Provision for free medical assistance, nursing, clothing, food, housing, and education of children**, and a hundred other matters might with equal propriety be proposed as tending to relieve the

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employee of mental strain and worry. Can it fairly be said that the power of Congress to regulate interstate commerce extends to the prescription of any or all of these things? It is not apparent that they are really and essentially related solely to the social welfare of the worker, and therefore remote from any regulation of commerce as such? We think the answer is plain. These matters obviously lie outside the orbit of congressional power". - **Railroad Retirement Board v. Alton Railroad Co, 295 U.S. 330, 55 S. Ct. 758 1935**),

The Social Security Act, founded on the same principal was used to advance taxation. This Act was intended to apply to International Labor Agreements and as such could not be made mandatory against all citizens as will be learned later in this document. However, by using the pretext of law it was eagerly bought into by the people. Therefore implementing not only point seven, but point 1 as well. Government welfare had begun.

A further extension of this unlawful taxation occurred during World War II. Playing on the patriotic theme the government instituted the Victory Tax. This tax was at a 5% rate on the earnings of a worker and was only intended to be in force until the end of hostilities. Realizing that the American people had become indoctrinated into the payment of this tax that they did not constitutionally owe congress repealed the Victory Tax in 1944 only to replace it with another tax act to keep the taxation alive. The increases in the rate of taxation have been used as the source of funding for the government to finance their excursions across the line between federal and state powers. It funds the points of the Communist Manifesto.

Point 8 - A great public debt must be built up

Here in point eight the subject of national debt is bared:

8. A great public debt must be built up so that citizens can never escape its burdens. This makes government the virtual receiver for the entire nation.

Actually, the groundwork for this point was laid with the founding of the Federal Reserve System by congress way back in 1913. Today they state that the purpose was "to provide the nation with a safer, more flexible, and more stable monetary and financial system." It is a private company, reach in your wallet or purse and pull out a piece of paper currency. Now notice that on it is stated "Federal Reserve Note". Don't think that the word "Federal" means it is government for it does not. The Federal Express is not "federal" in a governmental sense, nor is the Federal Reserve System. The predecessor to "Federal Reserve Notes" was the "Treasury Note" and it bore a statement to the effect that it was redeemable in gold or silver. That statement does not exist on the "Federal Reserve Note" as it is redeemable in nothing. What has the Supreme Court said in this regard?

"Governments descend to the level of a mere private corporation, and take on the characteristics of a mere private citizen (where private corporate Commercial Paper [Fed. Reserve Notes] and securities is concerned)... For Purpose of suit, such corporations and individuals are regarded as entities entirely separate from government." - (Clearfield Trust Co. v. United States 318 U.S. 363-371; United States v. Burr, 309 U.S. 242)

The federal government, when it needs to "borrow" money (remember, the national debt must be built up) it turns to the Federal Reserve. Thus, they pay interest on money printed at the federal mints to the Federal Reserve shareholders. Thomas Jefferson warned against this when he stated:

"If American people ever allow private banks to control the issue of their currency, first by inflation then by deflation, the banks, and the corporations will grow up around them, will deprive the people of all property until their children wake up homeless on the continent their fathers conquered."

Point 9 - A general distrust of private business and industry must be kept alive

This point is as follows:

9. A general distrust of private business and industry must be kept alive, so that the public may not begin to rely upon its own resources.

One only needs to be aware of current events to understand that this point has been driven home. Think about the investment scandals, the wrongdoings of major firms, and the matter of the outsourcing of jobs.

Point 10 - Government bureaus are set up to control practically every aspect of the citizen's life

Here is the reading of this point:

10. Government bureaus are set up to control practically every aspect of the citizen's life. These bureaus issue directives without number, but all under the authority of the leader to whom they are immediately responsible. It is a government of men, and not of laws.

The web site at <http://www.lib.lsu.edu/gov/tree> lists the U.S. Government Departments and Agencies. A look there should convince you that this point has been accomplished.

Point 11 - The education of the youth of the nation is taken under control

An important point as the indoctrination must begin at an early age. It reads as follows:

11. The education of the youth of the nation is taken under control to the end that all may, at an early age, be inoculated with a spirit of submission to the system and of reverence for the benevolent leader.

As with other points, federal infiltration into the education system (a state's right and power) is accomplished by the granting of federal funds that are given with conditions attached. Once accomplished federal programs establish educational goals. No longer are the basics taught. The Constitution is taught only to the extent that it is a document by which our government is supposed to operate that was signed at a specific date. The rights that it guarantees are not taught in an in-depth manner. This is because the federal and most states do not want them learned. This is well said by the following:

"It has ever been the scheme of government to keep the people ignorant of their rights" -
Thomas Paine

Point 12 - Steady stream of government propaganda

This point appears as follows, and for anyone that reads, listens to, or watches the mainstream media it is obvious (or should be) that the "steady stream of government propoganda exists:

12. To supplement and fortify all the foregoing, there is kept flowing a steady stream of government propoganda designed to extol all that bow the knee, and to vilify those who dare to raise a voice of dissent.

Conclusion to Chapter

Since the building of a socialist style welfare state demands funding, the spreading of the property of labor is of prime importance. Without it, they could not build a society dependent upon government to replace one built on freedom and individual endeavor. Therefore, the focus of this publication will be on their means of obtaining this funding by unlawful application of the fundamental law of the Constitution of the United States and of the tax laws based on the Statutes of congress.

This is based on official government source material. Therefore, if you are seeking a silver bullet showing that the laws of congress do not comply with the constitution, or other typical arguments espoused by many, i.e. the tax laws were repealed, names in all-caps specify other entities, etc. then go elsewhere. Congress well knows the constitutional constraints imposed upon it and legislate accordingly. What they state politically out of the chambers of congress does not count. There is a single reason that this nation has been deliberately led toward socialism. That reason is you, the American citizen that has been manipulated by lies while placing trust in your government. This has allowed a federal agency to grab control of the courts, and others in government with the blessing of your elected and appointed, for it is power and control they seek. They legislate one-way, and then allow all to be disregarded to facilitate the theft of your property and rights.

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As the truth emerges a sense of anger should develop and grow. If it does not then you are helplessly brainwashed and indoctrinated into a socialist belief, damning you children and theirs the life of serfdom to fraudulent masters.

The introduction need say no more.

Federal Government Misinformation Exposed

The Supreme Court has stated "No constitutional right exists under the Ninth Amendment, or to any other provision of the Constitution of the United States, 'to trust the federal government and to rely on the integrity of its pronouncements' - MAPCO, Inc. v. Carter (1978, Em Ct. App) 573 F2d 1268, cert den 437 US 904. 57 L Ed 2d 1134, 98 S Ct 3090.

With that stated, certain myths based on misinformation purposely propagated by the federal government must be disposed of right up front. Misinformation from the federal government plays on the ignorance of the people in regards to the law making process, the jurisdictional limitations of the federal courts, and the provisions of the Administrative Procedures that pertains to the federal government. Here the concentration will be on the misinformation as it applies to taxation. Key Supreme Court decisions will clearly show that our governments, federal, state, and in some instances municipal are not to be trusted.

Importance of Court Decisions

Court decisions vary in importance according to the level of the court. Supreme Court decisions become the Law of the Land. That the IRS is well aware that Supreme Court Decisions are the Law of the Land, and that the decisions of the lower courts are limited in application is shown within their Internal Revenue Manual (IRM). Regarding the IRM, the Supreme Court has stated:

"Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required. *Service v. Dulles*, 354 U.S. 363, 388 (1957); *Vitarelli v. Seaton*, 359 U.S. 535, 539-540 (1959). The BIA, by its Manual, has declared that all directives that "inform the public of privileges and benefits available" and of "eligibility requirements" are among those to be published. The requirement that, in order to receive general assistance, an Indian must reside directly "on" a reservation is clearly an important substantive policy that fits within this class of directives. Before the BIA may extinguish the entitlement of these otherwise eligible beneficiaries, it must comply, at a minimum, with its own internal procedures." - [*Morton v. Ruiz*, 415 U.S. 199, 94 S.Ct. 1055, 39 L.Ed.2d 270 (1974)]

In spite of the above, the IRS has effectively incorporated procedures in the IRM whereby they commit fraud and attempt to bypass the Constitution of the United States. However, their IRM does admit to the fact that Supreme Court decisions are the Law of the Land and must be adhered to.

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Importance of Court Decisions

1. Decisions made at various levels of the court system are considered to be interpretations of tax laws and may be used by either examiners or taxpayers to support a position.
2. Certain court cases lend more weight to a position than others. **A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions of lower courts. The Internal Revenue Service must follow Supreme Court decisions. For examiners, Supreme Court decisions have the same weight as the Code.**
3. 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.

Therefore, the decisions shown in this chapter must be recognized by the IRS. However, they purposely misrepresent them and spread untruths concerning the decisions, in particular the Brushaber decision as shall be shown. To put it truthfully they spit in the face of the Supreme Court.

Key Supreme Court Decisions

Following are key decisions of the Supreme Court having bearing on taxation:

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Decision:	Page:
The Antelope, 23 U.S. 66, 120 (1825)	12
Citizens' Savings & Loan Ass'n v. City of Topeka, 87 U.S. 655 (1874)	12
Butchers' Union Co. v. Crescent City Co., 111 U.S. 746 (1884)	13
Flint v. Stone Tracy Co., 220 U.S. 107 (1911)	14
Stratton's Independence, LTD. v. Howbert, 231 US 399, 414 (1913)	14
Brushaber v. Union Pacific R. Co., 240 U.S. 1 (1916)	15
Eisner v. Macomber, 252 U.S. 189 (1920)	17
Truax v. Corrigan, 257 US 312, 331, 338 (1921)	18
Bowers v. Kerbaugh-Empire Co., 271 US 174D (1926)	18
Redfield v. Fisher, 292 P. 813, 135 Or. 180, 294 P. 461, 73 A.L.R. 721 (1931)	18
Railroad Retirement Board v. Alton Railroad Co, 295 U.S. 330, 55 S. Ct. 758 1935)	18
Murdock v. Pennsylvania, 319 U.S. 105 at 113 (1943)	18
James v. United States, 366 US 213, p. 213, 6L Ed 2d 246 (1961)	19
Central Illinois Public Service Co. v. United States, 435 U.S. 21 (1978)	19
South Carolina v. Baker, 485 U.S. 505 (1988)	19

The Antelope, 23 U.S. 66, 120 (1825)

Here it is very specific in stating that no one can deprive another of the fruits of his own labor:

"Every man has a natural right to the fruits of his own labor, as generally admitted; and no other person can rightfully deprive him of those fruits, and appropriate them at his will." (The Antelope, 23 U.S. 66, 120, 1825)

Citizens' Savings & Loan Ass'n v. City of Topeka, 87 U.S. 655 (1874)

This decision delivered a very powerful message that covers what is happening in this nation today – robbery by government(s):

"...It must be conceded that there are such rights in every free government beyond the control of the State. A government which recognized no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism. It is true it is despotism of the many, of the majority, if you choose to call it so, but it is nonetheless despotism. It may well be doubted if a man is to hold all that he is accustomed to call his own, all in which he has placed his happiness, and the security of which is essential to that happiness, under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many. [87 U.S. 655, 663] The theory of our governments, State and National, is opposed to the deposit of unlimited power anywhere. The executive, the legislative, and the judicial branches of these governments are all of limited and defined powers.

"Of all the powers conferred upon government that of taxation is most liable to abuse. Given a purpose or object for which taxation may be lawfully used and the extent of its exercise is in its very nature unlimited. It is true that express limitation on the amount of tax to levied or the things to be taxed may be imposed by constitution or statute, but in most instances for which taxes are levied, as the support of government, the prosecution of war, the National defence, any limitation is unsafe. The entire resources of the people should in some instances be at the disposal of the government. "

The power to tax is, therefore, the strongest, the most pervading of all the powers of government, reaching directly or indirectly to all classes of the people. It was said by Chief Justice Marshall, in the case of McCulloch v. The State of Maryland, that the power to tax is the power to destroy. A striking instance of the truth of the proposition is seen in the fact that the existing tax of ten per cent imposed by the United States on the circulation of all other banks than the National banks, drove out of existence every [87 U.S. 655, 664] State bank of circulation within a year or two after its passage. This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited

wealth and prosperity to the other, if there is no implied limitation of the uses for which the power may be exercised.

To lay with one hand the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms.

Nor is it taxation. A 'tax,' says Webster's Dictionary, 'is a rate or sum of money assessed on the person or property of a citizen by government for the use of the nation or state.' 'Taxes are burdens or charges imposed by the legislature upon persons or property to raise money for public purposes.' [6](#)

Coulter, J., in Northern Liberties v. St. John's Church, says, very forcibly, 'I think the common mind has everywhere taken in the understanding that taxes are a public imposition, levied by authority of the government for the purpose of carrying on the government in all its machinery and operations-that they are imposed for a public purpose.'

We have established, we think, beyond cavil that there can be no lawful tax which is not laid for a public purpose. It may not be easy to draw the line in all cases so as to decide what is a public purpose in this sense and what is not.

It is undoubtedly the duty of the legislature which imposes or authorizes municipalities to impose a tax to see that it is not to be used for purposes of private interest instead of a public use, and the courts can only be justified in interposing when a violation of this principle is clear and the [\[87 U.S. 655, 665\]](#) reason for interference cogent. And in deciding whether, in the given case, the object for which the taxes are assessed falls upon the one side or the other of this line, they must be governed mainly by the course and usage of the government, the objects for which taxes have been customarily and by long course of legislation levied, what objects or purposes have been considered necessary to the support and for the proper use of the government, whether State or municipal. Whatever lawfully pertains to this and is sanctioned by time and the acquiescence of the people may well be held to belong to the public use, and proper for the maintenance of good government, though this may not be the only criterion of rightful taxation.

Butchers' Union Co. v. Crescent City Co., 111 U.S. 746 (1884)

This decision is powerful in what it clearly states. The concurring opinion of Justice Fields, using the words of Adam Smith from "Wealth of Nations":

As in our intercourse with our fellow-men certain principles of morality are assumed to exist, without which society would be impossible, so certain inherent rights lie at the foundation of all action, and upon a recognition of them alone can free institutions be maintained. These inherent rights have never been more happily expressed than in the declaration of independence, that new evangel of liberty to the people: 'We hold these truths to be self-evident'-that is, so plain that their truth is recognized upon their mere statement-'that all men are [\[111 U.S. 746, 757\]](#) endowed'-not by edicts of emperors, or decrees of parliament, or acts of congress, but 'by their Creator with certain inalienable rights.'-that is, rights which cannot be bartered away, or given away, or taken away, except in punishment of crime-'and that among these are life, liberty, and the pursuit of happiness; and to secure these'-not grant them, but secure them- 'governments are instituted among men, deriving their just powers from the consent of the governed.' Among these inalienable rights, as proclaimed in that great document, is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give to them their highest enjoyment. The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all communities from time immemorial, must therefore be free in this country to all alike upon the same conditions. The right to pursue them, without let or hinderance, except that

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which is applied to all persons of the same age, sex, and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright. **It has been well said that 'the property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable.** The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property. It is a manifest encroachment upon the just liberty both of the workman and of those who might be disposed to employ him. As it hinders the one from working at what he thinks proper, so it hinders the others from employing whom they think proper.' Smith, Wealth Nat. bk. 1, c. 10.

Justice Bradley stated the following in his opinion:

They established and declared one of the inalienable rights of freemen which our ancestors brought with them to this country. **The right to follow any of the common occupations of life is an inalienable right, it was formulated as such under the phrase 'pursuit of happiness' in the declaration of independence, which commenced with the fundamental proposition that 'all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.'** This right is a large ingredient in the civil liberty of the citizen. To deny it to all but a few favored individuals, by investing the latter with a monopoly, is to invade one of the fundamental privileges of the citizen

Flint v. Stone Tracy Co., 220 U.S. 107 (1911)

In this decision the meaning of "excises" is defined:

"Excises are taxes laid upon the manufacture, sale or consumption of commodities within the country, upon licenses to pursue certain occupations and upon corporate privileges...the requirement to pay such taxes involves the exercise of [220 U.S. 107, 152] privileges, and the element of absolute and unavoidable demand is lacking...Conceding the power of Congress to tax the business activities of private corporations. The tax must be measured by some standard...**It is therefore well settled by the decisions of this court that when the sovereign authority has exercised the right to tax a legitimate subject of taxation as an exercise of a franchise or privilege, it is no objection that the measure of taxation is found in the income produced in part from property which of itself considered is nontaxable.**"

" .. the act of Congress approved August 5, 1909, known as 'the corporation tax' .. subject to pay annually a special **excise tax** with respect to the **carrying on and doing business by such corporation** ... of the entire net **income ... 'from all sources;'** and the return to be made to the collector of internal revenue ... the act, as resting **upon the doing of business** ... It is therefore well settled by the decisions of this court ... that **the measure of taxation is found in the income ... being the income of the corporation from all sources** ... " - *Flint v. Stone Tracy Co.*, 220 U.S. 107, 142, 144, 145-7, 165 (1911)

Stratton's Independence, LTD. v. Howbert, 231 US 399, 414 (1913)

This case takes on importance in that it states what the income tax law of 1894 was, and the reason it was ruled unconstitutional. It also stated what the corporation tax act of 1909 was – an excise tax on the conduct of business in a corporate capacity:

"As has been repeatedly remarked, the corporation tax act of 1909 was not intended to be and is not, in any proper sense, an income tax law. This court had decided in the Pollock case that the income tax law of 1894 amounted in effect to a direct tax upon property, and was invalid because not apportioned according to populations, as prescribed by the Constitution. The act of 1909 avoided this difficulty by imposing not an income tax [direct], but an excise

tax [indirect] upon the conduct of business in a corporate capacity, measuring however, the amount of tax by the income of the corporation".
Stratton's Independence, LTD. v. Howbert, 231 US 399, 414 (1913)

Brushaber v. Union Pacific R. Co., 240 U.S. 1 (1916)

In their misinformation, the IRS likes to refer to the Supreme Court decision in **Brushaber v. Union Pacific R.R. Co., 240 US 1 (1916)** by stating that the court decision was the same as the amendment reads. **Nothing is further from the truth. The decision of the court indicates that the wording of the amendment was stated on page 17 of the decision immediately following the statement** "This is the text of the Amendment:" They merely repeated it before rendering their findings. Page 17 is shown on page 22. It is on page 19 of the decision (refer to page 23) the court stated the true purpose of the amendment. The following cites pertain to the Brushaber decision. The pages of the decision that these cites are located on (11, 17, and 19) are shown on pages 21, 22 and 23 respectively:

"If acceded to, would cause *one provision* of the Constitution *to destroy another*: that is, they would result in bringing the provisions of the Amendment exempting a direct tax from apportionment into *irreconcilable conflict* with the general requirement that all direct taxes be apportioned. Moreover, the tax authorized by the Amendment, being direct, would not come under the rule of uniformity applicable under the Constitution to other than direct taxes, and thus it would come to pass that the result of the Amendment would be to authorize a particular direct tax not subject either to apportionment or to the rule of uniformity...This result ...would **create radical and destructive changes in our constitutional system and multiply confusion.**"
(Emphasis added) – Page 11

"The contention that the Amendment treats a tax on income as a direct tax although it is relieved from apportionment and is necessarily therefore not subject to the rule of uniformity as such rule only applies to taxes which are not direct, thus destroying the two great classifications which have been recognized and enforced from the beginning, **is also wholly without foundation**" –
(Emphasis added) Page 17

"It is clear on the face of this text (the 16th Amendment) that it does not purport to confer power to levy income taxes in a generic sense – **an authority already possessed** and never questioned – or to limit and distinguish between one kind of income taxes and another, but that the **whole purpose of the Amendment was to relieve all income taxes when imposed from apportionment from a consideration of the sources whence the income was derived.**" -
(Emphasis added) Page 17

Moreover in addition the conclusion reached in the Pollock Case did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, **but on the contrary recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such** unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct taxation was adopted to prevent, in which case the duty would arise to disregard form and consider substance alone and hence subject the tax to the regulation as to apportionment which otherwise as an excise would not apply to it. Nothing could serve to make this clearer than to recall that in the Pollock Case in so far as the law taxed incomes from other classes of property than real estate and invested personal property, that is, income from "professions, trades, employments, or vocations" (**158 U.S. 637**), its validity was recognized; [*27] indeed it was expressly declared that no dispute was made upon that subject and attention was called to the fact that taxes on such income had been sustained as excise taxes in the past. **Id., p. 635. The whole law was however declared unconstitutional on the ground that to permit it to thus operate would relieve real estate and invested personal property from taxation and "would leave the burden of the tax to be borne by professions, trades, employments, or vocations; and in that way what was intended as a tax on capital would remain, in substance, a tax on occupations and labor," (Id., p. 637) a result which it was held could not have been contemplated by Congress.** - (Emphasis added) Page 17

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“Indeed, from another point of view, the Amendment demonstrates that no such purpose was intended, and on the contrary shows that it was drawn with the object of maintaining the limitations of the Constitution and harmonizing their operation. We say this because it is to be observed that although from the date of the Hylton Case, because of statements made in the opinions in that case, it had come to be accepted that direct taxes in the constitutional sense were confined to taxes levied directly on real estate because of its ownership, the Amendment contains nothing repudiation or challenging the ruling in the Pollock Case that the word 'direct' had a broader significance, since it embraced also taxes levied directly on personal property because of its ownership, and therefore the Amendment at least impliedly makes such wider significance a part of the Constitution, -a condition which clearly demonstrates that the purpose was not to change the existing interpretation except to the extent necessary to accomplish the result intended; that is, **the prevention of the resort to the sources from which taxed income was derived in order to cause a direct tax on the income to be a direct tax on the source itself, and thereby to take an income tax out of the class of excises, duties, and imposts, and place it in the class of direct taxes.**” – (Emphasis added) page 19

Notice that it states, “the prevention of the resort to the sources from which taxed income was derived in order to cause a direct tax on the income to be a direct tax on the source itself”. In other words, the source is isolated from taxation.

“ ... the **income tax** provisions of the tarrif act of October 3, 1913 .. it was not levied directly on property because of its ownership, but rather **on its use**, and **was therefore an excise, duty, or impost ... taxation on income was in its nature an excise entitled to be enforced as such** ... ” - *Brushaber v. Union Pacific R. Co.*, 240 U.S. 1, 9, 14, 17 (1916)

That congress recognized this decision is made evident in the following:

“The Supreme Court has held that the sixteenth amendment did not extend the taxing power of the United States to new or excepted subjects but merely removed the necessity which might otherwise exist for an apportionment among the states of taxes laid on income whether it be derived from one source or another. Therefore, the amendment made it possible to bring investment income within the scope of a general income-tax law but did not change the character of the tax. It is still fundamentally an excise or duty with respect to the privilege of carrying on any activity or owning any property that produces income.” - From the Congressional Record-House, March 27, 1943, p.2580.

The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax: it is the basis for determining the amount of tax.

And:

“If by professional effort any person should earn a given amount annually and spends only half of it, he saves the other half, the one half he saved in turn becomes principle, the principle is property at the end of any given period. That savings is a source and any income derived from it is an income from property, not an income from the earning capacity on the personal ability of the taxpayer” - Congressional Record, Aug.28, 1913, page 3842 - 3845.

House Report 1337 dated March 9, 1954 and Senate Report 1622 dated June 15, 1954 both serve to prove that congress was, and is aware of this. These reports will be covered in the definition of “income”, in the chapter on Definitions.

You will not get your representatives in congress to admit to this. Try it. There is much more misinformation purposely put out by the federal government but this one is the foundation for the others in regards to taxation.

At first reading, it would appear that it did indeed give new taxing power, but a closer examination reveals that it did not. Notice that the word “incomes” pertains to a derived value from any “source”, therefore clearly separating the source from the derived income. The fact that it is “without regard to any census or

enumeration” places it in the category of an indirect, or excise tax. The Supreme Court has always stated that the words in the laws indicate what the laws require, and that no word can be rendered superfluous. In light of this, the word "source" maintains its distinction and viability under the Federal Rules of Statutory Construction:

As in all cases involving statutory construction, "our starting point must be the language employed by Congress," *Reiter v Sonotone Corp.*, 442 US 330, 337, 60 L Ed 2d 931, 99 S Ct. 2326 (1979), and we assume "that the legislative purpose is expressed by the ordinary meaning of the words used." *Richards v United States*, 369 US 1, 9, 7 L Ed 2d 492, 82 S Ct. 585 (1962).

"We are not at liberty to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word. As early as in Bacon's Abridgment, § 2, it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word, shall be superfluous, void, or insignificant.' This rule has been repeated innumerable times." Justice Strong, *United States v. Lexington Mill & E. Co.*, 232 US 399, pp. 409. (1914)

Stanton v. Baltic Mining Co.- 241 U.S. 103, 112 (1916)

"... it manifestly disregards the fact that by the previous ruling it was settled that the provisions of the 16th Amendment conferred no new power of taxation.. "

Peck V. Lowe, 247 U.S. 165, 173 (1918)

"The Sixteenth Amendment, although referred to in argument. has no real bearing and may be put out of view. As pointed out in recent decisions, it does not extend the taxing power to new or excepted subjects,..."

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

In this case, the following was stated:

In order, therefore, that the clauses cited from article 1 of the Constitution may have proper force and effect, save only as modified by the amendment, and that the latter also may have proper effect, it becomes essential to distinguish between what is and what is not 'income,' as the term is there used, and to apply the distinction, as cases arise, 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 whose limitations alone that power can be lawfully exercised.

While discussing this case, the Court had to determine exactly what "income" was. The Court stated:

After examining dictionaries in common use (Bouv. L. D.; Standard Dict.; Webster's Internat. Dict.; Century Dict.), we find little to add to the succinct definition adopted in two cases arising under the Corporation Tax Act of 1909 (*Stratton's Independence v. Howbert*, 231 U.S. 399, 415, 34 S. Sup. Ct. 136, 140 [58 L. Ed. 285]; *Doyle v. Mitchell Bros. Co.*, 247 U.S. 179, 185, 38 S. Sup. Ct. 467, 469 [62 L. Ed. 1054]), 'Income may be defined as the gain derived from capital, from labor, or from both combined,' provided it be understood to include profit gained through a sale or conversion of capital assets, to which it was applied in the *Doyle* Case, 247 U.S. 183, 185, 38 S. Sup. Ct. 467, 469 (62 L. Ed. 1054).

" ... the government, in a variety of forms, runs the fundamental error already mentioned a failure to appraise correctly the force of the term 'income' as used in the Sixteenth Amendment ... " (-U.S. Supreme Court); *Eisner v. Macomber*, 252 U.S. 189, 213 (1920)

Regarding the definition of income, Justice Mahlon Pitney declared that **"Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised."**

Federal Government Misinformation

Truax v. Corrigan, 257 US 312, 331, 338 (1921)

This case delivered a powerful message about government:

"The Due Process of Law commandment in the Fourteenth Amendment is a codification of the rule prescribed in Deuteronomy that the King shall read and keep within the Law, and deviate neither to The Right Nor to The Left, **nor shall he commit theft**, nor murder. "The due process clause requires that every man shall have ... the benefit of the general law, ... so that every citizen **shall hold his life, liberty and property and immunities under the protection of the general rules** which govern society. It of course tends to secure equality...." Truax v. Corrigan, 257 US 312, 331, 338 (1921)."

"The commandment in the Fourteenth Amendment that the People in each state must give to every "person" within their jurisdiction the "equal protection of the laws," is a codification of the Ancient Hebrew "One Law" (for citizens and strangers alike) principle and a codification of Jesus' Golden Rule (i.e., you and your neighbors should be treated equally by all humans administering the power of the sword). "It sought equality of treatment of all persons ... similarly situated. **It means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances.**" Truax v. Corrigan, 257 US 312, 331, 338 (1921).

Bowers v. Kerbaugh-Empire Co., 271 U.S. 170, 174 (1926)

In this case, the court again defined "income":

"The Sixteenth Amendment declares that Congress shall have power to levy and collect taxes on income, "from whatever source derived" without apportionment among the several states, and without regard to any census or enumeration. **It was not the purpose or effect of that amendment to bring any new subject within the taxing power.**"

Redfield v. Fisher, 292 P. 813, 135 Or. 180, 294 P. 461, 73 A.L.R. 721 (1931)

In this case, the following is clearly stated:

"The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; but the individuals' rights to live and own property are natural rights for the enjoyment of which an *excise cannot* be imposed."

Railroad Retirement Board v. Alton Railroad Co, 295 U.S. 330, 55 S. Ct. 758 1935)

In this case, the Supreme Court limited the federal power to enact mandatory acts:

"The catalogue of means and actions which might be imposed upon an employer in any business, tending to the satisfaction and comfort of his employees, seems endless. **Provision for free medical assistance, nursing, clothing, food, housing, and education of children**, and a hundred other matters might with equal propriety be proposed as tending to relieve the employee of mental strain and worry. **Can it fairly be said that the power of Congress to regulate interstate commerce extends to the prescription of any or all of these things?** It is not apparent that they are really and essentially related solely to the social welfare of the worker and therefore remote from any regulation of commerce as such? We think the answer is plain. These matters obviously lie outside the orbit of congressional power". - **Railroad Retirement Board v. Alton Railroad Co, 295 U.S. 330, 55 S. Ct. 758 1935)**,

Murdock v. Pennsylvania, 319 U.S. 105 at 113 (1943)

Note the emphasized text, for it states very clearly that labor in an unregulated occupation is a, fundamental right and not a taxable privilege:

It is contended, however, that the fact that the license tax can suppress or control this activity is unim- [319 U.S. 105, 113] portant if it does not do so. But that is to disregard the nature of this tax. **It is a license tax-a flat tax imposed on the exercise of a privilege granted by the Bill of Rights. A state may not impose a charge for the enjoyment of a right granted by the federal constitution. Thus, it may not exact a license tax for the privilege of carrying on interstate commerce** (McGoldrick v. Berwind-White Co., 309 U.S. 33, 56-58, 60 S.Ct. 388, 397, 398, 128 A.L.R. 876), **although it may tax the property used in, or the income derived from, that commerce, so long as those taxes are not discriminatory.** Id., 309 U.S. at page 47, 60 S.Ct. at page 392, 128 A.L.R. 876 and cases cited. **A license tax applied to activities guaranteed by the First Amendment would have the same destructive effect. It is true that the First Amendment, like the commerce clause, draws no distinction between license taxes, fixed sum taxes, and other kinds of taxes. But that is no reason why we should shut our eyes to the nature of the tax and its destructive influence. The power to impose a license tax on the exercise of these freedoms is indeed as potent as the power of censorship which this Court has repeatedly struck down.** Lovell v. Griffin, 303 U.S. 444, 58 S.Ct. 666; Schneider v. State, supra; Cantwell v. Connecticut, 310 U.S. 296, 306, 60 S.Ct. 900, 904, 128 A.L.R. 1352; Largent v. Texas, 318 U.S. 418, 63 S.Ct. 667, 87 L.Ed. --; Jamison v. Texas, supra.

James v. United States, 366 US 213, p. 213, 6L Ed 2d 246 (1961)

This decision stated:

"...the Sixteenth Amendment, which grants Congress the power "to lay and collect taxes on incomes, from whatever source derived..." Helvering v. Clifford, 309 US 331, 334; Douglas v. Willcuts, 296 US 1,9. It has long been settled that Congress' broad statutory definitions of taxable income were intended "to use the full measure of taxing power." **The Sixteenth Amendment is to be taken as written and is not to be extended beyond the meaning clearly indicated by the language used.**" Edwards v. Cuba R. Co. 268 US 628, 631 [From separate opinion by Whittaker, Black, and Douglas, JJ.] (Emphasis added)"

Central Illinois Public Service Co. v. United States, 435 U.S. 21 (1978)

In this decision it is very plainly pointed out that "wages", as used in the common meaning of the word and "income" were entirely different in meaning:

"Decided cases have made the distinction between wages and income and have refused to equate the two in withholding or similar controversies. Peoples Life Ins. Co. v. United States, 179 Ct. Cl. 318, 332, 373 F.2d 924, 932 (1967); Humble Pipe Line Co. v. United States, 194 Ct. Cl. 944, 950, 442 F.2d 1353, 1356 (1971); Humble Oil & Refining Co. v. United States, 194 Ct. Cl. 920, 442 F.2d 1362 (1971); Stubbs, Overbeck & Associates v. United States, 445 F.2d 1142 (CA5 1971); Royster Co. v. United States, 479 F.2d, at 390; Acacia Mutual Life Ins. Co. v. United States, 272 F. Supp. 188 (Md. 1967)." - **Central Illinois Public Service Co. v. United States, 435 U.S. 21.**

South Carolina v. Baker, 485 U.S. 505 (1988)

This case reaffirmed the Brushaber decision while reversing the Pollock decision in part:

"The legislative history merely shows that the words "from whatever source derived" of the Sixteenth Amendment were not affirmatively intended to authorize Congress to tax state bond interest **or to have any other effect on which incomes were subject to federal taxation**, and that **the sole purpose of the Sixteenth Amendment was to remove the apportionment requirement for whichever incomes were otherwise taxable.**" - [South Carolina v. Baker, 485 U.S. 505 (1988)]

Miscellaneous Citations

Federal Government Misinformation

"The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the state or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the state, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the state, and can only be taken from him by due process of law, and in accordance with the Constitution. Among his rights are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon their rights. " - Hale v. Henkel, 201 U.S. 43 (1906)

Conclusion

From the cases covered in this chapter, it was clearly shown that:

- The income tax is an excise tax,
- Excises are taxes laid upon the manufacture, sale or consumption of commodities within the country, upon licenses to pursue certain occupations and upon corporate privileges,
- The individual, unlike the corporation, cannot be taxed for the mere privilege of existing,
- Provision for free medical assistance, nursing, clothing, food, housing, and education of children are not in the scope of federal powers,
- The individuals' rights to live and own property are natural rights for the enjoyment of which an **excise cannot** be imposed.

The following decisions, as covered above show without doubt that the IRS fails to recognize or obey the decisions of the Supreme Court. It is like them slapping the court in the face:

- Butchers' Union Co. v. Crescent City Co., 111 U.S. 746 (1884) on page 13,
- Brushaber v. Union Pacific R. Co., 240 U.S. 1 (1916) on page 15,
- Redfield v. Fisher, 292 P. 813, 135 Or. 180, 294 P. 461, 73 A.L.R. 721 (1931) on page 18,
- Railroad Retirement Board v. Alton Railroad Co, 295 U.S. 330, 55 S. Ct. 758 1935) on page 18

In that the actions of the federal and state governments in forcing exactions (takings) from the property of our labor, the following cite states the truth, that our federal and most state governments flagrantly violate not only the fundamental law of the constitution and those of statutes as they reek lies, theft, destruction and false imprisonment upon the people but that they violate the rules in the Holy Scriptures. They look to both, left and right as they commit this theft of property. A theft that has driven many to their death through suicide, or in seeking revenge against the wrongdoers. As to the federal courts, they are vile and filthy with corruption and deny due process as they assist the U.S. Attorneys in reaching decisions in favor of the wrongdoers to falsely punish the accused. These same attorneys that fail to heed an admonishment of the court; "The United States Attorney... is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer... It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." [**Berger v. United States**, 295 U.S. 78 (1935)]

The Constitutions are not the sources of our personal rights. Our theory of government is that the people [Citizens of the several states], in full possession of inherent, inalienable rights, have formed the government in order to protect these [Natural] rights, and have incorporated them into the organic law as a shield against unwarrantable interference by any department of governments. -- **16 CJS § 199**

Every [state] citizen and freeman is endowed with certain rights and privileges, to enjoy which no written law or statute is required. These are fundamental or natural rights, recognized among all free people. -- **United States v. Morris**, 125 F 322, 325

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ever, that the confusion is not inherent, but rather arises from the conclusion that the Sixteenth Amendment provides for a hitherto unknown power of taxation, that is, a power to levy an income tax which although direct should not be subject to the regulation of apportionment applicable to all other direct taxes. And the far-reaching effect of this erroneous assumption will be made clear by generalizing the many contentions advanced in argument to support it, as follows: (a) The Amendment authorizes only a particular character of direct tax without apportionment, and therefore if a tax is levied under its assumed authority which does not partake of the characteristics exacted by the Amendment, it is outside of the Amendment and is void as a direct tax in the general constitutional sense because not apportioned. (b) As the Amendment authorizes a tax only upon incomes "from whatever source derived," the exclusion from taxation of some income of designated persons and classes is not authorized and hence the constitutionality of the law must be tested by the general provisions of the Constitution as to taxation, and thus again the tax is void for want of apportionment. (c) As the right to tax "incomes from whatever source derived" for which the Amendment provides must be considered as exacting intrinsic uniformity, therefore no tax comes under the authority of the Amendment not conforming to such standard, and hence all the provisions of the assailed statute must once more be tested solely under the general and preëxisting provisions of the Constitution, causing the statute again to be void in the absence of apportionment. (d) As the power conferred by the Amendment is new and prospective, the attempt in the statute to make its provisions retroactively apply is void because so far as the retroactive period is concerned, it is governed by the preëxisting constitutional requirement as to apportionment.

But it clearly results that the proposition and the con-

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of direct taxes on property, but on the contrary recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct taxation was adopted to prevent, in which case the duty would arise to disregard form and consider substance alone and hence subject the tax to the regulation as to apportionment which otherwise as an excise would not apply to it. Nothing could serve to make this clearer than to recall that in the *Pollock Case* in so far as the law taxed incomes from other classes of property than real estate and invested personal property, that is, income from "professions, trades, employments, or vocations" (158 U. S. 637), its validity was recognized; indeed it was expressly declared that no dispute was made upon that subject and attention was called to the fact that taxes on such income had been sustained as excise taxes in the past. *Id.*, p. 635. The whole law was however declared unconstitutional on the ground that to permit it to thus operate would relieve real estate and invested personal property from taxation and "would leave the burden of the tax to be borne by professions, trades, employments, or vocations; and in that way what was intended as a tax on capital would remain, in substance, a tax on occupations and labor," (*Id.*, p. 637) a result which it was held could not have been contemplated by Congress.

This is the text of the 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."

It is clear on the face of this text that it does not purport to confer power to levy income taxes in a generic sense—an authority already possessed and never ques-

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forbids the application to such taxes of the rule applied in the *Pollock Case* by which alone such taxes were removed from the great class of excises, duties and imposts subject to the rule of uniformity and were placed under the other or direct class. This must be unless it can be said that although the Constitution as a result of the Amendment in express terms excludes the criterion of source of income, that criterion yet remains for the purpose of destroying the classifications of the Constitution by taking an excise out of the class to which it belongs and transferring it to a class in which it cannot be placed consistently with the requirements of the Constitution. Indeed, from another point of view, the Amendment demonstrates that no such purpose was intended and on the contrary shows that it was drawn with the object of maintaining the limitations of the Constitution and harmonizing their operation. We say this because it is to be observed that although from the date of the *Hylton Case* because of statements made in the opinions in that case it had come to be accepted that direct taxes in the constitutional sense were confined to taxes levied directly on real estate because of its ownership, the Amendment contains nothing repudiating or challenging the ruling in the *Pollock Case* that the word direct had a broader significance since it embraced also taxes levied directly on personal property because of its ownership, and therefore the Amendment at least impliedly makes such wider significance a part of the Constitution—a condition which clearly demonstrates that the purpose was not to change the existing interpretation except to the extent necessary to accomplish the result intended, that is, the prevention of the resort to the sources from which a taxed income was derived in order to cause a direct tax on the income to be a direct tax on the source itself and thereby to take an income tax out of the class of excises, duties and imposts and place it in the class of direct taxes.

The Documentation System of Federal Law

Most everyone understands that it is congress that makes the laws of the nation; a right constitutionally denied other branches of government or agencies thereof. Even the Judicial Branch cannot constitutionally make law, though it has managed to sidestep this fact too frequently. What most do not realize is what happens to a law once it is passed by congress. It is this shortcoming in knowledge that will be addressed in this chapter.

One of the important steps in the enactment of a valid law is the requirement that it shall be made known to the people who are to be bound by it. There would be no justice if the state were to hold its people responsible for their conduct before it made known to them the unlawfulness of such behavior. In practice, our laws are published immediately upon their enactment so that the public will be aware of them. The Supreme Court has stated the following in *Federal Crop Ins. Corporation v. Merrill*, 332 U.S. 380 (1947)

Just as everyone is charged with knowledge of the United States Statutes at Large, [332 U.S. 380 , 385] Congress has provided that the appearance of rules and regulations in the Federal Register gives legal notice of their contents. 49 Stat. 502, 44 U. S.C. 307, 44 U.S.C.A. 307.

'Men must turn square corners when they deal with the Government,' does not reflect a callous outlook. It merely expresses the duty of all courts to observe the conditions defined by Congress for charging the public treasury. The 'terms and conditions' defined by the Corporation, under authority of Congress, for creating liability on the part of the Government preclude recovery for the loss of the reseeded wheat no matter with what good reason the respondents thought they had obtained insurance from the Government. Indeed, not only do the Wheat Regulations limit the liability of the Government as if they had been enacted by Congress directly, but they were in fact incorporated by reference in the application, as specifically required by the Regulations. 3 [332 U.S. 380 , 386]

Therefore, this chapter is extremely important.

Evolution of the Titles of Code and their Regulations

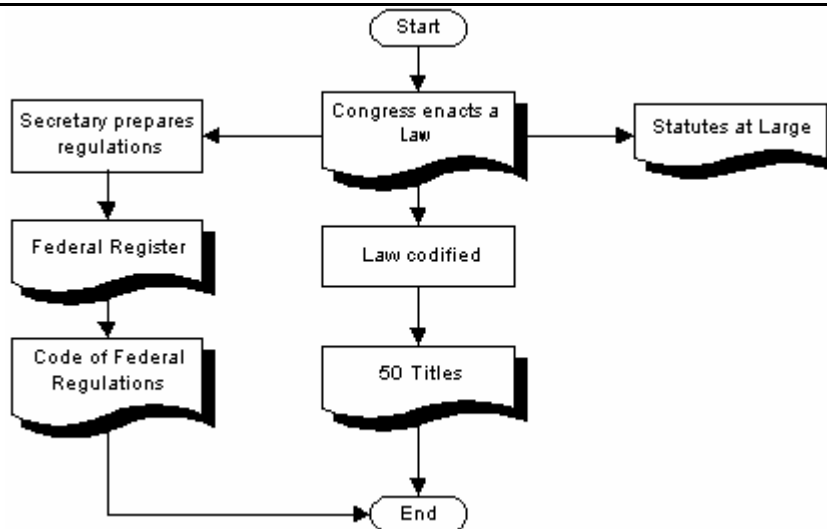
The enactment of laws, their codification into the various titles, and the enactment of regulations for their enforcement are illustrated in the figure on page 25 and covered in the paragraphs that follow.

Passage of Law

When both, the Senate and House of Representative agree to a bill, it is sent to the President for approval. If the President approves a bill, or allows it to become law without signing it, the original enrolled bill is sent from the White House to the Archivist of the United States for publication. If both Houses pass a bill over the objections of the President, the body that last overrides the veto transmits it. It is then assigned a public law number, and paginated for the Statutes at Large volume covering that session of Congress. The public and private law numbers run in sequence starting anew at the beginning of each Congress and are prefixed for ready identification by the number of the Congress. For example, the first public law of the 106th Congress is designated Public Law 106-1 and the first private law of the 106th Congress is designated Private Law 106-1. Subsequent laws of this Congress also will contain the same prefix designator.

Slip Laws

The first official publication of the statute is in the form generally known as the "slip law". In this form, each law is published separately as an unbound pamphlet. The heading indicates the public or private law number, the date of approval, and the bill number. The heading of a slip law for a public law also indicates the United States Statutes at Large citation. If the statute has been passed over the veto of the President, or has become law without the President's signature because he did not return it with objections, an appropriate statement is inserted instead of the usual notation of approval.



Evolution of the Titles of Code and their Regulations

The Office of the Federal Register, National Archives and Records Administration prepares the slip laws and provides marginal editorial notes giving the citations to laws mentioned in the text and other explanatory details. The marginal notes also give the United States Code classifications, enabling the reader immediately to determine where the statute will appear in the Code. Each slip law also includes an informative guide to the legislative history of the law consisting of the committee report number, the name of the committee in each House, as well as the date of consideration and passage in each House, with a reference to the Congressional Record by volume, year, and date. A reference to presidential statements relating to the approval of a bill or the veto of a bill when the veto was overridden and the bill becomes law is included in the legislative history as a citation to the Weekly Compilation of Presidential Documents.

Copies of the slip laws are delivered to the document rooms of both Houses where they are available to officials and the public. They may also be obtained by annual subscription or individual purchase from the Government Printing Office and are available in electronic form. Section 113 of title 1 of the United States Code provides that slip laws are competent evidence in all the federal and state courts, tribunals, and public offices.

Statutes at Large

The United States Statutes at Large, prepared by the Office of the Federal Register, National Archives and Records Administration, provide a permanent collection of the laws of each session of Congress in bound volumes. The latest volume containing the laws of the first session of the 105th Congress is number 111 in the series. Each volume contains a complete index and a table of contents. A legislative history appears at the end of each law. There are extensive marginal notes referring to laws in earlier volumes and to earlier and later matters in the same volume.

Under the provisions of a statute originally enacted in 1895, these volumes are legal evidence of the laws contained in them and will be accepted as proof of those laws in any court in the United States.

The Statutes at Large are a chronological arrangement of the laws exactly as they have been enacted. There is no attempt to arrange the laws according to their subject matter or to show the present status of an earlier law that has been amended on one or more occasions. The code of laws serves that purpose.

Black's Law Dictionary, sixth Edition defines the Statute at Large as follows:

The Documentation System of Federal Law

Statutes at large. An official compilation of the acts and resolutions of each session of Congress published by the Office of the Federal Register in the National Archives and Records Service. It consists of two parts, the first comprising public acts and joint resolutions, the second, private acts and joint resolutions, concurrent resolutions, treatises, proposed and ratified amendments to Constitution, and Presidential proclamations. The arrangement is currently by Public Law number, and by chapter number in pre-1951 volumes. This is the official print of the law for citation purposes where titles of the United States Code have not been enacted into positive law.

Note the sentence "This is the official print of the law for citation purposes where titles of the United States Code have not been enacted into positive law." This is very important for Title 26 – Internal Revenue Code (IRC) **has not been enacted into positive law**. In the following paragraphs what is stated in *United States v. Welden*, 377 U.S. 95 (1964) must be kept in mind. This case was an Appeal From The United States District Court For The District Of Massachusetts. No. 235. Argued February 27, 1964. Decided April 20, 1964:

"[Footnote 4] This Act, as codified, appears at 15 U.S.C. 32. The codification, which has not been enacted into positive law, eliminates the appropriation provision of the Act which by its terms was of no effect after June 30, 1904. The codification makes no other change. 61 Stat. 638, 1 U.S.C. 204 (a), declares that the United States Code establishes "prima facie the laws of the United States, general and permanent in their nature Provided, however, that whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts" This Court, in construing that statute has said that "the very meaning of 'prima facie' is that the Code cannot prevail over the Statutes at Large when the two are inconsistent." *Stephan v. United States*, 319 U.S. 423, 426 . Even where Congress [377 U.S. 95, 99] has enacted a codification into positive law, this Court has said that the "change of arrangement, which placed portions of what was originally a single section in two separated sections cannot be regarded as altering the scope and purpose of the enactment. For it will not be inferred that Congress, in revising and consolidating the laws, intended to change their effect unless such intention is clearly expressed." *Fourco Glass Co. v. Transmirra Corp.*, 353 U.S. 222, 227, quoting *Anderson v. Pacific Coast S. S. Co.*, 225 U.S. 187, 198 -199.

"Certainly where, as here, the "change of arrangement" was made by a codifier without the approval of Congress, it should be given no weight. "If construction is necessary, recourse must be had to the original statutes themselves." *Murrell v. Western Union Tel. Co.*, 160 F.2d 787, 788. Accordingly, in order to construe the immunity provision of the Appropriations Act of February 25, 1903, we must read it in the context of the entire Act, rather than in the context of the "arrangement" selected by the codifier." (emphasis added) - *United States v. Welden*, 377 U.S. 95 (1964)

Codification of the Laws

The United States Code contains a consolidation and codification of the general and permanent laws of the United States arranged according to subject matter under 50 title headings. It sets out the status of the laws, as amended, without repeating all the language of the amendatory acts except where necessary for that purpose. Its purpose is to present the laws in a concise and usable form without requiring recourse to the many volumes of the Statutes at Large containing the individual amendments.

The Code is prepared by the Law Revision Counsel of the House of Representatives. New editions are published every six years and cumulative supplements are published after the conclusion of each regular session of the Congress. The Code is also available in electronic form for computer access.

Of the 50 titles, only 23 have been enacted into positive (statutory) law. These titles are 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 36, 37, 38, 39, 44, 46, and 49. When a title of the Code was enacted into positive law, the text of the title became legal evidence of the law. Titles that have not been enacted into positive law are only *prima facie* evidence of the law. In that case, the Statutes at Large still govern.

Regulations

Here is where the knowledge of the average American fails. They do not know that the laws as passed by congress are enforced through regulations. Once a law is passed by congress it is sent to the agency that will have enforcement responsibility. Those concerning taxation will go to the Department of the Treasury where the Secretary has the delegated authority to make regulations (rules). The matter of having delegated authority is important for everything accomplished within government is by delegated authority. The Supreme Court has said:

"We have no officers in this government from the President down to the most subordinate agent, who does not hold office under the law, with prescribed duties and limited authority. And while some of these, as the President, the Legislature and the Judiciary, exercise powers in some sense left to the more general definitions necessarily incident to fundamental law found in the Constitution, the larger portion of them are the creation of statutory law, with duties and powers prescribed and limited by that law," - *Pierce v. United States* ("The Floyd Acceptances"), 7 Wall. (74 U.S.) 666 (1869): 7 Wall, at 677-678.

Types of Regulations

In *Batterton v. Francis*, 432 U.S. 416, 425 n.9, 97 S.Ct. 2399, 53 L.Ed.2d 448 (1977), this Court pointed out the difference between the weight to be given to substantive regulations and the weight to be given to policy interpretations in determining the intent of Congress. This Court said:

Legislative, or substantive, regulations are "issued by an agency pursuant to statutory authority and which implement the statute, as, for example, the proxy rules issued by the Securities and Exchange Commission.... Such rules have the force and effect of law." U.S. Dept. of Justice, Attorney General's Manual on the Administrative Procedure Act 30 n 3 (1947). See *United States v. Mersky*, 361 U.S. 431, 437-438, 80 S.Ct. 459, 4 L.Ed.2d 423 (1960); *Atchison, T. & S.F.R. Co. v. Scarlett*, 300 U.S. 471, 474, 57 S.Ct. 541, 81 L.Ed.2d 748 (1937).

By way of contrast, a court is not required to give effect to an interpretive regulation. Varying degrees of deference are accorded to administrative interpretations, based on such factors as the timing and consistency of the agency's position, and the nature of its expertise. See *General Electric Co. v. Gilbert*, 429 U.S. 125, 141-145, 97 S.Ct. 401, 50 L.Ed.2d 343 (1976); *Morton v. Ruiz*, 415 U.S. 199, 231-237, 94 S.Ct. 1055, 39 L.Ed.2d 270 (1974); *Skidmore v. Swift & Co.*, 323 U.S. 134, 140, 65 S.Ct. 161, 89 L.Ed. 124 (1944).

That the IRS is aware of this is made evident in 4.10.7.2.3.2 of their IRM:

4.10.7.2.3.2 (01-01-2006)

Types of Regulations

1. Legislative and interpretative regulations are issued by the Secretary of the Treasury. If the code states "The Secretary shall provide such regulations . . .", then the regulations issued are legislative. Interpretative regulations are issued under the general authority of IRC section 7805(a), which allows regulations to be written when the Secretary determines they are needed to clarify a Code section.

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2. The courts consider the merit of both interpretative and legislative regulations. However, more weight is given to legislative regulations than to interpretative regulations.

In order for a regulation to have the "force and effect of law," it must have certain substantive characteristics and be the product of certain procedural requisites. The central distinction among agency regulations found in the APA is that between "substantive rules" on the one hand and **"interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice" on the other.** 30 A "substantive [441 U.S. 281, 302] rule" is not defined in the APA, and other authoritative sources essentially offer definitions by negative inference. 31 But in *Morton v. Ruiz*, 415 U.S. 199 (1974), we noted a characteristic inherent in the concept of a "substantive rule." We described **a substantive rule - or a "legislative-type rule,"** *id.*, at 236 - **as one "affecting individual rights and obligations."** *Id.*, at 232. **This characteristic is an important touchstone for distinguishing those rules that may be "binding" or have the "force of law."** *Id.*, at 235, 236.

That an agency regulation is "substantive," however, does not by itself give it the "force and effect of law." The legislative power of the United States is vested in the Congress, and the exercise of quasi-legislative authority by governmental departments and agencies must be rooted in a grant of such power by the Congress and subject to limitations which that body imposes. As this Court noted in *Batterton v. Francis*, 432 U.S. 416, 425 n. 9 (1977):

Likewise the promulgation of these regulations must conform with any procedural requirements imposed by Congress. *Morton v. Ruiz*, *supra*, at 232. For agency discretion is limited not only by substantive, statutory grants of authority, but also by the procedural requirements which "assure fairness and mature consideration of rules of general application." *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759, 764 (1969). The pertinent procedural limitations in this case are those found in the APA." *CHRYSLER CORP. v. BROWN*, 441 U.S. 281 (1979)

Federal Register

The Federal Register is the vehicle by which the applicability of the sections of code is traceable. Title 5 section 552 Public information; agency rules, opinions, orders, records, and proceedings states in subsection (a)(D):

- (D) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and
- (E) each amendment, revision, or repeal of the foregoing.....

Since the printing and publication of documents comes under Title 44, it is Chapter 15 - Federal Register and Code of Federal Regulations that states the requirements for the publication and printing of the Federal Register (FR) and Code of Federal Regulations (CFR). These have been codified in Title 1 CFR section 5.9 lists the following: categories:

- (a) **The President.** This category contains each Executive order or Presidential proclamation and each other Presidential document that the President submits for publication or orders to be published
- (b) **Rules and regulations.** This category contains each document having general applicability and legal effect, except those covered by **paragraph (a) of this section.**
- (c) **Proposed rules.** This category contains each notice of proposed rulemaking submitted pursuant to section 553 of title 5, United States Code, or any other law, which if promulgated as a rule, would have general applicability and legal effect. This category includes documents that suggest changes to regulations in the Code of Federal Regulations, begin a rulemaking proceeding, and affect or relate to other documents previously published in the proposed rules section.

(d) **Notices.** This category contains miscellaneous documents applicable to the public and not covered by paragraphs (a), (b), and (c) of this section. This category includes announcements of meetings and other information of public interest.

Of importance to remember are the four categories as detailed in Title 1 CFR section 5.9. These being

- Presidential Executive orders and proclamations,
- Rules and regulations (actually both words have the same meaning),
- Proposed rules, and
- Notices

Again, it is to be noted that it is those published as rules and regulations that have legal effect and is in agreement with Title 5 section 552. The IRS in 26 CFR § 601.702 recognizes the importance and applicability of the Administrative Procedures.

Therefore, the Administrative Procedures as stated above apply in all the following, meaning that it is only those that are entered in the Federal Register and codified in the Code of Federal Regulations as rules/regulations that have legal effect. What has not been revealed is the true meaning of “legal effect” as it has been stated above. This will be shown later as not meaning that all rules/regulations have the true impact of law, i.e. by imposing penalties or taxes, dictating a set action, etc.

Exceptions to Requirements

Title 5 section 301 - Departmental regulations states that “Departmental regulations The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property.

This section does not authorize withholding information from the public or limiting the availability of records to the public.

Meaning the heads of the Executive or military departments can prescribe the regulations that apply internally to the departments. Title 44 - Public Printing and Documents, Chapter 15--Federal Register and Code Of Federal Regulations, section 1505 - Documents to be published in Federal Register subsection (a) lists the following as being required to be published in the Federal Register:

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

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

(2) **documents or classes of documents that the President may determine from time to time have general applicability and legal effect; and**

(3) **documents or classes of documents that may be required so to be published by Act of Congress.**

For the purposes of this chapter every document or order which prescribes a penalty has general applicability and legal effect.

Here it is important to note that the IRS, functioning under the umbrella of the Department of the Treasury is under the Executive Branch of the federal government. Therefore, internal procedures of the agency are not required to be published in the Federal Register. However, the Supreme Court has stated otherwise:

“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more

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rigorous than otherwise would be required. *Service v. Dulles*, 354 U.S. 363, 388 (1957); *Vitarelli v. Seaton*, 359 U.S. 535, 539-540 (1959). The BIA, by its Manual, has declared that all directives that "inform the public of privileges and benefits available" and of "eligibility requirements" are among those to be published. The requirement that, in order to receive general assistance, an Indian must reside directly "on" a reservation is clearly an important substantive policy that fits within this class of directives. Before the BIA may extinguish the entitlement of these otherwise eligible beneficiaries, it must comply, at a minimum, with its own internal procedures." - [Morton v. Ruiz, 415 U.S. 199, 94 S.Ct. 1055, 39 L.Ed.2d 270 (1974)]

Requirements for Entries in the Federal Register

In the Introduction the purpose of the Federal Register Document Drafting Handbook (DDH) is stated as "The DDH provides Federal agencies with guidance and examples for complying with the Office of the Federal Register's format and editorial requirements for Federal Register documents."

It also states the requirements of the President's Memorandum of June 1, 1998 -- Plain Language in Government Writing and gives a link to a document "Writing User-Friendly Documents," available at <http://www.plainlanguage.gov>.

Another important fact given in the Introduction is that of the usage of certain words. They state:

Whenever we present requirements from the Administrative Committee of the Federal Register's regulations in 1 CFR, we use "must" instead of "shall" because "must" imposes a legal obligation. We use "may" instead of "should" to indicate discretion to act. We use "should" to indicate when we strongly recommend that you comply with a procedure that is optional.

In the above, note the following:

- "**Must**" is used instead of "**shall**" because "**must**" imposes a legal obligation
- "**May**" is used instead of "**should**" to indicate discretion to act
- "**Should**" is used when it is strongly recommend that you comply with a procedure that is optional.

The Federal Register Document Drafting Handbook by the National Archives and Records Administration gives the requirements for entries into the Federal Register. These are covered in the following paragraphs. For the three categories, i.e. Proposed Rules, Rules, and Notices the information given will include the definition, requirements of the Action and Authority lines within the document submittal, the Supplementary Information, and of the authority citation. If further information is desired, the DDH can be accessed online at the following address:

<http://www.archives.gov/federal-register/write/handbook/faqs.html>

The three categories are addressed in the following paragraphs

Paragraph:	Page:
Proposed Rules	30
Rules	31
Notices	35

Proposed Rules

Definition

Proposed rules are defined within the DDH as follows:

This category contains documents that propose changes to your agency's regulations in the Code of Federal Regulations (CFR) and request public comment on those proposed changes. Your document may propose regulatory text or describe the subjects and issues involved. The OFR

publishes in the proposed rules any document that serves as the first public notice of a rulemaking proceeding and invites public input. Typical documents in this category are:

Advance notices of proposed rulemaking, notices of inquiry, and notices of intent.

Proposed rules.

Petitions for rulemaking.

Unified Agenda of Federal Regulatory and Deregulatory Actions.

Documents that affect other documents previously published in the proposed rules category. These documents:

Extend the comment deadline.

Announce a meeting or hearing.

Publish or announce the availability of supplemental information.

Withdraw or terminate a proposed rule.

Correct a previously published proposed rule.

Negotiated rulemaking documents. These documents:

Establish committees.

Announce committee meetings.

Since the proposed rule cannot have any legal effect until approved and made a final rule further discussion is unnecessary for our purposes. The Action Line in the entry for the Federal Register for a proposed rule will look similar to these examples from the DDH:

ACTION: Proposed rule.

ACTION: Proposed rule; extension of comment period.

ACTION: Proposed rule; correction.

ACTION: Proposed rule; notice of hearing (or meeting).

ACTION: Proposed rule; withdrawal (or termination).

ACTION: Notice of proposed rulemaking.

ACTION: Advance notice of proposed rulemaking.

ACTION: Petition for rulemaking.

ACTION: Petition for rulemaking; denial.

ACTION: Petition for rulemaking; withdrawal.

ACTION: Proposed policy statement.

ACTION: Proposed rule; availability of supplemental information.

Final Rules

Definition

In regards to final rules, the DDH states the following:

This category contains documents having general applicability and legal effect. The terms "rules" and "regulations" have the same meaning within the Federal Register publication system. Typical documents in this category are:

- Advance notices of proposed rulemaking, notices of inquiry, and notices of intent.
- Documents that amend the CFR by adding new text or by revising or removing existing text.
- Temporary rule documents that are effective immediately for a short or definable period of Time.
- Interim rule documents that are effective immediately and may request comments.
- Direct final rule documents that request comments before the rule becomes effective.
- Documents that affect other documents previously published in the rules category.

These documents:

Correct a previously published rule.

Change the effective date.

Change the comment deadline of an interim rule or direct final rule.

Suspend a previously published rule.

Withdraw a rule not yet in effect.

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- Documents that have no regulatory text and do not amend the CFR but affect your agency. These documents include:
 - Petition for reconsideration.
 - General policy statements.
 - Interpretations of agency rules.
 - Clarifications of agency rules.
 - Waivers of agency rules that are generally applicable.

Action and Authority Lines

For a final rule, the Action and Authority lines are of importance. These are covered in the following paragraphs.

Action Line

According to the DDH, the ACTION caption identifies the type of document. It does not summarize the substance of a document.

Typical ACTION captions for a rule document are given below. Others are possible:

- ACTION: Final rule.
- ACTION: Final rule; delay of effective date.
- ACTION: Final rule; suspension of effectiveness.
- ACTION: Final rule; confirmation of effective date.
- ACTION: Final rule; correction.
- ACTION: Final rule; interpretation.
- ACTION: Final rule; petition for reconsideration.
- ACTION: Interim rule.
- ACTION: Interim rule with request for comments.
- ACTION: Direct final rule.
- ACTION: Temporary rule.
- ACTION: Policy statement.
- ACTION: Interpretation.
- ACTION: Clarification.

An Action line from an existing Federal Register entry will be used to illustrate the Action line. **TD 8879 (TD stands for Treasury Decision as entered in** Volume 65, pages 17149-17164 of the Federal Register will be used (refer to the next page). The proper reference would be T.D. 8879, 65 FR 17159 as listed in the source documents following any impacted regulation.

Supplementary Information

The Supplementary Information section includes the regulatory history of this rulemaking, and a statement of the rule's basis and purpose. This section may be used to provide additional information that is required by law, agency policy, or Executive order.

A list of questions is given in the DDH in order to assist in the preparation of the section. The questions are as follows:

- What law or directive authorizes the rule?
- What existing regulations address the problem?
- What problem does the rule address?
- What issues are connected with the problem?
- What facts, surveys, or studies identify and define the problem?
- How does this rule attempt to solve the problem?
- Were other solutions considered?
- Why was this solution chosen?
- Is this solution cost-effective?

[Federal Register: March 31, 2000 (Volume 65, Number 63)]
[Rules and Regulations]

[Page 17149-17164]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr31mr00-12]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40, 41, 47, 48, 145, and 602

[TD 8879]

RIN 1545-AV71; RIN 1545-AT18

Kerosene Tax; Aviation Fuel Tax; Taxable Fuel Measurement and Reporting; Tax on Heavy Trucks and Trailers; Highway Vehicle Use Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; conforming amendments to temporary regulations; and removal of temporary regulations.

T.D. 8879, 65 FR 17159 - Action Line

How will this solution affect the regulated parties?
Does this rule contain penalties for noncompliance?
Are penalty provisions essential?
Can the requirements be monitored?
Can the penalty provisions be enforced?
Have you identified other documents in this rulemaking, and included their *Federal Register* citations?
Did you publish an Advance Notice of Proposed Rulemaking?
Did you publish a proposed rule?
Have you announced meetings or hearings?
Have you discussed all necessary regulatory analysis and review requirements?
What other statutes apply to this rulemaking?
How will public participation be handled?
How was public participation handled?
Are there special instructions for mailing public comments?
Are there formal or informal hearings?
Are there procedures for requesting a public hearing?
Are there any instructions for filing comments or making oral presentations?
Will transcripts of the hearing be made available?
Have you used subject headings to break up a lengthy SUPPLEMENTARY INFORMATION section? For example:
Background
Statutory authority
Discussion of comments
Related documents
Topical headings
Drafting information
Public participation

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The answers to some of these questions are critical in determining whether a regulation is backed by law. This is particularly important for those regulations that impose a tax or penalty, or in any way authorize the actions of taking any property. **If a law or statute of congress is not referenced within the supplementary information that authorizes such action, then the requirements of that regulation cannot be lawfully applied.** The following figure will show just a portion of the Supplementary Information for T.D. 8879, 65 FR 17159. The actual entry is too large to be shown in its entirety.

Background

Section 4081 imposes a tax on certain removals, entries, and sales of taxable fuel. Before July 1, 1998, taxable fuel meant gasoline and diesel fuel. As of that date, however, the definition of taxable fuel was expanded by the Taxpayer Relief Act of 1997 (Public Law 105-34, 111 Stat. 788 (the 1997 Act)) to include kerosene.

T.D. 8879, 65 FR 17159 - Partial Supplementary Information

The Background is a sub-element of the Supplementary Information. Note that in the figure a direct reference is made to the Taxpayer Relief Act of 1997 (Public Law 105-34, 111 Stat. 788). This answers the question as to what law or directive authorizes the rule. **Since it is a public law of congress, the impacted regulations have the teeth of law.**

Authority Line

In regards to the Authority line the DDH states the following:

You must cite the authority that authorizes your agency to change the CFR. Give the authority citation in the shortest form. Placement of the authority citation depends on what unit of the CFR you are amending.

There are two types of authority:

Statutory:

Public law.

United States Code.

Nonstatutory:

Presidential Executive order.

Presidential Administrative order.

Presidential Memorandum.

Agency delegation, policy, or directive.

Office of Management and Budget circular.

CFR regulations.

Your agency is responsible for maintaining accurate and current authority citations.

Present the authority citation at one of two central places:

Part level, or

Subpart level.

The Authority Line for Part 40 of T.D. 8879, 65 FR 17159 appears as shown in the figure on page 35. Note that this figure shows that the authority citation for **part 40** continues to read....

By referring back to the Action Line as shown in the figure on page 33 it will be noticed that effected 26 CFR Parts 40,41,47, 48, 145, and 602. As indicated on the figure for the Authority Line on the following page a separate Authority entry is made for each CFR part that is impacted.

PART 40--EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

T.D. 8879, 65 FR 17159 - Authority Line and Citation

As can be seen the Authority Line gives 26 U.S.C. 7805*** as the authority for the T.D. entry into the Federal Register. Therefore, the rule-making authority of section 7805 of the Tax Code was used. The three asterisks indicate that there has been no change in authority from previous entries.

Notices

Definition

The DDH states the following in regards to Notices:

This category contains documents that do not have regulatory text, do not impose requirements with general applicability and legal effect, and do not affect a rulemaking proceeding. Some notices are required to be published by law.

Typical notice documents announce:

Meetings.

Availability of applications.

Issuance or revocation of a license.

Grant application deadlines.

Availability of certain environmental impact statements.

Certain petitions.

Orders or decisions affecting named parties.

It then goes on to state:

You may present the text of your notice document in any organized and logical format. Your use of our preamble format to present the text of a notice is optional. However, we recommend that you use the following preamble format.

AGENCY:

ACTION:

SUMMARY:

DATES:

ADDRESSES:

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION:

If you use the preamble captions, follow the order shown. You may omit preamble captions which are not applicable. Present the remaining captions in the proper sequence. Do not create new captions. Place material not identified by the existing captions in the SUPPLEMENTARY INFORMATION section.

Of these, let's take a look at the Action line in the following paragraph.

Action Line

For each Notice to be entered in the Federal Register the Action line is of interest.

The DDH states the following:

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The ACTION caption identifies the type of document. It does not summarize the substance of a document. The following examples represent typical captions for a notice document. Others are possible.

- ACTION: Notice.
- ACTION: Announcement of meeting.
- ACTION: Availability of survey.
- ACTION: Solicitation of applications.

A typical Action line for a Notice is shown in the following figure.

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[Federal Register: November 5, 2003 (Volume 68, Number 214)]
[Notices]
[Page 62659]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr05no03-157]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8836 and Schedules
A and B

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

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Notice Entry at 68 FR 62659
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Since notices are not lawfully binding, no further explanation will be given.

Code of Federal Regulations

The *Code of Federal Regulations* (CFR) is a codification of the general and permanent rules published in the *Federal Register* by the Executive departments and agencies of the Federal Government. The CFR online is a joint project authorized by the publisher, the National Archives and Records Administration's Office of the Federal Register, and the Government Printing Office (GPO) to provide the public with enhanced access to Government information

The CFR is divided into 50 titles that represent each title of code. Within the entire set of CFR volumes (about 200 volumes total) is a volume titled "CFR Index and Findings Aids". In this volume is a table titled "Parallel Table of Authorities and Rules" that cross-references the sections of code from the 50 titles to the appropriate CFR and part(s) that have the force of statutory law in regards to the sections of code. This will be covered in more detail later on.

Determining Applicability and Legal Effect of a Regulation

This is very important, for not all regulations entered in the Code of Federal Regulations are binding by law. In regards to the tax code the authority to make rules, or regulations as they are more familiarly known (rule and regulation have the same meaning) comes from Title 26 section 7805(a), which reads as follows:

- Sec. 7805. Rules and regulations
- (a) Authorization

Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be

necessary by reason of any alteration of law in relation to internal revenue.

Here it is important to note that it is only "**all needful rules and regulations for the enforcement of this title**" that can be prescribed, to include **all rules and regulations as may be necessary by reason of any alteration of law**. This means that the authority to write the rules and regulations **does not give any authority for changing the law**. Constitutionally, only congress can make or change laws, and such laws must comply with the constitutional limitations. The courts have held:

It is common for various Congressional acts to be entirely enforceable only through regulations. Any given act may simply authorize a defined federal official to perform certain acts in accordance with regulations he promulgates; until the regulations are implemented, the act in question might compel nothing. An example of such an act is the Bank Secrecy Act ("BSA") P.L.91-508, 84 Stat. 1114, the amended version of which is codified at 31 U.S.C., §§ 5311, et seq. Throughout this particular act, language such as "the Secretary may require," "the Secretary may by regulations require," "as the Secretary may require," repeatedly appears in the Act's sections up through §242. In *California Bankers Assn. v. Shultz*, 416 U.S. 21, 26, 94 S.Ct. 1494 (1974), the Court noted that the BSA entirely depended upon regulations:

"[W]e think it important to note that the Act's civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary; if the Secretary were to do nothing, the Act itself would impose no penalties on anyone."

Moreover, most importantly the Secretary can neither add to nor take from what is stated in the statutes. He cannot "make law", which means establishing taxes, rates, penalties, or legal requirements. Regulations for such actions must be based on statutes that clearly state such requirements:

Where the provisions of an act are unambiguous, and its direction specific, the Secretary of the Treasury has no power to amend the statute by regulations." -- *Koshland v. Helvering*, 298 U.S. 441, 447, 56 S.Ct. 767, 80 L.Ed. 1268 (1936). -- And further, "The commissioner has no more power to add to the act what he thinks Congress may have overlooked than he has to supply what Congress has deliberately omitted". --- *General Electric Co. v. Barton*, 372 F.2d 108, 111 (6th Cir. 1967). See also *H. Wetter Mfg. Co. v. U.S.*, 458 F.2d 1033.

Therefore, the regulations are the enforcement tool for the laws and must conform to the law as it is written. Regulations cannot add anything to the law, or subtract anything from it. Now it is time to remember that:

- 1) The Secretary or his delegate prescribes the regulations,
- 2) The regulations must be entered in the Federal Register as (excluding Presidential Executive orders and proclamations):
 - Rules and regulations (actually both words have the same meaning),
 - Proposed rules, and
 - Notices.
 - Only those entered as rules and regulations have any legal effect.
 - The regulations, as entered in the Federal Register are then codified and entered in the Code of Federal Regulations.

The definition of regulations, as given in Black's Law Dictionary, 6th Edition is shown on page 38 Note where it states "**Regulations are not the work of the legislature and do not have the effect of law in theory**". Another important reason that it is the Statutes at Large that should be referred to in the case of the IRC for the reason stated on page 26

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Regulations. Rules, orders, and the like, issued by various governmental departments to carry out the intent of the law. Agencies issue regulations to guide the activity of those regulated by the agency and of their own employees and to ensure uniform application of the law. Regulations are not the work of the legislature and do not have the effect of law in theory. In practice, however, because of the intricacies of judicial review of administrative action, regulations can have an important effect in determining the outcome of cases involving regulatory activity. United States Government regulations appear first in the *Federal Register*, published five days a week, and are subsequently arranged by subject in the *Code of Federal Regulations*. See Regulatory Flexibility Act.

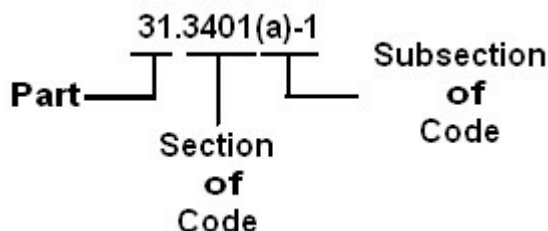
Treasury Regulations. Treasury Department Regulations (abbr. "Treas. Regs.") represent the position of the Internal Revenue Service as to how the Internal Revenue Code is to be interpreted. Their purpose is to provide taxpayers and I.R.S. personnel with rules of general and specific application to the various provisions of the tax law. Such regulations are published in the Federal Register and in tax services.

Again, note where it states that "Treasury Department Regulations (abbr. "Treas. Regs.") **represent the position of the Internal Revenue Service as to how the Internal Revenue Code is to be interpreted.**" Therefore, they are IRS interpretations of the IRC, which may or may not be that of the Statutes at Large.

At times, it is important to know if a regulation, as entered in the CFR has any backing in law. This is more so in regards to any regulation that imposes a penalty, the imposition of a tax, demands an action, or in any way authorizes a taking of property. This can be done by using the Parallel Table of Authorities and Rules or the information covered in regards to Federal Registry entries as previously covered.

CFR section Construction

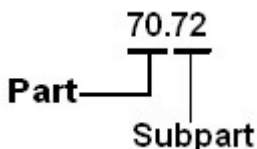
Each Title of Code has its own Code of Federal Regulations (CFR). A basic knowledge of the construction of a CFR is necessary. A CFR is basically divided in parts, with each part containing those regulations pertaining to the subject matter of the part. The following figure depicts the numbering scheme for a regulation.



Basic Title 26 CFR Numbering Scheme

Therefore, as shown above a regulation as entered in the CFR has a number consisting of the Part of the CFR it is located in, followed by a decimal and the number of the section from the Title of Code it pertains to. This in turn is followed by the subsection of the section of code it addresses.

The numbering scheme used in the Title 27 CFR is different. Since the codified sections used as authority remained in Title 26 the section number was abandoned in the numbering scheme. The scheme for the Title 27 CFR appears as follows:



Basic Title 27 CFR Numbering Scheme

As shown, it consists of just the part of the CFR it is located in and a subpart number of assignment.

Now a look at the parts of Titles 26 CFR and 27 CFR will be helpful.

Title 26 CFR Parts

The parts of Title 26 CFR and their titles are listed in the following table.

Title 26 CFR Parts

Part:	Title:
1	Income Taxes
2	Maritime construction reserve fund
3	Capital construction fund
4	Temporary income tax regulations under section 954 of the Internal Revenue Code
5	Temporary income tax regulations under the Revenue Act of 1978
5c	Temporary income tax regulations under the Economic Recovery Tax Act of 1981
5e	Temporary income tax regulations, travel expenses of Members of Congress
5f	Temporary income tax regulations under the Tax Equity and Fiscal Responsibility Act of 1982
6a	Temporary regulations under Title II of the Omnibus Reconciliation Act of 1980
7	Temporary income tax regulations under the Tax Reform Act of 1976
8	Temporary income tax regulations under section 3 of the Act of October 26, 1974 (Pub. L. 93-483)
9	Temporary income tax regulations under the Tax Reduction Act of 1975
11	Temporary income tax regulations under the Employee Retirement Income Security Act of 1974
12	Temporary income tax regulations under the Revenue Act of 1971
13	Temporary income tax regulations under the Tax Reform Act of 1969
14a	Temporary income tax regulations relating to incentive stock options
15	Temporary income tax regulations relating to exploration expenditures in the case of mining
15a	Temporary income tax regulations under the Installment Sales Revision Act
16	Temporary regulations under the Revenue Act of 1962
16A	Temporary income tax regulations relating to the partial exclusion for certain conservation cost-sharing payments
17	Temporary income tax regulations under 26 U.S.C. 103(c)
18	Temporary income tax regulations under the Subchapter S Revision Act of 1982
19	Temporary regulations under the Revenue Act of 1964
20	Estate tax; estates of decedents dying after August 16, 1954
22	Temporary estate tax regulations under the Economic Recovery Tax Act of 1981
25	Gift tax; gifts made after December 31, 1954
26	Generation-skipping transfer tax regulations under the Tax Reform Act of 1986
28-29	[Reserved]
31	Employment taxes and collection of income tax at source
32	Temporary employment tax regulations under the Act of December 29, 1981 (Pub. L. 97-123)
34	[Reserved]
35	Employment tax and collection of income tax at source regulations under the Tax Equity and Fiscal Responsibility Act of 1982
35a	Temporary employment tax regulations under the Interest and Dividend Tax Compliance Act of 1983
36	Contract coverage of employees of foreign subsidiaries
37-39	[Reserved]
40	Excise tax procedural regulations
41	Excise tax on use of certain highway motor vehicles

Title 26 CFR Parts (Continued)

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Part:	Title:
43	Excise tax on transportation by water
44	Taxes on wagering; effective January 1, 1955
46	Excise tax on policies issued by foreign insurers and obligations not in registered form
48	Manufacturers and retailers excise taxes
49	Facilities and services excise taxes
50	Regulations relating to the tax imposed with respect to certain hydraulic mining
52	Environmental taxes
53	Foundation and similar excise taxes
54	Pension excise taxes
55	Excise tax on real estate investment trusts and regulated investment companies
56	Public charity excise taxes
141	Temporary excise tax regulations under the Employee Retirement Income Security Act of 1974
143	Temporary excise tax regulations under the Tax Reform Act of 1969
145	Temporary excise tax regulations under the Highway Revenue Act of 1982 (Pub. L. 97-424)
148	Certain excise tax matters under the Excise Tax Technical Changes Act of 1958
151-155	[Reserved]
156	Excise tax on greenmail
157	Excise tax on structured settlement factoring transactions
158-169	[Reserved]
170-299	[Reserved]
300	User fees
301	Procedure and administration
302	Taxes under the International Claims Settlement Act, as amended August 9, 1955
303	Taxes under the Trading With the Enemy Act
304	[Reserved]
305	Temporary procedural and administrative tax regulations under the Indian Tribal Governmental Tax Status Act of 1982
306-399	[Reserved]
400	Temporary regulations under the Federal Tax Lien Act of 1966
401	Temporary procedures and administration regulations under the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248)
402	[Reserved]
403	Disposition of seized personal property
404	Temporary regulations on procedure and administration under the Tax Reform Act of 1976
405-419	[Reserved]
420	Temporary regulations on procedure and administration under the Employee Retirement Income Security Act of 1974
421-499	[Reserved]
600	[Reserved]
601	Statement of procedural rules
602	OMB control numbers under the Paperwork Reduction Act
701	Presidential election campaign fund
702	Presidential primary matching payment account
703-800	[Reserved]
801	Balanced system for measuring organizational and employee performance within the Internal Revenue Service
802-899	[Reserved]

Title 27 CFR Parts

The parts of Title 27 CFR and their titles are listed in the following table.

Title 27 CFR Parts

Part:	Title:
1	Basic permit requirements under the Federal Alcohol Administration Act, nonindustrial use of distilled spirits and wine, bulk sales and bottling of distilled spirits
4	Labeling and advertising of wine
5	Labeling and advertising of distilled spirits
6	``Tied-House''
7	Labeling and advertising of malt beverages
8	Exclusive outlets
9	American viticultural areas
10	Commercial bribery
11	Consignment sales
12	Foreign nongeneric names of geographic significance used in the designation of wines
13	Labeling proceedings
16	Alcoholic beverage health warning statement
17	Drawback on taxpaid distilled spirits used in manufacturing nonbeverage products
18	Production of volatile fruit-flavor concentrate
19	Distilled spirits plants
20	Distribution and use of denatured alcohol and rum
21	Formulas for denatured alcohol and rum
22	Distribution and use of tax-free alcohol
24	Wine
25	Beer
26	Liquors and articles from Puerto Rico and the Virgin Islands
27	Importation of distilled spirits, wines, and beer
28	Exportation of alcohol
29	Stills and miscellaneous regulations
30	Gauging manual
31	Alcohol Beverage Dealers
40	Manufacture of tobacco products and cigarette papers and tubes
41	Tobacco
44	Exportation of tobacco products and cigarette papers and tubes, without payment of tax, or with drawback of tax
45	Removal of tobacco products and cigarette papers and tubes, without payment of tax, for use of the United States
46	Miscellaneous regulations relating to tobacco products and cigarette papers and tubes
53	Manufacturers excise taxes--firearms and ammunition
70	Procedure and administration
71	Rules of practice in permit proceedings
72	Disposition of seized personal property
73	Electronic signatures; electronic submission of forms
447	Importation of arms, ammunition and implements of war
478	Commerce in firearms and ammunition
479	Machine guns, destructive devices, and certain other firearms
555	Commerce in Explosives
646	Contraband cigarettes

Verification of Regulations Statutory Backing

There are certain factors that must be considered in determining if a regulation has any basis in law. Among these are the development and implementation dates of the various documents involved in the federal documentation system. The codification of the laws into separate titles began in 1926, and the writing of regulations by the agencies about the same time. Prior to that, congress did the complete task in one. The laws they passed included everything, to include what the regulations do now. The Statutes at Large system of cataloging the Public and Private Laws of Congress began in 1845.

The Documentation System of Federal Law

This causes different sources for information to be researched to be used. On the GPO website official U.S. Codes for all titles are available on-line for the years 1994 to present. The Public and Private Laws of congress are available from the 104th congress (1995-96) through the current session.

The web sites for these and other references that can be used are given in Appendix A on page 362. Since the on-line resources are restricted in regards to dates, a means of obtaining and researching the federal documentation from earlier dates is an absolute necessity. For this access to a library having an excellent legal reference is best. University libraries, especially where there is a law school normally subscribe to government microfiche sources, which are maintained current. They also normally keep bound copies of the Volumes of the Statutes at Large, congressional records and court case resources.

In the following paragraphs the verification of statutory backing will be covered as required by specific circumstances:

Method:	Page:
Parallel Table of Authority and Rules	42
Regulation Source Listings	43

Parallel Table of Authorities and Rules

On the very first page of the Parallel Table of Authorities and Rules, hereafter called the Parallel Table the following is stated:

Entries in the table are taken directly from the rulemaking authority citation provided by Federal agencies in their regulations. Federal agencies are responsible for keeping these citations current and accurate. Because Federal agencies sometimes present these citations in an inconsistent manner, the table cannot be considered all-inclusive.

Which means that there may be errors, but this does not distract from its use? Remember, Ivory Soap is boasted as being 99⁴⁴/₁₀₀% pure but the lack of ⁵⁶/₁₀₀% purity does not make it a bad product. In fact, it makes it an excellent product. If there is any doubt, then Federal Register entries for the regulation in question may need to be individually checked to determine applicability.

It is simple to use, and for basic purposes as far as one needs to go, unless the exact statute(s) giving any authority to a code section and its regulations needs to be known.

Although a good reference, the Parallel Table does have weaknesses. It can only identify the CFRs and their parts where regulations backed by statutes for a particular code section are located. For example, the Parallel Table gives the following in regards to IRC section 6011:

601126 Parts 31, 40, 55, 156, 301
27 Parts 25, 53

Meaning that IRC section 6011 has statutory backed regulations in parts 31, 40, 55, 156, 301 of 26 CFR; and in parts 25, 53 of 27 CFR. What further complicates the issue is the fact that regulations more often than not address specific subsections of a regulation. For example, in looking at the regulations regarding IRC section 6011 that exist in only 26 CFR part 31 we find the following regulations listed:

Regulation:	Title/Subject:
31.6011-4	Requirement of statement disclosing participation in certain transactions by taxpayers.
31.6011(a)-1	Returns under Federal Insurance Contributions Act.
31.6011(a)-2	Returns under Railroad Retirement Tax Act.
31.6011(a)-3	Returns under Federal Unemployment Tax Act.
31.6011(a)-3A	Returns of the railroad unemployment repayment tax.
31.6011(a)-4	Returns of income tax withheld.
31.6011(a)-5	Monthly returns.

Regulation:	Title/Subject:
31.6011(a)-6	Final returns.
31.6011(a)-7	Execution of returns.
31.6011(a)-8	Composite return in lieu of specified form.
31.6011(a)-9	Instructions to forms control as to which form is to be used.
31.6011(a)-10	Instructions to forms may waive filing requirement in case of no liability tax returns.
31.6011(b)-1	Employers' identification numbers.
31.6011(b)-2	Employees' account numbers.

The possibility exists that not all of these regulations have statutory backing. This means that to discover if a section of code has such backing it is necessary not only to relate the section to the regulations, but also to attempt as much as possible to relate the specific subsection to the regulations.

To use it one simply looks in the Parallel Table for the section number in the Title of interest. Since this is 26 United States Code (U.S.C. or Title 26) it is in the pages of the Parallel Table pertaining to 26 U.S.C. that we go to check. For illustrative purposes, let's look at what the Parallel Table states about IRC sections 861 and 911. The Parallel Table page containing the entries for that range of sections is shown on the following page.

IRC Section 861

From looking in the Parallel Table there is no entry for this section of code. This means that the section gives no authority to any regulations. Let's double-check this at the Cornell University Law School at <http://www.law.cornell.edu/>, which maintains a database on federal codes and regulations. The result is shown below:



No corresponding parts in CFR

[There are no CFR parts for which 26 USC 861 provides authority.](#)

Let's not give up on this section of code yet. It will be addressed again when a look at what the regulation sources reveals/ Yes, I did state regulation but it is meant to reveal that not all that you read in the CFRs has legal meaning, i.e. backing of law (statute).

IRC Section 911

As can be seen by the entry in the Parallel Table for IRC section 911 regulations exist in 26 CFR Part 1:

91126 Part 1

This indicates that the regulations that this section provides authority of law for are located in 26 CFR Part 1 – Income Taxes. Again, another look at this to try to determine exactly what statute gives this authority is taken in the paragraph on regulation source listings.

Regulation Source Listings

Following each regulation, the sources from which they were derived are listed. There may be no sources listed, or more than one. Typical listings for regulations from Titles 26 and 27 CFR are shown and explained in the following paragraphs.

CFR Index

26 U.S.C. (1986 I.R.C.)—Continued	CFR	26 U.S.C. (1986 I.R.C.)—Continued	CFR
475	26 Part 1	1293	26 part 1
481—483	26 Part 1	1295	26 part 1
501	32 Part 736	1296	26 Part 1
	34 Part 73	1301	26 Part 1
	46 Part 502	1361	26 Part 1
504	26 Part 1	1368	26 Part 1
514	26 Part 1	1374	26 Part 1
527	26 Part 1	1377	26 Part 1
585	26 Part 1	1391 et seq	7 Part 25
597	26 Parts 1, 301	1391	24 Parts 597, 598
642	26 Part 1	1397D	7 Part 3401
643	26 Parts 1, 301		26 Part 1
663	26 Part 1	1397E	26 Part 1
664	26 Part 1	1397E-1	26 Part 1
672	26 Part 1	1441	26 Parts 1, 31
679	26 Part 1	1443	26 Part 1
684	16 Part 1	1445	26 Part 1
701—761	26 Part 1	1502—1504	26 Part 1
809	26 Part 1	2056	26 Part 301
831	26 Part 301	2056A	26 Part 301
832	26 Part 1	2523	26 Part 301
	31 Part 343	2518	26 Part 25
835	26 Part 301	2632	26 Part 26
845	26 Part 1	2662	26 Part 26
846	26 Part 1	2663	26 Part 26
848	26 Part 1	3121	26 Parts 31, 32, 36
852	26 Part 1	3127	26 Part 301
860	26 Part 55	3231	26 Part 32
860E	26 Part 1	3301 et seq	20 Part 601
860G	26 Part 1	3304	20 Parts 604, 616
863—865	26 Part 1	3306	20 Part 604
865	26 Part 301	3309—3311	20 Part 301
874	26 Part 1	3401—3402	26 Part 31
882	26 Part 1	3401	26 Part 1
884	26 Part 1	3405	26 Part 35
892	26 Part 1	3406	26 Parts 31, 35a
894	26 Part 1	4041	26 Part 48
902	26 Part 1	4051—4052	26 Parts 48, 145
904	26 Parts 1, 301	4051	26 Part 41
907	26 Part 1	4061	26 Parts 48, 142
911	26 Part 1	4064	26 Part 48
924	26 Part 1	4071	26 Part 48
925	26 Part 1	4073	26 Part 48
927	26 Part 1	4081	26 Part 48
936	26 Part 1	4082	26 Part 48
954	26 Parts 1, 4	4083	26 Part 48
957	26 Part 1	4101	26 Part 48
960	26 Part 1	4181—4182	27 Parts 53, 70
985	26 Part 1	4216—4219	27 Part 53
987	26 Part 1	4221—4223	27 Part 53
988	26 Part 1	4222	26 Part 48
989	26 Part 1	4225	27 Part 53
1032	26 Part 1	4251	26 Part 49
1043	5 Part 2634	4293	26 Part 48
1059	26 Part 1	4374	26 Parts 46, 47
1060	26 Part 1	4461	19 Part 24
1092	26 Part 1	4462	19 Part 24
1202	26 Part 1	4482—4483	26 Part 41
1221	26 Part 1	4483	26 Part 48
1244	26 Part 1	4493	26 Part 154
1254	26 Part 1	4662	26 Part 52
1255	7 Part 14	4682	26 Part 52
1274A	26 Part 1	4854	7 Part 28
1275	26 Part 1	4943	26 Part 53
1286	26 Part 1	4975	26 Part 54
1291	26 Part 1	4980B	26 Part 54

Regulation Sources for 26 CFR 1.861-8T

If one looks in 26 CFR for regulations concerning IRC section 861 it will be found that there are about 24 regulations, all located in Part 1 – Income Taxes. Since it is the computation of taxable income from sources within the United States and from other sources and activities, a look at 1.861-8T is in order, where the sources given at the end of the regulation reads as follows:

[T.D. 8228, 53 FR 35474, Sept. 14, 1988, as amended by T.D. 8286, 55 FR 3054, Jan. 30, 1990; T.D. 8337, 56 FR 10369, Mar. 12, 1991; T.D.8597, 60 FR 36679, July 18, 1995; T.D. 8805, 64 FR 1509, Jan. 11, 1999; T.D. 8973, 66 FR 67083, Dec. 28, 2001]

Notice that it consists of only Treasury Decisions, which are not laws and in themselves do not give a regulation any backing of law. There are some though that would have you believe that these have the power or effect of law. Only congress can make law. Let's take a look at the last two T.D.'s that are listed.

In T.D. 8805, 64 FR 1509, Jan. 11, 1999 the only entries for 1.861-8T:pertain to Section 1.861-8T(e)(8): Net Operating Loss

Further, the authority citation is shown as:

Authority: 26 U.S.C. 7805 * * *

The three asterisk indicating no change from the preceding source listing. 26 U.S.C. 7805 pertains to the basic authority for the Secretary to "prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue. **It cannot, and does not give any authority to make law. Only congress can do that.**

Now let's look at T.D. 8973, 66 FR 67083, Dec. 28, 2001, the latest entry. In it the following is stated regarding the authority for 1.861-8T:

Par. 3. Section 1.861-8T is amended as follows:

1. Paragraphs (e)(1) and (e)(3) through (e)(11) are revised.
2. Paragraph (h) is amended by removing the last sentence of the concluding text.
3. **The authority citation at the end of the section is removed.**

The revisions read as follows:

Sec. 1.861-8T Computation of taxable income from sources within the United States and for other sources and activities (temporary).

* * * * *

(e) * * *

(1) [Reserved]. For further guidance, see Sec. 1.861-8(e)(1).

* * * * *

(3) through (11) [Reserved]. For further guidance, see Sec. 1.861-8(e)(3) through (e)(11).

* * * * *

This T.D. even removed the basic 26 U.S.C. 7805 authority of the Secretary.

Conclusion: The regulation at 26 CFR 1-861-8T **is without any legal authority.**

Regulation Sources for 26 CFR 1.911-1

Next, lets look at a source listing for 26 CFR 1.911-1. The listing is as follows:

The Documentation System of Federal Law

(Sec. 911 (95 Stat. 194; 26 U.S.C. 911) and sec. 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954)

[T.D. 8006, 50 FR 2964, Jan. 23, 1985]

Notice that preceding the Treasury Decision, Sec. 911 (95 Stat. 194; 26 U.S.C. 911) and sec. 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954 are listed. The 95 Stat. 194 references the Statute at Large entry where the legal authority for IRC section 911 is located. The entry for IRC section 7805 is basic regulation writing authority of IRC section 7805. Looking at it is found as being Public Law (P.L.) 97-34. This is shown on the following page and a look is important to afford an insight as to particular facts

Notice what is stated in subsection (7):

“(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing rules—
“(A) for cases where a husband and wife each have earned income from sources outside the United States, and
“(B) for married individuals filing separate returns.

In other words, the Secretary has been ordered, by law to prescribe the regulations. Another fact that will be of interest later is that within P.L. 97-34 is subsection (f) where the following appears:

“(f) CROSS REFERENCES.—

“For administrative and penal provisions relating to the exclusions provided for in this section, see sections 6001, 6011, 6012(c), and the other provisions of subtitle F.”

Keep this reference to sections 6001, 6011, and 6012(c) in mind. They will pop up again in this document.

Regulation Sources for 26 CFR 31.3401(a)(8)(A)-1

For another example, let's look at a regulation for a section in Subtitle C – Employment Taxes. The previous examples were for sections in Subtitle A – Income Tax. Therefore, let's look at the sources for regulation 26 CFR 31.3401(a)(8)(A)-1 for IRC section 3401 – Definitions as it pertains to “wages”. The source listing appears as follows:

(Sec. 911, 95 Stat. 194; 26 U.S.C. 911), sec. 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954)

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6697, 28 FR 13745, Dec. 17, 1963; T.D. 8006, 50 FR 2977, Jan. 23, 1985]

Notice that the section, statute as called out is identical to that for IRC section 911. Even T.D. 8006, 50 FR 2977, Jan. 23, 1985 appears in both.

Regulation Sources for 26 CFR 31.6011-4

For the last example, we'll look at a regulation for IRC section 6011. This section of code is shown in the Parallel Table as having regulations in the following CFR Parts:

601126 Parts 31, 40,55, 156, 301
27 Parts 25, 53

For our purposes, we'll look at 31.6011-4. The source for this regulation is as follows:

[T.D. 9046, 68 FR 10169, Mar. 4, 2003]

In T.D. 9046, 68 FR 10169, Mar. 4, 2003 the following is shown for authority:

imposed by this chapter (including any credit or deduction for the amount of taxes paid or accrued to a foreign country or possession of the United States) shall be allowed to the extent such deduction, exclusion, or credit is properly allocable to or chargeable against amounts excluded from gross income under subsection (a).

“(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing rules—

“(A) for cases where a husband and wife each have earned income from sources outside the United States, and

“(B) for married individuals filing separate returns.

“(e) ELECTION.—

“(1) IN GENERAL.—An election under subsection (a) shall apply to the taxable year for which made and to all subsequent taxable years unless revoked under paragraph (2).

“(2) REVOCATION.—A taxpayer may revoke an election made under paragraph (1) for any taxable year after the taxable year for which such election was made. Except with the consent of the Secretary, any taxpayer who makes such a revocation for any taxable year may not make another election under this section for any subsequent taxable year before the 6th taxable year after the taxable year for which such revocation was made.

“(f) CROSS REFERENCES.—

“For administrative and penal provisions relating to the exclusions provided for in this section, see sections 6001, 6011, 6012(c), and the other provisions of subtitle F.”

(b) CONFORMING AMENDMENTS.—

(1) The table of sections for subpart B of part III of subchapter N of chapter 1 is amended by striking out the item relating to section 911 and inserting in lieu thereof the following:

“Sec. 911. Citizens or residents of the United States living abroad.”

26 USC 43.

(2) Section 43(c)(1)(C)(i) is amended by striking out “relating to income earned by individuals in certain camps outside the United States” and inserting in lieu thereof “relating to citizens or residents of the United States living abroad”.

26 USC 1302,
1304, 1402, 6012,
6091.

(3) Sections 1302(b)(2)(A)(i), 1304(b)(1), 1402(a)(8), 6012(c), and 6091(b)(1)(B)(iii) are each amended by striking out “relating to income earned by employees in certain camps” and inserting in lieu thereof “relating to citizens or residents of the United States living abroad”.

26 USC 37, 63,
105, 410, 879,
1303, 1304.

(4) Sections 37(e)(9)(B), 63(e)(2), 105(h)(3)(B)(v), 410(b)(3)(C), 879(a)(1), 1303(c)(2), and 1304(c)(3) are each amended by striking out “section 911(b)” each place it appears and inserting in lieu thereof “section 911(d)(2)”.

Ante, p. 190.

(5) Paragraph (11) of section 1402(a) is amended to read as follows:

“(11) in the case of an individual described in section 911(d)(1)(B), the exclusion from gross income provided by section 911(a)(1) shall not apply; and”.

SEC. 112. REPEAL OF DEDUCTION FOR CERTAIN EXPENSES OF LIVING ABROAD.

26 USC 913.

(a) IN GENERAL.—Section 913 (relating to deduction for certain expenses of living abroad) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

95 Stat. 194

Par. 10. The authority citation for part 31 continues to read in part as follows:

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Authority: 26 U.S.C. 7805 * * *

Notice the wording "continues to read in part". This indicates that there is more authority but it is not shown. The three asterisks following 7805 signify that there is no change from the preceding authority. However, what was that authority? To answer that we can note that T.D. 9046, 68 FR 10169 is dated Mar. 4, 2003. Now, following the sections of code are source listings to the various statutes (Public Laws) that the section is based on, and a brief summary of the amendments. By searching IRC section 6011 for the date Mar. 4, 2003 we find the following:

Pub. L. 105-206, title II, Sec. 2003(c), July 22, 1998, 112 Stat. 725, provided that: "In the case of taxable periods beginning after December 31, 1999, the Secretary of the Treasury or the Secretary's delegate shall, to the extent practicable, establish procedures to accept, in electronic form, any other information, statements, elections, or schedules, from taxpayers filing returns electronically, so that such taxpayers will not be required to file any paper."

Since this gives Pub. L. 105-206, title II, Sec. 2003(c) we need to look at 112 Stat. 725. In doing so we find the following for Sec. 2003(c) (note, this is the section number of the Public Law, not the IRC) (shown in part):

SEC. 2003. PAPERLESS ELECTRONIC FILING.

<<NOTE: 26 USC 6011 note.>> (c) Establishment of Procedures for Other Information.--In the case of taxable periods beginning after December 31, 1999, the Secretary of the Treasury or the Secretary's delegate shall, to the extent practicable, establish procedures to accept, in electronic form, any other information, statements, elections, or schedules, from taxpayers filing returns electronically, so that such taxpayers will not be required to file any paper.

the Secretary may relieve such individual of such liability.

"(g) Regulations.--The Secretary shall prescribe such regulations as are necessary to carry out the provisions of this section, including--

Therefore, this regulation does have the backing of a statute.

Regulation Sources for 27 CFR

Next to be covered are the sources for the regulations found in Title 27 CFR - Alcohol, Tobacco, and Firearms. A typical source listing is as follows (sources for Title 27 CFR part 70.71 Assessment authority):

(26 U.S.C. 6201)

[T.D. ATF-301, 55 FR 47611, Nov. 14, 1990]

If you will notice, the source listing for a Title 27 CFR regulation also references sections from the IRC. This is because prior to June 6, 1972 there was no Bureau of Alcohol, Tobacco, and Firearms (BATF) and the laws pertaining to them were administered by the IRS. Treasury Order 120-01, dated June 6, 1972 gave the functions, powers and duties that were associated with alcohol, tobacco, and firearms to the BATF. Therefore, 27 CFR part 70.71 was derived from IRC section 6201 as a result of the first T.D. listed below the reference to IRC section 6201.

Here The T.D. ATF-301 entry signifies authority for IRC section 6201 was transferred to the BATF upon its creation. This is verified in the Parallel Table of Authority and Rules where the regulations, as backed by law are shown to be in Title 27 CFR part 70. The T.D. ATF-301 entry in the Federal Register at 55 FR 47604, Nov.

14, 1990 is shown on page 111 and includes a brief but revealing description of the change brought about by Treasury Order 120-01

Since the authority was transferred from Title 26 to trace the statutory backing one must return to that CFR and look at the regulations for the IRC section shown. Once they are located the tracing is accomplished as given in the paragraph Regulation Source Listings on page 43.

Conclusion for Determining Applicability and Legal Effect of a Regulation

As we have seen, only certain regulations have the authority of law behind them. These are called Legislative, or substantive regulations, as opposed to interpretive regulations. The Supreme Court has addressed both, as shown in the following cites:

Therefore, in the determinations made in regard to specific regulations the following can be said:

- 26 CFR 1.861-8T is a regulation without authority. Remember, even the basic 26 U.S.C. 7805 authority of the Secretary was removed.
- 26 CFR 1.911-1 is a legislative/substantive regulation backed by a Public Law.
- 26 CFR 31.3401(a)(8)(A)-1 is a legislative/substantive regulation backed by a Public Law.
- 26 CFR 31.6011-4 is a legislative/substantive regulation backed by a Public Law.

It has also been shown that for a legislative/substantive regulation the statute/law has to include a directive to the Secretary to prescribe such regulations as are necessary to carry out the provisions of the section.

At times, it becomes desirable to trace back through the code sections to obtain the “what” and “who” regarding taxes, back to the originating statutes. This is covered in the paragraph Tracing General and Permanent Statutes on page 50.

That there is a distinct and clear relationship between the regulations and the statutes has been stated by the Supreme Court:

“As we see it, **a construction of the regulation necessarily is an interpretation of the statute.** An administrative regulation, of course, is not a “statute.” **While in practical effect regulations may be called “little laws,” they are at most but offspring of statutes.** **Congress alone may pass a statute,** and the Criminal Appeals Act calls for direct appeals if the District Court’s dismissal is based upon the invalidity or construction of a statute. See *United States v. Jones*, 345 U.S. 377 (1953). This Court has always construed the Criminal Appeals Act narrowly, limiting it strictly “to the instances specified.” *United States v. Borden Co.*, 308 U.S. 188, 192 (1939). See also *United States v. Swift & Co.*, 318 U.S. 442 (1943). **Here the statute is not complete by itself, since it merely declares the range of its operation and leaves to its progeny the means to be utilized in the effectuation of its command. But it is the statute which creates the offense** of the willful removal of the labels of origin and provides the punishment for violations. The regulations, on the other hand, prescribe the identifying language of the label itself, and assign the resulting tags to their respective geographical areas. **Once promulgated, [361 U.S. 431, 438] these regulations, called for by the statute itself, have the force of law,** and violations thereof incur criminal prosecutions, just as if all the details had been incorporated into the congressional language. **The result is that neither the statute nor the regulations are complete without the other, and only together do they have any force. In effect, therefore, the construction of one necessarily involves the construction of the other.**” - *United States V. Mersky*, 361 U.S. 431 (1960)

What are equally important in the above are not only what is mentioned, but also that which is omitted. While they cover the interrelationship between the statutes and regulations, they omit any reference to a relationship between codified sections and the statutes or regulations.

Final Word on Words

The Documentation System of Federal Law

Whenever determining the meaning of any document in the Statutes, Titles of Code, Federal Register, and Code of Federal Regulations remember what was stated in the introduction to the Document Drafting Handbook concerning the use of certain words. It's repeated below:

Whenever we present requirements from the Administrative Committee of the Federal Register's regulations in 1 CFR, we use "must" instead of "shall" because "must" imposes a legal obligation. We use "may" instead of "should" to indicate discretion to act. We use "should" to indicate when we strongly recommend that you comply with a procedure that is optional.

More is given on the usage of these words in NARA's Directions for Drafting Legal Documents, as shown below:

3. Use "must" instead of "shall".

shall	imposes an obligation to act, but may be confused with prediction of future action
will	predicts future action
must	imposes obligation, indicates a necessity to act
should	infers obligation, but not absolute necessity
may	indicates discretion to act
may not	indicates a prohibition

To impose a legal obligation, use "must."

To predict future action, use "will."

DON'T SAY: The Governor shall approve it.

SAY: The Governor must approve it. [obligation]

OR: The Governor will approve it. [future action]

Access to the "Drafting Legal Documents" is at the following URL:

<http://www.archives.gov/federal-register/write/legal-docs/>

Tracing General and Permanent Statutes

Finding the general and permanent statutes that apply to the sections of the IRC of 1939 as they relate to the IRC of 1986 involves two steps:

Step 1:

The section numbers differ from those of the IRC of 1986; therefore, the code section of the IRC of 1986 that is in question must be cross-referenced to the applicable sections in the IRC of 1939. This is accomplished by referring to 26 IRC where at the very front the following is stated:

ACT AUG. 16, 1954, CH. 736, 68A STAT. 3

The following tables have been prepared as aids in comparing provisions of the Internal Revenue Code of 1954 (redesignated the Internal Revenue Code of 1986 by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095) with provisions of the Internal Revenue Code

of 1939. No inferences, implications, or presumptions of legislative construction or intent are to be drawn or made by reason of such tables.

Citations to "R.A." refer to the sections of earlier Revenue Acts.

Note that it states "provisions of the Internal Revenue Code of 1954 (redesignated the Internal Revenue Code of 1986 by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095) with provisions of the Internal Revenue Code of 1939". Therefore, it can be seen that the sections of code in the IRC of 1954 and those of the IRC of 1986 are the same number-wise, with two exceptions to be stated later.

There are two tables following the above, the first (Table I) cross-references the 1939 code sections to those of the 1986 code. Table II does the reverse and since our familiarity is more to the 1986 is the one to use. Therefore to complete step one in tracing back to the Statutes at Large of origination you simply go to Table II and locate the IRC 1986 code section you are tracing in the left column and find the corresponding 1939 code section in the right column.

Step 2:

To complete step two, there are two choices:

Refer to Table A in part 1 of the appendix of the IRC of 1939, or

Refer to the Derivations of Code sections of the Internal Revenue Codes of 1939 and 1954, hereafter referred to as the Derivations of Code sections. This document is available at most libraries that have a legal section, such as universities and colleges. It can also be obtained, free of charge at the Joint Committee on Taxation web site given in Appendix A. An email request can be made from the web site

For our purposes, choice 2 will be used. There are three tables in this document as follows:

Table I - Sources of the 1939 Code: gives dates of enactment, and the volume of Statutes at Large with page, chapter and section of the Act from which the 1939 code sections were derived. The first page of Table I of the Derivations of Code sections is shown on page 52

Table II - Sources of the 1954 Code: this table cross-references the sections of the 1954 code to the applicable sections of the 1939 code from which they were derived or to which they corresponded. If no section is shown in the 1939 columns, then the 1954 section is a new section not found in the 1939 code. The first page of Table II of the Derivations of Code sections is shown on page 53.

Table III - Corresponding sections of the 1939 and 1954 Codes: in this table the sections of the 1939 code are cross-referenced to the sections of the 1954 code they were incorporated into. This table, with the exception of heading wording, elimination of duplication, and correction of errors this table is the same as that of Table I in Volume 68A of the Statutes at Large (pages 931 and following). The first page of Table III of the Derivations of Code sections is shown on page 54.

Therefore, since the code sections of the IRC codes of 1954 and 1986 correspond, with two exceptions Table II of the Derivations of Code sections will enable the identification of the enabling Statutes at Large, to include the Revised Statutes. If no entry is found in the columns for the 1939 code then it is a section added and the section itself in the 1986 code referenced to identify the Statutes applicable. The two exceptions to corresponding sections of the two codes are:

The code section is a new section not found in the 1939 code.

DERIVATIONS OF THE CODE SECTIONS OF THE INTERNAL REVENUE CODES OF 1939 AND 1954

Table I lists in the first column the sections of the Internal Revenue Code of 1939 as enacted, and in the succeeding columns the date of enactment, volume of the Statutes at Large, page, Chapter, and section of the Act from which the 1939 Code sections were derived.

Except for the wording of the headings, this table is the same as Table A in volume 53, Part 1 of the Statutes at Large (1939), at pages v and following; it continues the convention of using "do" for ditto. Sections with a line across are mostly cross references with the exception of a few which are effective dates. The Internal Revenue Code of 1939, 53 Stat. (Part 1), 1, enacted on February 10, 1939, was the first reenactment into positive law of the general and permanent statutes relating to internal revenue since the enactment of the Revised Statutes in 1874. The Revised Statutes (R.S.) were enacted as positive law and therefore, reference to the Statutes at Large is unnecessary.

Table I.—Sources of the 1939 Code

[* = Amending statute. † = Reenacting statute. ‡ = Adding statute.]

1939 I. R. C. section	Date enacted	Statutes at Large—			Act section
		Vol- ume	Page	Chap- ter	
1, page 4.....	1938, May 28....	52	452	289	1.
2 .....do.....	.....do.....	52	452	289	2.
3 .....do.....	.....do.....	52	452	289	3.
4 .....do.....	.....do.....	52	452	289	4.
11.....	.....do.....	52	452	289	11.
12.....	.....do.....	52	453	289	12.
13.....	.....do.....	52	455	289	13.
14.....	.....do.....	52	456	289	14.
15.....	.....do.....	52	457	289	15.
21.....	.....do.....	52	457	289	21.
22(a)-(i).....	.....do.....	52	457	289	22.
22(j).....	.....do.....	52	457	289	22.
23.....	1938, May 28....	52	460	289	23.
24.....	.....do.....	52	464	289	24.
25.....	.....do.....	52	466	289	25.
26.....	.....do.....	52	467	289	26.
27.....	.....do.....	52	468	289	27.
28.....	.....do.....	52	470	289	28.
31.....	.....do.....	52	472	289	31.
32.....	.....do.....	52	472	289	32.
33.....	.....do.....	52	473	289	33.
41.....	.....do.....	52	473	289	41.
42.....	.....do.....	52	473	289	42.
43.....	.....do.....	52	473	289	43.
44.....	.....do.....	52	473	289	44.
45.....	.....do.....	52	474	289	45.
46.....	.....do.....	52	474	289	46.

(3)

Table I of the Derivations of Code sections (First Page)

Table II.—Sources of the 1954 Code

Table II lists in the second, fourth, and sixth columns the applicable sections of the Internal Revenue Code of 1939 from which the various sections of the Internal Revenue Code of 1954, as enacted on August 16, 1954, were respectively derived or to which they corresponded. (Sections listed under the 1954 Code columns but with no corresponding 1939 Code section represent new Code sections under the 1954 Code.)

Except for the heading wording, certain changes in punctuation, and the elimination of unnecessary repetition, this table is the same as Table II in volume 68A of the Statutes at Large, at pages 952 and following.

1954 Code section	Derived from 1939 Code section	1954 Code section	Derived from 1939 Code section	1954 Code section	Derived from 1939 Code section
1	11; 12 (b)(3), (c)(f).	114	22(b)(16).	213	23(x).
2	12(d).	115	22(b)(8); 116(d), (e).	214	
3	400.			215	23(u).
4	23(aa)(4), 401, 402, 404.	116		216	23(z).
		117		217	
5		118		241	26.
11	13, 15, 104(b), 261.	119		242	26(a).
		120		243	26(b)(1).
12		121	22(b)(17), 116(i).	244	26(b)(2).
21	108.	141	23(aa)(1).	245	26(b)(3).
31	35, 322(a)(4).	142	23(aa) (4), (5); 213(d).	246	26(b).
32	32.			247	26(h).
33	31.	143	23(aa)(6).	248	
34		144	23(aa) (3), (7).	261	24(a).
35	25.	145		262	24(a)(1).
36	23(aa)(2).	151	25(b)(1).	263	23(a)(1)(C); 24(a)(2)(3).
37		152	25(b)(3).	264	24(a) (4), (6).
38		153	25(b)(2).	265	23(b), 24(a)(5).
61	22(a).	154		266	24(a)(7).
62	22(n).	161	23.	267	24 (b), (c).
63	21.	162	23(a)(1).	268	24(f).
71	22(k).	163	23(b).	269	129.
72	22(b)(2).	164	23 (c), (d).	270	130.
73	22(m).	165	23 (e); (f); (g) (1), (2), (3), (4); (h); (i); (k)(2).	271	23(k)(6).
74				272	
75	22(o).			273	24(d).
76	22(j), 3799.			301	22(e); 115(a), (b), (d), (e), (j).
77	123.	166	23(k).	302	115(c), (g)(1), (i).
101	22(b)(1).	167	23(l), 23(n), 114(a).	303	115(g)(3).
102	22(b)(3).	168	23(t), 124A.	304	115(g)(2).
103	22(b)(4).	169	23(t), 124B.	305	115(f).
104	22(b)(5).	170	23 (o), (q); 120.	306	
105				307	113(a)(19).
106				311	
107	22(b)(6).	171	23(v), 125.	312	115 (c), (h), (l), (m); 394(d).
108	22(b) (9), (10).	172	23(s), 122.		
109	22(b)(11).	173	23(bb).		
110		174			
111	22(b)(12).	175		316	115 (a), (b).
112	22(b)(13).	211	23.	317	
113	22(b)(14).	212	23(a)(2).	318	

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Table II of the Derivations of Code sections (First Page)

Table III.—Corresponding Sections of the 1939 and 1954 Codes

Table III lists in the second, fourth, and sixth columns the applicable sections of the Internal Revenue Code of 1954, as enacted on August 16, 1954, which contained provisions derived from or corresponding to provisions of the respective sections of the Internal Revenue Code of 1939 listed in the first, third, and fifth columns, respectively.

Except for the heading wording, certain changes in punctuation, the elimination of unnecessary repetition, and the correction of certain errors (indicated by footnotes), this table is the same as Table I in volume 68A of the Statutes at Large, at pages 931 and following.

1939 Code section	Corresponded to 1954 Code section	1939 Code section	Corresponded to 1954 Code section	1939 Code section	Corresponded to 1954 Code section
1.....		22(b)(11)	109.	23(i).....	165.
2.....	7806(a).	22(b)(12)	111.	23(j).....	1091.
3.....		22(b)(13)	112.	23(k)(1).	166, 593.
4.....		22(b)(14)	113.	23(k)(2).	165(g)(1), 166(e), 582.
11.....	1.	22(b)(15)	621.	23(k)(3).	165(g)(2).
12(a).....		22(b)(16)	114.	23(k)(4).	166.
12(b)		22(b)(17)	121.	23(k)(5).	166.
(1), (2)		22(c).....	471.	23(k)(6).	271, 166.
12(b)(3).	1.	22(d)		23(l).....	167.
12(c).....	1.	(1)-(5)	472.	23(m).....	611.
12(d).....	2.	22(d)(6).	1321, 6155(a).	23(n).....	167.
12(e).....		22(e).....	301(a).	23(o).....	170.
12(f).....	1.	22(f).....	1001.	23(p).....	404.
12(g).....		22(g).....	861, 862, 863, 864.	23(q).....	170.
13(a).....		22(h).....	Ch. I, Subch. G, Pt. III.	23(r).....	591.
13(b).....	11.			23(s).....	172.
13(c)-(f).		22(i).....		23(t).....	168, 169.
14.....		22(j).....	76.	23(u).....	215.
15(a),		22(k).....	71.	23(v).....	171.
(b).....	11.	22(l).....	691.	23(w).....	691.
15(c).....	1551.	22(m).....	73, 6201(c).	23(x).....	213.
21.....	63.	22(n).....	62.	23(y).....	
22(a).....	61.	22(o).....	75.	23(z).....	216.
22(b)(1).	101.	23.....	161, 211.	23(aa)(1)	141.
22(b)(2)		23(a)(1)		23(aa)(2)	36.
(A).....	72.	(A).....	162.	23(aa)(3)	144.
22(b)(2)		23(a)(1)		23(aa)(4)	4, 142.
(B).....	72, 403.	(B).....	162.	23(aa)(5)	142.
22(b)(2)		23(a)(1)		23(aa)(6)	143.
(C).....	72.	(C).....	263.	23(aa)(7)	144.
22(b)(3).	102.	23(a)(2).	212.	23(bb)...	173.
22(b)(4).	103.	23(b).....	163, 265.	23(cc)....	616.
22(b)(5).	104.	23(c)(1)..	164.	23(dd)...	592.
22(b)(6).	107.	23(c)(2)..		23(ee)...	1202.
22(b)(7).	894.	23(c)(3)..	164.	23(ff).....	615.
22(b)(8).	115, 526, 892, 893, 911, 912, 933, 943.	23(d).....	164.	24(a).....	261.
		23(e).....	165.	24(a)(1).	262.
		23(f).....	165.	24(a)(2),	
22(b)(9).	108.	23(g).....	165.	(3).....	263.
22(b)(10)	108.	23(h).....	165.	24(a)(4).	264.
				24(a)(5).	265.

Table III of the Derivations of Code sections (First Page)

Code sections in the 1986 code were renumbered to allow entry of new code sections. To validate this possibility the content must be compared. If section title and content differ, then one must look in the Revisions, Amendments, and Prior Provisions following the section body of the 1986 code section, an example being section 7608 of the IRC of 1986 where the following is stated Prior Provisions: "A prior section 7608 was renumbered section 7613 of this title." Although not widespread this often occurs.

With the appropriate Statutes identified, they themselves must be referenced in order to determine if they themselves are the originating Statute, or others predating them must be looked at. There are four sources for looking at, copying, or obtaining these Statutes as follows:

For those dating from 1774 to 1873 the "A Century of Lawmaking for a New Nation - U.S. Congressional Documents and Debates 1774-1873" website listed in Appendix A can be used. A difficulty in using this source is that the documents are scanned images, therefore making the search mechanism archaic and time consuming.

For those dating from 1995 through the present date the "Federal Register" website listed in Appendix A can be used. Again, the search mechanism may be difficult for some to use.

The third and easiest method is via visitation to a good university or college library. Here all documents regardless of date should be available, either in hard copy or on microfilm. This is the easiest method by far and the librarians are there to assist you.

The final, and most time consuming is by Freedom of Information Act request to the National Archives and Records Administration.

Internal Revenue Code of 1954

Since the code sections of the 1954 code and 1986 codes are the same, with the exceptions noted not much will be included here. A page of the 1954 code as entered at 68A Statute, page 740 is shown on page 56. It should be noted that this page includes section 6020 of the 1954 code.

By referring to Table II of the Derivations of Code sections and locating section 6020 in the 1954 column(s) it can be determined that section 6020(a) is derived from section 3611(a)(2) of the 1939 code and section 6020(b) from section 3612(a) and (c) of the 1939 code.

Internal Revenue Code of 1986

The IRC of 1986 was derived from the IRC code of 1954 as stated at the front of Title 26: "Internal Revenue Code of 1954 (redesignated the Internal Revenue Code of 1986 by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095)". Therefore, the redesignation was by public law. In tracing back to the original enabling acts and revisions there is one difference in how it was accomplished in the Internal Revenue Code of 1954. In the IRC of 1986 each section of code has, immediately following its text a listing of the source documents (Statutes) that it was derived from. For most, the initial item listed under source will be the reference to the Statute for the 1954 code section it was derived from. Since we used section 6020 of the 1954 IRC and the 1939 code section (3611) that it was derived from here section 6020 of the 1986 IRC will be used. This section reads as follows (abbreviated - amendment text not included):

Sec. 6020. Returns prepared for or executed by Secretary

(a) Preparation of return by Secretary

If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person.

(b) Execution of return by Secretary

(1) Authority of Secretary to execute return

If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed

Subpart D—Miscellaneous Provisions

Sec. 6020. Returns prepared for or executed by Secretary.

Sec. 6021. Listing by Secretary of taxable objects owned by non-residents of internal revenue districts.

SEC. 6020. RETURNS PREPARED FOR OR EXECUTED BY SECRETARY.

(a) **PREPARATION OF RETURN BY SECRETARY.**—If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary or his delegate may prepare such return, which, being signed by such person, may be received by the Secretary or his delegate as the return of such person.

(b) **EXECUTION OF RETURN BY SECRETARY.**—

(1) **AUTHORITY OF SECRETARY TO EXECUTE RETURN.**—If any person fails to make any return (other than a declaration of estimated tax required under section 6015 or 6016) required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary or his delegate shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) **STATUS OF RETURNS.**—Any return so made and subscribed by the Secretary or his delegate shall be prima facie good and sufficient for all legal purposes.

SEC. 6021. LISTING BY SECRETARY OF TAXABLE OBJECTS OWNED BY NONRESIDENTS OF INTERNAL REVENUE DISTRICTS.

Whenever there are in any internal revenue district any articles subject to tax, which are not owned or possessed by or under the care or control of any person within such district, and of which no list has been transmitted to the Secretary or his delegate, as required by law or by regulations prescribed pursuant to law, the Secretary or his delegate shall enter the premises where such articles are situated, shall make such inspection of the articles as may be necessary and make lists of the same, according to the forms prescribed. Such lists, being subscribed by the Secretary or his delegate, shall be sufficient lists of such articles for all purposes.

68A Stat. 740 (26 USC 6020)

therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) Status of returns

Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

(Aug. 16, 1954, ch. 736, 68A Stat. 740; Pub. L. 90-364, title I, Sec. 103(e)(3), June 28, 1968, 82 Stat. 264; Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title IV, Sec. 412(b)(4), July 18, 1984, 98 Stat. 792.)

Here it should be noted that the first source document listed is "Aug. 16, 1954, ch. 736, 68A Stat. 740". This is the reference to the 1954 IRC section it was derived from, shown on page 56. If the first source document listed is not in regards to 68A Stat, and is dated later than 1954 it indicates that the section is a new one not present in the IRC of 1954. In this case, the first document listed is the originating Statute.

Knowing the first entry is the 68A Stat entry, the originating act can be determined by using the Derivations of Code sections of the Internal Revenue Codes of 1939 and 1954, or by referring to the tables at the front of Title 26. Otherwise, the first entry is the originating act.

IMPORTANT NOTES

Following the source document listing there are certain items that are important to be aware of. These are as follows:

1. Amendments: this section gives brief descriptions made to the section by Public Laws, etc. It pays to look at what is stated in the amendments, as we shall see in the next chapter:
2. References in Text: here, if present are given notes pertaining to Acts, words, etc. that appear in the text of the section

If accessing the U.S. Code using the online resources of the Government Printing Office the "CROSS REFERENCES" portion will not be shown in the latest version of the Code, although it will still appear in earlier versions. It is an obvious attempt at "hiding" key elements of law from the American people. This constitutes "hidden law". To see these cross-references you must access the sections of code from the 1994 revision.

In regards to the above, a single fact must be pointed out, and that is what is stated in IRC section 7806:

Sec. 7806. Construction of title

-STATUTE-

(a) Cross references

The **cross references in this title to other portions of the title, or other provisions of law, where the word "see" is used,** are made only for convenience, and shall be given no legal effect.

(b) Arrangement and classification

No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this title, nor shall any table of contents, table of cross references, or similar outline, analysis, or descriptive matter relating to the contents of this title be given any legal effect. The preceding sentence also applies to the sidenotes and ancillary tables contained in the various prints of this Act before its enactment into law.

What this means is that the mere listing of a section within the cross references **does not** give the referenced section any backing of law. However, IRC section 7806 is not backed by regulations that have the enforcement backing of any statute itself. For this reason it can only be considered an interpretive regulation concerning a statement of fact. Additionally, subsection (a) reads the same as section 2 of the IRC of 1939 and is what 7806(a) was derived from. The IRC of 1939 was positive law giving credence to what IRC section 7806(a) of the present code states. It still does not negate the fact that if any of the sections so referenced are backed by regulations that have lawful statutes behind them, then those sections still have legal effect.

The Documentation System of Federal Law

In regards to IRC 7806(b), what is meant is that regardless of where within the IRC a particular code section appears it's use is not necessarily limited to that particular portion of the IRC. For example, IRC section 911 appears in Subtitle A--Income Taxes, Chapter 1--Normal Taxes and Surtaxes, Subchapter N--Tax Based on Income From Sources Within or Without the United States, Part III--Income from Sources Without the United States - Subpart B--Earned Income of Citizens or Residents of United States Living Abroad; yet it is referred to in Subtitle C--Employment Taxes, Chapter 24--Collection of Income Tax At Source on Wages

Definitions

In reading the codes in the United States Code (USC), or the regulations in the Code of Federal Regulations (CFR) it is important that you do not take the meanings of words in their ordinary sense of understanding. Always look for the sections in the applicable part, subpart, chapter, or subchapter of the USC that you are studying. **If you take certain key terms in their ordinary sense, you will erroneously apply laws, statutes, and regulations to your situation that may not apply.** By doing so you make yourself liable for their provisions. That congress has employed the trickery of words appears in the Congressional Record:

As the Congressional Record reflects: "[W]e have tolerantly permitted the habitual misuse of words to serve as a vehicle to abandon our foundations and goals." House Congressional Record, June 13, 1967, pg. 15641.

The definitions of primary importance are the following:

Definition:	Page:
"Includes" and "Including"	59
"United States" and "State"	61
"Trade or Business"	71
"Employee"	72
"Income"	80
"Wages"	89

"Includes" and "Including"

The definition of "Includes" and "Including" is discussed in both, the Court view and as it appears in the IRC of 1986. This is probably the most important definition to learn, and also the most misunderstood.

Court View

In *Blanck et al. v. Pioneer Mining Co. et al.* (Wash.; 159 Pac. 1077, 1079) it is stated as follows:

"the word 'including' is a term of **enlargement and not a term of limitation**, and necessarily implies that something is intended to be embraced in the permitted deductions beyond the general language which precedes. However, 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' introduces an **enlarging** definition of the preceding general words, 'actual cost of the labor,' thus of necessity excluding the idea of a further **enlargement** than that furnished by the **enlarging** clause to introduced. When read in its immediate context, as on all authority it must be read, the word 'including' is obviously used in the sense of its synonymous 'comprising; comprehending; embracing.'"

Notice that here it is stated that it is a term of enlargement, but then goes on to state that "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. In other words, the only additions that can be made by enlargement must fit with the words that appear within the definition, therefore becoming restrictive.

In addition, the Supreme Court has addressed the meaning, as shown below:

"[w]here general words [such as the provisions of 7701(c) -PH] follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words."
Circuit City Stores v. Adams, 532 US 105, 114-115 (2001)

Definitions

“Under the principle of *eiusdem generis*, when a general term follows a specific one, the general term should be understood as a reference to subjects akin to the one with specific enumeration.” - *Norfolk & Western R. Co. v. Train Dispatchers*, 499 US 117 (1991)

“...a word is known by the company it keeps (the doctrine of *noscitur a sociis*). This rule we rely upon to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving "unintended breadth to the Acts of Congress." *Jarecki v. G. D. Searle & Co.*, 367 US 303, 307 (1961)” *Gustafson v. Alloyd Co.* (93-404), 513 US 561 (1995).

Perhaps other definitions will enable additional understanding.

Dictionary and Other Definitions

There are two Latin legal terms that apply (Black’s Law Dictionary, 6th Edition):

Inclusio unius est exclusio alterius. The inclusion of one is the exclusion of another. This doctrine decrees that where law expressly describes [a] particular situation to which it shall apply, an irrefutable inference must be drawn that what is omitted or excluded was intended to be omitted or excluded.

Noscitur a sociis. It is known from its associates. Under the doctrine of "*noscitur a sociis*", the meaning of questionable or doubtful words or phrases in a statute may be ascertained by reference to the meaning of other words or phrases associated with it.

Black’s Law Dictionary, 6th Edition defines it as:

Include. (Lat. *Includere*, to shut in, keep within.) To confine within, hold as in 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.

In Merriam-Webster's Online Dictionary, 10th Edition it defines it as follows:

Main Entry: **in·clude**

Pronunciation: in-'klüd

Function: *transitive verb*

Inflected Form(s): **in·clud·ed**; **in·clud·ing**

Etymology: Middle English, from Latin *includere*, from *in-* + *cludere* to close -- more at CLOSE

Date: 15th century

1: to shut up: **ENCLOSE**

2: to take in or comprise as a part of a whole

3: to contain between or within <two sides and the *included* angle>

- **in·clud·able** or **in·clud·ible** /-'klü-d&-b&l/ *adjective*

synonyms INCLUDE, COMPREHEND, EMBRACE, INVOLVE mean to contain within as part of the whole. INCLUDE suggests the containment of something as a constituent, component, or subordinate part of a larger whole <the price of dinner *includes* dessert>. COMPREHEND implies that something comes within the scope of a statement or definition <his system *comprehends* all history>. EMBRACE implies a gathering of separate items within a whole <her faith *embraces* both Christian and non-Christian beliefs>. INVOLVE suggests inclusion by virtue of the nature of the whole, whether by being its natural or inevitable consequence <the new job *involves* a lot of detail>.

It is defined by Webster as follows:

"To comprehend or comprise, as a genus of the species, the whole a part, an argument or reason the inference; to take or reckon in; to contain; embrace; as this volume includes the essays to and including the tenth."

The Century Dictionary defines "including," thus: "to comprise as a part."

26 USC section 7701(c)

In 26 USC, section 7701(c) it is defined as follows:

(c) Includes and including

The terms "includes" 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.

In the above it can be seen that it takes on the meaning as given in *Blanck et al. v. Pioneer Mining Co. et al.* (Wash.; 159 Pac. 1077, 1079) in that it is restrictive only in that any other item to be considered as within the meaning must have the characteristics of the items already enclosed within the definition as given.

To be within the "meaning" an object must have the same common characteristics as the objects that are in the definition. For example, if a term "fruits" as defined listed the following objects or items "apple, pear, peach" a carrot could not be included as it would not be within the meaning of the term. This because the listed items are fruits while the carrot is a vegetable. A common thread must exist in order to add new items to the definition. This then needs to be remembered whenever the word "includes" or "included" are used in a definition. In our next definition, the meaning of the use of "includes" and "including" will be put to use.

Another proof that the above is true comes from Black's Law Dictionary, Abridged Sixth Edition where it defines "define" and "definition as shown below:

Define. To explain or state the exact meaning of words and phrases; to state explicitly; to limit; to determine essential qualities of; to determine the precise signification of; to settle; to establish or prescribe authoritatively; to make clear. To declare that a certain act shall constitute an offense is defining that offense. *See also* Definition.

Definition. 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. *See also* Define.

“United States” and “State”

These definitions are discussed in both, their present reading in the IRC of 1986 and as shown in the previous codes/sections/statutes that they were derived from in the following paragraphs:

Paragraph:

Page:

Definitions

Supreme Court Definition	62
Present section	62
Previous Codes/sections/Statutes Derived From	64

Supreme Court Definition

The term "United States" has several meanings, as given in Black's Law Dictionary, 6th Edition Abridged::

United States. This term has several meanings.

It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in family of nations, it may designate territory over which sovereignty of United States extends, or it may be collective name of the states which are united by and under the Constitution.

Here the three meanings are defined:

- A. Sovereign occupying the position analogous to that of other sovereigns in the family of nations,
- B. It may designate the territory over which the sovereignty of the United States extends, or
- C. It may be the collective name of the states which are united by and under the Constitution.

The Court also defined the two types of legislative powers of Congress. Legislation in respect to the 2nd definition and legislation in respect to the 3rd definition:

"In exercising its constitutional power to make all needful regulations respecting territory belonging to the United States, " (2) " Congress is not subject to the same constitutional limitations as when legislating for the United States." (3)

It should be noted that under the constitution each of the fifty states is Sovereign under the constitution. This is noted in the Corpus Juris Secundum (Principles of American Law):

"Volume 20: Corpus. Juris Sec. §1785: "The United States Government is a foreign corporation with respect to a State" - NY re: Merriam 36 N.E. 5051441 S.Ct.1973, 41 L.Ed.287

Present section - 26 USC 7701(a)(9) and (10)

In the following paragraphs one must apply the meaning to "includes" as given in 26 U.S.C. section 7701(c) as previously covered on page 61 and shown in the figure "Federal Court Jurisdiction" on page 247.

In section 7701(a) (9) and (10) "United States" and "State" are defined as follows:

(9) United States

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

(10) State

The term "State" shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.

Before jumping to conclusions in regards to the definition of the "United States" look at the definition for "State" - it consists of the same items, or entities. The common element of these entities is that they are areas as constitutionally established (District of Columbia - seat of the federal government), or those areas not granted

statehood but that are under congresses' statutory control. None of the fifty States can fit within this meaning, as they are sovereign under the constitution:

"Congress exercises its confirmed powers subject to the limitations contained in the Constitution. If a State ratifies or gives consent to any authority which is not specifically granted by the Constitution of the United States, it is null and void. State officials cannot consent to the enlargement of powers of Congress beyond those enumerated in the Constitution." - Sandra Day O'Conner in the 1992 case of New York v. United States

Further proof of the limitation in the meaning can be found in Amendments given at the end of section 7701. There are important amendments in regards to two laws made by congress, for they occurred following the admission of Alaska and Hawaii into the union as sovereign States. Alaska was admitted on Jan 3, 1959, and Hawaii on Aug 21, 1959. These amendments are:

Subsec (a)(9) Pub L 86-70, Sec 22(g), substituted 'the Territory of Hawaii' for 'the Territories of Alaska and Hawaii'

Subsec (a)(10) Pub L 86-70, Sec 22(h), substituted 'Territory of Hawaii' for 'Territories'

Subsec (a)(9), (10) Pub L 86-624, Sec 18(i), t), struck out reference to the Territory of Hawaii

Now lets reverse the process and rebuild these definitions to what they were prior to the admission of Hawaii and Alaska:

Since the 1960 Amendment changed the definition of Subsection (a)(9) and (a)(10) lets rewrite them to how they read prior to the 1960 Amendment:

9) United States

The term 'United States' when used in a geographical sense includes only the States, the Territory of Hawaii, and the District of Columbia

(10) State

The term 'State' shall be construed to include the 'Territory of Hawaii, and the District of Columbia, where such construction is necessary to carry out provisions of this title

Now lets repeat the process for the 1959 Amendment:

(9) United States

The term 'United States' when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia

(10) State

The term 'State' shall be construed to include the 'Territories of Alaska and Hawaii, and the District of Columbia, where such construction is necessary to carry out provisions of this title

Now we see that prior to the 1959 Amendment, both Alaska and Hawaii were defined as a part of the United States and as a State. Now, first Alaska becomes admitted as a sovereign State and the 1959 Amendment takes effect, which means that now the definitions are as follows:

(9) United States

The term 'United States' when used in a geographical sense includes only the States, the Territory of Hawaii, and the District of Columbia

(10) State

The term 'State' shall be construed to include the 'Territory of Hawaii, and the District of Columbia, where such construction is necessary to carry out provisions of this title.

An interesting observation can now be made. Notice that the definitions of "United States" and "State" prior to Alaska's statehood included that State, but after admission of Alaska, it was dropped from the definition of a "State". It is now not considered as applicable to Title 26 a State.

Definitions

Then, after the admission of Hawaii these definitions were further changed as a result of Hawaii's statehood:

(9) United States

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

(10) State

The term 'State' shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title

In applying the above, another fact must be kept in mind. Constitutionally, only congress can make laws. These laws are often passed to federal departments or agencies to implement regulations for carrying them out. These agencies and departments however **cannot add anything to the law or make any assumptions as to "what congress meant"**. The rules and regulations must conform only to what congress has included in the law: Congress took Alaska and Hawaii out of the definition, no department or agency can put it back in by assumption.

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

"Treasury regulations can add nothing to income as defined by Congress." - *Blatt Co. v U.S.*, 59 S.Ct. 186.

Further, **a judge cannot make assumptions for to do so would be in itself "making law"**, which is not within their powers. Many Article I judges, being venal in nature, to protect themselves from IRS actions, or perhaps get their piece of the monies and property unconstitutionally taken have made such venal decisions. I will not be so trapped for their limits of jurisdiction are known to me. Further, the Supreme Court has stated:

"Where rights secured by the constitution are involved, there can be no rule-making or legislation which would abrogate them." *Miranda v. Arizona* (U.S. Supreme Court) 380 US 436 (1966)

"When any court violates the clean and unambiguous language of the constitution, a fraud is perpetrated and no one is bound to obey it." *State v. Sutton* 63 Minn 167, 65 NW 262, 30 LRA 630

Statutes employing the word 'person' are ordinarily construed to exclude the sovereign." 56 L.Ed. 2d. 895.

"Decency, security, and liberty alike demand that government officials 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. Crime is contagious. If government becomes a lawbreaker, it breeds contempt for the law...it invites every man to become a law unto himself...and against that pernicious doctrine, this court should resolutely set its face." *Olmstead v U.S.*, 277 US 348, 485; 48 S. Ct. 564, 575; 72 LEd 944.

Previous Codes/sections/Statutes Derived From

The background history of sections of the IRC is of importance. More often than not they were written in a more honest age of government and therefore do not attempt to obscure the true meanings. In the brief for the United States in *United States of America, Petitioner v. Whiting Pools, Inc.*, No. 82-215 In the Supreme Court of the United States, October Term, 1982 the U.S. Attorney used such reference to past Statutes. Revised Statute section 3140 from the Revised Statutes of 1874 is a part of the historical background of the definition of "State" in IRC section 7701(a)(10).

Note that in the Revised Statute of 1874 section 3140 the word "Territories" is also used. This giving credence to the use of the word "includes" as it is defined and to our analogy to its use.

In the IRC of 1939 (positive law) the term “state” is defined as follows:

‘ (d) STATE.—The term “State” includes Alaska, Hawaii, and the District of Columbia.

Remember that Alaska was admitted to statehood on Jan 3, 1959, and Hawaii on Aug 21, 1959. Therefore at the time of the IRC of 1939 they **were territories not states**, therefore showing again that the definition only applied to the territories under federal government control.

Varying Definitions within the Present IRC

In the following table different definitions of the term “United States”, as appears in the tax code are given, along with the chapter or part of the code to which they apply. Common sense and reality should suffice in the realization that if the term always included the 50 States the many variations of the definitions would be unnecessary and one would do. The definition for “State” must also be taken into consideration as the word “State” is used in some definitions of “United States”.

Tax Code Definitions and Applications for “United States” and “State”

Title/Subtitle/Chapter/Subchapter/part/ Subpart/section	Definition	Class
TITLE 26 - INTERNAL REVENUE CODE Subtitle A - Income Taxes CHAPTER 1 - NORMAL TAXES AND SURTAXES Subchapter A - Determination of Tax Liability PART IV - CREDITS AGAINST TAX Subpart D - Business Related Credits Sec. 42. Low-income housing credit	(8) Other definitions For purposes of this subsection - (B) Possessions treated as States The term ‘State’ includes a possession of the United States.	B
TITLE 26 - INTERNAL REVENUE CODE Subtitle A - Income Taxes CHAPTER 1 - NORMAL TAXES AND SURTAXES Subchapter B - Computation of Taxable Income PART III - ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME Sec. 103. Interest on State and local bonds	(c) Definitions For purposes of this section and part IV - (2) State The term ‘State’ includes the District of Columbia and any possession of the United States.	B

Tax Code Definitions and Applications for “United States” and “State” (Cont.)

Definitions

Title/Subtitle/Chapter/Subchapter/part/ Subpart/section	Definition	Class
<p>TITLE 26 - INTERNAL REVENUE CODE Subtitle A - Income Taxes CHAPTER 1 - NORMAL TAXES AND SURTAXES Subchapter B - Computation of Taxable Income PART III - ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME Sec. 103. Interest on State and local bonds</p>	<p>(c) Definitions For purposes of this section and part IV - (2) State The term 'State' includes the District of Columbia and any possession of the United States.</p>	<p>B</p>
<p>TITLE 26 - INTERNAL REVENUE CODE Subtitle A - Income Taxes CHAPTER 1 - NORMAL TAXES AND SURTAXES Subchapter I - Natural Resources PART V - CONTINENTAL SHELF AREAS Sec. 638. Continental shelf areas</p>	<p>For purposes of applying the provisions of this chapter (including sections 861(a)(3) and 862(a)(3) in the case of the performance of personal services) with respect to mines, oil and gas wells, and other natural deposits - (1) the term 'United States' when used in a geographical sense includes the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the United States and over which the United States has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources; and</p>	<p>A</p>
<p>TITLE 26 – INTERNAL REVENUE CODE Subtitle A - Income Taxes CHAPTER 1 - NORMAL TAXES AND SURTAXES Subchapter I - Natural Resources PART V - CONTINENTAL SHELF AREAS Sec. 638. Continental shelf areas</p>	<p>For purposes of applying the provisions of this chapter (including sections 861(a)(3) and 862(a)(3) in the case of the performance of personal services) with respect to mines, oil and gas wells, and other natural deposits - (1) the term 'United States' when used in a geographical sense includes the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the United States and over which the United States has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources; and</p>	<p>A</p>

Definitions

Title/Subtitle/Chapter/Subchapter/part/ Subpart/section	Definition	Class
<p>TITLE 26 - INTERNAL REVENUE CODE Subtitle C - Employment Taxes CHAPTER 21 - FEDERAL INSURANCE CONTRIBUTIONS ACT Subchapter C - General Provisions Sec. 3121. Definitions</p>	<p>Sec. 3121. Definitions (e) State, United States, and citizen For purposes of this chapter - 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.</p>	<p>B</p>
<p>TITLE 26 - INTERNAL REVENUE CODE Subtitle C - Employment Taxes CHAPTER 23 - FEDERAL UNEMPLOYMENT TAX ACT Sec. 3306. Definitions</p>	<p>For purposes of this chapter - State The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands. (2) United States The term 'United States' when used in a geographical sense includes the States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.</p>	<p>B</p>
<p>TITLE 26 - INTERNAL REVENUE CODE Subtitle D - Miscellaneous Excise Taxes CHAPTER 32 - MANUFACTURERS EXCISE TAXES Subchapter B - Coal Sec. 4121. Imposition of tax</p>	<p>(d) Definitions For purposes of this subchapter - (3) United States The term 'United States' has the meaning given to it by paragraph (1) of section 638.</p>	<p>A</p>
<p>TITLE 26 - INTERNAL REVENUE CODE Subtitle D - Miscellaneous Excise Taxes CHAPTER 32 - MANUFACTURERS EXCISE TAXES Subchapter C - Certain Vaccines Sec. 4132. Definitions and special rules</p>	<p>(7) United States The term 'United States' has the meaning given such term by section 4612(a)(4).</p>	<p>B, C</p>
<p>TITLE 26 - INTERNAL REVENUE CODE Subtitle D - Miscellaneous Excise Taxes CHAPTER 33 - FACILITIES AND SERVICES Subchapter C - Transportation by Air PART I - PERSONS Sec. 4262. Definition of taxable transportation</p>	<p>(c) Definitions For purposes of this section - (1) Continental United States The term 'continental United States' means the District of Columbia and the States other than Alaska and Hawaii.</p>	<p>B, C</p>
<p>TITLE 26 - INTERNAL REVENUE CODE Subtitle D - Miscellaneous Excise Taxes CHAPTER 33 - FACILITIES AND SERVICES CHAPTER 36 - CERTAIN OTHER EXCISE TAXES Subchapter A - Harbor Maintenance Tax Sec. 4462. Definitions and special rules</p>	<p>(a) Definitions For purposes of this subchapter - (3) United States mainland For purposes of this subsection, the term 'United States mainland' means the continental United States (not including Alaska).</p>	<p>B, C</p>
<p>TITLE 26 - INTERNAL REVENUE CODE Subtitle D - Miscellaneous Excise Taxes CHAPTER 36 - CERTAIN OTHER EXCISE TAXES Subchapter D - Tax on Use of Certain Vehicles Sec. 4482. Definitions</p>	<p>(c) Other definitions and special rule For purposes of this subchapter - (1) State The term 'State' means a State and the District of Columbia.</p>	<p>B, C</p>

Tax Code Definitions and Applications for "United States" and "State" (Cont.)

Title/Subtitle/Chapter/Subchapter/part/ Subpart/section	Definition	Class
TITLE 26 - INTERNAL REVENUE CODE Subtitle F - Procedure and Administration CHAPTER 79 – DEFINITIONS Sec. 7701. Definitions	(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof - (9) United States The term 'United States' when used in a geographical sense includes only the States and the District of Columbia. (10) State The term 'State' shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.	B
TITLE 26 - INTERNAL REVENUE CODE Subtitle F - Procedure and Administration CHAPTER 96 - PRESIDENTIAL PRIMARY MATCHING PAYMENT ACCOUNT Sec. 9032. Definitions	For the purposes of this chapter - (10) The term 'State' means each State of the United States and the District of Columbia.	B, C

It is interesting to note that the only parts of the code that apply within the 50 states (Class C: "it may be the collective name of the States which are united by and under the Constitution") are the "excise" taxes. Also, if one will notice the word "includes" was not used in these definitions, being replaced by the word "means"..

Preliminary Information Concerning the Definitions of "Employment", "Employee", "Employer" and "Wages"

Before delving into the IRC definitions of "Employment", "Employee", "Employer" and "Wages" it is important to realize certain facts that play a key part in how these terms are defined.

Public Salary Tax Act of 1939

The Public Salary Tax Act of 1939 played a significant part in forming the basis of fraud by which our federal and state governments now operate. Following are key facts that apply to the act:

- In the case of *O'Malley v. Woodrough* (307 U. S. 277), however, the provisions of the Revenue Act of 1936, which required the inclusion in gross income for the purposes of taxation of the compensation of "judges of courts of the United States taking office after June 6, 1932," the Court upheld as constitutional, stating in the course of its opinion, "To suggest that it (the tax) makes inroads upon the independence of judges who took office after Congress had thus charged them with the common duties of citizenship, by making them bear their aliquot share of the cost of maintaining the Government, is to trivialize the great historic experience on which the framers based the safeguards of article III, Sec. 1 (of the Constitution, p. 282)."
- A similar evolution in the attitude of the Court took place in regard to the taxation by states of the salaries of Federal officials and the taxation by the Federal Government of the salaries of state officials. In *Rogers v. Graves* (299 U. S. 401) decided in 1937, the Supreme Court had held that the State of New York was without power to tax the salary of the general counsel of the Panama Railroad Co., which was an instrumentality of the United States Government.
- In *Graves v. O'Keefe* (306 U. S. 466), however, two years later, the Court ruled that the salary of O'Keefe, who was an attorney for the Home Owners Loan Corporation, a Federal Government instrumentality, could be taxed by the State of New York. The exercise of the right of the Federal Government to tax incomes derived from salaries received as employees of state instrumentalities was upheld by the Court in *Helvering v. Gerhardt* (304 U. S. 405); although in *Brush v. Commissioner* (300 U. S. 352), decided a year previously, the Court had invalidated the taxation by the United States of the salary of the Chief Engineer of New York's Bureau of Water Supply, Gas and Electricity.

Definitions

- Congress passed the Public Salary Tax Act that provided for the taxation of the salaries of Federal judges taking office prior to June 6, 1932. The Federal Government also consented to state taxation of the salaries of Federal employees, provided that no discrimination is made because of the source of compensation.
- The taxable status of public employees was further affected through the Public Salary Tax Act of 1939 that provided that salaries for 1939 and thereafter paid by the state and local governments would be subject to the Federal income tax. It also opened the way for state and local governments to tax the salaries of Federal employees.

The impact of this act on the definitions will be made clear as they are covered.

“Employment”

Title 26 section 3101- Rate of tax

This section of code identifies the Old age, survivors, and disability insurance; and the hospital insurance as additional income taxes. Subsection (a) very clearly states that it applies to **Old age, survivors, and disability insurance**. It then goes on to state that it is in regards to **wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))**. This is repeated in subsection (b) concerning hospital insurance where it states **with respect to employment (as defined in section 3121(b))**.

Note that it applies to what is received with respect to **employment (as defined in section 3121(b))**. Therefore, next we will see what this definition is.

Title 26 section 3121- Definitions

As the income taxes as identified in IRC section 3101 are applicable to employment as defined within IRC section 3121(b) a look at that subsection is important: What it reveals is that it contains a very wordy description purposely intended to confuse the unwary. However, subsections (b)(A), (B), and (C) bares an important fact where it states in regards to “employment” that it is employment of the following types:

(A) by an **employee** for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or
(B) outside the United States by a citizen or resident of the United States as an **employee** for an American employer (as defined in **subsection (h)**), or
(C) if it is service, **regardless of where or by whom performed**, which is designated as employment or recognized as equivalent to employment under an **agreement entered into under section 233 of the Social Security Act; except that such term shall not include--**. In 3(B), it goes on to state **service not in the course of the employer's trade or business** as being excluded.

Notice the statement “which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233 of the Social Security Act; except that such term shall not include —”. Here it mentions as being “employment” that which is recognized as employment under section 233 of the Social Security Act (SSA). Section 233 of the SSA is codified in section 433 of Title 42. Section 433(a) that states it is regarding those subject to international agreements with other countries regarding a social security system.

Therefore, anyone subjected to an international agreement between the United States and their home country and employed within the United States has their labor classified as “employment”. The second item of importance in IRC section 3121 is the statement in subsection (b)(3)(B) where it states “**service not in the course of the employer's trade or business**”. Remember now we are talking of exceptions to the term “employment”. This statement gains importance **because it states that service not in the course of the employer's trade or business does not constitute employment for purposes of the SSA**. This sounds so

simple that it makes one believe that logically it must include almost everyone. Not so fast, let's look at IRC section 7701(a)(26) where "trade or business is defined as "The term "trade or business" includes the performance of the functions of a public office."

Now, by applying the definition of what is meant by the term "includes" it is clearly stated that only the functions of a public office constitute "employment" for SSA purposes. Public office relates to those elected and appointed, no other. It does however take on a modified meaning within Subtitle E - Alcohol, Tobacco, and Certain Other Excise Taxes.

Another indication that the social security system, as presently enforced is nothing more than a federal con game to defraud you of the property of your labor.

"Trade or Business"

Too many get fixed on a single meaning for this term as it is called out in Title 26 section 7701(a)(26) where it is defined as "The term "trade or business" includes the performance of the functions of a public office". There are other meanings though, such as in the following paragraphs.

In Title 26 section 864(b) it is defined as "For purposes of this part, part II, and chapter 3, the term "trade or business within the United States" includes the performance of personal services within the United States at any time within the taxable year, but does not include—"

In subtitle E - Alcohol, Tobacco, and Certain Other Excise Taxes there are several definitions given. Only one will be addressed here, and that is found in section 5081. Imposition and rate of tax. In the effective date listing for Section 10512(h) of Pub. L. 100-203 it states that "provided that:" In general.--Any person engaged on January 1, 1988, in any **trade or business** which is subject to an **occupational tax** shall be treated for purposes of such tax as having 1st engaged in such trade or business on such date." The occupational taxes referred to are called out as "For purposes of this paragraph, the term 'occupational tax' means any tax imposed under part II of subchapter A of chapter 51, section 5276, section 5731, or section 5801 of the Internal Revenue Code of 1986 (as amended by this section)."

These sections are as follows:

- Chapter 51--Distilled Spirits, Wines, and Beer, Subchapter D--Industrial Use of Distilled Spirits, Sec. 5276. Occupational tax
- Chapter 52--Tobacco Products and Cigarette Papers and Tubes, Subchapter D--Occupational Tax, Sec. 5731. Imposition and rate of tax
- Chapter 53--Machine Guns, Destructive Devices, and Certain Other Firearms, Subchapter A--Taxes, Part I --Special (Occupational) Taxes, Sec. 5801. Imposition of tax

There are others in subtitle E but the above should give you an idea.

You can also find different definitions in regards to being engaged in "wagering or gambling", and in regards to being engaged in catching fish. Regarding this, one looks at the backside of a Form 1099-MISC where in the instructions states that

Box 7. Shows nonemployee compensation. If you are in the trade or business of catching fish, box 7 may show cash you received for the sale of fish. If payments in this box are SE income, report this amount on Schedule C, C-EZ, or F (Form 1040), and complete Schedule SE (Form 1040). You received this form instead of Form W-2 because the payer did not consider you an employee and did not withhold income tax or social security and Medicare taxes. Contact the payer if you believe this form is incorrect or has been issued in error. If you believe you are an employee, report this

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amount on line 7 of Form 1040 and call the IRS for information on how to report any social security and Medicare taxes.

“Employee”

Here we will not linger as long and get to the point. I am sure that you know what an employee is in everyday language. Here we will get to the meaning in the tax code, and it is different. There are two chapters of the code that are of importance in determining the meaning of the term “employee”. These are Chapter 21 - Federal Insurance Contributions Act, and Chapter 24 - Collection of Income Tax at Source on Wages. These will be covered in the following paragraphs.

“Employee” as defined in Chapter 21 - Federal Insurance Contributions Act

The definition of employee within chapter 21 is given in IRC section 3121(d) as:(1) **any officer of a corporation**; or (2) **any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee**; or (3) any individual (other than an individual who is an employee under paragraph (1) or (2)) **who performs services for remuneration for any person-**

It then goes on and lists the occupations that fall within (3) as being (A) an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal; (B) as a full-time life insurance salesman; (C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him; or (D) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations; and on-and-on.

It also states within that an employee includes any individual who performs services that are included under an agreement entered into pursuant to section 218 of the Social Security Act.

Subsection (d) (1) and (2) requires one to know what corporations they are referring to, and what are the “common law rules”. It is subsection (d)(3) though that is most subject to misunderstanding, as it appears to either benefit, or punish certain occupations depending on your viewpoint. Perhaps the regulations can clear the understanding. Regulations for IRC section 3121 appear in 26 CFR – Income Tax parts 31, 32, and 36. Part 32 pertains to taxes with respect to payments because of sickness or accident disability for Social Security and Railroad Retirement taxes. Part 36 pertains to contract coverage of employees of foreign subsidiaries. Therefore, concentration will be on those within part 31. Since an “employee” works for an “employer”, that meaning will also be investigated.

In regards to a “corporation”, its meaning within the IRC is defined at IRC section 7701(a)(3) as “The term “corporation” includes associations, joint-stock companies, and insurance companies.” Sure leaves out IBM, Microsoft, and other private enterprise companies don’t it.

26 CFR section 31.3121(d)-1 – Who are employees

In section 31.3121(d)-1(a)(2) the following is stated:(2) Section 3121(d) contains **three separate and independent tests** for determining who are employees. Paragraphs (b), (c), and (d) of this section relate to the respective tests. Paragraph (b) relates to the test for determining whether an officer of a corporation is an employee of the corporation. Paragraph (c) relates to the test for determining whether an individual is an employee under the usual common law rules. Paragraph (d) relates to the test for determining which individuals in certain occupational groups who are not employees under the usual common law rules are included as employees. If an individual is an employee under any one of the tests, he is to be considered an employee for purposes of the regulations in this subpart whether or not he is an employee under any of the other tests.

Therefore, subsections 31.3121(d) -1 (c) and (d) are of interest. First, let's look at 31.3121(d)-1(c) which deals with common law employees. It contains a quagmire of words and terms designed to make most believe they are indeed "employees". However, buried within the on-going dribble are words that point out the truth. This is the statement that **Individuals such as physicians, lawyers, dentists, veterinarians, construction contractors, public stenographers, and auctioneers, engaged in the pursuit of an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees.**

What makes this wording important is that it mentions three key terms "trade", "business", and "profession". In regards to the first two, let's take another look at the definition given in Title 26 section 7701(a)(26) where it is defined as "The term "trade or business" includes the performance of the functions of a public office".

Now, here one must remember the definition of "includes" which indicates that it is only the performance of the functions of a public office that classifies what a trade or business is in terms of the IRC. I have put emphasis on the word "or" for a reason. Let's take a look at its meaning as stated in Black's Law Dictionary, Abridged Sixth Edition:

Or, conj. A disjunctive particle used to express an alternative or to give a choice of one among two or more things. It is also used to clarify what has already been said, and in such cases, means "in other words," "to-wit," or "that is to say." The word "or" is to be used as a function word to indicate an alternative between different or unlike things. In some usages, the word "or" creates a multiple rather than an alternative obligation; where necessary in interpreting an instrument, "or" may be construed to mean "and."

Therefore the wording "**engaged in the pursuit of an independent trade, business** means that if you are not engaged in the performance of the functions of a public office, then you are not classified as an "employee" for the purposes of Chapter 21 - Federal Insurance Contributions Act according to statutory law.

Now a look at the words "**or profession**" must be considered. Since this was listed as an alternative to the terms "trade" or "business as discussed above it takes on a different meaning as it is not relevant, or within the meaning of the term "trade or business". Here we must leave statutory law and go directly to the fundamental law of the United States, since Supreme Court decisions are the Law of the Land. To see what the Courts has stated in regards to the taxation of the professions I refer you to the cites given in the chapter "Federal Government Misinformation Exposed" starting on page 11:

Therefore, unless you are one involved in a trade or business (performance of the functions of a public office) per IRC 7701(a)(26) you **are not** an employee in accordance with IRC 3121 and its regulations. In this regard, the Supreme Court stated the limitations on federal power in Railroad Retirement Board v. Alton Railroad Co, 295 U.S. 330, 55 S. Ct. 758 1935, shown on page 18.

Notice that though this is in regards to the Railroad Retirement the items mentioned are common to social security.

The Treasury Financial Manual lists those on whom Social Security and Medicare taxes are imposed on as follows:

4030.20-Employees Subject to Social Security and Medicare Taxes

Both Social Security and Medicare taxes are imposed on the following groups:

- All Federal employees hired on or after January 1, 1984, including those with previous Federal service who have experienced a break in Federal service of 366 or more days.

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- All legislative branch employees not participating in the CSRS as of December 31, 1983.
- All members of Congress, the President, and the Vice President.
- All sitting Federal judges, executive level and noncareer appointees in the Senior Executive Service, and noncareer members of the Senior Foreign Service.

Doesn't this appear in agreement with the Public Salary Tax Act of 1939 covered on page 69? It also lists those upon whom the taxes are not imposed:

4030.30-Employees Not Covered for Social Security and Medicare under the IRC

The following employees are not covered for Social Security and Medicare under the IRC:

- Inmates of a U.S. penal institution.
- Student nurses, student dietitians, and student physical or occupational therapists described in 5 U.S.C. section 5351(2), who are attached to a hospital or clinic, etc., operated by the U.S. Government. Medical or dental interns or residents in training are subject to the rules described in TFM subsections 4030.10 and 4030.20.
- Individuals serving under temporary conditions in connection with emergencies due to fire, storm, earthquake, flood, or other similar emergencies.

“Employee” as defined in Chapter 24 - Collection of Income Tax at Source on Wages

The definition of “employee” is found in IRC section 3401(c) states “For purposes of this chapter, the term “employee” includes an officer, employee, or elected official of the United States, a State, or any political subdivision 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.”

Notice that the term “includes” is used in the definition; therefore limiting it to whom it states is an “employee”, allowing only the addition of other classifications of those that work for government and an officer of a corporation. A corporation is defined in IRC section 7701(a)(3) as “The term “corporation” includes associations, joint-stock companies, and insurance companies.”

Now for the appropriate regulations.

26 CFR section 31.3401(c)-1 - Employee

The regulations for enforcement are found in Sec. 31.3401(c)-1 Employee. In subsection 31.3401(c)-1(c) an exclusion is made for those in an independent trade, business, or profession who offer their services to the public sector: **“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.”**

Does this seem familiar? It should, as this is the same as was stated in the regulations for IRC 3121. Additionally, 31.3401(c)-1(a) limits the application to certain classes of government employees: “The term employee includes every **individual** performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. **The term includes officers and employees, whether elected or appointed, of the United States, a 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.**”

Notice the usage of the term “includes” and the words “**elected**” and “**appointed**”. This limits the designation as “employee” to only those that are elected to office, or appointed to a key position. It **does not include** the clerks, janitors, or others plying a common trade and employed by the government. If you are government employed and wish to determine if you are considered an “employee” refer to 5 U.S.C. section 2105 Employee.

This definition is based upon Title 5 section 5514 (page 163 where it states the following: in subsection (a)(1) “(a)(1) **When the head of an agency or his designee determines that an employee, member of the**

Armed Forces or Reserve of the Armed Forces, is indebted to the United States for debts to which the United States is entitled to be repaid at the time of the determination by the head of an agency or his designee, or is notified of such a debt by the head of another agency or his designee the amount of indebtedness may be collected in monthly installments, or at officially established pay intervals, by deduction from the current pay account of the individual.

Additionally, in (a)(4) it goes on to state “The collection of any amount under this section shall be in accordance with the standards promulgated pursuant to sections 3711 and 3716-3718 of title 31 or in accordance with any other statutory **authority for the collection of claims of the United States or any agency thereof.**”

26 CFR section 31.3401(a)-2 - Exclusions from wages

That the terms “individual” and “employee” are not always synonymous is shown in the regulations at 26 CFR Sec. 31.3401(a)-2 Exclusions from wages (Federal Register entries at T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6654, 28 FR 5251, May 28, 1963 (shown on page 76); T.D. 7096, 36 FR 5216, Mar. 18, 1971) where it states “(a) In general. (1) The term “wages” does not include any remuneration for services performed by an employee for his employer which is specifically excepted from wages under section 3401(a).(2) The exception attaches to the remuneration for services performed by an employee and not to the employee as an individual; that is, the **exception applies only to the remuneration in an excepted category.**”

This states that an “employee” gets the exemptions only while in an excepted category of individuals. One may be an “employee” and an “individual”, but not all “individuals” are “employees”.

“Employee” as Defined in Publication 15 (Circular E), Employer’s Tax Guide

In Publication 15 (Circular E), Employer’s Tax Guide the following is stated regarding the term “employee”. The publication is available at <http://www.irs.gov/formspubs/lists/0,,id=97819,00.html> for those wishing to download it:

2. Who Are Employees?

Generally, employees are defined either under common law or under statutes for certain situations.

Employee status under common law. Generally, a worker who performs services for you is your employee if you have the right to control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed. See Publication 15-A, Employer’s Supplemental Tax Guide, for more information on how to determine whether an individual providing services is an independent contractor or an employee.

Generally, people in business for themselves are not employees. For example, doctors, lawyers, veterinarians, construction contractors, and others in an independent trade in which they offer their services to the public are

Rules and Regulations

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER C—EMPLOYMENT TAXES (T.D. 6654)

PART 31—EMPLOYMENT TAXES; APPLICABLE ON AND AFTER JANUARY 1, 1955

Employment Taxes

On March 23, 1963, notice of proposed rule making was published in the *FEDERAL REGISTER* (28 F.R. 2921), with respect to conforming the Employment Tax Regulations (26 CFR Part 31) to the amendments made to the Internal Revenue Code of 1954 by section 51 of the Foreign Service Act Amendments of 1960 (74 Stat. 847), by section 110(g) of the Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 537), by section 201(c) of the Peace Corps Act (75 Stat. 625), and by section 7(e) of the Self-Employed Individuals Tax Retirement Act of 1962 (76 Stat. 830). No objection to the rules proposed having been received during the 30-day period prescribed in the notice, the regulations as proposed are hereby adopted.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] MORTIMER M. CAPLIN,
Commissioner of Internal Revenue.

Approved: May 22, 1963.

STANLEY S. SURELY,
Assistant Secretary of the
Treasury.

In order to conform the Employment Tax Regulations (26 CFR Part 31) to the amendments made to the Internal Revenue Code of 1954 by section 51 of the Foreign Service Act Amendments of 1960 (74 Stat. 847), by section 110(g) of the Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 537), by section 201(c) of the Peace Corps Act (75 Stat. 625), and by section 7(d) of the Self-Employed Individuals Tax Retirement Act of 1962 (76 Stat. 830), such regulations are amended as follows:

PARAGRAPH 1. Section 31.3401(a)-1 is amended by revising paragraph (a)(1) and paragraph (b)(1)(ii) to read as follows:

§ 31.3401(a)-1 Wages.

(a) *In general.* (1) The term "wages" means all remuneration for services performed by an employee for his employer unless specifically excepted under section 3401(a) or excepted under section 3402(e).

(b) *Certain specific items.*—(1) *Pensions and retirement pay.* . . .

(ii) *Amounts received as retirement pay for service in the Armed Forces of the United States, the Coast and Geodetic Survey, or the Public Health Service or as a disability annuity paid under the provisions of section 831 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1081; 60 Stat. 1021), are subject to withholding unless such pay or disability annuity is excluded from gross income under section 104(a)(4), or is taxable as an annuity under the provisions of section 72. Where such retirement pay or disability annuity (not excluded from gross income under section 104(a)(4) and not taxable as an annuity under the provisions of section 72) is paid to a nonresident alien individual, withholding is required only in the case of such amounts paid to a nonresident alien individual who is a resident of Puerto Rico.*

PAR. 2. Paragraph (a)(1) of § 31.3401(a)-2 is amended to read as follows:

§ 31.3401(a)-2 Exclusions from wages.

(a) *In general.* (1) The term "wages" does not include any remuneration for services performed by an employee for his employer which is specifically excepted from wages under section 3401(a).

PAR. 3. Section 31.3401(a)(6) is amended to read as follows:

§ 31.3401(a)(6) Statutory provisions; definitions; wages; remuneration for services of certain nonresident alien individuals.

SEC. 3401. *Definitions.*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration . . . for services performed by an employee for his employer . . . ; except that such term shall not include remuneration paid—

(6) For services performed by a nonresident alien individual, other than—

(A) A resident of a contiguous country who enters and leaves the United States at frequent intervals; or

(B) A resident of Puerto Rico if such services are performed as an employee of the United States or any agency thereof; or

(C) An individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, if such remuneration is exempt, under section 1441(c)(4)(B), from deduction and withholding under section 1441(a), and is not exempt from taxation under section 872(b)(3), or

[Sec. 3401(a)(6) as amended by sec. 110(g)(1), Mutual Educational and Cultural Exchange Act 1961 (75 Stat. 537)]

PAR. 4. Section 31.3401(a)(6)-1 is amended by revising paragraphs (a) and (c), and by adding paragraph (d) to read as follows:

§ 31.3401(a)(6)-1 Remuneration for services of certain nonresident alien individuals.

(a) Except in the case of certain nonresident alien individuals who are resi-

dents of Canada, Mexico, or Puerto Rico or individuals who are temporarily present in the United States as nonimmigrants under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101), as amended, remuneration for services performed by nonresident alien individuals does not constitute wages subject to withholding under section 3402. For withholding of income tax on remuneration paid for services performed within the United States in the case of nonresident alien individuals generally, see § 1.1441-1 and following of this chapter (Income Tax Regulations).

(c) *Remuneration paid to a nonresident alien individual for services performed in Puerto Rico for an employer (other than the United States or any agency thereof) is excepted from wages and hence is not subject to withholding, even though such alien individual is a resident of Puerto Rico at the time when such services are performed. Wages paid for services performed by a nonresident alien individual who is a resident of Puerto Rico are subject to withholding if such services are performed as an employee of the United States or any agency thereof. The place of performance of such services is immaterial, provided such alien individual is a resident of Puerto Rico at the time of performance of the services. Wages representing retirement pay for services in the Armed Forces of the United States, the Coast and Geodetic Survey, or the Public Health Service, or a disability annuity paid under the provisions of section 831 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1081; 60 Stat. 1021), are subject to withholding, under the limitations specified in paragraph (b)(1)(ii) of § 31.3401(a)-1, in the case of an alien resident of Puerto Rico.*

(d) (1) Remuneration paid after 1961 to a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101), as amended, is not excepted from wages under section 3401(a)(6) if the remuneration is exempt from withholding under section 1441(a) by reason of section 1441(c)(4)(B) and is not exempt from taxation under section 872(b)(3). See §§ 1.872-2 and 1.1441-4 of this chapter (Income Tax Regulations). A nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (J) includes an alien individual admitted to the United States as an "exchange visitor" under section 201 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1446).

(2) Section 101 of the Immigration and Nationality Act (8 U.S.C. 1101), as amended, provides in part, as follows:

SEC. 101. *Definitions.* Immigration and Nationality Act (66 Stat. 166)

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usually not employees. However, if the business is incorporated, corporate officers who work in the business are employees.

If an employer-employee relationship exists, it does not matter what it is called. The employee may be called an agent or independent contractor. It also does not matter how payments are measured or paid, what they are called, or if the employee works full or part time.

Statutory employees. If someone who works for you is not an employee under the common law rules discussed above, do not withhold federal income tax from his or her pay. Although the following persons may not be common law employees, they may be considered employees by statute for social security, Medicare, and FUTA tax purposes under certain conditions.

- **An agent (or commission) driver who delivers food, beverages (other than milk), laundry, or dry cleaning for someone else.**

- **A full-time life insurance salesperson who sells primarily for one company.**

- **A homemaker who works by guidelines of the person for whom the work is done, with materials furnished by and returned to that person or to someone that person designates.**

- **A traveling or city salesperson (other than an agent-driver or commission-driver) who works full time (except for sideline sales activities) for one firm or person getting orders from customers. The orders must be for items for resale or use as supplies in the customer's business. The customers must be retailers, wholesalers, contractors, or operators of hotels, restaurants, or other businesses dealing with food or lodging.**

See Publication 15-A for details on statutory employees.

Statutory nonemployees. Direct sellers and qualified real estate agents are by law considered nonemployees. They are instead treated as self-employed for all federal tax purposes, including income and employment taxes. See Publication 15-A for details.

Notice where it states, "Generally, people in business for themselves are not employees. For example, **doctors, lawyers, veterinarians, construction contractors, and others in an independent trade in which they offer their services to the public are usually not employees.**" This is in keeping with what was stated in the regulation at 31.3121(d)-1(c) and (d) as shown on page 73 in regards to Chapter 21 - Federal Insurance Contributions Act, and again in 31.3401(c)-1 as shown on page 74 in regards to Chapter 24 - Collection of Income Tax at Source on Wages

Now look at where it states, "If someone who works for you is not an employee under the common law rules discussed above, do not withhold federal income tax from his or her pay."

Notice in addition, that it states " However, if the business is incorporated, corporate officers who work in the business are employees." Again, this is in keeping with what is stated in IRC sections 3121(d) and 3401(c), previously covered on pages 72 and 74. "

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This means that your labor, as performed by an agreement or contract whether it be verbal, by a handshake, or a written contract with a private company or party does not classify you as an "employee" within the taxing statutes. It cannot, for to do so would violate decisions of the Supreme Court. For example, refer to Central Illinois Public Service Co. v. United States, 435 U.S. 21 (1978) shown on page 19 and South Carolina v. Baker, 485 U.S. 505 (1988) on page 19.

Notice also that the above determinations were made in accordance with the "common law rules.

There is a close relationship between the terms "employee", "employer" and "employment that sheds further light in regards to the meanings of each. These are covered individually in other paragraphs.

Definition by Common Law Rule of Internal Revenue Manual

In the Internal Revenue Manual (IRM) the common law is given in 4.23.5.6 (02-01-2003) Common Law Standard where the following is stated:

4.23.5.6 (02-01-2003) Common Law Standard

1. The common law rules for determining whether a worker is an employee or an independent contractor are described in Section 31.3121(d)-1(c) of the Federal Employment Tax regulations. Under the common law, a worker is an employee when the person for whom the services are performed has the right to control and direct the individual who performs the services. This control reaches not only the result to be accomplished, but also the details and means by which that result is to be accomplished. Note that control must be present, but need not actually be exercised. Also, note that courts have held that the degree of supervision necessary to demonstrate control is only "such supervision as the nature of the work requires." McGuire v. United States, 349 F. 2d 644, 646 (9th Cir. WA 1965).

Note that the case cited is from a lower court and therefore valid in regards to that single case only. In addition, it sates "Section 31.3121(d)-1(c) of the Federal Employment Tax regulations" which was previously covered.

Within the IRM a table is given in Exhibit 4.23.5-2 (02-01-2003) for Employment Tax Treatment for Various Categories of Workers and appears as follows:

Type of Worker	Income Tax Withholding	FICA	FUTA
Common Law Employee	Withhold	Taxable	Taxable
Corporate Officer	Withhold	Taxable	Taxable
Statutory Employees			
Agent or Commission Driver	No Withholding	Taxable	Taxable
Full-time Life Insurance Salesperson	No Withholding	Taxable	Exempt
Full-time Traveling or City Salesperson	No Withholding	Taxable	Taxable
Home Worker	No Withholding	Taxable if paid \$100 or more in cash during the calendar year	Exempt
218 Employee	Withhold	Taxable	Exempt

Type of Worker	Income Tax Withholding	FICA	FUTA
Statutory Non-Employees			
Qualified Real Estate Agent — IRC § 3508(b)(1)	No Withholding	Exempt*	Exempt
Direct Seller — IRC § 3508(b)(2)	No Withholding	Exempt*	Exempt
Companion Sitter — IRC § 3506	No Withholding	Exempt*	Exempt
Section 530 Employee	No Withholding	Exempt**	

Note the exemptions for income tax withholding and FICA. FUTA only applies to employers. By careful scrutiny, it should be noticed that the table addresses only common law, Statutory Employees and that of a corporate officer. It does not have any entries regarding those who are not common law employees, statutory employees, or corporate officers.

Conclusion of Definition for “Employee”

Here all that needs to be stated is that the three sources in defining the term “employee” are consistent. To recap the similarity will be shown.

In 26 CFR 31.3121(d)-1(c) and (d) of Chapter 21 this regulation, which pertains to IRC section 3121 in chapter 21 the following is stated regarding the definition of “employee” under the common law rules **“Individuals such as physicians, lawyers, dentists, veterinarians, construction contractors, public stenographers, and auctioneers, engaged in the pursuit of an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees.”**

In 26 CFR section 31.3401(c)-1 of chapter 24 this regulation, which pertains to IRC section 3401 in chapter 24 The following was stated **“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.”**

Notice the similarity in the statements. This again was repeated in Publication 15 (Circular E), Employer’s Tax Guide where the following is stated regarding the term “employee” in Employee status under common law **“Generally, people in business for themselves are not employees. For example, doctors, lawyers, veterinarians, construction contractors, and others in an independent trade in which they offer their services to the public are usually not employees. However, if the business is incorporated, corporate officers who work in the business are employees.”**

Three times in three sources, the statement is consistent. The Internal Revenue Manual does not contradict what has been shown; in fact, it shows the validity in that the table in Exhibit 4.23.5-2 lacks any entry for those not subject under the fundamental law. It is also shown in the Corpus Juris Secundum (CJS) as follows:

“LIABILITY, TO TAXATION, however, IS BASED ON THE individuals RECIPROCAL ENJOYMENT OF BENEFITS OF GOVERNMENT, as discussed in § 4, and persons clearly beyond the reach of governmental benefits are likewise outside the scope of taxing power.” (84 CJS § 59(a)) (emphasis added) - CJS

“The various objects or subjects have been held properly subjected to EXCISE TAX such as an impost for the privilege to pursue certain callings, to deal with special commodities, to exercise particular franchises . . . but is not broad enough to include every occupation which one may follow in the exercise of a natural right, without aid from the government, and without affecting the rights or interests of others in such a way as properly to call for governmental regulations.” (84 CJS § 122, Subject of Excise Tax in General, p. 247)

Definitions

“Income”

This is a key definition, which deserves a thorough understanding. Most Americans, using the common language understanding think that it includes the pay they receive for their work. Here we destroy that myth. There are four sections within the IRC of 1986 defining income. These are as follows. They all have one commonality; there is not a definition of the base term “income” in any of them:

- Sec. 61 - Gross income defined
- Sec. 62 - Adjusted gross income defined
- Sec. 63 - Taxable income defined
- Sec. 64 - Ordinary income defined

By looking at Title 26 (IRC) section 62 it states that adjusted gross income = gross income minus certain deductions. Therefore it can be stated that:

IRC section 62 = IRC section 61 - section 62 deductions

Now let's look at IRC section 63 where it states “taxable income” means gross income minus the deductions allowed by this chapter (other than the standard deduction). Therefore, it again is dependent on the defined gross income of IRC section 61. Therefore it can be stated that:

IRC section 63 - IRC section 61 - (section 61 deductions + section 62 deductions)

IRC section 64 states “For purposes of this subtitle, the term “ordinary income” includes any gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b). Any gain from the sale or exchange of property which is treated or considered, under other provisions of this subtitle, as “ordinary income” shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b).

IRC section 1231 is titled, and pertains to property used in the trade or business and involuntary conversions. Since this section is not applicable to John or Jane Q. Public, it will be discounted. Therefore, this leaves us with the fact that since IRC sections 62 and 63 are dependent upon the IRC section 61 gross income IRC section 61 is the one to examine more closely. Within all of the above reference is made to “gain”. The meaning of this term is the subject of the following paragraph.

Gain

Black's Law Dictionary, 6th Edition defines gain as shown below:

Gain. Profits; winnings; increment of value. Difference between receipts and expenditures; pecuniary gain. Difference between cost and sale price. Appreciation in value or worth of securities or property.

Excess of revenues over expenses from a specific transaction. Frequently used in the context of describing a transaction not part of a firm's typical, day-to-day operations.

See also Acquire; Acquisition; Capital (*Capital gain*); Includible gain; Income; Profit; Realized gain or loss; Return.

Notice the phrases “Difference between cost and sale price”, “Appreciation in value or worth of securities or property”. See also that it refers you to “income”. The meaning of this term is well revealed in House Report 1337, discussed on page 84. Within the IRC and its regulations the Secretary has given the means for determining the gain derived from the sale of property, which is exactly what your labor is.

IRC Sections 1001, 1011, and 1012 and their regulations

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

- 1) The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in section 1011 for determining gain, ...
- 2) The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.
- 3) 26 USC Section 1001(a)(b) states "The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in section 1011 for determining gain
- 4) 26 USC Section 1011 states "The basis of property shall be the cost of such property. ...".
- 5) In 26 USC Section 1012 it is stated that "The basis of property shall be the cost of such property, except as otherwise provided in this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses). The cost of real property shall not include any amount in respect of real property taxes which are treated under section 164(d) as imposed on the taxpayer."

In other words, if an employer and employee agree that the employee will give one hour of his time in return for a certain amount of money, the cost, or basis under Section 1012, of the employee's labor is the pay agreed upon. Similarly, if an attorney or doctor agrees to perform a certain service for an agreed upon amount of compensation, the value of the service to be performed is the amount the patient or client has agreed to pay.

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

If one has no gain, one would not have sufficient "gross income" to require the filing of a federal personal income tax return, and one would not be a taxpayer as to that tax nor subject to the provisions of Subtitle A. Likewise, without gain there can be no "taxable income", "tax table income" or "self-employment income", and would not have a tax liability. Again, this person would not be a taxpayer nor subject to the provisions of Subtitle A.

Title 26 section 61 - Gross income defined

This section states in subsection (a) "General definition Except as otherwise provided in this subtitle, gross income means all **income** from whatever **source** derived, including (but not limited to) the following **items**". It then lists the following 15 items:

- (1) Compensation for services, including fees, commissions, fringe benefits, and similar items;
- (2) Gross income derived from business;
- (3) Gains derived from dealings in property;
- (4) Interest;
- (5) Rents;
- (6) Royalties;
- (7) Dividends;
- (8) Alimony and separate maintenance payments;
- (9) Annuities;
- (10) Income from life insurance and endowment contracts;
- (11) Pensions;
- (12) Income from discharge of indebtedness;

Definitions

- (13) Distributive share of partnership gross income;
- (14) Income in respect of a decedent; and
- (15) Income from an interest in an estate or trust.

In subsection (b) Cross-references it states "For items specifically included in gross income, see part II (sec. 71 and following). For items specifically excluded from gross income, see part III (sec. 101 and following).

The first thing to be noted is where it states "**income** from whatever **source derived**, including (but not limited to) the following **items**. This is important for it uses two words or terms, "source" and "items" which indicates that each has its own meaning. In light of this, the word "source" maintains its distinction and viability under the Federal Rules of Statutory Construction. It states that the "income" is **derived from** the source, which in turn can be any of the items listed. Let's see how Black's Law Dictionary defines the words "item" and "source":

Item. Also; likewise; in like manner;

again; a second time. This word was formerly used to mark the beginning of a new paragraph or division after the first, whence is derived the common application of it to denote a separate or distinct particular of an account or bill. One of the portions, equal or unequal, into which anything is divided, or regarded as divided; something less than a whole; a number, quantity, mass, or the like, regarded as going to make up, with others or another, a larger number, quantity, mass, etc., whether actually separate or not; a piece, fragment, fraction, member or constituent.

A separate entry in an account or a schedule, or a separate particular in an enumeration of a total.

An "item" in an appropriation is an indivisible sum of money dedicated to a stated purpose. For commercial paper purposes, a negotiable or non-negotiable writing for the payment of money that is collected through the collection process governed by U.C.C. Article 4. U.C.C. § 4-104(1)(g).

Source. That from which **any act, movement~ information, or effect proceeds**. A person or thing that originates, sets in motion, or is a primary agency in producing any course of action or result. An originator; creator; origin. **A place where something is found or whence it is taken or derived.** See also Cause.

Summary of Associated Sections for Title 26 section 61

A look at the other sections as referred or cross-referenced to often helps in understanding the section. In looking through the sections so referred to, or cross-referenced, and since the focus of this publication is for the individual U.S. Citizen living within the United States and employed within the private sector most of these referenced sections can be ignored. However, Title 26 section 861 - Income from sources within the United States is of interest, but of no real importance as we will discover and will be analyzed further in the paragraph on sec. 861. First though, one should notice the use of the word "see" in the references within IRC section 61 where it states "For items specifically included in gross income, see part II (sec. 71 and following). For items specifically excluded from gross income, see part III (sec. 101 and following)", and in the cross references where it states "see section 861" and "see section 862". Always remember what was stated in IRC section 7806 as covered on page 57 when the word "see" is used: "The cross references in this title to other portions of the title, or other provisions of law, where the word "see" is used, are made only for convenience, and shall be given no legal effect."

The Code of Federal Regulation (CFR) Title 26 "Income Tax Regulation", in effect from 1939 to 1953, under section 39.21-1 and 39.22 (a)-1 defined the then accepted definition of income as it applied to the current tax system. Section 39.21-1 is titled "Meaning of net income" and, in part, says:

"(a) The tax imposed by chapter 1 is upon income. **Neither income exempted by statute or fundamental law**, nor expenses incurred in connection therewith, other than interest, enter into the computation of net income as defined by section 21. ...Income (in the broad sense) meaning all wealth which flows in to the taxpayer other than as a mere return of capital. It

includes the forms of income specifically described as gains and profits, including gains derived from the sale or other distribution of capital assets. ..."

Here the statement "Neither income exempted by statute or **fundamental law**, nor expenses incurred in connection therewith, other than interest, enter into the computation of net income as defined by section 21" is extremely important for it explicitly removes from the term "income" that income which is exempted by statute or fundamental law (the Constitution of the United States of America). The cites of the Supreme Court given within this document constitute fundamental law, via the court's interpretation and are therefore the Law of the Land.

Section 116 of the 1939 code relates to the exemption of the compensation of specific "employees", but the regulations for section 22(b) bear looking at. In part, it reads as follows:

Sec. 39.22(b)-1. Exemption--Exclusions from gross income.
 Certain items of income specified in section 22(b) are exempt from tax and may be excluded from gross income. These items, however, are exempt only to the extent and in the amount specified. No other items are **exempt from gross income** except **(1) those items of income which are, under the Constitution, not taxable by the Federal Government**; (2) those items of income which are exempt from tax on income under the provisions of any Act of Congress still in effect; and (3) the income exempted under the provisions of section 116."

Notice item 1 where it specifically states "those items of income which are, under the Constitution, not taxable by the Federal Government". So here is an admission that the Constitution forbids taxation of certain items.

A pause for thinking is now in order. The 16th Amendment was purportedly ratified in 1913. In the Brushaber decision, discussed in the chapter named "Federal Government Misinformation Exposed" on page 11, the Supreme Court stated that in fact the 16th Amendment **did not** change the Constitution in any way as on page 19 of the Brushaber decision (shown on page 23) they stated:

"-a condition which clearly demonstrates that the purpose was not to change the existing interpretation except to the extent necessary to accomplish the result intended; that is, **the** prevention of the resort to the sources from which taxed income was derived in order to cause a direct tax on the income to be a direct tax on the source itself, and thereby to take an income tax out of the class of excises, duties, and imposts, and place it in the class of direct taxes."

Since changes to the Constitution must be made by the amendment process, and there have been no amendments regarding taxation since the 16th Amendment in 1913 it stands to reason that **what was not taxable by the fundamental law of the Constitution in 1939 is still untaxable under the IRC of 1986 (current tax code)**. Congress cannot change the Constitution by statute.

House Report 1337 dated March 7, 1954 and Senate Report 1622 dated June 15, 1954 show that congress is aware of this limitation. Extracts are shown in the following figures. The complete text for House Report 1337 is included on page 84.

§ 61. Gross income defined

This section corresponds to section 22(a) of the 1939 Code. While the language in existing section 22(a) has been simplified, the all-inclusive nature of statutory gross income has not been affected thereby. Section 61 (a) is as broad in scope as section 22(a).

Section 61(a) provides that gross income includes "all income from whatever source derived." This definition is based upon the 16th Amendment and the word "income" is used in its constitutional sense.

House Report 1337 Extract

Definitions

Section 61 (a) provides that gross income includes “all income from Whatever source derived.” This definition is based upon the sixteenth Amendment and the word “income” is used, as in section 22 (a) in its constitutional sense. It is not intended to change the concept of income that obtains under section 22 (a). Therefore, although the section 22 (a) phrase “in whatever form paid” has been eliminated, statutory gross income will continue to include income realized in any form. Likewise, no change is effected by the elimination of the specific reference to compensation of the President and judges of courts of the United States, and the compensation of such individuals will continue to be taxed in the same manner as that of other taxpayers. In view of the fact that certain types of income are excluded from gross income by other sections of the income tax subtitle of the new code, section 61 (a) contains a clause excepting such income from the general definition of gross income.

Senate Report 1622 Extract

Since this applies to the IRC of 1954, it is also applicable to the IRC of 1986. This is because the Internal Revenue Code of 1954 was redesignated the Internal Revenue Code of 1986 by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095. This complies with the following court decision:

"whatever may constitute income, therefore, must have the essential feature of gain to the recipient. This was true at the time of Eisner V Macomber, it was true under section 22(a) of the Internal Revenue code of 1938, and it is likewise true under section 61(a) of the IRS code of 1954. **If there is not gain, there is not income, congress has taxed income, not compensation**" - Conner v US 303 F supp 1187 Federal District court, Houston, never overruled

This exempts the compensation of Americans employed in the private sector within the 50 State Republics, refer to the cites given in the chapter on “Fraudulent Government Misinformation on page 11. Again, it references section 116 (of the 1939 IRC), although again it follows the word “see”.

In the section above, the reference to section 911 of the IRC is of interest and will be addressed more than once in this publication. At this point, it is important to remember that the forerunner of this section (IRC of 1939 section 116) was referred to directly in regulation 39.22(b)-1 of the CFR **but only following the word “see”**..

House Report 1337

The following is the full text of House Report 1337:

H.R. Rep. No. 1337, 83RD Cong., 2ND Sess. 1954, 1954 U.S.C.C.A.N. 4017, 1954 WL 6063 (Leg. Hist.)

H.R. Rep. No. 1337, 83rd Cong., 2nd Sess. 1954
1954 USCC&AN 4017

P.L. 83-591, INTERNAL REVENUE CODE OF 1954
HOUSE REPORT NO. 83-1337

*4017 **House Committee Report**

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Ways and Means Committee Report 4019

Detailed Discussion of Technical Provisions of the Bill.. 4137

Minority Views 4594

This Report was prepared by the House Committee on Ways and Means to accompany H.R. 8300 "A Bill to Revise the Internal Revenue Laws of the United States". It is being supplied you,

herewith, in advance of the Bill, so that United States Code Congressional and Administrative News readers may acquaint themselves with the proposed changes in the Revenue Laws.

*4155 SUBCHAPTER B-COMPUTATION OF TAXABLE INCOME
PART I-DEFINITIONS

§ 61. Gross income defined

This section corresponds to section 22(a) of the 1939 Code. While the language in existing section 22(a) has been simplified, the all-inclusive nature of statutory gross income has not been affected thereby. Section 61 (a) is as broad in scope as section 22(a).

Section 61(a) provides that gross income includes "all income from whatever source derived." This definition is based upon the 16th Amendment and the word "income" is used in its constitutional sense. Therefore, although the section 22(a) phrase "in whatever form paid" has been eliminated, statutory gross income will continue to include income realized in any form. Likewise, no change is effected by the elimination of the specific reference to compensation of the President and judges of courts of the United States, and the compensation of such individuals will continue to be taxed in the same manner as that of other taxpayers. In view of the fact that certain types of income are excluded from gross income by other sections of the income tax subtitle of the new code, section 61(a) contains a clause excepting such income from the general definition of gross income. After the general definition there has been included, for purposes of illustration, an enumeration of 15 of the more common items constituting gross income. It is made clear, however, that gross income is not limited to those items enumerated. Thus, an item not named specifically in paragraphs (1) through (15) of section 61(a) will nevertheless constitute gross income if it falls within the general definition in section 61(a).

End of Report

A look at the regulations for section 61 is in order. These are found in 7 CFR part 3 and 26 CFR part 1. Concentration here will be those in 26 CFR part 1 as 7 CFR part 3 pertains to Agriculture debt management.

Only two need to be looked at, 1.61-1 and 1.61-2 in order to determine what gross income is in regards to compensation for U.S. Citizens living within the United States and employed in the private sector.

26 CFR section 1.61-1 - Gross income

Subsection (a) of this section again uses the phrase "**unless excluded by law**".

The key words here are "**unless excluded by law**" for earlier it has been shown that the remuneration of U.S. Citizens living and working within the 50 Sovereign States does not constitute "income". Refer to the cites given in the chapter called "Federal Government Misinformation Exposed" beginning on page 11.

26 CFR section 1.61-2- Compensation for services, including fees, commissions, and similar items

Subsection (a) of this section lists the various types of compensation that are included in the term "income". Here again the phrase "**unless excluded by law**" appears. The listing includes the following:

1. Wages, salaries, commissions paid salesmen,
2. compensation for services on the basis of a percentage of profits,
3. commissions on insurance premiums, tips, bonuses (including Christmas bonuses),
4. termination or severance pay,
5. rewards,
6. jury fees,
7. marriage fees and other contributions received by a clergyman for services,
8. pay of persons in the military or naval forces of the United States,
9. retired pay of employees, pensions, and retirement allowances are income to the recipients

Definitions

Finally, we want to return to section 61 of the IRC and note what is stated in the cross-references given at the very end and following the word “see”. Here it refers us to section 861 for income from sources within the United States and to section 862 for income from sources without the United States. Therefore let's look first at section 861 which is located in Subtitle A - Income Taxes, Chapter 1 - Normal Taxes and Surtaxes - Subchapter N - Computation of Taxable Income Part I - Source Rules and Other General Rules Relating to Foreign Income.

The first thing to point out is the subchapter and part heading itself point to the fact that it refers only to foreign income, but the fact that it is referred to in IRC section 61 means it bears scrutiny for explanatory reasons. Refer to the following paragraph.

Further Historical Facts for Section 61

A look at Section 61(a) of the IRC of 1986 with that of Section 22(a) of the IRC of 1939 shows that subsection (a) begins differently. In the IRC of 1986 it appears as follows:

(a) General definition

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

In the IRC of 1939 it is as follows:

GENERAL DEFINITION. —“Gross income” includes 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, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. In the case of Presidents of the United States and judges of courts of the United States taking office after June 6, 1932, the compensation received as such shall be included in gross income; and all Acts fixing the compensation of such Presidents and judges are hereby amended accordingly.

Notice the bolded and underlined words. In the IRC of 1939, the word “from” immediately follows the word “derived”. This makes it very plain that what follows are the sources that income can be derived from, not the items that constitute “income”. They are source items, with the exception of the compensation paid of Presidents of the United States and judges of courts of the United States taking office after June 6, 1932 that do constitute “income”.

In the IRC of 1986 notice that the wording has been changed to where the word “income” precedes the word “source”. The word “derived is separated from the listed items by the words “including (but not limited to) the following items. This tends to reintroduce the obscurity of the fact that the items listed are source, not items of “income”.

Title 26 section 861- Income from sources within the United States

Section 861(a) states “(a) Gross income from sources within United States - The following items of gross income shall be treated as income from sources within the United States:” and goes on to list the following:

- (1) Interest
- (2) Dividends.....
- (3) Personal services.....
- (4) Rentals and royalties.....
- (5) Disposition of United States real property interest....
- (6) Sale or exchange of inventory property.....
- (7) Amounts received as underwriting income.....
- (8) Social security benefits.....

(b) Taxable income from sources within United States (Defines taxable income as total of gross income from items in subsection (a) minus authorized deductions).

First, remember that in IRC section 61 it was pointed out that the reference to 861, as given in the cross references read as follows” Within the United States, see section 861 of this title”. Now notice that in IRC section 861 where it lists the sections that 861 are referred to. The word “see” does not appear and IRC section 61 is not listed. To gain a further understanding of the statues behind this section a referral to the Derivations of Code Sections shows that it was derived from 1954 IRC section 861 (same number for 1986 IRC) which was derived from section 119(a), (b), and (e) of the 1939 IRC. Section 119 of the 1939 IRC has its roots in Volume 52 of the Statues at Large, page 503,chapter 289, section 119, enacted on May 28, 1938. The related regulations addressing "within" income showed that **this was domestic income taxable for nonresident aliens, foreign corporations, and some who do business in federal possessions.**

Now a look at the regulations for IRC section 861 is in order.

Title 26 section 861Regulations

First, we'll look at what entries relate to code section 861. What is important is that while they may not have any legal effect in regards to U.S. Citizens working within the 50 State Republics, they will provide an indication as to what is considered “gross income” and to whom it applies: Only four need to be looked at. This is done in the following paragraphs.

26 CFR section 1.861-1 - Income from sources within the United States

This regulation states “the sources of income for purposes of the income tax” without any resident, nonresident, foreign, or domestic restrictions. It doesn't say "for purposes of nonresident aliens," or "for those who have domestic and foreign income." It says for purposes of the income tax. The section goes on to say “(1) Within the United States. The gross income from sources within the United States, consisting of the **items of gross income specified in section 861(a)** plus the items of gross income allocated or apportioned **to such sources in accordance with section 863(a)**. It continues by saying "**The statute** provides for the following three categories of income” acknowledging that it is the statute that provides the authority. It then gives the three categories as:

(1) WITHIN the United States. The gross income from sources within the United States, consisting of **the items of gross income specified in section 861(a)** plus the items of gross income allocated or apportioned to such sources in accordance with section 863(a). See Sacs. **1.861-2 to 1.861-7**, inclusive, and Sec. 1.863-1. The Taxable Income From Sources Within The United States, in the case of such income, shall be determined by deducting therefrom, in accordance with SECTIONS 861(b) and 863(a) [allowable deductions]. **SEE SECS. 1.861-8 and 1.863-1.**

(2) Without the United States...

(3) Partly within and partly without the United States..." [26 CFR § 1.861-1]

Then the section goes on to say this in subsection (b) “Taxable income from sources within the United States. The TAXABLE INCOME FROM SOURCES WITHIN THE UNITED STATES shall consist of the taxable income described in PARAGRAPH (a)(1) of this section [the citation above] plus the taxable income allocated or apportioned to such sources, as indicated in paragraph (a)(3) of this section."

Those who have income partly from within and partly from without the U.S. have to use the rules in Section 863 to divide it into "within" and "without" income, which can effect one's taxable income from sources WITHIN the United States. The language is very clear. Note that we were referred to **26 CFR 1.861-8** regarding determining "taxable income from sources within the United States". That regulation will be looked on page 88.

26 CFR section 1.861-4 - Compensation for labor or personal services

This section states in subsection (a) “(1) Gross income from sources within the United States includes compensation for labor or personal services performed in the United States irrespective of the residence of the payer, the place in which the contract for service was made, or the place or time of payment; except that such compensation shall be deemed not to be income from sources within the United States, if—

In this regulation, it is important to note the following:

Definitions

1. Subsection (a) states who it applies to and gives the exceptions. In subsection (a)(iii) the exceptions are broken into applicability
 - a) In (a)(iii)(a) it pertains to a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States. It also specifies that it is those not engaged in a trade or business within the United States. IRC section 7701(a)(26) defined the meaning of the term "trade or business" as follows:
 - 12)
 - 13) "The term "trade or business" includes the performance of the functions of a public office." Meaning, either an elected or appointed member of government.
 - 14)
 - b) In (a)(iii)(b) it pertains to an individual who is a citizen or resident of the United States, a domestic partnership, or a domestic corporation, if such labor or services are performed for an office or place of business maintained in a foreign country or in a possession of the United States by such individual, partnership, or corporation.

Now we go to the regulation at 1.861-8, which is key as it specifies the computation of taxable income from sources within the United States and from other sources and activities.

26 CFR section 1.861-8 - Computation of taxable income from sources within the United States and from other sources and activities.

Relevant points to learn from this section are as follows:

- 1) 26 CFR § 1.861-8(f)(1) lists the sources that are taxable for the purposes of the income tax.
- 2) Subsection (f)(i), deals with the foreign tax credit, which is § 911 of the code regarding U.S. Citizens living abroad.
- 3) Subsection (f)(iv) again references "trade or business".
- 4) In addition to this section of law revealing citizens being subject to this entry, subsection (vi)(E) specifically relates to citizens by using the word in its language.

26 CFR section 1.861-8T - Computation of taxable income from sources within the United States and from other sources and activities (Temporary)

This regulation directly refers to IRC section 911 in 1.861-8T(c)(D). Therefore, IRC section 911 is directly referred to in this regulation. IRC section 911 pertains to the foreign earned income' with respect to any individual, meaning the amount received by such individual from sources within a foreign country or countries which constitute earned income attributable to services performed by such individual. **However, the regulations at 1.861-8 and 1.861-8T are without statutory backing and will gain you nothing in its use.** This was shown on page 43 and will be shown again.

It does however hint at the fact that the only liability for U.S. Citizens is that of those living abroad. One thing that has been missing in all of the above is a clearly defined meaning for the base term "income". Because of that, at this point I will show what the term "income" means. In *Eisner v. Macomber*, 252 US 189 US Supreme court, never overruled stated that:

"...the definition of 'income' approved by this court is: The gain derived from capital, from labor, or from both combined, provided it be understood to include profits gained through sale or conversion of capital assets."

And:

"Congress cannot by any definition (of income in this case) it may adopt, conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully expressed."

In *Conner v US 303 F sup 1187 Federal District court, Houston*, **never overruled** the court stated:

“.. whatever may constitute income, therefore, must have the essential feature of gain to the recipient. This was true at the time of *Eisner V Macomber*, it was true under section 22(a) of the Internal Revenue code of 1938, and it is likewise true under Section 61(a) of the IRS code of 1954.

If there is not gain, there is not income, **congress has taxed income, not compensation**”.

So far, it has been shown that these rulings are incorporated within the IRC.

Going back to regulations 1.861-8 and 1.861-8T in the 26 CFR, an interesting fact is shown in the last Federal Register entry for them. This is T.D. 8973, 66 FR 67083, Dec. 28, 2001 where the following is stated (abbreviated). Note the bolded text:

Section 1.861-8 also issued under 26 U.S.C. 882(c). * * *

Section 1.865-1 also issued under 26 U.S.C. 863(a) and

Par. 2. Section 1.861-8 is amended by:

1. Revising paragraphs (e)(7)(iii) and (e)(8).
2. **Removing the authority citation at the end of the section.**

The revisions read as follows:

Sec. 1.861-8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(e) * * *

(7) * * *

Par. 3. Section 1.861-8T is amended as follows:

1. Paragraphs (e)(1) and (e)(3) through (e)(11) are revised.
2. Paragraph (h) is amended by removing the last sentence of the concluding text.
3. **The authority citation at the end of the section is removed.**

The revisions read as follows:

Note that the authority citation has been removed. This means there is no authority whatsoever for the regulation, not even that of IRC section 7805.

“Wages”

Here a look at the IRC sections and regulations defining the term “wages” will show that the term has an entirely different meaning in taxation than as used in every-day language. A look at the appropriate sections as listed in IRC Subtitle C--Employment Taxes is in order. For purposes of brevity, and because the RRTA withholding of chapter 22 is similar to that of FICA in chapter 21 (only applies to a specific group) we can narrow what needs to be looked at to those regarding FICA (chapter 21) and withholding at source on wages (chapter 24). Chapter 23 is in regards to the Federal Unemployment Tax Act and regards employers only so will not be covered. First though the term “remuneration” must be understood. This is defined in Black’s Law Dictionary, Abridged Sixth Edition as consisting of payment; reimbursement, reward; recompense; salary; compensation.

“Wages” According to Chapter 21 Federal Insurance Contributions Act

Title 26 section 3121 - Definitions

In looking at IRC section 3121(a) that defines “wages” in regards to chapter 21, it is evident that it contains many words, which makes for “fuzzy interpretation. The statement “**(as determined under section 230 of the Social Security Act)**” is of significance though. By referring to the “References in Text” section of IRC section 3121 the following is stated:

Definitions

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1), (15), (b), (d)(4), (j)(2)(D), (4)(B), (l)(1), (4), (6), (r)(3)(A), (u), (w)(1), and (x), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. **Title II of the Act is classified generally to subchapter II (Sec. 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 201, 210, 215, 218, 223, 230, and 233 of the Act are classified to sections 401, 410, 415, 418, 423, 430, and 433, respectively, of Title 42.** For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

We find that Title II of the act is classified generally to subchapter II (Sec. 401 et seq.) of chapter 7 of Title 42 and that certain sections of the Act are classified to the sections of Title 42, chapter 7 as shown in the following:

Title II Act sections	Title 42 sections
201	401
210	410
215	415
218	418
223	423
230	430
233	433

Therefore, as it was stated in IRC 3121 “as determined under section 230 of the Social Security Act” we need to see what section 230 of the act as codified in Title 42 section 430 states:

Sec. 430. Adjustment of contribution and benefit base
(c) Amount of base for period prior to initial cost-of-living benefit increase
For purposes of this section, and for purposes of determining wages and self-employment income under sections 409, 411, 413, and 415 of this title and sections 1402, 3121, 3122, 3125, 6413, and 6654 of the Internal Revenue Code of 1986, ..

In looking at it we note that it states “for purposes of determining wages and self-employment income under sections 409, 411, 413, and 415 of this title and sections 1402, 3121, 3122, 3125, 6413, and 6654 of the Internal Revenue Code of 1986”.

Therefore, to determine what constitutes “wages” we need to refer to sections 409, 411, 413, and 415 of Title 42 It is Title 42, section 409 that defines “wages. In section 409(b), Regulations providing exclusions from term the following is stated: **“Nothing in the regulations prescribed for purposes of chapter 24 of the Internal Revenue Code of 1986 (relating to income tax withholding) which provides an exclusion from `wages” as used in such chapter shall be construed to require a similar exclusion from `wages” in the regulations prescribed for purposes of this subchapter.”**

Notice where it states that if an exclusion exists for purposes of chapter 24 of the Internal Revenue Code of 1986 (relating to income tax withholding) will also apply to this subchapter (Subchapter II--Federal Old-Age, Survivors, and Disability Insurance). At this point, a look at the regulations for IRC section 3121 and Title 42 section 409 and applicable Federal Register entries should be made.

26 CFR section 31.3121(a)-1 - Wages

Since 26 CFR part 31 covers Employment taxes and collection of income tax at source it is found that 31.3121(a)-1 concerns the definition of “wages” and makes reference to section 230 of the Social Security Act for determining maximum amounts of remuneration subject to withholding. An entry in the Federal Register at T.D. 6516, 25 FR 13032, Dec. 20, 1960 lists the different sections/subsections of 3121 and states that all employment tax regulations pursuant to the Internal Revenue Code of 1954 are entered as republished for purposes of editorial changes and corrections of form, style, and internal references.

20 CFR section 404.2 - General definitions and use of terms

Since section 230 of the Social Security Act is referenced and that is codified in Title 42 section 409, a look at the regulations for that section is in order. The regulations are found at 20 CFR part 404. By referring to the Federal Register entry at 26 FR 7055, Aug. 5, 1961 (shown on page 92) in the third column it is noticed that in 404.2(c)(8) it states "The terms defined in sections 209, 210, and 211 of the act shall have the meanings therein assigned to them". section 209 of the Act is codified at Title 42 section 409, therefore if an exemption exists for chapter 24 it also applies to chapter 21.

This means that a look at chapter 24 section 3401 Definitions is in order. This is covered in the following paragraph.

It is also important to note that in the definition for "employee" it was shown that the term was limited to only a select group. I refer you to the conclusion for that definition on page 79.

"Wages" According to Chapter 24 Collection of Income Tax at Source on Wages**Title 26 section 3401 - Definitions**

In 3401(a) Wages, the following is stated "For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services **performed by an employee for his employer**, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include remuneration paid—"

Important to note that it states, "**performed by an employee for his employer**". Remember, on page 72 who was determined to be an "employee"? I refer you to the conclusion for that definition on page 79. Therefore, in actuality we need only to look at IRC section 3401(a) and its regulation. However, there is one place in the section that refers to others that are not categorized as "employees" That is covered in the following paragraph.

In 3401(a)(8)(A) it states "for services for an employer (other than the United States or any agency thereof)—" and in subsection (i) states "performed by a citizen of the United States if, at the time of the payment of such remuneration, it is reasonable to believe that such remuneration will be excluded from gross income under section 911.

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ment or recovery of overpayments and liability of certifying officers.

(g) Subpart G relates to filing of applications and other forms.

(h) Subpart H relates to evidentiary requirements for establishing an initial and continuing right to monthly benefits and for establishing a right to lump-sum death payment. (Evidentiary requirements relating to disability are contained in Subpart P.)

(i) Subpart I relates to maintenance and revision of records of wages and self-employment income.

(j) Subpart J relates to maintenance determining and reviewing entitlement to and payment of benefits and lump sums, determining and reviewing rights with respect to the establishment and continuance of a period of disability, the revision of earnings records, and the representation of parties.

(k) Subpart K relates to employment, wages, self-employment and self-employment income.

(l) Subpart L relates to determinations of relationship of a claimant to the individual on whose earnings the application is based.

(m) Subpart M relates to coverage of employees of State and local Governments.

(n) Subpart N relates to benefits in cases involving veterans.

(o) Subpart O relates to the inter-relationship of the old-age, survivors and disability insurance program with the railroad retirement program.

(p) Subpart P relates to rights and benefits based on disability.

§ 404.2 General definitions and use of terms.

(a) *Terms relating to acts and regulations.* (1) "The act" means the Social Security Act, as amended, as in effect July 1, 1961.

(2) "Social Security Act" means the act approved August 14, 1935 (49 Stat. 620).

(3) "Social Security Act Amendments of 1950" means the act approved August 28, 1950 (64 Stat. 477).

(4) "Social Security Act Amendments of 1952" means the act approved July 18, 1952 (66 Stat. 767).

(5) "Social Security Act Amendments of 1954" means the act approved September 1, 1954 (68 Stat. 1052).

(6) "Social Security Act Amendments of 1956" means the act approved August 1, 1956 (70 Stat. 807).

(7) "Social Security Act Amendments of 1958" means the act approved August 28, 1958 (72 Stat. 1013).

(8) "Social Security Act Amendments of 1960" means the act approved September 13, 1960 (74 Stat. 924).

(9) "Social Security Act Amendments of 1961" means the act approved June 30, 1961 (75 Stat. 131).

(10) "Regulations 2" (20 CFR, 1938 ed. Part 402) means the regulations approved July 20, 1937, as amended from time to time, relating to Federal old-age benefits under title II of the Social Security Act and amendments to such title effective prior to January 1, 1940.

(11) "Regulations 3" (Part 403 of this chapter) means the regulations approved May 21, 1940, as amended and supplemented from time to time, relating to Federal old-age and survivors benefits under title II of the Social Security Act and amendments to such title effective prior to January 1, 1951.

(12) "Internal Revenue Code of 1939" means the act approved February 10, 1939 (53 Stat. Part 1), as amended.

(13) "Internal Revenue Code of 1954" means the act approved August 16, 1954 (68A Stat. 1), as amended.

(14) "Railroad Retirement Act" means the Railroad Retirement Act of 1937 (50 Stat. 307), as amended.

(15) "Section" means a section of the regulations in Part 404 of this chapter unless the context indicates otherwise.

(b) *Secretary; Commissioner; Administration; Appeals Council; Hearing Examiner; Bureau defined.* (1) "Secretary" means the Secretary of Health, Education, and Welfare.

(2) "Commissioner" means the Commissioner of Social Security.

(3) "Administration," except where the context clearly indicates otherwise, means the Social Security Administration in the Department of Health, Education, and Welfare.

(4) "Appeals Council" means the Appeals Council of the Office of Hearings and Appeals in the Social Security Administration or such member or members thereof as may be designated by the Chairman.

(5) "Hearing Examiner" (formerly designated "referee"), means a hearing examiner in the Office of Hearings and Appeals of the Social Security Administration.

(6) "Bureau" means the Bureau of Old-Age and Survivors Insurance of the Social Security Administration.

(c) *Miscellaneous.* (1) "Certify," when used in connection with the duty imposed on the Secretary by section 205 (1) of the act, means that action taken by the Administration in the form of a written statement addressed to the Managing Trustee, setting forth the name and address of the person to whom payment of a benefit or lump sum, or any part thereof, is to be made, the amount to be paid, and the time at which payment should be made.

(2) "Benefit" means an old-age insurance benefit, disability insurance benefit, wife's insurance benefit, husband's insurance benefit, child's insurance benefit, widow's insurance benefit, widower's insurance benefit, mother's insurance benefit, or parent's insurance benefit under title II of the act. (Lump sums, which are death payments under title II of the act, are excluded from the term "benefit" as defined in this part to permit greater clarity in the regulations.)

(3) "Lump sum" means a lump-sum death payment under title II of the act or any person's share of such a payment.

(4) "Attainment of age." An individual attains a given age on the first moment of the day preceding the anniversary of his birth corresponding to such age.

(5) "State," unless otherwise indicated, includes (i) the District of Columbia, (ii) the Virgin Islands, (iii) the Commonwealth of Puerto Rico effective January 1, 1951, (iv) Guam and American Samoa, effective September 13, 1960, generally, and for purposes of sections 210(a) and 211 of the act effective after 1960 with respect to service performed after 1960, and effective for taxable years beginning after 1960 with respect to crediting net earnings from self-employment and self-employment income, and (v) the Territories of Alaska and Hawaii prior to January 3, 1959, and August 21, 1959, respectively when those territories acquired statehood.

(6) "United States," when used in a geographical sense, includes, unless otherwise indicated, (i) the States, (ii) the Territories of Alaska and Hawaii prior to January 3, 1959, and August 21, 1959, respectively, when they acquired statehood, (iii) the District of Columbia, (iv) the Virgin Islands, (v) the Commonwealth of Puerto Rico effective January 1, 1951, and (vi) Guam and American Samoa, effective September 13, 1960, generally, and for purposes of sections 210(a) and 211 of the act, effective after 1960 with respect to service performed after 1960, and effective for taxable years beginning after 1960 with respect to crediting net earnings from self-employed and self-employment income.

(7) Masculine gender includes the feminine, unless otherwise indicated.

(8) The terms defined in sections 209, 210, and 211 of the act shall have the meanings therein assigned to them.

(Sec. 210, 74 Stat. 936 to 942, 42 U.S.C. 410)

§ 404.3 General provisions.

(a) *Extent to which Part 403 of this chapter (Regulations No. 3 of the Social Security Administration) remains in effect.* Part 403 of this chapter (Regulations No. 3 of the Social Security Administration) continues in effect with respect to old-age and survivors insurance benefits under title II of the act for months prior to September 1950 (except with respect to additional deductions from such benefits under section 203(g) of the act in effect prior to the Social Security Act Amendments of 1950); to lump-sum death payments under that title with respect to deaths after 1939 and before September 1950; and to whether, under that title, services performed before 1951 constitute employment and whether remuneration paid before 1951 for employment constitutes wages. Except as provided in this section or as specifically incorporated in this Part 404 by reference, Part 403 of this chapter (Regulations No. 3 of the Social Security Administration) is superseded by the regulations in this Part 404.

(b) *Effect of cross references.* The cross references in the regulations in this Part 404 to other portions of the regulations, when the word "see" is used, are made only for convenience and shall be given no legal effect.

(c) *Periods of limitation ending on nonwork days.* Pursuant to the provisions of section 216(j) of the act, effective September 13, 1960, where any pro-

The first thing noticed in this subsection is that the term "employee" was not used; it states "a citizen of the United States. A look at IRC section 911 reveals that it in regards to an exclusion of a specific amount of remuneration for U.S. citizens or residents thereof living abroad. These are exemptions regarding certain items, as shall be seen. Now to look at the key regulations.

26 CFR section 31.3401(a)-1 - General definitions and use of terms

This regulation bears out what was stated in Title 26 section 3401(a). The Federal Register entry for 26 CFR section 31.3401(a)-1 at T.D. 6654, 28 FR 5251, May 28, 1963 shown on page 76 where it states for section 31.3401(a)-1 "The term ``wages" means all **remuneration for services performed by an employee for his employer** unless specifically excepted under section 3401(a) or excepted under section 3402(e). Notice that it pertains to **remuneration for services performed by an employee for his employer**. Having previously determined who an employee is it is evident, that for those not in that selected category their remuneration **does not constitute wages within the meaning of the tax statutes**.

The IRC sections and regulations are therefore in agreement with still standing decisions of the Supreme Court of the United States. In regards to the FICA and RRTA withholdings the Supreme Court decision in Railroad Retirement Board v. Alton Railroad Co, 295 U.S. 330, 55 S. Ct. 758 1935) applies. For this decision, refer to page 18. It is also stated in Rowan Cos. v. United States, 452 U.S. 247, 255 (1981):

The plain language and legislative histories of the relevant statutes indicates that Congress intended its definition of "wages" to be interpreted in the same manner for FICA and FUTA, as the income tax withholding...When Congress revised the withholding system by replacing §172 with the Current Tax Payment Act of 1943, 57 Stat. 126, it retained the definition of "wages." Ibid. In view of this sequence of consistency, the plain language of the statutes is strong evidence that Congress intended "wages" to mean the same thing under FICA, FUTA, and income-tax withholding. - Rowan Cos. v. United States, 452 U.S. 247, 255 (1981)

Title 26 section 7701 - Definitions

Title 26 section 7701 gives several definitions in subsections (a) through (n). In regards to subsection (a), it states at the beginning:

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

And then gives the definitions for 46 various terms. These terms, and subsections (b) through (n) appear. Since not all of these definitions are applicable to the basic subject of this document they will not be covered in depth here. Those that do apply will be covered whenever in this document the need arises.

The Income Tax and the Employment Tax

The most common mistake made is that most people only think of the taxes they pay as the "income tax". Nothing could be further from the truth. There are two distinct and separate taxes, the income tax, and the employment tax:

With that said each will be covered in the following paragraphs:

<u>Tax:</u>	<u>Page:</u>
Income Tax	94
Employment Tax	105

Income Tax

What most people spend an enormous amount of time studying and debating is this tax. In reality it is not very difficult to understand **and less time should be wasted regarding this tax.**

The 16th Amendment and What the Supreme Court States

The 16th Amendment reads as follows:

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.

Notice that there are three (3) key words, **income**, **source**, and **derived**. It is **not** the **source** that is taxed, but the **income** that is **derived** from the **source**. Is that too hard to understand? If so, there is little that can be done except for you to improve your reading comprehension. Reading without the ability to comprehend means a lack of the ability to understand. What the Supreme Court did, and what must be done by all to properly interpret meaning is to give **every word** it's full meaning:

"We are not at liberty to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be **accorded to every word**. As early as in Bacon's Abridgment, § 2, it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, **no clause, sentence, or word, shall be superfluous, void, or insignificant.**' This rule has been repeated innumerable times." Justice Strong, *United States v. Lexington Mill & E. Co.*, 232 US 399, pp. 409. (1914)

Perhaps one or two examples will help.

Example A: John Doe deposits \$1000.00 in his bank account. After the current year expires the bank sends him a Form 1099-INT showing an interest payment of \$25.00. It should also show an amount of tax withheld and sent to the IRS, we'll say \$5.00. Here is what these figures relate to:

- \$1000.00 **Source**
- \$25.00 **Income**
- \$5.00 **Tax on income**

As you can see. The **source** is **not** taxed, it is the **income derived from the source that is taxed**, Now John Doe must follow the instructions for completing his Form 1040 to report what is shown on the Form 1099-INT.

Example B: John Doe invests \$10,000 in a stock. After the current year expires he receives a Form 1099-DIV showing he received a dividend of \$750.00. It should also show any federal income tax withheld and sent to the IRS, we'll say \$75.00. Here is what these figures relate to:

- \$10,000.00 **Source**

- \$750.00 **Income**
- \$75.00 **Tax on income**

Congress recognized this fully as shown in the Congressional Record:

“The Supreme Court has held that the sixteenth amendment did not extend the taxing power of the United States to new or excepted subjects but merely removed the necessity which might otherwise exist for an apportionment among the states of taxes laid on income whether it be derived from one source or another. Therefore, the amendment made it possible to bring investment income within the scope of a general income-tax law but did not change the character of the tax. It is still fundamentally an excise or duty with respect to the privilege of carrying on any activity or owning any property that produces income.” - From the Congressional Record-House, March 27, 1943, p.2580.

The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. **The income is not the subject of the tax: it is the basis for determining the amount of tax.**

And:

“If by professional effort any person should earn a given amount annually and spends only half of it, he saves the other half, the one half he saved in turn becomes principle, the principle is property at the end of any given period. That savings is a **source and any income derived from it is an income from property**, not an income from the earning capacity on the personal ability of the taxpayer” - Congressional Record, Aug.28, 1913, page 3842 - 3845.

Since income is taxed it stands to reason that it must be reported. IRS Notice 2003-19, Place for Filing Certain Elections, Statements, Returns and Other Documents states that the purpose is to specify the filing requirements in regards to the reorganization of the service. This notice is discussed in the following paragraph.

IRS Notice 2003-19, Place for Filing Certain Elections, Statements, Returns and Other Documents

. First though make note of the bolded and underlined text above. IRS Notice 2003-19 can be obtained from <http://www.irs.gov/pub/irs-drop/n-03-19.pdf> .

The first page of IRS Notice 2003-19 is shown on page 96 and includes its purpose, background, and format. It states that the purpose is to specify the filing requirements in regards to the reorganization of the service. It includes the following statement:

This notice lists the affected sections of the regulations, and provides the proper Service office for filing each election, statement, and other document required or permitted by the regulations. Section 4 of this notice is organized according to the Internal Revenue Code section under which the regulations were issued;

Place for Filing Certain Elections, Statements, Returns and Other Documents
Notice 2003-19

SECTION 1. PURPOSE

Certain provisions of Title 26 of the Code of Federal Regulations direct taxpayers to file elections, statements, and other documents with offices or officials that have been eliminated in the recent Internal Revenue Service (Service) reorganization. This notice advises taxpayers of the proper address for filing certain elections, statements, and other documents with the Service as a result of the reorganization, including with respect to offices or officials that no longer exist as part of the reorganization. This notice, however, does not modify any existing delegation order and does not identify Service officials who currently are authorized to perform any action currently provided for in a regulation. Taxpayers should contact the Service if they have questions regarding who within the Service is authorized to perform any action currently provided for in a regulation with respect to a Service official or position that no longer exists as a result of the reorganization.

This notice does not affect any filing prior to its issuance. Furthermore, although this notice does not modify the regulations identified herein, taxpayers should follow the filing instructions contained in the notice in order to ensure the timely receipt and processing of filings made with the Service. However, if a taxpayer files an election, statement, or document as directed in existing regulations, the Service will forward such election, statement, or document to its proper filing location.

The Treasury Department and Service intend to issue revised regulations that will

take into account the recent Service reorganization. In addition, until such time, the Service intends to periodically update taxpayers (through updated notices or other means of communication) regarding where elections, statements, and other documents should be filed.

SECTION 2. BACKGROUND

Section 1001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 686, requires the Commissioner of Internal Revenue to develop and implement a plan to reorganize the Service. As a result of this reorganization, the Service replaced the national, regional, and district structure with organizational units serving particular industries and groups of taxpayers.

Existing regulations direct taxpayers to file certain elections, statements, and other documents with various national, regional, and district offices, and specify that certain Service officials or positions are authorized to perform certain actions. Some of these regulations pertain to elections, statements, and other documents that, because of a change in the law or other factor, are no longer required to be filed. Other regulations specify outdated places of filing (e.g., the Office of District Director), contain outdated filing instructions, lack specific filing addresses for elections, statements, and other documents that are currently required or permitted to be filed, or specify that certain actions are to be taken by Service officials or positions that no longer exist.

SECTION 3. FORMAT OF THIS NOTICE

This notice lists the affected sections of the regulations, and provides the proper Service office for filing each election, statement, and other document required or permitted by the regulations. Section 4 of this notice is organized according to the Internal Revenue Code section under which the regulations were issued; section 5 provides the mailing addresses for the various Service offices, including the case processing site, listed in the notice; and section 6 provides a telephone number that taxpayers may call to obtain information

The Income Tax and the Employment Tax

Therefore, section 4 is of interest as it lists the sections of code that mandate a filing of a return regarding an income tax. Remember, in regulation 1.6012-1(a) regards the income tax for individuals and is confined to Subtitle A – Income Tax and lists the Forms 1040, 1040X, and 1040NR as the appropriate forms to use, depending on your status and situation. The income tax is not the same as the requirement for withholding that applies to Subtitle C - Employment Taxes. This is important in that the withholding tax is an **employment tax** and therefore not the same as the **income tax** as given in Subtitle A – Income Taxes:

The table is reproduced and shown beginning on this page.

Section 4 Table of Notice 2003-19 Copy

CODE SECTION	REGULATION SECTION AND DESCRIPTION	PLACE OF FILING
Non-Code	50.8 Taxes Imposed on Certain Hydraulic Mining	Cincinnati Submission Processing Center
Non-Code	302.1-3 through 302.1-7 Taxes Under the International Claims Settlement Act	Ogden Submission Processing Center
Non-Code	303.1-4 through 303.1-7 Taxes Under the Trading With the Enemy Act	Ogden Submission Processing Center
43	1.43-3(a)(2) Petroleum Engineer's Certification of a Project	Ogden Submission Processing Center
43	1.43-3(b)(2) Owner's Continued Certification of a Project	Ogden Submission Processing Center
48	1.48-12(d)(7)(ii) Request for Extension of the Period of Limitations	IRS Tax Credit Unit Drop 607 P.O. Box 245 Bensalem, PA 19020
167	1.167(d)-1 Agreement as to Useful Life and Rates of Depreciation	Ogden Submission Processing Center
167	1.167(l)-1(h)(5) Depreciation on Qualified Public Utility Property	Cincinnati Submission Processing Center
169	1.169-4 Election to Revoke Amortization Deduction	Ogden Submission Processing Center
169	1.169-4 Election to Revoke Amortization Deduction	Ogden Submission Processing Center
175	1.175-6 Treatment of Expenditures for Soil or Water Conservation	Cincinnati Submission Processing Center
180	1.180-2 Expenditures by Farmers for Fertilizer, etc.	Ogden Submission Processing Center
243	1.243-4 Dividends Received Deduction	Ogden Submission Processing Center
243	1.243-5 Effect of Election	Ogden Submission Processing Center
302	1.302-4 Termination of Shareholder's Interest	<i>Section 302(c)(2)(A)(iii) agreement: attach to Return</i> <i>Notice of acquisition: Cincinnati or Ogden Submission Processing Center</i>
332	1.332-4 Liquidations Covering More Than 1 Year	Ogden Submission Processing Center
341	1.341-7 Certain Sales of Stock of Consenting Corporations	Ogden Submission Processing Center
381	1.381(c)(25)-1 Deficiency Dividend of Qualified Investment Entity	Ogden Submission Processing Center
442	1.442-1(b) Change of Accounting Period	Submission Processing Center where return was filed

The Income Tax and the Employment Tax

443	1.443-1(b)(2)(v) Computation of Tax for Short Period Return	Ogden Submission Processing Center
451	1.451-6(b)(2) Requests for Revocation of Election to Include in Gross Income Insurance Proceeds	Ogden Submission Processing Center

Section 4 Table of Notice 2003-19 Copy (Cont.)

CODE SECTION	REGULATION SECTION AND DESCRIPTION	PLACE OF FILING
503	1.503(c)-1 Future Status of Organizations Denied Exemption	IRS P.O. Box 192 Covington, KY 41012
507	1.507-2 Termination of Private Foundation Status	IRS P.O. Box 192 Covington, KY 41012
547	1.547-2 Deficiency Dividend	Ogden Submission Processing Center
616	1.616-2 Election to Defer Development Expenditures	Submission Processing Center where return was filed
642	1.642(g)-1 Disallowance of Double Deduction	Case Processing Site
754	1.754-1(c)(1) Time and Manner of Making Election to Adjust Basis of Partnership Property	Ogden Submission Processing Center
856	1.856-6 REIT Election to Treat Property as Foreclosure Property	Ogden Submission Processing Center
856	1.856-8 Revocation of REIT Election	Ogden Submission Processing Center
860	1.860-2 Deficiency Dividend Deduction for Qualified Investment Entity	Ogden Submission Processing Center
863	1.863-3(b)(1), (3) and (e)(1) Allocation and Apportionment of Income (election to use books and records method)	Philadelphia Submission Processing Center
863	1.863-3(e)(1) Allocation and Apportionment of Income (method change requests)	Philadelphia Submission Processing Center
936	1.936-7(c) Revocation of Section 936 Election	Philadelphia Submission Processing Center
964	1.964-1(c)(3)(ii) Determination of Earnings and Profits of a Foreign Corporation (method change statements)	Philadelphia Submission Processing Center
970	1.970-2 Election as to Date of Determining Investment in Export Assets	Philadelphia Submission Processing Center
1375	1.1375-1(d)(2) Passive Investment Income of an S Corporation	Ogden Submission Processing Center
1441	1.1441-4(b)(2)(v) Exemption from Withholding on Compensation for Independent (and certain Dependent) Personal Services of a Nonresident Alien (filing by withholding agent)	Internal Revenue Service International Section P.O. Box 920 Bensalem, PA 19020-8518
1502	1.1502-75(h)(1) Consolidated Return Made by Common Parent Corporation	Returns should be filed where the common parent would file a separate return
1563	1.1563-3(d)(2)(iv) Election Designating Group in which the Corporation is to be Included	Ogden Submission Processing Center

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2016	20.2016–1 Recovery of Death Taxes Claimed as a Credit	<i>Taxpayers domiciled in the U.S.:</i> Cincinnati Submission Processing Center <i>Taxpayers domiciled outside the U.S.:</i> Philadelphia Submission Processing Center
2031	20.2031–6 Estate Tax–Valuation of Household & Personal Effects	<i>Taxpayers domiciled in the U.S.:</i> Cincinnati Submission Processing Center <i>Taxpayers domiciled outside the U.S.:</i> Philadelphia Submission Processing Center

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CODE SECTION	REGULATION SECTION AND DESCRIPTION	PLACE OF FILING
2053	20.2053–3 Estate Tax–Deduction for Expenses of Administering Estate	<i>Taxpayers domiciled in the U.S.:</i> Cincinnati Submission Processing Center <i>Taxpayers domiciled outside the U.S.:</i> Philadelphia Submission Processing Center
2053	20.2053–9 Estate Tax–Deduction for Certain State Death Taxes	<i>Taxpayers domiciled in the U.S.:</i> Cincinnati Submission Processing Center <i>Taxpayers domiciled outside the U.S.:</i> Philadelphia Submission Processing Center
2053	20.2053–10 Estate Tax–Deduction for Certain Foreign Death Taxes	<i>Taxpayers domiciled in the U.S.:</i> Cincinnati Submission Processing Center <i>Taxpayers domiciled outside the U.S.:</i> Philadelphia Submission Processing Center
2056A	20.2056A–2 Requirements for Qualified Domestic Trusts	Case Processing Site
2056A	20.2056A–11 Filing Requirements & Payment of IRC § 2056A Estate Tax	<i>Taxpayers domiciled in the U.S.:</i> Cincinnati Submission Processing Center <i>Taxpayers domiciled outside the U.S.:</i> Philadelphia Submission Processing Center
2701	25.2701–4 Accumulated Qualified Payments	<i>Taxpayers domiciled in the U.S.:</i> Cincinnati Submission Processing Center <i>Taxpayers domiciled outside the U.S.:</i> Philadelphia Submission Processing Center
6012	1.6012–1(a)(5) Individuals Required to Make Returns of Income	Submission Processing Center where return will be filed
6012	1.6012–2 Corporations Required to Make Returns of Income	Ogden Submission Processing Center or to the address specified in the form or instructions.
6032	1.6032–1 Returns of Banks for Common Trust Funds	Ogden Submission Processing Center
6036	301.6036–1 Notice Required of Executor, Receiver, or Other Fiduciary	Case Processing Site

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6039	1.6039–2(b)(2) Time for Furnishing Statements (to Participants in Certain Stock Option Plans) See Code section 6039(a) as to nature of participant statements, as 1.6039–2(b)(2) has not yet been amended to reflect current law.	IRS – Martinsburg Computing Center Information Reporting Program Attn: Extension of Time Coordinator 240 Murall Drive Kearneysville, WV 25430
6043	1.6043–1 Returns Requiring Corporate Dissolution or Liquidation	Ogden Submission Processing Center
6044	1.6044–4 Exemption for Certain Consumer Cooperatives	Ogden Submission Processing Center
6050J	1.6050J–1T Information Returns Relating to Foreclosure of Security	Ogden Submission Processing Center
6091	20.6091–1 Estate Tax–Place of Filing of Returns & Documents	Returns and other forms should be mailed to the address specified in the form or instructions. Other documents should be mailed to: <i>Taxpayers domiciled in the U.S.:</i> Cincinnati Submission Processing Center <i>Taxpayers domiciled outside the U.S.:</i> Philadelphia Submission Processing Center. Hand-carried returns, forms, or other documents should be filed with the local Service office (see section 6 of this notice).

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CODE SECTION	REGULATION SECTION AND DESCRIPTION	PLACE OF FILING
6091	25.6091–1 Gift Tax–Place for Filing Returns and Other Documents	Returns and other forms should be mailed to the address specified in the form or instructions. Other documents should be mailed to: <i>Taxpayers domiciled in the U.S.:</i> Cincinnati Submission Processing Center <i>Taxpayers domiciled outside the U.S.:</i> Philadelphia Submission Processing Center. Hand-carried returns, forms, or other documents should be filed with the local Service office (see section 6 of this notice).
6091	31.6091–1 Place for Filing Returns	Returns should be mailed to the address specified in the form or instructions. Hand-carried returns should be filed with the local Service office (see section 6 of this notice).
6091	40.6091–1 Excise Tax–Place for Filing Returns	Returns should be mailed to the address specified in the form or instructions. Hand-carried returns should be filed with the local Service office (see section 6 of this notice).

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6091	41.6091-1 Place for Filing Returns	Returns should be mailed to the address specified in the form or instructions. Hand-carried returns should be filed with the local Service office (see section 6 of this notice).
6091	44.6091-1 Place for Filing Returns	Returns should be mailed to the address specified in the form or instructions. Hand-carried returns should be filed with the local Service office (see section 6 of this notice).
6091	55.6091-1 Place for Filing Chapter 44 Tax Returns	Returns should be mailed to the address specified in the form or instructions. Hand-carried returns should be filed with the local Service office (see section 6 of this notice).
6091	156.6091-1 Place for Filing Chapter 54 (Greenmail) Tax Returns	Returns should be mailed to the address specified in the form or instructions. Hand-carried returns should be filed with the local Service office (see section 6 of this notice).
6091	301.6091-1 Place for Filing Returns or Other Documents	Returns and other forms should be mailed to the address specified in the form or instructions. Other documents should be mailed to the Case Processing Site. Hand-carried returns, forms, or other documents should be filed with the local Service office (see section 6 of this notice).
6091	1.6091-2 Place for Filing Income Tax Returns	Returns should be mailed to the address specified in the form or instructions. Hand-carried returns should be filed with the local Service office (see section 6 of this notice).

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CODE SECTION	REGULATION SECTION AND DESCRIPTION	PLACE OF FILING
6104	301.6104(a)-5(a) Withholding of Information from Public Inspection by Applicant for Tax Exempt Status	IRS P.O. Box 192 Covington, KY 41012
6161	1.6161-1 Extension of Time for Paying Tax or Deficiency	Cincinnati or Ogden Submission Processing Center
6161	20.6161-1(b) Extension of Time for Paying Tax Shown on the Return	<i>Taxpayers domiciled in the U.S.:</i> Cincinnati Submission Processing Center <i>Taxpayers domiciled outside the U.S.:</i> Philadelphia Submission Processing Center.

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6161	25.6161-1 Gift Tax-Extension of Time for Paying Tax or Deficiency	<i>Taxpayers domiciled in the U.S.:</i> Cincinnati Submission Processing Center <i>Taxpayers domiciled outside the U.S.:</i> Philadelphia Submission Processing Center.
6161	20.6161-2 Extension of Time for Paying Deficiency in Tax	<i>Taxpayers domiciled in the U.S.:</i> Cincinnati Submission Processing Center <i>Taxpayers domiciled outside the U.S.:</i> Philadelphia Submission Processing Center
6163	20.6163-1 Estate Tax-Extension of Time for Paying Tax	<i>Taxpayers domiciled in the U.S.:</i> Cincinnati Submission Processing Center <i>Taxpayers domiciled outside the U.S.:</i> Philadelphia Submission Processing Center.
6164	1.6164-1 Extension of Time for Payment of Taxes by Corporation With Carryback	Cincinnati or Ogden Submission Processing Center
6164	1.6164-8 Corporations-Payments on Termination	Cincinnati or Ogden Submission Processing Center
6165	20.6165-1 Estate Tax-Bonds Where Time to Pay has Been Extended	<i>Taxpayers domiciled in the U.S.:</i> Cincinnati Submission Processing Center <i>Taxpayers domiciled outside the U.S.:</i> Philadelphia Submission Processing Center.
6166A	20.6166A-1 Estate Tax-Extension of Time to Pay	<i>Taxpayers domiciled in the U.S.:</i> Cincinnati Submission Processing Center <i>Taxpayers domiciled outside the U.S.:</i> Philadelphia Submission Processing Center.
6324B	20.6324B-1 Special Lien for Additional Estate Tax Attributable to Farm Value	Case Processing Site
6325	20.6325-1 Estate Tax-Release of Lien or Partial Discharge of Property	<i>Taxpayers domiciled in the U.S.:</i> Cincinnati Submission Processing Center <i>Taxpayers domiciled outside the U.S.:</i> Philadelphia Submission Processing Center.
6325	301.6325-1 Application for Certificate of Discharge of Property from Lien	Case Processing Site
6326	301.6326-1 Appeal of Erroneous Filing of Lien	Case Processing Site
6334	301.6334-3 Determination of Exempt Amount	Case Processing Site
6334	301.6334-4 Verified Statements	Case Processing Site
6337	301.6337-1 Right to Redeem Property Before or After Sale	Case Processing Site
6343	301.6343-1 Request for Release of Levy	Case Processing Site
6343	301.6343-2 Request for Return of Property Wrongfully Levied Upon	Case Processing Site
6501	301.6501(o)-2 Special Rules for Partnership Items of Federally Registered Partnerships	Cincinnati or Ogden Submission Processing Center

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CODE SECTION	REGULATION SECTION AND DESCRIPTION	PLACE OF FILING
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The Income Tax and the Employment Tax

6679	301.6679–1 Failure to File Returns Regarding Foreign Corporations or Partnerships	Philadelphia Submission Processing Center
6724	301.6724–1 Reasonable Cause	Cincinnati or Ogden Submission Processing Center
6863	301.6863–1 Stay of Collection of Jeopardy Assessments	Case Processing Site
6863	301.6863–2 Collection of Jeopardy Assessment, Stay of Sale of Property	Case Processing Site
7001	301.7001–1 License to Collect Foreign Items	Submission Processing Center where return will be filed.
7101	301.7101–1 Form of Bond and Surety Required	Case Processing Site
7102	301.7102–1 Single Bond in Lieu of Multiple Bonds	Case Processing Site
7406	301.7406–1 Disposition of Judgments and Moneys Received	Case Processing Site
7425	301.7425–2 Discharge of Liens, Nonjudicial Sales	Case Processing Site
7430	301.7430–1(d)(1)(i) Exhaustion of Administrative Remedies	Case Processing Site
7432	301.7432–1 Civil Damages for Failure to Release Lien	Case Processing Site
7433	301.7433–1 Civil Damages for Unauthorized Collection Actions	Case Processing Site
7507	301.7507–9 Exemption of Insolvent Banks from Tax	Cincinnati or Ogden Submission Processing Center
7517	301.7517–1 Estate and Gift Tax–Determination of Value	<i>Taxpayers domiciled in the U.S.:</i> Cincinnati Submission Processing Center <i>Taxpayers domiciled outside the U.S.:</i> Philadelphia Submission Processing Center.
7623	301.7623–1 Rewards for Information	Case Processing Site

Since Subtitle A consists of IRC sections 1 through 1563 a look at those sections, as listed in section 4 of IRS Notice 2003-19 should give an indication of who is liable for the “income tax”. However, since the estate and/or gift tax may apply to a few a look at IRC sections 2016 through 2701 as listed in the table is also in order, as is IRC regulation 25.6091–1.

What you might be wondering about is that the table lacked any mention of the sections pertaining to subtitle E, alcohol, tobacco, and firearms. The reason is simple, the IRS does not deal with these taxes as responsibility was transferred to the BATF initially, then to the TTF.

When you get to the chapter “The Form 1040 and the IRS” you will learn that the IRS was never created by law and that the IRS ceased publication of the Internal Revenue Manual 1100 in the Federal Register choosing to rely on the regulations in 26 CFR part 601. It is 26 CFR 601.102 that describes the taxes collected by the IRS and will be covered next.

Sec. 601.102 Classification of taxes collected by the Internal Revenue Service

Sec. 601.102 of 26 CFR reads as follows:

Sec. 601.102 Classification of taxes collected by the Internal Revenue Service.

(a) Principal divisions. Internal revenue taxes fall generally into

The Income Tax and the Employment Tax

the following principal divisions:

- (1) Taxes collected by assessment.
 - (2) Taxes collected by means of revenue stamps.
- (b) Assessed taxes. Taxes collected principally by assessment fall into the following two main classes:
- (1) Taxes within the jurisdiction of the U.S. Tax Court. These include:
 - (i) Income and profits taxes imposed by Chapters 1 and 2 of the 1939 Code and taxes imposed by subtitle A of the 1954 Code, relating to income taxes.
 - (ii) Estate taxes imposed by Chapter 3 of the 1939 Code and Chapter 11 of the 1954 Code.
 - (iii) Gift tax imposed by Chapter 4 of the 1939 Code and Chapter 12 of the 1954 Code.
 - (iv) The tax on generation-skipping transfers imposed by Chapter 13 of the 1954 Code.
 - (v) Taxes imposed by Chapters 41 through 44 of the 1954 Code.
 - (2) Taxes not within the jurisdiction of the U.S. Tax Court. Taxes not imposed by Chapter 1, 2, 3, or 4 of the 1939 Code or Subtitle A or Chapter 11 or 12 of the 1954 Code are within this class, such as:
 - (i) Employment taxes.
 - (ii) Miscellaneous excise taxes collected by return.
 - (3) The difference between these two main classes is that only taxes described in subparagraph (1) of this paragraph, i.e., those within the jurisdiction of the Tax Court, may be contested before an independent tribunal prior to payment. Taxes of both classes may be contested by first making payment, filing claim for refund, and then bringing suit to recover if the claim is disallowed or no decision is rendered thereon within six months.

Now to analyze the key points in the above. Note that in subsection (a) it gives the two principal divisions, Taxes collected by assessment, and those collected by means of revenue stamps. Then in subsection (b) it denotes those that are collected by assessment as:

Taxes within the jurisdiction of the U.S. Tax Court. These include:

- Income and profits taxes imposed by Chapters 1 and 2 of the 1939 Code and taxes imposed by subtitle A of the 1954 Code, relating to income taxes.
- Estate taxes imposed by Chapter 3 of the 1939 Code and Chapter 11 of the 1954 Code.
- Gift tax imposed by Chapter 4 of the 1939 Code and Chapter 12 of the 1954 Code.
- The tax on generation-skipping transfers imposed by Chapter 13 of the 1954 Code.
- Taxes imposed by Chapters 41 through 44 of the 1954 Code.

Taxes not within the jurisdiction of the U.S. Tax Court.

- Taxes not imposed by Chapter 1, 2, 3, or 4 of the 1939 Code or Subtitle A or Chapter 11 or 12 of the 1954 Code are within this class, such as: (i) **Employment taxes**, and (ii) **Miscellaneous excise taxes collected by return**.

In the above remember that Subtitle A encompasses sections 1 through 1563 of the IRC. Chapters 11 and 12 pertain to the estate and gift taxes respectively. The miscellaneous excise taxes are those within the following chapters of the IRC that are collected by return:

- CHAPTER 31--RETAIL EXCISE TAXES – IRC sections 4001 thru 4053
- CHAPTER 32--MANUFACTURERS EXCISE TAXES - IRC sections 4064 thru 4103
- CHAPTER 33--FACILITIES AND SERVICES - IRC sections 4251 thru 4293
- CHAPTER 34--POLICIES ISSUED BY FOREIGN INSURERS - IRC sections 4371 thru 4374

- CHAPTER 35--TAXES ON WAGERING - IRC sections 4401 thru 4424
- CHAPTER 36--CERTAIN OTHER EXCISE TAXES - IRC sections 4461 thru 4484
- CHAPTER 37--REPEALED
- CHAPTER 38--ENVIRONMENTAL TAXES - IRC sections 4611 thru 4682
- CHAPTER 39--REGISTRATION-REQUIRED OBLIGATIONS - IRC section 4701
- CHAPTER 40--GENERAL PROVISIONS RELATING TO OCCUPATIONAL TAXES - IRC sections 4901 thru 4907
- CHAPTER 41--PUBLIC CHARITIES - IRC sections 4911, and 4912
- CHAPTER 42--PRIVATE FOUNDATIONS; AND CERTAIN OTHER TAX-EXEMPT ORGANIZATIONS - IRC sections 4940 thru 4963
- CHAPTER 43--QUALIFIED PENSION, ETC., PLANS - IRC sections 4971 thru 4980E
- CHAPTER 44--QUALIFIED INVESTMENT ENTITIES - IRC sections 4981, and 4982
- CHAPTER 45--REPEALED
- CHAPTER 46--GOLDEN PARACHUTE PAYMENTS - IRC section 4999
- CHAPTER 47--CERTAIN GROUP HEALTH PLANS - IRC section 5000

To learn just what these relate to you can see that they are of no concern to the average John or Jane Doe. This can be done at http://www.access.gpo.gov/uscode/title26/subtitled_.html.

In reality unless you are wealthy with large sums deposited in bank accounts, or heavily invested the income tax as it applies to you is minute. In most cases, by simply following the instructions in completing the Form 1040 most of what has been withheld can be claimed as excess tax paid.

This leaves only the employment taxes, which will be covered in the next paragraph. As a final note, you will see that not once did I refer to any of the definitions, such as "employee", "wages", "United States", "State", or "Trade or Business" as covered in the chapter on definitions. The reason being that there is no need to by virtue of the fact that the 16th Amendment stated "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."

There is however one fact that must be brought to mind, There is a single liability clause in Subtitle A, and that is at IRC section 1461 where a "withholding agent" is required to withhold the tax in regards to the following IRC sections:

- Section 1441 Withholding of tax on nonresident aliens.
- Section 1442 Withholding of tax on foreign corporations.
- Section 1443 Foreign tax-exempt organizations.

The reason this is in Subtitle A is the simple fact that they relate to nonresident aliens and foreign corporations and tax-exempt organizations. Now think about it, why would they subject these to withholding? The reason is simple, they are located outside of the United States in foreign countries, if you did not withhold right up front any money for the taxes due would be located overseas, making recovery much more difficult.

These sections are within Chapter 3 of Subtitle A of the IRC. Chapter 3 is entitled "Withholding of Tax on Nonresident Aliens and Foreign Corporations."

Employment Taxes

This is very important to read and thoroughly understand as this is where the IRS performs its fraudulent acts of theft and intimidation, **not in the income tax as previously explored**. The employment taxes are explained in 26 CFR section 601.401, which is covered on page 107. First a brief history of the requirement to withhold taxes is in order.

A Brief History of the Requirement to Withhold Taxes

The requirement to withhold taxes from employment became law in 1943. It is important to remember that by this time the federal government had basically succeeded through lies and propaganda in convincing the American people that it was mandatory, and few Americans have caught on yet that it is not, and cannot be made mandatory for everyone. This made it very easy for them in 1943 to implement the Current Tax Payment Act of 1943, 57 Stat. 126 that expanded the withholding from social security into withholding on the earnings of America's working citizens. It made tax collectors of the private sector employers. That this was to be done in a fraudulent manner was known for they had already done the same regarding social security. In putting together, and implementing this withholding numerous discussions and such were carried out and much was revealed. In the following links you will find references to key Supreme Court decisions that bear out what has been covered in this document. Here are a few:

The plain language and legislative histories of the relevant statutes indicates that Congress intended its definition of "wages" to be interpreted in the same manner for FICA and FUTA, as the income tax withholding...When Congress revised the withholding system by replacing §172 with the Current Tax Payment Act of 1943, 57 Stat. 126, it retained the definition of "wages." Ibid. In view of this sequence of consistency, **the plain language of the statutes is strong evidence that Congress intended "wages" to mean the same thing under FICA, FUTA, and income-tax withholding.** - **ROWAN COS. v. UNITED STATES**, 452 U.S. 247, 255 (1981)

"LIABILITY, TO TAXATION, however, IS BASED ON THE individuals RECIPROCAL ENJOYMENT OF BENEFITS OF GOVERNMENT, as discussed in § 4, and persons clearly beyond the reach of governmental benefits are likewise outside the scope of taxing power." (84 CJS § 59(a)) (emphasis added) - CJS

"The various objects or subjects have been held properly subjected to EXCISE TAX such as an impost for the privilege to pursue certain callings, to deal with special commodities, to exercise particular franchises . . . but is not broad enough to include every occupation which one may follow in the exercise of a natural right, without aid from the government, and without affecting the rights or interests of others in such a way as properly to call for governmental regulations." (84 CJS § 122, Subject of Excise Tax in General, p. 247)

Note: read the above three or four times, for it states very clearly what has been stated in this document concerning the meanings of "employee", and "trade or business".

The following is referring to the Senate Bill's adding subsection (c) to IRC § 3770 of the 1939 code. IRC § 3770 is what IRC § 6401 of the present code is derived from. It is the lawful basis for recovering what has been withheld as a result of the so-called "honest mistakes" of the private sector employers.

Section 4 (d) of the Senate bill adds new subsection (c) to section 3770 of the code. Under this provision an amount paid as tax shall not be considered not to constitute an overpayment solely because there was no tax liability in respect of which that amount was paid.

The income-tax law requires the taxpayer to make a return of his tax and to pay the tax so returned. These requirements contemplate that in the discharge of these duties at the time, place, and manner prescribed, honest mistakes will occur—mistakes both as to the amount of the tax and as to the existence of any tax liability; and that such honest mistakes made incident to the bona fide orderly compliance with the actual or reasonably apparent duties of the taxpayer **are to be corrected under the provisions of law governing overpayments. It is believed that existing law so provides. The language of certain court decisions (holding that certain payments, not made incident to a bona fide and orderly discharge of actual or reasonably apparent duties imposed by law, are not overpayments and accordingly that interest is not payable) has been read by some as meaning that no payment can result in an overpayment if no tax liability actually existed. It is not believed that such reading is in any way a statement of existing law. The provisions of the bill, however, emphasize the need for clarity in this regard.**

Under the bill as passed by the Senate, two requirements became basic features of the income tax: (1) The declaration and payment of the estimated tax; and (2) the withholding and collection by the employer of tax from the wages of employees, and the return and payment as such of the amount by the employer to the Government. **Honest mistakes incident to faithful and orderly compliance will, of course, occur, just as they have in the older procedures of the law.**

Note: see how they referred to "Honest mistakes"? Even though now it is proven that the withholding on the common citizens are intentional acts of fraud and theft.

Section 4 (d) of the Senate bill added subsection (c) to section 3770 of the code. Under this provision an amount paid as tax shall not be considered not to constitute an overpayment solely because there was no tax liability in respect of which that amount was paid.

When you look at the chapter "Recover by Using the Law" on page 317 IRC Section 6401 is covered, and subsection (c) is the legal basis for the recovery actions.

Links to Information Regarding Withholding

The following links offer much information regarding the birth of withholding. What is saddening is that while the American military were fighting to defeat the axis powers, the politicians at home were working diligently to incorporate the very evils of those powers into American law through trickery and downright lies:

Site Name

- Historical Perspectives on the Federal Income Tax: <http://www.taxhistory.com/1943.html>
- Evolution of Federal Income Tax Withholding: The Machinery of Institutional Change: <http://www.cato.org/pubs/journal/cj14n3-1.html>
- The Plan That Slogans Built: The Revenue Act of 1943 : <http://www.taxhistory.org/thp/readings.nsf/cf7c9c870b600b9585256df80075b9dd/671f701c110a19d985256e430079173d?OpenDocument>

Title 26 CFR part 601.401 - Employment taxes.

This part of 26CFR 601.401 pertain to employment taxes and should be studied carefully as it is revealing. It is shown abbreviated as it is extremely long:

Sec. 601.401 Employment taxes.

(a) General--(1) **Description of taxes. Federal employment taxes are imposed by Subtitle C of the Internal Revenue Code. Chapter 21 (Federal Insurance Contributions Act) imposes a tax on employers of one or more individuals and also a tax on employees, with respect to ``wages" paid and received. Chapter 22 (Railroad Retirement Tax Act) imposes (i) an employer tax and employee tax with respect to ``compensation" paid and received, (ii) an employee representative tax with respect to ``compensation" received, and (iii) a supplemental tax on employers, measured by man-hours for which ``compensation" is paid. Chapter 23 (Federal Unemployment Tax Act) imposes a tax on employers of one or more individuals with respect to ``wages" paid. Chapter 24 (collection of income tax at source on wages) requires every employer making payment of ``wages" to deduct and withhold upon such wages the tax computed or determined as provided therein. The tax so deducted and withheld is allowed as a credit against the income tax liability of the employee receiving such wages.**

(2) Applicable regulations. **The descriptive terms used in this**

The Income Tax and the Employment Tax

section to designate the various classes of taxes are intended only to indicate their general character. Specific information relative to the scope of each tax, the forms used, and the functioning of the Service with respect thereto is contained in the applicable regulations. Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from the district director of internal revenue.

(3) Collection methods. Employment taxes are collected by means of returns and by withholding by employers. Employee tax must be deducted and withheld by employers from ``wages" or ``compensation" (including tips reported in writing to employer) paid to employees, and the employer is liable for the employee tax whether or not it is so deducted. ...

Form 941E is prescribed for reporting on a quarterly basis. The employer and employee taxes imposed by Chapter 21 (other than the employer and employee taxes on wages paid for agricultural labor) and the tax required to be deducted and withheld upon wages by Chapter 24 are combined in a single return on Form 941.

(4) Receipts for employees. Employers are required to furnish each employee a receipt or statement, in duplicate, showing the total wages subject to income tax withholding, the amount of income tax withheld, the amount of wages subject to tax under the Federal Insurance Contributions Act, and the amount of employee tax withheld. See section 6051 of the Code.

(2) Employees' account numbers. Each employee (or individual making a return of net earnings from self-employment) who does not have an account number must file an application on Form SS-5, a copy of which may be obtained from any district office of the Social Security Administration or from a district director of internal revenue. The form, after execution in accordance with the instructions thereon, must be filed with the district office of the Social Security Administration, and at a later date the employee will be furnished an account number. The employee must furnish such number to each employer for whom the employee works, in order that such number may be entered on each tax return filed thereafter by the employer.

(3) Reporting of wages. Forms 941, 942, and 943 each require, as a part of the return, that the wages of each employee paid during the period covered by the return be reported thereon. Form 941 a is available to employers who need additional space for the listing of employees.

(ii) Income tax withholding. If an employer files a return reporting and paying less than the correct amount of income tax required to be withheld from wages paid during the return period, the employer is required to report and pay the additional amount due, either (a) on a return for any return period in the calendar year in which the wages were paid, or (b) on a supplemental return for the return period in which the wages were paid.

(2) Overcollections from employees--(i) Employee tax. If an employer collects from an employee more than the correct amount of employee tax under the Federal Insurance Contributions Act or the Railroad Retirement Act, and the error is ascertained within the applicable period of limitation on credit or refund, the employer is required either to repay the amount to the employee, or to reimburse the employee by applying the amount of the overcollection against employee tax which otherwise would be collected from the employee after the error is ascertained. If the overcollection is repaid to the employee, the employer is required to obtain and keep the employee's written receipt showing the date and amount of the repayment. In addition, if the employer repays or reimburses an employee in any calendar year for an overcollection which

occurred in a prior calendar year, the employer is required to obtain and keep the employee's written statement (a) that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and (b) that the employee will not claim refund or credit of such amount.

(ii) **Income tax withholding. If, in any return period in a calendar year, an employer withholds more than the correct amount of income tax, and pays over to the Internal Revenue Service the amount withheld, the employer may repay or reimburse the employee in the excess amount in any subsequent return period in the same calendar year. If the amount is so repaid, the employer is required to obtain and keep the employee's written receipt showing the date and amount of the repayment.**

(3) **If an employee entitled to a special refund of employee social security tax is not required to file an income tax return for the year in which such special refund may be claimed as a credit, the employee may file a claim for refund of the excess social security tax on Form 843.** Claims must be filed with the district director of internal revenue for the district in which the employee resides.

AS stated, these are just bits and pieces, but note the following:

- The referral is to Chapters 21, 22, 23, and 24 as stated.
- Whenever the term “**employee**” is used they are referring to “**employees**” as defined in Title 5 section 5514 (page 163) which is the basis for the definitions of “**employee**” within the IRC.
- The referral to the Form 941 and other **employer** forms validates what is shown in the section pertaining to the Form 941 on page 127.
- The collection method is by returns and by **withholding by employers. Employee tax** must be deducted and withheld by employers from “**wages**” or “**compensation**” (**including tips reported in writing to employer**) **paid to employees**, and the employer is liable for the employee tax whether or not it is so deducted. ...
- Receipts for **employees** are mandatory (Forms W-2 or 1099-MISC).
- **Employees’** account numbers are mandatory..

Looking at the listing above it is very clear that in regards to the “employment taxes one must take into consideration the definition of the key terms as covered in the chapter on definitions. Let’s recap who the term “employee” refers to.

Recap of “Employee”

1. The basis for the definition of “employee” is found in Title 5 section 5514 (refer to page 163) where the following is stated:

(a)(1) **When the head of an agency or his designee determines that an employee, member of the Armed Forces or Reserve of the Armed Forces, is indebted to the United States for debts to which the United States is entitled to be repaid at the time of the determination by the head of an agency or his designee, or is notified of such a debt by the head of another agency or his designee the amount of indebtedness may be collected in monthly installments, or at officially established pay intervals, by deduction from the current pay account of the individual.**

The reference to “head of an agency” clearly shows that it is in regards to a **government employee**.

2. In the definition of “employee” in regards to IRC Chapters 21 thru 24, as given beginning on page 72 it was shown that the definition remains consistent regarding those chapters and based on those that were in a “trade or business”, i.e. **government employees**

The Income Tax and the Employment Tax

3. The Treasury Decision (T.D.) Federal Register entry at 55 FR 47604 shown on page 111, in the third column identifies whom the IRS has authority over as being:
 - Those involved in ATF Manufacturing;
 - Government: employees, Law enforcement, Law enforcement officers, and
 - Those private persons and entities who have a contract with any Federal or State government to do business with those legal entities.

4. The page at T.D. ATF-301, 55 FR 47605, Nov. 14, 1990 shows the sections of code in the IRC that are enforceable through regulations in 27 CFR part 70, which is Procedure and Administration. This page is shown on page 112 of this file. The importance of this is in the fact that the term “trade or business” takes on a different meaning in Subtitle E - Alcohol, Tobacco, and Certain Other Excise Taxes. This was shown on page 71. It also takes on a different meaning in regards to being engaged in “wagering or gambling”, and also in regards to being engaged in catching fish or other activities within the Continental Shelf.

DEPARTMENT OF THE TREASURY**Bureau of Alcohol, Tobacco and Firearms**

27 CFR Parts 19, 24, 25, 70, 170, 179, 194, 197, 250, 270, 275, 285, 290, and 296

[T.D. ATF-301]

Change in Responsibility for Enforced Collection of Certain Alcohol, Tobacco, and Firearms Taxes

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This Treasury decision will transfer from the Internal Revenue Service (IRS) to ATF the functions associated with enforced collection of delinquencies of the special (occupational) tax, the domestic excise tax on distilled spirits, wine, malt beverages, tobacco products, cigarette papers and tubes, and the firearms tax imposed by subtitle E of the Internal Revenue Code. Furthermore, certain procedural and administrative rules are being adopted from IRS regulations in 26 CFR 301 to ATF regulations in 27 CFR part 70. In addition, changes in part 70 are being made to reflect amendments made to 28 U.S.C. 6851 and 6656 by the Omnibus Budget Reconciliation Act, Public Law 101-239.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Jackie White, Coordinator, Tax Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, (202) 566-7602.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1972, ATF was established by Treasury Department Order No. 120-01 (formerly Order No. 221). This Order transferred from IRS to the newly-formed Bureau the functions, powers and duties relating to alcohol, tobacco, firearms, and explosives laws. The Order specifically stated that "all existing activities relating to the collection, processing, depositing, or accounting for taxes . . . shall continue to be performed by the Commissioner of Internal Revenue to the extent not now performed by the Alcohol, Tobacco and Firearms Division until the Director shall otherwise provide with the approval of the Secretary." ATF assumed responsibility for the collection of taxes imposed by subtitle E of the Internal Revenue Code

in July, 1987, by means of T.D. ATF-251, and adopted provisions in 27 CFR part 70 similar to the portions of 26 CFR part 301 which concerned deposit and assessment of taxes. This final rule will transfer the remaining collection functions with respect to taxes administered by ATF. These functions include the use of liens and levies in enforcement of the taxes under ATF's jurisdiction. ATF is adopting regulations similar to those used by IRS in support of enforced collection.

In addition to adopting regulations on enforced collection activities, this final rule also recodifies additional regulations from 26 CFR relating to the examination, assessment, and collection functions. ATF has now determined that these additional regulations are applicable to its tax collection activities.

Existing sections in 27 CFR part 70 will be renumbered to allow insertion of new sections. These sections are redesignated by means of a table in paragraph 13. In some cases, existing sections of 27 CFR part 70 have been expanded to include material related to enforced collections, and amended to show new titles of responsible officials where appropriate. Each section in title 27 of the Code of Federal Regulations which refers to a section in 26 CFR part 301 which has been adopted in 27 CFR part 70 or to a section of 27 CFR part 70 which has been redesignated has been changed to reflect the new reference. References to the old section numbers within 27 CFR part 70 have been updated to show the new section numbers.

Administrative Procedure Act

Because this final rule is a rule of agency management that merely transfers existing requirements relating to enforced collection of taxes to ATF from the Internal Revenue Service, it is found to be unnecessary to issue this Treasury decision for notice and public procedure or subject to a delayed effective date pursuant to 5 U.S.C. 553(a)(2), (b)(3) and (d)(3).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because a general notice of proposed rulemaking is not required under 5 U.S.C. 553 or any other law.

Executive Order 12291

Because this rule relates to agency organization, management and procedure, the provisions of Executive Order 12291 do not apply.

Paperwork Reduction Act

This final rule does not affect any recordkeeping or reporting requirements.

Drafting Information

The principal author of this document is Marjorie Dundas of the Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Taxpaid wine bottling house, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 25

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 170

Alcohol and alcoholic beverages, Authority delegations, Claims, Customs duties and inspection, Disaster assistance, Excise taxes, Labeling, Liquors, Penalties, Reporting and recordkeeping requirements, Surety bonds, Wine.

27 CFR Part 179

Administrative practice and procedure, Arms and munitions, Authority delegation, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation.

27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Wine.

27 CFR Part 197

Alcohol and alcoholic beverages, Authority delegations, Claims, Drugs, Excise taxes, Foods, Spices and flavorings, Surety bonds, Reporting and recordkeeping requirements.

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Electronic fund transfers, Excise taxes, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Puerto Rico, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 285

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses.

27 CFR Part 296

Cigarette papers and tubes, Cigars and cigarettes, Claims, Disaster assistance, Excise taxes, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

Issuance

Title 27 CFR chapter I is amended as follows:

PART 19—(AMENDED)

Par. 1. The authority citation for part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5041, 5051, 5062, 5066, 5101, 5111–5113, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510, 7805; 31 U.S.C. 9301, 9303, 9303, 9304, 9306.

§ 19.52 (Amended)

Par. 2. Section 19.52(a) is amended by removing the reference to “§ 70.105” in the last sentence and replacing it with “§ 70.113”.

§ 19.519 (Amended)

Par. 3. Section 19.519 is amended by removing the two references to “§ 70.66” in the second and third sentences and replacing them with “§ 70.61”.

§ 19.520 (Amended)

Par. 4. Section 19.520 is amended by removing the reference to “26 CFR 301.6676–1” in the last sentence and replacing it with “§ 70.113 of this chapter”.

PART 24—(AMENDED)

Par. 5. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5006, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502,

7503, 7606, 7605, 7651; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 24.45 (Amended)

Par. 6. Section 24.45 is amended by removing the reference to “§ 70.105” in the last sentence and replacing it with “§ 70.113”.

§ 24.276 (Amended)

Par. 7. Section 24.276 is amended by removing the reference to “§ 70.66” in the last sentence and replacing it with “§ 70.61”.

PART 25—(AMENDED)

Par. 8. The authority citation for part 25 continues to read as follows:

Authority: 19 U.S.C. 81c, 1309; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

§ 25.121 (Amended)

Par. 9. Section 25.121 is amended by removing the reference to “§ 70.105” in the last sentence and replacing it with “§ 70.113”.

§ 25.168 (Amended)

Par. 10. Section 25.168 is amended by removing the reference to “26 CFR 301.6676–1” in the second sentence and replacing it with “§ 70.113 of this chapter”.

§ 25.173 (Amended)

Par. 11. Section 25.173(b) is amended by removing the reference to “§ 70.66” and replacing it with “§ 70.61 of this chapter”.

PART 70—(AMENDED)

Par. 12. The authority citation for part 70 is revised to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656, 6657, 6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

Par. 13. Part 70 is amended by redesignating the sections in the left-hand column below as the sections in the right-hand column:

Forms W-2, 1099, W-4, 941, 1040, and the IRS

In this chapter the Forms W-2, W-4, 1040, and 1099 will be covered, as well as the IRS itself. There are facts concerning these that are not known or understood by most. These areas are discussed in the following paragraphs. To truly understand and to track along you need to have the ADP and IDRS Information Document 6209 (hereinafter Document 6209), which can be downloaded at <http://www.irs.gov/foia/article/0,,id=150945,00.html>.

Paragraph:	Page:
ADP and IDRS Information Document 6209	113
The Tax Classes	113
Form W-2 – Wage and Tax Statement	115
Form 1099-MISC – Miscellaneous Income	117
Form W-4 - Employee's Withholding Allowance Certificate	119
Form 941 - Employer's QUARTERLY Federal Tax Return	127
Requirement for Withholding	
The Form 1040 – Individual Income Tax Return	129
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ADP and IDRS Information Document 6209

On the IRS web site it states "Document 6209 is a reference guide which contains ADP and IDRS data relative to various components of the IRS. It is generally updated annually." However, the last issue is dated 2003. On the 3d page of the document it states:

Document 6209 is provided as a handy reference guide only. More detailed and current information can be found in the appropriate Internal Revenue Manuals or ADP Handbooks. Providing Document 6209 in bound book format is the most economical format for our needs since the initial cost of changing from bound book to loose-leaf would be prohibitive. Additionally, the costs incurred in subsequent years would be greater than the cost of bound format. Document 6209 contains material of a sensitive nature and requires maximum safeguards. In addition, security dictates that copies of the Document 6209 carried by Revenue Officers and others should not come apart easily as potential loss would compromise "Official Use Only" material.

Therefore this document can be useful in determining key facts concerning the tax forms and their use. In referring to it two different page numbers will be given. The first is the page number as given in the TOC for Document 6209. This will be followed by the actual page in the document shown in parenthesis. The number in parenthesis allows you to navigate to that page by using the "Go to Page" function of the Acrobat program or reader you use.

The Tax Classes

Taxes are placed within specific Tax Classes, depending on what type of taxes they are. Within Document 6209 Section 2 Tax Returns and Forms is a table that lists the various tax forms and gives The Tax Class they apply to that begins on page 2-1(25) and extends to page 2-20 (44).

On page 4-2 (72) of Doc. 6209 the Tax Classes are listed as follows:

- 0 Employee Plans Master file (EPMF)
- 1 Withholding and Social Security
- 2 Individual Income Tax, Fiduciary Income Tax, Partnership return
- 3 Corporate Income Tax, 990C, 990T, 8038 Series, 8609, 8610
- 4 Excise Tax
- 5 Information Return Processing (IRP), Estate and Gift Tax
- 6 NMF

Forms W-2, W-4, 1040, 1099, and the IRS

7 CT-1

8 FUTA

9 Mixed - Segregation by tax class not required.

In the above NMF stands for Non-Master File, and FUTA stands for Federal Unemployment Tax Act. The Tax Classes for the forms of interest will be shown as these forms are covered.

An Important Change regarding OMB Numbers

On December 20, 2006 the IRS published in the federal Register (Vol. 71, No. 244, pages 76427 – 76434 a notice that impacts the OMB numbers and usage of 26 CFR 602.101 in determining what regulations apply to a particular form. The following are some excerpts of importance:

Under the PRA, OMB assigns a control number to each “collection of information” that it reviews and approves for use by an agency. A single information collection may consist of one or more forms, recordkeeping requirements, and/or third-party disclosure requirements. **Under the PRA and OMB regulations, agencies have the discretion to seek separate OMB approvals for individual forms, recordkeeping requirements, and third- party reporting requirements or to combine any number of forms, recordkeeping requirements, and/or third-party disclosure requirements (usually related in subject matter) under one OMB Control Number.** Agency decisions on whether to group individual requirements under a single OMB Control Number or to disaggregate them and request separate OMB Control Numbers are based largely on considerations of administrative practicality.

In the above note where it states “**agencies have the discretion to seek separate OMB approvals for individual forms, recordkeeping requirements, and third- party reporting requirements or to combine any number of forms, recordkeeping requirements, and/or third-party disclosure requirements (usually related in subject matter) under one OMB Control Number**”.

This Federal Register entry is for the purpose of combining several forms under a single OMB Number.

Currently, there are 195 forms used by individual taxpayers. These include Forms 1040, 1040A, 1040EZ, and their schedules and all the forms individual taxpayers attach to their tax returns (see the Appendix to this notice). For most of these forms, IRS has in the past obtained separate OMB approvals under unique OMB Control Numbers and separate burden estimates. Since the ITBM does not estimate burden on a form-by-form basis, IRS is no longer able to provide burden estimates for each tax form used by individuals. The ITBM estimates the aggregate burden imposed on individual taxpayers, based upon their tax-related characteristics and activities. **IRS therefore will seek OMB approval of all 195 individual tax forms as a single “collection of information.” The aggregate burden of these tax forms**

In the above they have stated their intention to assigning a single OMB Number to 195 forms.

Since a number of forms used by individual taxpayers are also used by corporations, partnerships, and other kinds of taxpayers, **there will be a transition period during which IRS will report different burden estimates for individual taxpayers and for other taxpayers using the same forms. For those forms used by both individual and other taxpayers, IRS will display two OMB Control Numbers (1545–0074 and the OMB Control Numbers currently assigned to these forms) and provide two burden estimates.**

Note the transition period in which two OMB Numbers will be displayed on the forms that are involved and used by individual and other taxpayers. It then goes on to list the forms for which OMB Number 1545-0074 will apply to as follows:

PRA Submission to OMB Title: U.S. Individual Income Tax Return. *OMB Number:* 1545–0074.
Form Numbers: Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE;
Form 1040A and Schedules 1, 2 and 3; Form 1040EZ; and all attachments to these forms (see the Appendix to this notice).

The following forms that are referred to in this document are therefore subject to falling within the OMB Number 1545-0074 group:

Form W-4
Forms 4852

Problem in Identifying Applicable Regulations

26 CFR 602.101` OMB Control numbers is the regulation that matches the forms to the regulations applicable to each. This is very important, as the few that understand the federal law structure well know. It is the regulations that drive everything in federal law. A law without substantiating regulations is merely a collection of words and unenforceable. The grouping of 195 forms under a single OMB Number (1545-0074) **does not** mean that every regulation listed as applicable to the Form 1040 (1545-0074) is also applicable to the other 194 forms. This should be obvious by looking at the regulations.

26 CFR 602.101, as it currently exists lists the original OMB Numbers as assigned to the separate (in most cases) forms. But by indicating 1545-0074 on all 195 forms and without any knowledge of what the original OMB Number for a form was how can you determine what it was so you can select the proper regulations from 602.101?

The easiest way is by going to the following IRS web site where forms for previous years are available. Just click on the year and select the form in question. It will bear the original OMB Number:

<http://www.irs.gov/formspubs/article/0,,id=98339,00.html>

For example, say you need the original OMB Number for Forms W-4 and 4852. By going to the listing for 2005 and selecting these forms the following original OMB Numbers are shown:

Form W-4 OMB Number 1545-0010
Form 4852 Not listed

If a form you need is not listed, then you must revert to using internet search function. Links will be listed to various similarly named forms. Select one that pertains to the federal taxation. By doing so you will be able to access an earlier Form 4852 showing the original OMB Number of 1545-0458.

Use the original OMB Number to locate the applicable regulations in 26 CFR 602.101.

Perhaps someday the IRS will update the CFR, but don't hold your breath.

Form W-2 – Wage and Tax Statement

The Form W-2 Tax Classes as listed in Document 6209 are as follows:

Form W-2 Tax Classes

Form	Tax Class	Use
W-2	5	Wage and Tax Statement
W-2C	5	Statement of Corrected Income and Tax Amounts
W-2CM	5	Commonwealth of the Northern Mariana Island Wage and Tax Statement
W-2GU	5	Guam Wage and Tax Statement
W2-G	5	Statement of Gambling Winnings
W-2VI	5	US Virgin Islands Wage and Tax Statement

As can be seen all versions are True Tax Class 5. Since it is the Form W-2 that is of prime interest a look at the regulations that govern the use of this form will be done in the next paragraph.

Form W-2 Regulations.

By going to 26 CFR 602.101 the regulations applicable to the Form W-2 (OMB Number 1545-0008) can be determined. They are shown in the following table and covered on the page indicated..

Form W-2 Regulations

Regulation	Title/Subject	Page
1.6041-1	Return of information as to payments of \$600 or more	116
1.6041-2	Return of information as to payments to employees	116
1.6041-6	Returns made on Forms 1096 and 1099 under section 6041; contents and time and place for filing	116
1.6052-1	Information returns regarding payment of wages in the form of group-term life insurance	116
1.6052-2	Statements to be furnished employees with respect to wages paid in the form of group-term life insurance	116
1.9101-1	Permission to submit information required by certain returns and statements on magnetic tape	116
31.3402(o)-3	Extension of withholding to sick pay	125
31.6051-1	Statements for employees	117
31.6051-2	Information returns on Form W-3 and Internal Revenue Service copies of Forms W-2.	117
31.6051-3	Statements required in case of sick pay paid by third parties	117
31.6053-2	Employer statement of uncollected employee tax.	117
31.6081(a)-1	Extensions of time for filing returns and other documents	117

1.6041-1 - Return of information as to payments of \$600 or more

This regulation applies only to those engaged in a **trade or business** so unless you are one of these the regulation does not apply to you.

1.6041-2 - Return of information as to payments to employees

This regulation stipulates **wages**, as defined in section 3401, paid to an **employee** are required to be reported on Form W-2. See section 6011 and the Employment Tax Regulations thereunder. Remember the definitions for “wages” and “employee” as covered in the chapter on definitions. IRC section 6011 and it’s regulations are discussed on page 167.

1.6041-6 - Returns made on Forms 1096 and 1099 under section 6041; contents and time and place for filing

Pertains to returns made on Forms 1096 and 1099. The Form 1096 is the Annual Summary and Transmittal of U.S. Information Returns so of no concern here. The Form 1099 is discussed on page 117, however this regulation is of no concern to John or Jane Doe.

1.6052-1 - Information returns regarding payment of wages in the form of group-term life insurance

This regulation applies to **wages** paid in the form of group life insurance. Unless you are an **employee** drawing **wages** this regulation does not apply.

1.6052-2 - Statements to be furnished employees with respect to wages paid in the form of group-term life insurance

Applicable only to statements to be furnished employees with respect to **wages** paid in the form of group-term life insurance. Therefore not applicable to those not drawing **wages**.

1.9101-1 - Permission to submit information required by certain returns and statements on magnetic tape

The title tells it all. No comment needed.

31.3402(o)-3 - Extension of withholding to sick pay

Covered on page 125.

31.6051-1 - Statements for employees

Are you an employee as defined in the tax laws? If not, this regulation does not apply to you.

31.6051-2 - Information returns on Form W-3 and Internal Revenue Service copies of Forms W-2.

This regulation concerns the filing of copies of the forms w-2 with the Social Security Administration with the W-3 transmittal form. Again, it applies only to those who are “**employees**” drawing “**wages**” as defined in the tax laws.

31.6051-3 - Statements required in case of sick pay paid by third parties

Applies only to payors of sick pay who shall furnish to the employer of the payee of the sick pay a written statement. Not applicable to the average person.

31.6053-2 - Employer statement of uncollected employee tax.

Applies to tips collected by an “**employee**”. If you are not a tax law defined **employee**” don’t worry about it.

31.6081(a)-1 - Extensions of time for filing returns and other documents

Deals with the extension of time to file in regards to the requirements of 31.6051-2 as stated above.

Conclusion for Form W-2

From what the regulations reveal most common Americans should never receive any Form W-2. Unfortunately the private sector employers have no spine, or take bad advice and ignore the laws, and the IRS loves them for doing so.

Form 1099-MISC – Miscellaneous Income

The Tax Classes for this form are as follows:

Form 1099 Tax Classes

Form	Tax Class	Use
SSA-1099	5	Social Security Benefit Statement
1099-A	5	Information Return for Acquisition or Abandonment of Secured Property
1099-B	5	Statement for Recipients of Proceeds From Real Estate Brokers and Barters Exchange Transactions.
1099-C	5	Cancellation of Debt
1099-DIV	5	Statement for Recipients of Dividends and Distributions 5 91
1099-G	5	Statement for Recipients of Certain Government Payments 5 86
1099-INT	5	Statement for Recipients of Interest Income
1099- LTC	5	Statement for Recipients - Long term care and accelerated health benefits
1099-MISC	5	Statement for Recipients of Miscellaneous Income
1099-MSA	5	Statement of Receipts of Medical Savings Account
1099-OID	5	Statement for Recipients of Original Issue Discount

Form 1099 Tax Classes (Cont.)

Form	Tax Class	Use
1099-PATR	5	Statement for Recipients of Taxable Distributions Received

Forms W-2, W-4, 1040, 1099, and the IRS

		from Cooperatives
1099-Q	5	Qualified Tuition Program Payments
1099-R	5	Statement for Recipients of Retirement Plans
1099-S	5	Statement for Recipients of Proceeds from Real Estate Transactions

Notice that they all relate to a True Tax Class of 5, Information Return Processing (IRP), Estate and Gift Tax.

Form 1099-MISC Regulations

By going to 26 CFR 602.101 the regulations applicable to the Form 1099-MISC (OMB Number 1545-0115) can be determined. They are shown in the following table and covered on the page indicated..

Form 1099-MISC Regulations

Regulation	Title/Subject	Page
1.6041-1	Return of information as to payments of \$600 or more	116
1.6041-4		118
1.6041-6	Returns made on Forms 1096 and 1099 under section 6041; contents and time and place for filing	116
1.6045-2	Furnishing statement required with respect to certain substitute payments	118
1.6050A-1	Reporting requirements of certain fishing boat operators	118
7.6041-1	Return of information as to payments of winnings from bingo, keno, and slot machines	119

1.6041-1 - Return of information as to payments of \$600 or more

This regulation was covered on page 116.

1.6041-4 - Return of information as to payments to employees

This regulation was covered on page 116.

1.6041-6 - Returns made on Forms 1096 and 1099 under section 6041; contents and time and place for filing

Pertains to returns made on Forms 1096 and 1099. The Form 1096 is the Annual Summary and Transmittal of U.S. Information Returns so of no concern here to John or Jane Doe.

1.6045-2 - Furnishing statement required with respect to certain substitute payments

This regulation applies to brokers.

1.6050A-1 - Reporting requirements of certain fishing boat operators

As the title states, it is of concern only to certain fishing boat operators. In fact in the instructions for filling in block 7 the following is stated:

Box 7. Shows nonemployee compensation. If you are in the trade or business of catching fish, box 7 may show cash you received for the sale of fish. If payments in this box are SE income, report this amount on Schedule C, C-EZ, or F (Form 1040), and complete Schedule SE (Form 1040). You received this form instead of Form W-2 because the payer did not consider you an employee and did not withhold income tax or social security and Medicare taxes. Contact the payer if you believe this form is incorrect or has been issued in error. If you believe you are an employee, report this amount on line 7 of Form 1040 and call the IRS for information on how to report any social security and Medicare taxes.

7.6041-1 - Return of information as to payments of winnings from bingo, keno, and slot machines

Since this regulation applies only to winnings from bingo, keno, and slot machines we will go no further.

Conclusion for Form 1099-MISC

In conclusion, as has been shown this form is applicable only to a selected few. As said in regards to the Form W-2 from what the regulations reveal most common Americans should never receive any Form 1099-MISC. Unfortunately the private sector employers have no spine, or take bad advice and ignore the laws, and the IRS loves them for doing so.

Form W-4 - Employee's Withholding Allowance Certificate

This form constitutes the starting point of the federal system of fraud and theft. Per Document 6209 it falls within Tax Class 5:

Form W-4 Tax Classes

Form	Tax Class	Use
W-4	5	Employee's Withholding Certificate
W-4E	5	Exemption from Withholding Allowance Certificate
W-4P	5	Withholding Certificate for Pension or Annuity payments
W-4S	5	Request for Federal Income Tax Withholding from Sick Pay
W-4V	5	Voluntary Withholding Request

Notice the very first word regarding the Form W-4. Are you an "**employee**" as defined in the tax statutes?

Notice also that it is the Form W-4V that applies to the Voluntary Withholding Request. Before getting any misconceptions the following, taken from the Form instructions themselves state the use:

- I f you receive any government payment shown below, you may use Form W-4V to ask the payer to withhold federal income tax.
- Unemployment compensation (including Railroad Unemployment Insurance Act (RUIA) payments),
 - Social security benefits,
 - Social security equivalent Tier 1 railroad retirement benefits,
 - Commodity Credit Corporation loans, or
 - Certain crop disaster payments under the Agricultural Act of 1949 or under Title II of the Disaster Assistance Act of 1988.

You are not required to have federal income tax withheld from these payments. **Your request is voluntary.**

Note. Payers may develop their own form for you to request federal income tax withholding. If a payer gives you its own form instead of Form W-4V, use that form.

Unlike before, since this form relies on IRC section 3402 almost exclusively a look at all the regulations for that section.

Title 26 section 3402 Regulations

The regulations are covered as shown below. Again, unless felt that it is important to do so the regulation will not be shown word-for-word but will be summarized. To view the entire regulation you can go to <http://www.gpoaccess.gov/cfr/index.html>.

Title 26 section 3402 Regulations

Regulation	Title/Subject	Page
31.3402(a)-1	Requirement of withholding	120
31.3402(b)-1	Percentage method of withholding.	120
31.3402(c)-1	Wage bracket withholding.	121
31.3402(d)-1	Failure to withhold.	121
31.3402(e)-1	Included and excluded wages.	121
31.3402(f)(1)-1	Withholding exemptions.	121
31.3402(f)(2)-1	Withholding exemption certificates.	121
31.3402(f)(3)-1	When withholding exemption certificate takes effect.	122
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31.3402(j)-1	Remuneration other than in cash for service performed by retail commission salesman	124
31.3402(k)-1	Special rule for tips.	124
31.3402(l)-1	Determination and disclosure of marital status.	124
31.3402(m)-1	Withholding allowances.	124
31.3402(p)-1	Voluntary withholding agreements.	125
31.3402(q)-1	Extension of withholding to certain gambling winnings.	126
31.3402(r)-1	Withholding on distributions of Indian gaming profits to tribal members.	126
31.3402(n)-1	Employees incurring no income tax liability.	124
31.3402(o)-1	Extension of withholding to supplemental unemployment compensation benefits	124
31.3402(o)-2	Extension of withholding to annuity payments if requested by payee.	125
31.3402(o)-3	Extension of withholding to sick pay.	125

31.3402(a)-1- Requirement of withholding

This regulation relies on being an employee drawing wages. Accordingly, the requirement of withholding can only apply to those that are identified as “employees” as defined on page 72 who are drawing “wages” as defined on page 89

31.3402(b)-1 - Percentage method of withholding

This regulation is based on the “wages” reported. If by definition as given in the definition of “wages” on page 89 your remuneration does not constitute “wages” this legislative/substantive regulatory requirement **does not apply**.

31.3402(c)-1 - Wage bracket withholding

Application of this regulation is dependent upon one being an “**employee**” as defined on page 72 and having no exclusions in regards to “**wages**” as defined on page 89. If you **are not an employee as defined** this legislative/substantive regulatory requirement **does not** apply to you.

31.3402(d)-1 - Failure to withhold

What is important in regards to this regulation is not only that it applies only to the “employer”, but also that there is no source documents listed. Therefore, it cannot be traced back to a statute authorizing the action. also refers to sec. 31.3403-1 for the liability for tax. This regulation is covered on page 126.

31.3402(e)-1 - Included and excluded wages

Again, there is no source documents listed for this regulation therefore, it cannot be traced back to a statute authorizing the action.

31.3402(f)(1)-1 - Withholding exemptions

This regulation gives the criteria for determining the number of exemptions that can be claimed on a W-4 Form. Notice that it is dependent on “**wages**” as defined on page 89 of an “**employee**” as defined on page 72. If you **are not an employee as defined**, this legislative/substantive regulatory requirement **does not** apply to you.

31.3402(f)(2)-1 Withholding exemption certificates

Here it initially states “the **individual shall** furnish the employer with a signed withholding exemption certificate relating to his marital status and the number of withholding exemptions which he claims”. However, what is meant by “shall”? This is not a stupid question, as the word does not necessarily mean a mandatory requirement. In regards to the government statutes and regulations it takes on a different meaning,

"Words like 'may', 'must', 'shall', etc., are constantly used in statutes without intending that they be taken literally." - (Fields vs. U.S. 27 app D.C. 433)

"As against the government the word 'shall' when used in statutes, is to be construed as 'may', unless a contrary intention is manifest." (Caro-Fulton R.R. Co. vs. Hecht 95- US 170)

"If necessary, to avoid unconstitutionality of a statute, 'shall' will be deemed equivalent to 'may.'" (Gow vs. Consolidated Copper Mines Corp. 165 Atl. 136)

"Shall' in a statute may be construed to mean 'may' in order to avoid constitutional doubt." (Grover Williams College vs. Village of Williams Bay 7 NW 2nd 891)

It was also so stated in NARA's Document Drafting Handbook as shown on page 50 and in their Directions for Drafting Legal Documents available at <http://www.archives.gov/federal-register/write/legal-docs/>.

So now, we see that this means “the individual **may** furnish the employer with a signed withholding exemption certificate relating to his marital status and the number of withholding exemptions which he claims”. This means a voluntary submittal, which is addressed in regulation 31.3402(n)-(1) - Employees incurring no income tax liability covered on page 124.

In addition, it states, “The employer **is required** to request a withholding exemption certificate from each “**employee**””. In regards to this statement note that it uses the wording “is required” denoting a mandatory requirement in lieu of the word “shall” and that it is applicable to an “**employee**”. **If the statement in the first sentence was mandatory** (On or before the date on which an **individual** commences employment with an employer, the **individual** shall furnish the employer with a signed withholding exemption certificate relating to his marital status and the number of withholding exemptions which he claims, which number shall in no event exceed the number to which he is entitled) then the wording “**The employer is required to request a withholding exemption certificate from each employee**” **would not be necessary since by virtue of the first sentence they would have it**. The U.S. Supreme Court has ruled for over 100 years that the words in

Forms W-2, W-4, 1040, 1099, and the IRS

the laws indicate what the laws require, and that no word can be rendered superfluous. In light of this, the words "individual" and "employee" maintain their distinction and viability under the Federal Rules of Statutory Construction. An "employee" may be an individual but an "individual" is not necessarily an "employee".

As can be seen, it also states: "if the statements described in Sec. 31.3402(n)-1 are true with respect to an individual, he may furnish his employer with a signed withholding exemption certificate which contains such statements. For form and contents of such certificates, see Sec. 31.3402(f)(5)-1." This withholding exemption certificate will take the place of the standard W-4 Form. Legislative or substantive Regulation 31.3402(n)-1 is covered on page 124 and regulation 31.3402(f)(5)-1 on page 123. Notice that the word "may" is used.

A word of caution in regards to this certificate, regulation section 31.3402(n)-1 is titled "Employees incurring no income tax liability" and applies only to those being an "**employee**" and who gets payments of "**wages**". The definitions learned in the chapter on definitions apply.

It should also be noted that subsection (b), which relates to change in status specifically states in (v)(4) that it relates to tax imposed under subtitle A. This is the subtitle for the income tax. There is only one liability for this tax in all of subtitle A and that is found in IRC section 1461 where a "withholding agent" is required to withhold the tax in regards to the following IRC sections:

- Section 1441 Withholding of tax on nonresident aliens.
- Section 1442 Withholding of tax on foreign corporations.
- Section 1443 Foreign tax-exempt organizations.

These sections are within Chapter 3 of the IRC. Chapter 3 is entitled "Withholding of Tax on Nonresident Aliens and Foreign Corporations."

Legislative or substantive Regulation 31.3402(f)(2)-1(g)(5)(ii) is the regulation giving the IRS the authority to determine the correctness of a withholding certificate. That regulation is covered on page 121. Again as can be seen these provisions rely on one being an "employee" as defined in IRC 3401(c) with supporting regulations at 31.3401(c)-1 (refer to chapter 3). **It is important to remember that the factual existence of a withholding statement, whether mandated by regulation, voluntary, or as a condition of employment is enough to trigger the IRS determination.**

The general requirement for submittal can be summed up as applying only to those:

- Who are "employees" and whose remuneration constitutes "wages" as defined in the IRC (refer to the chapter on definitions),
- Those who are within the meaning of sections 1441 through 1443, or
- To those making a "**voluntary**" withholding certificate.

31.3402(f)(3)-1 When withholding exemption certificate takes effect

This regulation pertains to when a withholding statement takes effect and is dependent upon one receiving "wages" as defined in chapter 3. If you do not receive "wages" as defined this regulation **does not apply**.

31.3402(f)(4)-1 - Period during which withholding exemption certificate remains in effect

This regulation pertains to the period that a withholding exemption certificate remains in effect and is dependent upon one being an "employee" as defined on page 72. If you are not an "employee" as defined, this regulation **does not apply**.

31.3402(f)(4)-2 - Effective period of withholding exemption certificate

This regulation pertains to the effective period a withholding exemption certificate remains in effect and is dependent upon one being an "**employee**" as defined on page 72. If you are not an "**employee**" as defined, this regulation **does not apply**.

31.3402(f)(5)-1 - Form and contents of withholding exemption certificates

This regulation is **extremely important to understand**. This is because any deviation in form and content as specified by this regulation can trigger an IRS determination of a “defective withholding statement” previously covered in regards to 31.3402(f)(2)-1(g)(5)(ii) (refer to page 121).

In 31.3402(f)(5)-1(a) it states: “Form W-4 is the form prescribed for the withholding exemption certificate required to be filed under section 3402(f)(2)”. In the regulations for section 3402(f)(2) found at 31.3402(f)(2)-1 (refer to page 118) it was determined that a requirement for a W-4 Form, or withholding exemption certificate applied only to those who are “employees” and whose remuneration constitutes “wages” as defined in the chapter on definitions, those who are within the meaning of sections 1441 through 1443, or to those making a “voluntary” withholding certificate. It was also stated that “**It is important to remember that the factual existence of a withholding statement, whether mandated by regulation, voluntary, or as a condition of employment is enough to trigger the IRS determination**”. That statement applies to the form and contents also, if they have one these provisions apply.

Section 31.3402(f)(5)-1(b) pertains to invalid Form W-4. And states: “. A Form W-4 does not meet the requirements of section 3402(f)(5) or this section and is invalid if it contains an alteration or unauthorized addition. For purposes of Sec. 31.3402(f)(2)-1(e) and this paragraph—“ and gives the following

:

- (1) An alteration of a withholding exemption certificate is any deletion of the language of the **jurat** or other similar provision of such certificate by which the employee certifies or affirms the correctness of the completed certificate, or any material defacing of such

31.3402(f)(6)-1 - Withholding exemptions for nonresident alien individuals

This regulation relates to nonresident alien individuals only, therefore further discussion is not warranted.

31.3402(g)-1 - Supplemental wage payments

Again, this regulation only pertains only to those defined as “employees” that are getting “wages”.

31.3402(g)-2 - Wages paid for payroll period of more than one year

The very first sentence in this regulation says enough: “If **wages** are paid to an **employee** for a payroll period of more than one year,”. Therefore, this regulation only pertains only to those defined as “**employees**” that are getting “**wages**”.

31.3402(g)-3 - Wages paid through an agent, fiduciary, or other person on behalf of two or more employers

This regulation applies to **wages** paid to an **employee**. Therefore, this regulation only pertains only to those defined as “**employees**” that are getting “**wages**”.

31.3402(h)(1)-1 - Withholding on basis of average wages

This regulation covers withholding based on average **wages**, as it applies to **wages** it has no application on those whose remuneration does not constitute **wages**.

31.3402(h)(2)-1 - Withholding on basis of annualized wages

This regulation covers withholding based on annualized **wages**, as it applies to **wages** it has no application on those whose remuneration does not constitute **wages**.

31.3402(h)(3)-1 - Withholding on basis of cumulative wages

This regulation gives the criteria for determining withholding on basis of cumulative **wages**. It is dependent upon one being an “**employee**” as defined On page 72 and having “**wages**” as defined on page 89. If you are not an **employee** as defined, this legislative/substantive regulatory requirement does not apply to you.

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31.3402(h)(4)-1 - Other methods (of withholding)

Same as above for regulation 31.3402(h)(3)-1. It is dependent upon one being an “**employee**” as defined on page 72 and having “**wages**” as defined on page 89. If you are not an **employee** as defined, this legislative/substantive regulatory requirement does not apply to you.

31.3402(i)-(1) - Additional withholding

This regulation states in Sec. 31.3402(i)-1(a): “In addition to the tax required to be deducted and withheld in accordance with the provisions of section 3402, the employer and employee may agree that an additional amount shall be withheld from the employee’s wages. The agreement shall be in writing and shall be in such form as the employer may prescribe.” Here is where those that don’t think they are donating enough can donate more. Again, if you **are not an employee as defined on page 72** or your remuneration **does not constitute wages** within the meaning of section 3401(a) this legislative/substantive regulatory requirement **does not** apply to you. Then, this is a voluntary increase.

31.3402(i)-(2) - Increases or decreases in withholding

This regulation concerns the requesting by employees that an additional amount be deducted from their wages. As you can see, it is dependent on one being an “**employee**” and being paid “**wages**” as defined in the chapter on definitions. If you **are not an employee as defined**, or your remuneration **does not constitute wages** within the meaning of section 3401(a) this legislative/substantive regulatory requirement **does not** apply to you.

31.3402(j)-1 Remuneration other than in cash for service performed by retail commission salesman.

Applies only to an “**employee**” working as a retail commission salesman

31.3402(k)-1 - Special rule for tips

This regulation is dependent on one being an “**employee**” and being paid “**wages**” as defined in the chapter on definitions. If you **are not an employee as defined**, or your remuneration **does not constitute wages** within the meaning of section 3401(a) this legislative/substantive regulatory requirement **does not** apply to you.

31.3402(l)-(1) - Determination and disclosure of marital status

This regulation relates to the determination of an “**employee’s**” marital status by the employer in order to determine withholding method to be used. If you are not an “**employee**” being paid “**wages**” as defined in the chapter on definitions it **does not apply to you**.

31.3402(m)-(1) - Withholding allowances

If you are an “**employee**” paid “**wages**” as defined in the chapter on definitions this regulation applies to you, otherwise **it does not apply**.

31.3402(n)-(1) - Employees incurring no income tax liability

The first thing to notice is that it is dependent on one being an “**employee**” and getting “**wages**” as these terms are defined in the chapter on definitions.

To sum it up, whether the W-4 Form itself, or a substitute withholding exemption certificate is submitted they both can lead into trouble and result in an unlawful “invalid W-4 Form” action by the IRS. Both rely on one being an “**employee**” as defined in chapter 3 and getting “**wages**” as defined in the chapter on definitions.

31.3402(o)-1 - Extension of withholding to supplemental unemployment compensation benefits

Since this regulation relates only to unemployment benefits, it will be left at that.

31.3402(o)-2 - Extension of withholding to annuity payments if requested by payee

If you are getting annuity payments and wish to have tax withholding made on them, then this is the regulation for you. Otherwise, it does not apply.

31.3402(o)-3 - Extension of withholding to sick pay

Not much to say about this regulation as its application is limited to only those situations where a payee may request the payor of the sick pay to withhold income tax with respect to payments of sick pay made on or after May 1, 1981. A reading of the regulation will show that it pertains to those who are "employees" being paid "wages" as those terms are defined.

31.3402(p)-1 - Voluntary withholding agreements

Note that it applies only to those classified as "**employees**" by definition in the IRC. What is more enlightening is that the words "**wage**" or "**wages**" do not appear at all in this regulation. Reference is made only to "amounts", more specifically those amounts described in paragraph (b)(1) of Sec. 31.3401(a)-3, made after December 31, 1970. Sec. 31.3401(a)-3 pertains to amounts deemed **wages** under voluntary withholding agreements. Paragraph (b)(1) of that regulation relies on paragraph (a) of the same regulation and states:

(b) Remuneration for services. (1) Except as provided in subparagraph (2) of this paragraph, **the amounts referred to in paragraph (a) of this section include any remuneration for services performed by an employee for an employer which, without regard to this section, does not constitute wages under section 3401(a)**. For example, remuneration for services performed by an agricultural worker or a domestic worker in a private home (amounts which are specifically excluded from the definition of wages by section 3401(a) (2) and (3), respectively) are amounts with respect to which a voluntary withholding agreement may be entered into under section 3402(p). See Secs. 31.3401(c)-1 and 31.3401(d)-1 for the definitions of "employee" and "employer".

Note where it states "the amounts referred to in paragraph (a) of this section include any remuneration for services performed by an **employee** for an employer which, without regard to this section, **does not constitute wages** under section 3401(a)". Therefore, when you enter into a voluntary withholding agreement in accordance with this regulation all your remuneration becomes taxable as "**wages**" even though exempted under IRC 3401(a).

It further states that the following remuneration for services **shall not** include amounts not subject to withholding of the following:

- Section 31.3401(a)-1(b)(12) (relating to remuneration for services performed by a permanent resident of the Virgin Islands),
- Section 31.3401(a)-2(b) (relating to fees paid to a public official),
- Section 3401(a)(5) (relating to remuneration for services for foreign government or international organization),
- Section 3401(a)(8)(B) (relating to remuneration for services performed in a possession of the United States (other than Puerto Rico) by citizens of the United States),
- Section 3401(a)(8)(C) (relating to remuneration for services performed in Puerto Rico by citizens of the United States),
- Section 3401(a)(11) (relating to remuneration other than in cash for service not in the course of employer's trade or business),
- Section 3401(a)(12) (relating to payments from or to certain tax-exempt trusts, or under or to certain annuity plans or bond purchase plans),
- Section 3401(a)(14) (relating to group-term life insurance),
- Section 3401(a)(15) (relating to moving expenses), or
- Section 3401(a)(16)(A) (relating to tips paid in any medium other than cash).

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Therefore, if you live within the U.S. and work in the private sector your remuneration is considered “**wages**” if you enter into “**voluntary withholding**”, or does it? Notice the following paragraph:

Then it goes on further to state “An agreement may be entered into under this section **only with respect to amounts which are includible in the gross income of the employee under section 61**, and must be applicable to all such amounts paid by the **employer** to the **employee**.”

Therefore “voluntary withholding **can only apply** to those defined as “**employees**” (refer to page 72).

31.3402(q)-1 - Extension of withholding to certain gambling winnings

If you are a gambler, then study this regulation on your own, as it does not apply to the rest of us.

31.3402(r)-1 - Withholding on distributions of Indian gaming profits to tribal members

Again, you are on your own in regards to this regulation as it only pertains to so few.

31.3403-1 - Liability for tax

Notice again that there are no source documents listed. Therefore, it cannot be traced back to a statute authorizing the action.

Conclusion for Form W-4

Another factor to look at is that the forms prescribed pertain to reporting for “**employees**”. This term is not all encompassing and is limited to those stated as such in IRC section 3401(c) by using the definition of “includes” and “including” given in IRC section 7701(c) per 26 CFR 301.7701-16 with Federal Register authority at T.D. 7977, 49 FR 36836, Sept. 20, 1984.

Since the terms “**wages**” and “**employee**” are inter-dependent, another look at the definition of “**wages**” will add merit to what has been stated. Section 3401(c) defines an **employee** as: “For purposes of this chapter, the term “**employee**” **includes** an officer, employee, or elected official of the United States, a State, or any political subdivision 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.” Therefore, by applying the definition of “includes and including” in IRC section 7701(c) an **employee** is as stated in IRC section 3401(c). In regards to a “corporation, its meaning within the IRC is defined at IRC section 7701(a)(3) as “The term “corporation” includes associations, joint-stock companies, and insurance companies.” Sure leaves out IBM, Microsoft, and other private enterprise companies don’t it.

Therefore, the remuneration of those in government who are elected or appointed is what constitutes “**wages**” for the purpose of Chapter 24 of the IRC (also Chapters 21 and 22 as previously shown). This is in keeping with another court decision:

"An income tax is neither a property tax nor a tax on occupations of common right, but is an EXCISE tax...The legislature may declare as 'privileged' and tax as such for state revenue, those pursuits not matters of common right, but it has no power to declare as a 'privilege' and tax for revenue purposes, occupations that are of common right." - **Simms v. Ahrens**, 271 SW 720.

There is no legal requirement for US. Citizens working in the private sector within the United States per 26 CFR 31.3402(f)(2), withholding exemption certificates to complete one. This regulation is key as it defines form and content of a W-4 Form or other withholding statement. It was covered on page 121 31.3402(f)(2)-1(a) gives the requirements for submittal of a W-4 Form:

If forced to fill out a Form W-4 in order to gain employment, do so and at filing time use the procedures given in the chapter “Recover by Using the Law” on page 317 to get a return of all unlawful withholdings.

Anyway you look at it, if they have a Form W-4 on you, and unless you correct it at filing time via the method outlined in the chapter “Recover by Using the Law” (page 317) they are likely to unlawfully consider the withholdings as a True Type Five Estate or Gift Tax as stated regarding IRC section 1040 on page 139.

In other words, the federal government acting through the IRS has committed fraud and theft. The following is from Black’s Law Dictionary , Abridged Sixth Edition:

In tax law, a payment is a gift if it is made without conditions, from detached and disinterested generosity, out of affection, respect, charity or like impulses, and not from the constraining force of any moral or legal duty or from the incentive of anticipated benefits of an economic nature.

Gift tax. A tax imposed on the transfer of property by gift. Such tax is imposed upon the donor of a gift and is based on the fair market value of the property on the date of the gift. *See also* Gift splitting election; Tax.

Form 941 - Employer’s QUARTERLY Federal Tax Return

It pays to look at one additional form that does not attach to a individual but to an “employer. This is the Form 941 - Employer’s Quarterly Federal Tax Return. It falls within the tax classes shown below:

Form 941 Tax Classes

Form	Tax Class	Use
941	1, *6	Employer’s Quarterly Federal Tax Return
941	1	Magnetic Tape Employer’s Quarterly Federal Tax Return
941C(PR)	1	Statement to Correct Information Previously Reported Under the Federal Insurance Contributions Act - Puerto Rico
941C	1	Statement to Correct Information Previously Reported Under the Federal Insurance Contributions Act
941-M	1	Employer’s Monthly Federal Tax Return
941NMI	6	Employer’s Tax Return of Northern Marianne Islands
941)n Line	1	Employer’s Tax Return On Line
941 E-File	1	Electronically Filed Employer’s Quarterly Federal Tax Return
941PR	1	Employer’s Quarterly Federal Tax Return, Puerto Rico
941SS	1	Employer’s Quarterly Federal Tax Return, Virgin Islands, Guam, American Samoa
941V	1	Employer’s Quarterly Tax Return
941TEL	1	Employer’s Quarterly Federal Tax Return – Telephone

Note: * means *Non-Masterfile.

Notice here that all relate to True Tax Class 1 - Withholding and Social Security, and that the Form 941 relates also to Tax Class 6. The Form 941NMI (Employer’s Tax Return of Northern Marianne Islands) however relates only to Tax Class 6. From this, it is obvious that the Forms 941 as submitted by American private sector employers is for the reporting of withholding and Social Security taxes **on employees**, and also Information Return Processing (IRP), Estate and Gift Taxes.

Form 941 Regulations

A look at the Form 941 needs to be done, it has an OMB Number of 1545-0029 and is governed by the regulations as listed in 26 CFR 602.101, OMB Control numbers. In 26 CFR 602.101 the following regulations for this form are listed:

Form 941 Regulations

Regulation:	Title/Contents:
31.3102-3	Collection of, and liability for, employee tax on tips.
31.3121(b)(19)-1	Services of certain nonresident aliens.
31.3121(r)-1	Election of coverage by religious orders.
31.3121(s)-1	Concurrent employment by related corporations with common paymaster.
31.3306(c)(18)-1	Services of certain nonresident aliens.
31.3401(a)(6)-1	Remuneration for services of nonresident alien individuals.
31.3401(a)(7)-1	Remuneration paid before January 1, 1967, for services formed by nonresident alien individuals who are residents of a contiguous country and who enter and leave the United States at frequent intervals.
31.3401(a)(8)(A)-1	Remuneration for services performed outside the United States by citizens of the United States.
31.3401(a)(8)(C)-1	Remuneration for services performed in Puerto Rico by citizen of the United States.
31.3401(a)-1	Wages.
31.3402(h)(1)-1	Withholding on basis of average wages.
31.3402(h)(3)-1	Withholding on basis of cumulative wages.
31.3404-1	Return and payment by governmental employer.
31.3504-1	Acts to be performed by agents.
31.6001-6	Notice by district director requiring returns, statements, or the keeping of records.
31.6011(a)-1	Returns under Federal Insurance Contributions Act.
31.6011(b)-2	Employees' account numbers.
31.6053-1	Report of tips by employee to employer.
31.6065(a)-1	Verification of returns or other documents.
31.6071(a)-1	Time for filing returns and other documents.
31.6091-1	Place for filing returns.
31.6205-1	Adjustments of underpayments.
31.6413(a)-1	Repayment by employer of tax erroneously collected from employee.
31.6413(a)-2	Adjustment of overpayments.
31.6413(c)-1	Repayment by payor of tax erroneously collected from payee.
31.6414-1	Credit or refund of income tax withheld from wages.
32.1	Social security taxes with respect to payments on account of sickness or accident disability.
32.2	Railroad retirement taxes with respect to payments on account of sickness or accident disability.
36.3121(1)(10)-1	Requirements in respect of liability under agreement.
36.3121(1)(10)-3	Returns.
301.6316-7	Payment of Federal Insurance Contributions Act taxes in foreign currency.

In the above, part 36 is in regards to Contract coverage of employees of foreign subsidiaries. Remember that 26 CFR part 601.101(a) included the wording "internal revenue laws applicable to taxpayers residing or doing business abroad, foreign taxpayers deriving income from sources within the United States, and taxpayers who are required to withhold tax on certain payments to nonresident aliens and foreign corporations, provided the books and records of those taxpayers are located outside the United States." Therefore, from the list of regulations to be used in completing the form it is readily apparent that 31.3121(b)(19)-1, 31.3306(c)(18)-1, 31.3401(a)(6)-1, and 31.3401(a)(7)-1 are applicable to foreign taxpayers deriving income from sources within the United States, and taxpayers who are required to withhold tax on certain payments to nonresident aliens and foreign corporations.

By the same reasoning, 26 CFR part 601.101(a) included the wording "internal revenue laws applicable to taxpayers residing or doing business abroad". Therefore regulations 31.3401(a)(8)(A)-1 and 31.3401(a)(8)(C)-1 would be applicable. Since 31.3401(a)(8)(A)-1 relates only to services performed outside the United States by citizens of the United States it is not applicable to those citizens residing in the 50 State Republics and not doing business abroad.

The following statement appears in the instructions for completing the Form 941:

Line 2—Total wages and tips plus other compensation
 Enter the total of all wages paid, tips reported, taxable fringe benefits provided, and other compensation paid to your **employees, even if you do not have to withhold income or social security and Medicare taxes on it.** Do not include supplemental unemployment compensation benefits, even if you withheld income tax on them. Do not include contributions to employee plans that are excluded from the employee's wages (e.g., section 401(k) and 125 plans).

The wording “even if you do not have to withhold income or social security and Medicare taxes on it” indicates that not all pay is subject to withholding and social security/Medicare taxes are not necessarily mandatory. Note also that it applies to “**employees**”.

A look at the governing regulations for completing a Form 1040 is also important. In doing so, it is learned that 26 CFR section 31.6011(a)-1 also applies to the Form 1040. It is found to apply only to returns of “**employees**” in respect of tips.

The general requirement for submittal can be summed up as applying only to those:

- who are “**employees**” and whose remuneration constitutes “**wages**”,
- those who are within the meaning of sections 1441 through 1443,
- to those making a “**voluntary**” withholding certificate.
- United States citizens living abroad (given a 80+ thousand write-off exemption).

In other words, it is a tax on those engaged in a **trade or business, nonresident aliens living and working in the United States, United States Citizens living abroad, and on those “volunteering” to pay the tax.**

What affection, respect, charity, etc. can we have for those that steal? The answer is simple, absolutely none.

The Form 1040 – Individual Income Tax Return

In Document 6209 the Tax Classes for this form is as follows:

Form 1040 Tax Classes

Form	Tax Class	Use
1040	2, *6	U.S. Individual Income Tax Return
1040 (telefile)	2	U.S. Individual Income Tax Return - Telefile
1040A	2	U.S. Individual Income Tax Return
1040A (telefile)	2	U.S. Individual Income Tax Return - Telefile
1040C	2	U.S. Departing Alien Income Tax Return
1040ES	2	U.S. Declaration of Estimated Income Tax for Individuals
1040EZ	2	U.S. Individual Income Tax Return
1040EZ-TEL	2	US Individual Income Tax Return - Telefile
1040NR	2, *6	U.S. Non-resident Alien Income Tax Return (PSC only)
1040PC	2	U.S. Individual Income Tax Return (Personal Computer)
1040PR	2, *6	U.S. Self-Employment Tax Return-Puerto Rico (PSC only)
1040SS	2	U.S. Self-Employment Tax Return-Virgin Islands, Guam, American Samoa (PSC only)

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Form 1040 Tax Classes (Cont.)

Form	Tax Class	Use
1040V	2	Payment Voucher
1040X	2	Amended U.S. Individual Income Tax Return

Note: * means *Non-Masterfile.

Notice that Tax Class 6 applies only to the 1040NR and 1040PR. It also is not a True Tax Class and applies to Non-Masterfiles only. All versions apply to Tax Class 2 however, this being Individual Income Tax, Fiduciary Income Tax, Partnership returns.

The primary purpose here is to show that the Form 1040, contrary to the erroneous belief of many is in fact a fully legitimate form meeting all OMB/PRA requirements.

Government forms have to meet certain requirements. These are detailed in the following:

- Title 5 CFR - Office of Personnel Management – Chapter III - Office of Management and Budget
- Title 44--Public Printing And Documents , Chapter 35 - Coordination of Federal Information Policy

That the IRS is aware of this is shown in 26 CFR Section 602.101:

Sec. 602.101 OMB Control numbers.

(a) Purpose. This part collects and displays the control numbers assigned to collections of information in Internal Revenue Service regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this part comply with the requirements of Secs. 1320.7(f), 1320.12, 1320.13, and 1320.14 of 5 CFR part 1320 (OMB regulations implementing the Paperwork Reduction Act), for the display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations. **This part does not display control numbers assigned by the Office of Management and Budget to collections of information of the Bureau of Alcohol, Tobacco, and Firearms.**

Notice that it does not display control numbers assigned by the Office of Management and Budget to collections of information of the Bureau of Alcohol, Tobacco, and Firearms. It then goes on to list the regulations applicable to the various forms. First, the Title 5 CFR regulatory requirements will be addressed.

Title 5 CFR Regulatory Requirements

The applicable parts of Title 5 CFR Part 1320 will be briefly covered in the following paragraphs. The parts of concern are not necessarily the same as those listed in 26 CFR Section 602.101. It seems that the IRS does an extremely poor job in keeping 26 CFR Section 602.101 updated. Title 5 CFR Part 1320.5 - General requirements states the general requirements of what is necessary for compliance. It is covered in the next paragraph.

Sec. 1320.5 General requirements.

This reads as follows:

Sec. 1320.5 General requirements.

(a) An agency shall not conduct or sponsor a collection of information unless, in advance of the adoption or revision of the collection of information--

(1) The agency has--

(i) **Conducted the review required in Sec. 1320.8;**

(ii) Evaluated the public comments received under Sec. 1320.8(d) and Sec. 1320.11;

(iii) Submitted to the Director, in accordance with such procedures and in such form as OMB may specify,

(A) The certification required under Sec. 1320.9,

(B) The proposed collection of information in accordance with Sec. 1320.10, Sec. 1320.11, or Sec. 1320.12, as appropriate,

(C) An explanation for the decision that it would not be appropriate, under Sec. 1320.8(b)(1), for a proposed collection of information to display an expiration date;

(D) An explanation for a decision to provide for any payment or gift to respondents, other than remuneration of contractors or grantees;

(E) A statement indicating whether (and if so, to what extent) the proposed collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and an explanation for the decision;

(F) A summary of the public comments received under Sec. 1320.8(d), including actions taken by the agency in response to the comments, and the date and page of the publication in the Federal Register of the notice therefor; and

(G) Copies of pertinent statutory authority, regulations, and such related supporting materials as OMB may request; and

(iv) Published, except as provided in Sec. 1320.13(d), a notice in the Federal Register--

(A) Stating that the agency has made such submission; and

(B) Setting forth--

(1) A title for the collection of information;

(2) A summary of the collection of information;

(3) A brief description of the need for the information and proposed use of the information;

(4) A description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information;

(5) An estimate of the total annual reporting and recordkeeping burden that will result from the collection of information;

(6) Notice that comments may be submitted to OMB; and

(7) The time period within which the agency is requesting OMB to approve or disapprove the collection of information if, at the time of submittal of a collection of information for OMB review under Sec. 1320.10, Sec. 1320.11 or Sec. 1320.12, the agency plans to request or has requested OMB to conduct its review on an emergency basis under Sec. 1320.13; and

(2) OMB has approved the proposed collection of information, OMB's approval has been inferred under Sec. 1320.10(c), Sec. 1320.11(i), or Sec. 1320.12(e), or OMB's disapproval has been voided by an independent regulatory agency under Sec. 1320.15; and

(3) The agency has obtained from the Director a control number to be displayed upon the collection of information.

(b) In addition to the requirements in paragraph (a) of this section, an agency shall not conduct or sponsor a collection of information unless:

(1) The collection of information displays a currently valid OMB control number; and

(2)(i) The agency informs the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently

valid OMB control number.

(ii) An agency shall provide the information described in paragraph (b)(2)(i) of this section in a manner that is reasonably calculated to inform the public.

(A) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents (other than in an electronic format), the information described in paragraph (b)(2)(i) of this section is provided ``in a manner that is reasonably calculated to inform the public" if the agency includes it either on the form, questionnaire or other collection of information, or in the instructions for such collection.

(B) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents in an electronic format, the information described in paragraph (b)(2)(i) of this section is provided ``in a manner that is reasonably calculated to inform the public" if the agency places the currently valid OMB control number in the instructions, near the title of the electronic collection instrument, or, for on-line applications, on the first screen viewed by the respondent.

(C) In the case of collections of information published in regulations, guidelines, and other issuances in the Federal Register, the information described in paragraph (b)(2)(i) of this section is provided ``in a manner that is reasonably calculated to inform the public" if the agency publishes such information in the Federal Register (for example, in the case of a collection of information in a regulation, by publishing such information in the preamble or the regulatory text, or in a technical amendment to the regulation, or in a separate notice announcing OMB approval of the collection of information). In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, publication of such information in the Code of Federal Regulations constitutes an alternative means of providing it ``in a manner that is reasonably calculated to inform the public." In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, OMB recommends for ease of future reference that, even where an agency has already provided such information ``in a manner that is reasonably calculated to inform the public" by publishing it in the Federal Register as a separate notice or in the preamble for the final rule (rather than in the regulatory text for the final rule or in a technical amendment to the final rule), the agency also publish such information along with a table or codified section of OMB control numbers to be included in the Code of Federal Regulations (see Sec. 1320.3(f)(3)).

(D) In other cases, and where OMB determines in advance in writing that special circumstances exist, to use other means that are reasonably calculated to inform the public of the information described in paragraph (b)(2)(i) of this section.

(c)(1) Agencies shall submit all collections of information, other than those contained in proposed rules published for public comment in the Federal Register or in current regulations that were published as final rules in the Federal Register, in accordance with the requirements in Sec. 1320.10. Agencies shall submit collections of information contained in interim final rules or direct final rules in accordance with the requirements of Sec. 1320.10.

(2) Agencies shall submit collections of information contained in proposed rules published for public comment in the Federal Register in

accordance with the requirements in Sec. 1320.11.

(3) Agencies shall submit collections of information contained in current regulations that were published as final rules in the Federal Register in accordance with the requirements in Sec. 1320.12.

(4) Special rules for emergency processing of collections of information are set forth in Sec. 1320.13.

(5) For purposes of time limits for OMB review of collections of information, any submission properly submitted and received by OMB after 12:00 noon will be deemed to have been received on the following business day.

(d)(1) To obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that the proposed collection of information:

(i) Is the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives;

(ii) Is not duplicative of information otherwise accessible to the agency; and

(iii) Has practical utility. The agency shall also seek to minimize the cost to itself of collecting, processing, and using the information, but shall not do so by means of shifting disproportionate costs or burdens onto the public.

(2) Unless the agency is able to demonstrate, in its submission for OMB clearance, that such characteristic of the collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information--

(i) Requiring respondents to report information to the agency more often than quarterly;

(ii) Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

(iii) Requiring respondents to submit more than an original and two copies of any document;

(iv) Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

(v) In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

(vi) Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

(vii) That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

(viii) Requiring respondents to submit proprietary, trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

(e) OMB shall determine whether the collection of information, as submitted by the agency, is necessary for the proper performance of the agency's functions. In making this determination, OMB will take into account the criteria set forth in paragraph (d) of this section, and will consider whether the burden of the collection of information is justified by its practical utility. In addition:

(1) OMB will consider necessary any collection of information specifically mandated by statute or court order, but will independently

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assess any collection of information to the extent that the agency exercises discretion in its implementation; and

(2) OMB will consider necessary any collection of information specifically required by an agency rule approved or not acted upon by OMB under Sec. 1320.11 or Sec. 1320.12, but will independently assess any such collection of information to the extent that it deviates from the specifications of the rule.

(f) Except as provided in Sec. 1320.15, to the extent that OMB determines that all or any portion of a collection of information is unnecessary, for any reason, the agency shall not engage in such collection or portion thereof. OMB will reconsider its disapproval of a collection of information upon the request of the agency head or Senior Official only if the sponsoring agency is able to provide significant new or additional information relevant to the original decision.

(g) An agency may not make a substantive or material modification to a collection of information after such collection of information has been approved by OMB, unless the modification has been submitted to OMB for review and approval under this Part.

(h) An agency should consult with OMB before using currently approved forms or other collections of information after the expiration date printed thereon (in those cases where the actual form being used contains an expiration date that would expire before the end of the use of the form).

Sec. 1320.7 Agency head and Senior Official responsibilities

Although 26 CFR 602.101 calls out 5 CFR Part 1320.7(f) that particular subsection no longer exists. The importance of 5 CFR Part 1320.7 lies in subsection (e) which restricts submissions to the OMB for approval to the agency head or the Senior Official, or their designee:

(e) Agency submissions of collections of information for OMB review, and the accompanying certifications under Sec. 1320.9, may be made only by the agency head or the Senior Official, or their designee.

Sec. 1320.8 Agency collection of information responsibilities

It is subsection (d) that is of interest here as it requires 60-day notice in the Federal Register, and otherwise consults with members of the public and affected agencies concerning each proposed collection of information, to solicit comments.

(d)(1) Before an agency submits a collection of information to OMB for approval, and except as provided in paragraphs (d)(3) and (d)(4) of this section, the agency shall provide 60-day notice in the Federal Register, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comment to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic

submission of responses.

(2) If the agency does not publish a copy of the proposed collection of information, together with the related instructions, as part of the Federal Register notice, the agency should--

(i) Provide more than 60-day notice to permit timely receipt, by interested members of the public, of a copy of the proposed collection of information and related instructions; or

(ii) Explain how and from whom an interested member of the public can request and obtain a copy without charge, including, if applicable, how the public can gain access to the collection of information and related instructions electronically on demand.

(3) The agency need not separately seek such public comment for any proposed collection of information contained in a proposed rule to be reviewed under Sec. 1320.11, if the agency provides notice and comment through the notice of proposed rulemaking for the proposed rule and such notice specifically includes the solicitation of comments for the same purposes as are listed under paragraph (d)(1) of this section.

(4) The agency need not seek or may shorten the time allowed for such public comment if OMB grants an exemption from such requirement for emergency processing under Sec. 1320.13.

Sec. 1320.11 Clearance of collections of information in proposed rules

Title 5 CFR 1320.11 - Clearance of collections of information in proposed rules gives the requirements for submitting the collection of information for publication in the Federal Register. It also stipulates a 3-year maximum period for use of a proposed form.

Sec. 1320.12 Clearance of collections of information in current rules

Title 5 CFR 1320.12 - Clearance of collections of information in current rules relates to collections of information contained in current rules that were published as final rules in the Federal Register by conducting the review established under Sec. 1320.8, including the seeking of public comment under Sec. 1320.8(d).

Sec. 1320.13 Emergency processing

Title 5 CFR 1320.13 relates to emergency processing so no further coverage is necessary.

Sec. 1320.14 Public access

Title 5 CFR 1320.14 requires the OMB to enable the public to participate in and provide comments during the clearance process.

Title 44--Public Printing And Documents , Chapter 35 - Coordination of Federal Information Policy

First, Title 44 has no code of federal regulations of its own relating to the coordination of federal information policy. The regulatory authority for this chapter is found throughout the various Title Car's. Title 44 § 3501 states the purposes of subchapter I - Federal Information Policy:

Title 44 § 3501 - Purpose

§ 3501. Purposes

Release date: 2005-03-01

The purposes of this subchapter are to—

(1) minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government;

(2) ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government;

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- (3) coordinate, integrate, and to the extent practicable and appropriate, make uniform Federal information resources management policies and practices as a means to improve the productivity, efficiency, and effectiveness of Government programs, including the reduction of information collection burdens on the public and the improvement of service delivery to the public;
- (4) improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society;
- (5) minimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information;
- (6) strengthen the partnership between the Federal Government and State, local, and tribal governments by minimizing the burden and maximizing the utility of information created, collected, maintained, used, disseminated, and retained by or for the Federal Government;
- (7) provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public and makes effective use of information technology;
- (8) ensure that the creation, collection, maintenance, use, dissemination, and disposition of information by or for the Federal Government is consistent with applicable laws, including laws relating to—
 - (A) privacy and confidentiality, including section 552a of title 5;
 - (B) security of information, including section 11332 of title 40 ^[1]; and
 - (C) access to information, including section 552 of title 5;
- (9) ensure the integrity, quality, and utility of the Federal statistical system;
- (10) ensure that information technology is acquired, used, and managed to improve performance of agency missions, including the reduction of information collection burdens on the public; and
- (11) improve the responsibility and accountability of the Office of Management and Budget and all other Federal agencies to Congress and to the public for implementing the information collection review process, information resources management, and related policies and guidelines established under this subchapter.

The requirements of this chapter of Title 44 parallel what was stated regarding Title 5 CFR Regulatory Requirements. Title 44 Section 3507(b)(3)(C) stipulates that “the agency may collect the information for not more than 1 year”. This is “For any proposed collection of information not contained in a proposed rule”. In this regard the courts have held that

We agree with the district court that the failure to display an expiration date on the form does not violate the Act. Even if the PRA requires an expiration [**15] date, the form was expressly designated a "1981" tax return which is sufficient to satisfy such a requirement. *United States v. Collins*, 920 F.2d 619, 631 (10th Cir. 1990).

Conclusion for Form 1040

Even though the Form 1040 is a proposed form, its use is made mandatory as long as the 3-year period is renewed and annual Federal Register entries made in the Federal Register of a Submission to OMB for Approval and Request for Comment. For those that tend to believe differently, based on the cases of the William Wallace Lear, and that of Robert Lawrence where the preponderance of evidence entered in defense consisted of Forms 1040 and the Paperwork Reduction Act, be careful. Because it formed the majority of their defense **it was not** what won the case for them..

Many state or believe that the IRS does not comply based simply on the fact that when they, or others use the FOIA to request copies of the IRS submittals to the OMB they receive a copy of a Form 83-I instead of a Form 83. Please read the following:

The process for obtaining OMB control numbers by federal agencies is fairly simple. An agency desiring to obtain a control number for a collection of information **submits Form 83-1 (also known in the past as Standard Form 83). The instructions for this form require each agency to submit with the form a**

"supporting statement" which is to "identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information." The supporting statement must also include information regarding the "burden" imposed upon the public as a result of the "collection of information."

Where did this information come from? One of the biggest pushers of this faulted argument:

<http://www.givemeliberty.org/docs/TaxResearchCD/Attach2.htm>

It is also evident in the OMB site at <http://www.whitehouse.gov/omb/inforeg/infocoll.html#fapraf> where the following is shown:

- **For Agencies - Paperwork Reduction Act Forms**
 - [Submission Form \(Form OMB 83-I\) \(Revised February 2004\) \(174k\)](#)
 - [Change Worksheet \(Form OMB 83-C\) \(Revised October 1995\) \(159k\)](#)
 - [Collection Discontinuation \(Form 83-D\) \(October 2004\) \(17k\)](#)
 - [Emergency Extension \(Form OMB 83-E\) \(Revised October 1995\) \(129k\)](#)

OMB tracks the status of all submittals. If you go to <http://www.reginfo.gov/public/do/PRAMain> and select "Department of the Treasury" as shown below you can locate the form by it's OMB Number and collect further information:

Information Collection Review

Current Inventory

This listing includes all collections of information from the public for which a Federal agency has received prior approval from OMB, as required by Paperwork Reduction Act. An ongoing collection must be approved by OMB at least once every three years.

Select Agency (agencies with information relevant to this report appear in the list)

Another important fact to consider is that most individuals are of the belief that the Form 1040 is only used to make payments, or to obtain a refund of an amount of the taxes paid **when the falsehoods promoted by the IRS are believed and used.** This is false, the Form 1040 is not a stand-alone form. It relies on other forms that are submitted to both you and the IRS. Typical examples are the Forms W-2, 1099-MISC, and others in the Form 1099 series. When any of the Forms W-2 and 1099-MISC are in error, that is are reporting you as an employee and your remuneration as wages you have every right to correct these errors as given in the chapter "Recover by Using the Law" that begins on page 317. A little history shows that the Form 1040 has always had a dual purpose – to pay taxes due, and to get a return of taxes that were withheld but not due. From The Withholding Tax Hearing Before a Subcommittee of The Committee On Finance, United States Senate, Seventy-Seventh Congress, Second Session On Data Relative To Withholding Provisions Of The 1942 Revenue Act August 23 And 22, 1942:

Statement of Charles G. Hardy, of Brookings Institution

Mr. Hardy. it seems to me the essential difference is that the withholding tax plan applies at the point of receipt of income, and this applies at the point of expenditure of income.

Senator Danaher. **Of course, you withhold not only from taxpayers but no taxpayers.** (Emphasis added)
Mr. Hardy. **Yes.** *"

Statement of Milton Friedman, Division of Tax Research, Treasury Department

Senator Danaher. I have only one other thought on that point. In the event of withholding from the owner of stock and no taxes due ultimately, where does he get his refund?

Mr. Friedman. You thinking of a corporation or an individual?

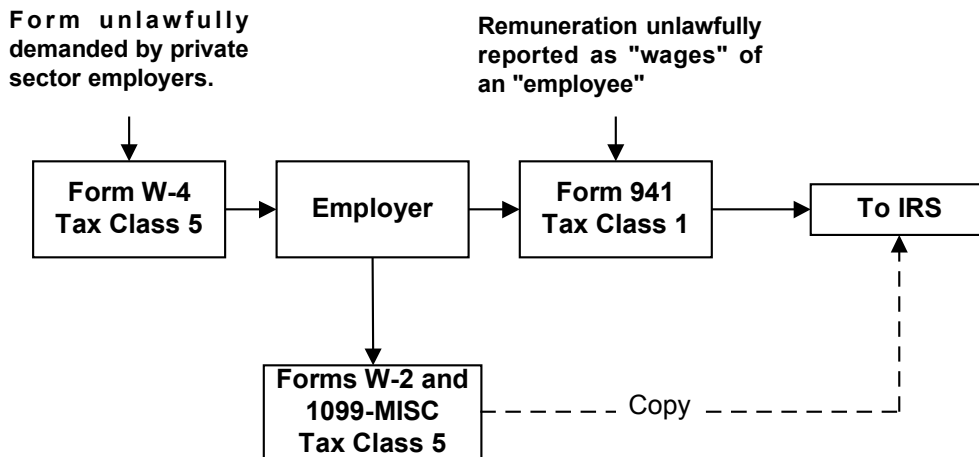
Senator Danaher. I am talking about an individual.

Mr. Friedman. **An individual will file an income tax return, and that income tax return will constitute an automa5c claim for refund.** Emphasis added

'Even if you do not otherwise have to file a return, you should file one to get a refund of any Federal income tax withheld.' from the instructions for the 2006 Form 1040 .

System of Fraud as Revealed by the Forms and Their Regulations

The usage of forms is driven by the regulations attached to them. The following figure depicts the initiation and use (also abuse) of the forms that implements the fraud of theft by the federal government..



Use and Abuse of Forms by the IRS and Employers.

Analysis

Here a systematic analysis will be made concerning the figure shown above.

- 1) **Form unlawfully demanded by private sector employers:** As detailed in the discussion concerning the Form W-4, which is a True Tax Class 5 (Information Return Processing (IRP), Estate and Gift Tax form (refer to page 119 it is shown that this form is lawfully required from:
 - a) Who are “employees” and whose remuneration constitutes “wages” as defined in the IRC (refer to the chapter on definitions),
 - b) Those who are within the meaning of sections 1441 through 1443, or
 - c) To those making a “voluntary” withholding certificate (Form W-4V).

Yet private sector employers demand that everyone complete one as a condition for being hired.

- 2) The private sector employer uses the information on the Form W-4s as a basis for reporting
- 3) After the end of the tax year the private sector employer generates the Forms W-2 for their full time workers and the Forms 1099-MISC for those that performed for them on a temporary basis. In both instances they use the unlawfully erroneous figures to complete these True Tax Class 5 forms.
- 4) The IRS then uses this bogus information to spot non-filers and others and to kick-off their fraudulent assessment, lien, and levy process as covered in the chapter “Fraudulent Tax Law Application” beginning on page 163

Therefore, to this point the conversion of the True Tax Class 5 requirements of the Form W-4 has by stealth been converted unlawfully into a required income tax. At this point a look at some facts concerning the Form 668(Y) will be done.

First, in an Exhibit as given in the Internal Revenue Manual (refer to page 119) you will notice that the kind of Tax is stated as "Income". If you receive a NFTL, check what is listed as Kind of Tax. If it is a fraudulent NFTL, derived as stated in the chapter "Fraudulent Tax Law Application" the Kind of Class will indicate "1040".. Since the Form W-4 relates to a Tax Class of 5, and the Form 1040 relates to a Tax Class of 2) the "1040" annotation on the notice clearly does not relate to the Form 1040 in any way. As shown in the IRM exhibit the kind of tax was given as a word, not a number. Therefore the 1040 annotation can be traced to IRC section 1040, which states the following:

Sec. 1040. Transfer of certain farm, etc., real property

(a) General rule

If the executor of the estate of any decedent transfers to a **qualified heir** (within the meaning of section 2032A(e)(1)) any property with respect to which an election was made under section 2032A, then gain on such transfer shall be recognized to the estate only to the extent that, on the date of such transfer, the fair market value of such property exceeds the value of such property for purposes of chapter 11 (determined without regard to section 2032A).

(b) Similar rule for certain trusts

To the extent provided in regulations prescribed by the Secretary, a rule similar to the rule provided in subsection (a) shall apply where the trustee of a trust (any portion of which is included in the gross estate of the decedent) transfers property with respect to which an election was made under section 2032A.

(c) Basis of property acquired in transfer described in subsection (a)

or (b)

The basis of property acquired in a transfer with respect to which gain realized is not recognized by reason of subsection (a) or (b) shall be the basis of such property immediately before the transfer increased by the amount of the gain recognized to the estate or trust on the transfer.

Then looking at the Amendment information pertaining to the section the following is stated:

Effective and Termination Dates of 2001 Amendment

Amendment by Pub. L. 107-16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107-16, set out as a note under section 121 of this title.

Amendment by Pub. L. 107-16 inapplicable to **estates of decedents dying, gifts made, or generation skipping transfers**, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered **to such estates, gifts, and transfers** as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

Form 668 (Y)
 Department of the Treasury - Internal Revenue Service
Notice of Federal Tax Lien Under Internal Revenue Laws

District NAME OF DISTRICT	Serial Number NNNNNNNN	For Optional Use by Assessing Office
------------------------------	---------------------------	--------------------------------------

As provided by sections 6321, 6322, and 6323 of the Internal Revenue Code, notice is given that taxes (including interest and penalties) have been assessed against the following-named taxpayer. Demand for payment of this liability has been made, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer
 FIRST NAME LINE
 SECOND NAME LINE

Residence
 STREET ADDRESS
 CITY, STATE ZIP CODE

IMPORTANT RELEASE INFORMATION: With respect to each assessment listed below, unless notice of lien is refiled by the date given in column (d), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6326(a).

Kind of Tax (b)	Tax Period Ended (c)	Identifying Number (e)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
INCOME	MM/DD/YY	98-MCA-NNNNN or NNN-NN-NNNN	MM/DD/YY	MM/DD/YY	\$ NNNNNNNNNNN
<p>THIS AMOUNT IS DUE, OWING AND UNPAID TO THE GOVERNMENT OF (TREATY PARTNER) AND IS BEING COLLECTED ON BEHALF OF (TREATY PARTNER) UNDER THE PROVISIONS OF ARTICLE (NN) OF THE UNITED STATES - (TREATY PARTNER) IMVINE TAX CONVENTION AND APPLICABLE PROVISIONS OF THE INTERNAL REVENUE LAWS OF THE UNITED STATES.</p>					

Place of Filing
 NAME LINE
 STREET ADDRESS
 CITY, STATE ZIP CODE
 Total \$ NNNNNNNNNNN

This notice was prepared and signed at _____ CITY, STATE _____, on this, the ____ day of _____, 19 ____ YEAR.

Signature
 ORIGINATOR'S NAME
 Title
 (ORIGINATOR'S TITLE)

NOTE: Certificate of officer authorized by law to make acknowledgments is not essential to the validity of Notice of Federal Tax Lien
 Rev. Rul. 71-405, 1971-2 C.B. 405

The emphasized text clearly links this section to a True Tax Class 5 (Estate & Gift), to which the Form W-4 relates.

Another revealing fact that you may not have noticed is that the 668(Y) shown in the exhibit is titled “Notice of Federal Tax Lien Under Internal Revenue Laws”. In addition, under the Form 668(Y) annotation is a notation showing a Rev date in 1961. Compare this to an actual court filing in the year 2004 as shown on page 142. On that form the title now reads “Notice of Federal Tax Lien” and the Rev date shown is February 2004. Why were the words “Under Internal Revenue Laws” dropped from the title of the form?

In the following chapter concerning fraudulent tax law application it will be shown that the IRC sections that pertain to assessments, liens, and levy are enforceable by regulations that are only found in 27 CFR. Now what event occurred between 1961 and 2004 that brought about the change in title?

The answer is in 1972 the Bureau of Alcohol, Tobacco, and Firearms was created per Treasury Order 120-01 as shown on pages 152 thru 154 and on T.D. ATF-301, 55 FR 47604, Nov. 14, 1990 as shown on page 111. Upon that creation all authority for assessment, lien, and levy was transferred to the BATF, as it was then known. This will be shown in the chapter “Fraudulent Tax Law Application”. Since the ATF has now been transferred to the Department of Justice Title 27 has been renamed to Intoxicating liquors and the tax collection regarding such activates taken over by the newly formed TTB (Alcohol and Tobacco Tax and Trade Bureau).

There is another way to make a gift, if you are so inclined. It is in Title 31 – Money and Finance, Section 321 - General authority of the Secretary reads as follows (abbreviated to subsection (d)(1) and (2)):

Sec. 321. General authority of the Secretary

(d)(1) The Secretary of the Treasury may accept, hold, administer, and use gifts and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Department of the Treasury. Gifts and bequests of money and the proceeds from sales of other property received as gifts or bequests shall be deposited in the Treasury in a separate fund and shall be disbursed on order of the Secretary of the Treasury. Property accepted under this paragraph, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift or bequest.

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

From the above, only those that are required by law to file an estate or gift tax (True Tax Class 5) need to be concerned for the Form W-4, and/or the Form W-2's as received Remember in the coverage on IRC section 4302 regulations that it was determined that the remuneration of those in government who are elected or appointed is what constitutes “**wages**” for the purpose of Chapter 24 of the IRC (also Chapters 21 and 22 as previously shown). It was also previously shown that the requirement also applies to Nonresident Aliens and Foreign Corporations, and others involved in a trade or business as defined in the tax laws.

Do you now feel obligated to make a “gift” to the Master of Our Government?

①
Form 668 (Y)(c)
 (Rev. February 2004)

3225

Department of the Treasury - Internal Revenue Service

Notice of Federal Tax Lien

Area: SMALL BUSINESS/SELF EMPLOYED AREA #5 Lien Unit Phone: (800) 829-3903	Serial Number [REDACTED]	For Optional Use by Recording Office
--	-----------------------------	--------------------------------------

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer: [REDACTED]

Residence: [REDACTED]

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refilled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Place of Filing: [REDACTED] Total \$ [REDACTED]

This notice was prepared and signed at DALLAS, TX, on this, the [REDACTED] day of [REDACTED], [REDACTED].

Signature: R. A. Mitchell
 for **THERESA HARLEY**
 Title: ACS
 (800) 829-3903
 25-00-0008

(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax lien. Rev. Rul. 71-466, 1971 - 2 C.B. 409)
 Part 1 - Kept By Recording Office
 Form 668(Y)(c) (Rev. 2-2004)
 CAT. NO 60025X

Actual Form 668(Y) Filing

The Internal Revenue Service

If you look in any official government listing or applicable web sites you will find the Internal Revenue Service listed as a government agency. That is not the question needing to be answered. The question is "is it legally a government agency that can operate within the 50 states?"

To answer that question one must first look at what the courts have held in this regard.

At the state level, it is a well-acknowledged rule that a duly constituted office of state government must be created either by the state constitution itself or by some legislative act; see *Patton v. Bd. of Health*, 127 Cal.

388, 393, 59 P. 702, 704 (1899) ("**One of the requisites is that the office must be created by the constitution of the state or it must be authorized by some statute**"); *First Nat. Bank of Columbus v. State*, 80 Neb. 597, 114 N.W. 772, 773 (1908); *State ex rel. Peyton v. Cunningham*, 39 Mont. 197, 103 P. 497, 498 (1909); *State ex rel. Stage v. Mackie*, 82 Conn. 398, 74 A. 759, 761 (1909); *State ex rel. Key v. Bond*, 94 W.Va. 255, 118 S.E. 276, 279 (1923) ("**a position is a public office when it is created by law**"); *Coyne v. State*, 22 Ohio App. 462, 153 N.E. 876, 877 (1926) ("**Unless the office existed there could be no officer either de facto or de jure. A de facto officer is one invested with an office; but if there is no office with which to invest one, there can be no officer. An office may exist only by duly constituted law**"); *State v. Quinn*, 35 N.M. 62, 290 P. 786, 787 (1930); *Turner v. State*, 226 Ala. 269, 146 So. 601, 602 (1933); *Oklahoma City v. Century Indemnity Co.*, 178 Okl. 212, 62 P.2d 94, 97 (1936); *State ex rel. Nagle v. Kelsey*, 102 Mont. 8, 55 P.2d 685, 689 (1936); *Stapleton v. Frohmiller*, 53 Ariz. 11, 85 P.2d 49, 51 (1938); *Buchholtz v. Hill*, 178 Md. 280, 13 A.2d 348, 350 (1940); *Krawiec v. Industrial Comm.*, 372 Ill. 560, 25 N.E.2d 27, 29 (1940); *People v. Rapsey*, 16 Cal.2d 636, 107 P.2d 388, 391 (1940); *Industrial Comm. v. Arizona State Highway Comm.*, 61 Ariz. 59, 145 P.2d 846, 849 (1943); *State ex rel. Brown v. Blew*, 20 Wash.2d 47, 145 P.2d 554, 556 (1944); *Martin v. Smith*, 239 Wis. 314, 1 N.W.2d 163, 172 (1941); *Taylor v. Commonwealth*, 305 Ky. 75, 202 S.W.2d 992, 994 (1947); *State ex rel. Hamblen v. Yelle*, 29 Wash.2d 68, 185 P.2d 723, 728 (1947); *Morris v. Peters*, 203 Ga. 350, 46 S.E.2d 729, 733 (1948); *Weaver v. North Bergen Tp.*, 10 N.J. Super. 96, 76 A.2d 701 (1950); *Tomaris v. State*, 71 Ariz. 147, 224 P.2d 209, 211 (1950); *Pollack v. Montoya*, 55 N.M. 390, 234 P.2d 336, 338 (1951); *Schaefer v. Superior Court in & for Santa Barbara County*, 248 P.2d 450, 453 (Cal.App. 1952); *Brusnigham v. State*, 86 Ga.App. 340, 71 S.E.2d 698, 703 (1952); *State ex rel. Mathews v. Murray*, 258 P.2d 982, 984 (Nev. 1953); *Dosker v. Andrus*, 342 Mich. 548, 70 N.W.2d 765, 767 (1955); *Hetrich v. County Comm. of Anne Arundel County*, 222 Md. 304, 159 A.2d 642, 643 (1960); *Meiland v. Cody*, 359 Mich. 78, 101 N.W.2d 336, 341 (1960); *Jones v. Mills*, 216 Ga. 616, 118 S.E.2d 484, 485 (1961); *State v. Hord*, 264 N.C. 149, 141 S.E.2d 241, 245 (1965); *Planning Bd. of Tp. of West Milford v. Tp. Council of Tp. of West Milford*, 123 N.J. Super. 135, 301 A.2d 781, 784 (1973); *Vander Linden v. Crews*, 205 N.W.2d 686, 688 (Iowa 1973); *Kirk v. Flournoy*, 36 Cal.App. 3d 553, 111 Cal. Rptr. 674, 675 (1974); *Wargo v. Industrial Comm.*, 58 Ill.2d 234, 317 N.E.2d 519, 521 (1974); *State v. Bailey*, 220 S.E.2d 432, 435 (W.Va. 1975); *Leek v. Theis*, 217 Kan. 784, 539 P.2d 304, 323 (1975); *Midwest Television, Inc. v. Champaign-Urbana Communications, Inc.*, 37 Ill.App.3d 926, 347 N.E.2d 34, 38 (1976); and *State v. Pinckney*, 276 N.W.2d 433, 436 (Iowa 1979).

This same rule applies at the federal level; see *United States v. Germaine*, 99 U.S. 508 (1879); *Norton v. Shelby County*, 118 U.S. 425, 441, 6 S.Ct. 1121 (1886) ("**there can be no officer, either de jure or de facto, if there be no office to fill**"); *United States v. Mouat*, 124 U.S. 303, 8 S.Ct. 505 (1888); *United States v. Smith*, 124 U.S. 525, 8 S.Ct. 595 (1888); *Glavey v. United States*, 182 U.S. 595, 607, 21 S.Ct. 891 (1901) ("**The law creates the office, prescribes its duties**"); *Cochnowar v. United States*, 248 U.S. 405, 407, 39 S.Ct. 137 (1919) ("**Primarily we may say that the creation of offices and the assignment of their compensation is a legislative function... And we think the delegation of such function and the extent of its delegation must have clear expression or implication**"); *Burnap v. United States*, 252 U.S. 512, 516, 40 S.Ct. 374, 376 (1920); *Metcalfe & Eddy v. Mitchell*, 269 U.S. 514, 46 S.Ct. 172, 173 (1926); *N.L.R.B. v. Coca-Cola Bottling Co. of Louisville*, 350 U.S. 264, 269, 76 S.Ct. 383 (1956) ("**Officers' normally means those who hold defined offices. It does not mean the boys in the back room or other agencies of invisible government, whether in politics or in the trade-union movement**"); *Crowley v. Southern Ry. Co.*, 139 F. 851, 853 (5th Cir. 1905); *Adams v. Murphy*, 165 F. 304 (8th Cir. 1908); *Scully v. United States*, 193 F. 185, 187 (D.Nev. 1910) ("**There can be no offices of the United States, strictly speaking, except those which are created by the Constitution itself, or by an act of Congress**"); *Commissioner v. Harlan*, 80 F.2d 660, 662 (9th Cir. 1935); *Varden v. Ridings*, 20 F.Supp. 495

Forms W-2, W-4, 1040, 1099, and the IRS

(E.D.Ky. 1937); *Annoni v. Blas Nadal's Heirs*, 94 F.2d 513, 515 (1st Cir. 1938); and *Pope v. Commissioner*, 138 F.2d 1006, 1009 (6th Cir. 1943).

Therefore, according to the courts an agency must either be created by the constitution or by a statute. Article I § 8, clause 18 vests Congress with complete responsibility for facilitating power of Government of the United States via legislation: [The Congress shall have Power] "To make all Laws which shall be necessary and proper for carrying into Execution the Foregoing Powers, and all other Powers vested by the Constitution in the Government of the United States, or in any Department or Officer thereof."

In the Act of 1862 congress created the office of the Commissioner of Internal Revenue, refer to Chapter CXIX on page 432 of the act as shown on page 145. In spite of the fact that the statute only created the office of Commissioner of Internal Revenue, not an agency the IRS and other elements of the federal government have attempted to justify it as an agency by untruthful statements. On the IRS website the following statements appear. The falsehoods follow each item:

1) The Agency

The IRS is a bureau of the Department of the Treasury and one of the world's most efficient tax administrators. In 2004, the IRS collected more than \$2 trillion in revenue and processed more than 224 million tax returns.

Falsehood: As shown on page 432 of the Act of 1862 (refer to page 145) it was clearly shown that congress had created only the office of the Commissioner of Internal Revenue. No bureau or agency was created. The court has stated:

Where the provisions of an act are unambiguous, and its direction specific, the Secretary of the Treasury has no power to amend the statute by regulations." -- *Koshland v. Helvering*, 298 U.S. 441, 447, 56 S.Ct. 767, 80 L.Ed. 1268 (1936). -- And further, "The commissioner has no more power to add to the act what he thinks Congress may have overlooked than he has to supply what Congress has deliberately omitted". --- *General Electric Co. v. Barton*, 372 F.2d 108, 111 (6th Cir. 1967). See also *H. Wetter Mfg. Co. v. U.S.*, 458 F.2d 1033.

2) Origin

The roots of IRS go back to the Civil War when President Lincoln and Congress, in 1862, created the position of commissioner of Internal Revenue and enacted an income tax to pay war expenses. The income tax was repealed 10 years later. Congress revived the income tax in 1894, but the Supreme Court ruled it unconstitutional the following year.

Falsehood: Here they state "The income tax was repealed 10 years later". The importance in this is that the courts have stated:

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

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

3) 16th Amendment

In 1913, Wyoming ratified the 16th Amendment, providing the three-quarter majority of states necessary to amend the Constitution. The 16th Amendment gave Congress the authority to enact an income tax. That same year, the first Form 1040 appeared after Congress levied a 1 percent tax on net personal incomes above \$3,000 with a 6 percent surtax on incomes of more than \$500,000.

In 1918, during World War I, the top rate of the income tax rose to 77 percent to help finance the war effort. It dropped sharply in the post-war years, down to 24 percent in 1929, and rose again during the Depression. During World War II, Congress introduced payroll withholding and quarterly tax payments.

432 THIRTY-SEVENTH CONGRESS. SESS. II. CH. 110-112, 116, 119. 1862.

and fifty thousand dollars is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for postal service on such mail routes established by the present Congress as the Postmaster General may deem necessary and expedient.

APPROVED, June 18, 1862.

June 19, 1862. CHAP. CXI. — *An Act to secure Freedom to all Persons within the Territories of the United States.*

Freedom in the Territories secured.

Post, p. 811.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act there shall be neither slavery nor involuntary servitude in any of the Territories of the United States now existing, or which may at any time hereafter be formed or acquired by the United States, otherwise than in punishment of crimes whereof the party shall have been duly convicted.

APPROVED, June 19, 1862.

June 19, 1862. CHAP. CXII. — *An Act to change the Location of the Port of Entry for the Puget Sound Collection District.*

Port of entry for Puget Sound collection district.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the first day of October, eighteen hundred and sixty-two, the port of Port Townsend, in the district of Puget Sound, in Washington Territory, is hereby abolished as a port of entry; and that Port Angelos be and is hereby established as the port of entry and delivery for the said district from and after the said date.

APPROVED, June 19, 1862.

June 20, 1862. CHAP. CXVI. — *An Act to change the Port of Entry for the District of Brunswick, Georgia.*

Port of entry for the district of Brunswick, Georgia.

Deputy collector at Darien.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the first day of July, eighteen hundred and sixty-two, the port of entry for the district of Brunswick, Georgia, shall be Brunswick, and that Darien shall be abolished as the port of entry.

SEC. 2. *And be it further enacted,* That there shall be a deputy collector appointed, according to law, to reside at Darien, and to exercise such powers as the Secretary of the Treasury, under the revenue laws, may prescribe.

APPROVED, June 20, 1862.

July 1, 1862. CHAP. CXIX. — *An Act to provide Internal Revenue to support the Government and to pay Interest on the Public Debt.*

1852, ch. 163, § 27. Post, pp. 561, 627.

1863, ch. 74. Post, p. 713.

Office of Commissioner of Internal Revenue, created.

Commissioner, appointment, salary, duty, &c., to prepare rules, forms, blanks, &c.,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purpose of superintending the collection of internal duties, stamp duties, licenses, or taxes imposed by this act, or which may be hereafter imposed, and of assessing the same, an office is hereby created in the Treasury Department to be called the office of the Commissioner of Internal Revenue; and the President of the United States is hereby authorized to nominate, and, with the advice and consent of the Senate, to appoint, a Commissioner of Internal Revenue, with an annual salary of four thousand dollars, who shall be charged, and hereby is charged, under the direction of the Secretary of the Treasury, with preparing all the instructions, regulations, directions, forms, blanks, stamps, and licenses, and distributing the same,

Forms W-2, W-4, 1040, 1099, and the IRS

Falsehood or failure to clarify: Their statement "Congress introduced payroll withholding and quarterly tax payments" failed to specifically identify whom the withholding applied to.

- 4) A New Name
In the 50s, the agency was reorganized to replace a patronage system with career, professional
- 5) employees. The Bureau of Internal Revenue name was changed to the Internal Revenue Service. Only the IRS commissioner and chief counsel are selected by the president and confirmed by the Senate.

Falsehood: In the historical statement, the Commissioner of Internal Revenue admitted that Congress did not create a Bureau of Internal Revenue via the 1862 act in which the office of Commissioner of Internal Revenue was created but alleged that Congress intended to create a bureau. In reality, the 1862 legislation created the offices of "assessor" and "collector", in addition to the office of Commissioner of Internal Revenue. Assessors and collectors were appointed for each revenue district somewhat as U.S. Attorneys are appointed today (refer to item 1 above).

Those appointed to these offices continued to collect internal revenue within States of the Union until the Internal Revenue Code of 1954 was implemented. The two offices were administratively abolished via Reorganization Plan No. 26 of 1950 eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280. The name of the Bureau of Internal Revenue was changed to Internal Revenue Service via Treasury Order 150-27, which was not published in the Federal Register in compliance with requirements of the Federal Register Act (See 44 U.S.C. §§ 1501 et seq.. particularly § 1505(a)).

The Internal Revenue Service, successor of the Bureau of Internal Revenue~ was not created by Congress, as required by Article I § 8, clause 18 of the Constitution of the United States; so cannot legitimately enforce internal revenue laws of the United States in States of tile Union. (See Statement of IRS organization at 39 Fed. Reg. 11572, 1974-1 Cum. Bul. 440, 37 Fed. Reg. 20960, and the Internal Revenue Manual 1100 through 1he 1997 edition;

In 1972, an Internal Revenue Manual 1100 was published in both the Federal Register and Cumulative Bulletin; see 37 Fed. Reg. 20960, 1972-2 Cum. Bul. 836, a copy of which is shown on page 148. On the very first page of this statement published in the Bulletin, the following admission was made:

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

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

Treasury Order 150-27 is what renamed the Bureau of Internal Revenue to the Internal Revenue Service. It is no longer shown in either Treasury Directive 00-07, or in Treasury Directive 00-02, which is a Numerical Index of Treasury Orders dated September 8, 2005). To prove that it existed one only needs to look at Internal

Revenue Bulletin No. 1997-41 dated October 14, 1997. Within that bulletin on page 15 the authority citation for a change in Delegation Order No. 97:

Internal Revenue Bulletin No. 1997-41 can be obtained at <http://www.irs.gov/pub/irs-irbs/>.

Sources of Authority: 26 CFR
301.7121-1(a); Treasury Order No.
150-07; Treasury Order No. 150-09; and
Treasury Order No. 150-17, subject to the
transfer of authority covered in Treasury
Order No. 120-01, as modified by Treasury
Order No. 150-27, as revised.
To the extent that the authority previously
exercised consistent with this order
may require ratification, it is hereby affirmed
and ratified.
This order supersedes Delegation
Order No. 97 (Rev. 33), which was effective
March 15, 1996.
Approved August 18, 1997.
Michael P. Dolan
Deputy Commissioner

The Treasury Orders shown within this authority are as follows:

- 150-07: Delegation--Final Approval of Closing Agreements
- 150-09: Delegation--Functions Created by the IR Code of 1954
- 150-17: Delegation--Act as Competent or Taxation Authority
- 120-01: Establishment of the Bureau of Alcohol, Tobacco and Firearms
- 150-27: Renaming of Bureau of Internal Revenue to Internal Revenue Service (never entered in Federal Register).

In essence, they have stated that the authority for the delegations of 150-07, 150-09, and 150-17 have been granted to either the BATF as formed by 120-01, or the Internal Revenue Service as renamed by 150-27 from the Bureau of Internal Revenue. Since it has been shown that agencies are created by law, and that no law ever created the Bureau of Internal Revenue then all subsequent events in this authority are unfounded in law.

By looking at Title 31 - Money and Finance, which is positive law the organization of the Department of the Treasury is shown as follows:

- **TITLE 31--MONEY AND FINANCE**
 - **SUBTITLE I--GENERAL**
 - **CHAPTER 3--DEPARTMENT OF THE TREASURY**

SUBCHAPTER I--ORGANIZATION

- Sec. 301. Department of the Treasury.
- Sec. 302. Treasury of the United States.
- Sec. 303. Bureau of Engraving and Printing.
- Sec. 304. Bureau of the Mint.¹
- Sec. 305. Federal Financing Bank.
- Sec. 306. Fiscal Service.
- Sec. 307. Office of the Comptroller of the Currency.

<i>Rev. Proc. No.</i>	<i>C.B. Citation</i>
64-1	1964-1 (Part I), 640
64-3	1964-1 (Part I), 642
64-52	1964-2, 1005
66-26	1966-1, 654
66-28	1966-1, 655
66-31	1966-2, 1212
66-42	1966-2, 1251
66-46	1966-2, 1255
67-5	1967-1, 575
67-8	1967-1, 582
67-11	1967-1, 589
68-15	1968-1, 769

Failure to include in this list of Revenue Procedures any administrative provisions should not be taken to imply that such has been determined to have continuing application to future transactions.

STATEMENT OF ORGANIZATION AND FUNCTIONS¹

This material supersedes the statements on organizations and functions published at 36 F.R. 849-890 [C.B. 1971-1,698], 36 F.R. 11946 [C.B. 1971-2,577], and 37 F.R. 489-490.

JOHNNIE M. WALTERS,
*Commissioner of
Internal Revenue*

Dated: September 27, 1972.

1100 Organization and Staffing

1110 ORGANIZATIONAL AND FUNCTIONS OF THE INTERNAL REVENUE SERVICE

1111 ESTABLISHMENT OF THE INTERNAL REVENUE SERVICE

1111.1 MISSION

The mission of the Service is to encourage and achieve the highest possible degree of voluntary compliance with the tax laws and regulations and to maintain the highest degree of public confidence in the integrity and efficiency of the Service. This includes communicating the requirements of the law to the public, determining the extent of compliance and causes of

¹ 37 F.R. 20960

non-compliance, and doing all things needful to a proper enforcement of the law.

1111.2 ORGANIC ACT

(1) The Office of the Commissioner of Internal Revenue was established by an act of Congress (12 Stat. 432) on July 1, 1862, and the first Commissioner of Internal Revenue took office on July 17, 1862.

(2) The act of July 1 provided:

“ . . . That, for the purpose of superintending the collection of internal duties, stamp duties, licenses, or taxes imposed by this Act, or which may be hereafter imposed, and of assessing the same, an office is hereby created in the Treasury Department to be called the Office of the Commissioner of the Internal Revenue; . . . Commissioner of the Internal Revenue, . . . shall be charged, and hereby is charged, under the direction of the Secretary of the Treasury, with preparing all the instructions, regulations, directions, forms, blanks, stamps, and licenses, and distributing the same or any part thereof, and all other matters pertaining to the assessment and collection of the duties, stamp duties, licenses, and taxes, which may be necessary to carry this Act into effect, and with the general superintendence of his office, as aforesaid, and shall have authority, and hereby is authorized and required, to provide proper and sufficient stamps or dies for expressing and denoting the several stamp duties, or the amount thereof in the case of percentage duties, imposed by this Act, and to alter and renew or replace such stamps from time to time, as occasion shall require; . . . ”

(3) By common parlance and understanding of the time, an office of the importance of the Office of Commissioner of Internal Revenue was a bureau. The Secretary of the Treasury in his report at the close of the calendar year 1862 stated that “The Bureau of Internal Revenue has been organized under the Act of the last session . . . ” Also it can be seen that Congress

had intended to establish a Bureau of Internal Revenue, or thought they had, from the act of March 3, 1863, in which provision was made for the President to appoint with Senate confirmation a Deputy Commissioner of Internal Revenue “who shall be charged with such duties in the bureau of internal revenue as may be prescribed by the Secretary of the Treasury, or as may be required by law, and who shall act as Commissioner of internal revenue in the absence of that officer, and exercise the privilege of franking all letters and documents pertaining to the office of internal revenue.” In other words, “the office of internal revenue” was “the bureau of internal revenue,” and the act of July 1, 1862 is the organic act of today’s Internal Revenue Service.

1111.3 HISTORY

1111.31 INTERNAL TAXATION

Madison’s Notes on the Constitutional Convention reveal clearly that the framers of the Constitution believed for some time that the principal, if not sole, support of the new Federal Government would be derived from customs duties and taxes connected with shipping and importations. Internal taxation would not be resorted to except infrequently, and for special reasons. The first resort to internal taxation, the enactment of internal revenue laws in 1791 and in the following 10 years, was occasioned by the exigencies of the public credit. These first laws were repealed in 1802. Internal revenue laws were reenacted for the period 1813-1817 when the effects of the war of 1812 caused Congress to resort to internal taxation. From 1818 to 1861, however, the United States had no internal revenue laws and the Federal Government was supported by the revenue from import duties and the proceeds from the sale of public lands. In 1862 Congress once more levied internal revenue taxes. This time the establishment of an internal revenue system, not exclusively

- Sec. 308. United States Customs Service.
- Sec. 309. Office of Thrift Supervision.
- Sec. 310. Continuing in office.

Notice that the IRS, BATF, or the new spin offs of the previous BATF are not mentioned or listed. Within Title 31, there are only 2 instances where the Internal Revenue Service is mentioned. These are covered in the following paragraphs.

Title 31 section 301 – Department of the Treasury

Within this section the following is stated:

- (a) The Department of the Treasury is an executive department of the United States Government at the seat of the Government.
- (f)(2) The President may appoint, by and with the advice and consent of the Senate, an **Assistant General Counsel who shall be the Chief Counsel for the Internal Revenue Service**. The Chief Counsel is the chief law officer for the Service and shall carry out duties and powers prescribed by the Secretary.

This regards the Assistant General Counsel only.

Title 31 section 306 - Fiscal Service

Within this section the following is stated way down in the Historical and Revision Notes:

Pub. L. 102-393, title I, Sec. 105, Oct. 6, 1992, 106 Stat. 1737, provided that: ``Notwithstanding any other provision of law, beginning October 1, 1992, and thereafter, **the Financial Management Service (FMS) shall be reimbursed by the Internal Revenue Service (IRS) and the Department of Agriculture, National Finance Center (NFC), for the postage costs the FMS incurs to make check payments on behalf of the IRS and the NFC.**''

Covers reimbursement costs for postage paid only. There is nothing in Title 31 that shows the IRS or BATF to be agencies created by law.

Regarding the ATF

In 1972 the Department of the Treasury issued Treasury Order 120-01 (shown on pages 152 through 154). This Treasury Order established the Bureau of Alcohol, Tobacco and Firearms and transferred the powers, functions, and duties relating to ATF taxable activities to the newly formed BATF. The background is shown in the Treasury Decision (T.D.) Federal Register entry at 55 FR 47604 is shown on page 111. The page at T.D. ATF-301, 55 FR 47604, Nov. 14, 1990 has several important facts indicated on it. The Summary and Background text gives in a very understandable form, the facts concerning the take-over of tax functions by the BATF in regards to ATF taxable activities.

Since the Treasury Order clearly states that the Bureau of Alcohol, Tobacco and Firearms was created by the Department of the Treasury, it like the IRS has no legal existence in law. Therefore, the Internal Revenue Service and the BATF must be operating in an ancillary or other secondary capacity under contract, memorandum of agreement or some comparable device to provide services under original authority delegated

to the Department of the Treasury; the contracted or otherwise authorized services extend only to government employees and employers, as defined at 26 U.S.C. §§ 3401(c) & (d). The authorization is essentially intragovernmental in nature; it does not extend to private sector enterprise in States of the Union.

Forms W-2, W-4, 1040, 1099, and the IRS

Since Treasury Order 120-01, "Establishment of the Bureau of Alcohol, Tobacco and Firearms," dated June 6, 1972, has been cancelled and Treasury Order 120-01 dated January 28, 2008 is now "Establishment of Alcohol and Tobacco Tax and Trade Bureau" dated January 24, 2008 the Alcohol and Tobacco Tax and Trade Bureau is also an agency not based in law. In the latest T.O. 120-01 the authorities, functions, and powers are stated as follows:

3. AUTHORITIES, FUNCTIONS, AND POWERS OF THE ADMINISTRATOR. The Administrator shall exercise the authorities, perform the functions, and carry out the duties of the Secretary in the administration and enforcement of:
 - a. Chapters 51 and 52 of the Internal Revenue Code of 1986;
 - b. Sections 4181 and 4182 of the Internal Revenue Code of 1986; and
 - c. Title 27, United States Code.-

Title 26 Authority Sections

Within Title 26 the following sections detail authority:

- Sec. 7801. Authority of Department of the Treasury.
- Sec. 7802. Internal Revenue Service Oversight Board.
- Sec. 7803. Commissioner of Internal Revenue; other officials.
- Sec. 7804. Other personnel.

In checking both, the Parallel Table of Authorities and Rules and the Cornell University Law School resources it is shown that There are no regulations, either legislative or substantive; or even interpretive regarding these sections of code:

No corresponding parts in CFR

There are no CFR parts for which 26 USC 7801 provides authority.

No corresponding parts in CFR

There are no CFR parts for which 26 USC 7802 provides authority.

No corresponding parts in CFR

There are no CFR parts for which 26 USC 7803 provides authority.

No corresponding parts in CFR

There are no CFR parts for which 26 USC 7804 provides authority.

The courts have stated that:

"As we see it, a construction of the regulation necessarily is an interpretation of the statute. An administrative regulation, of course, is not a "statute." While in practical effect regulations may be called "little laws," they are at most but offspring of statutes. **Congress alone may pass a statute,** and the Criminal Appeals Act calls for direct appeals if the District Court's dismissal is based upon the invalidity or construction of a statute. See *United States v. Jones*, 345 U.S. 377 (1953).

Therefore, the lack of regulations indicates that there are no statutes specifying any authority for IRC Sections 7801 through 7804. Again showing that the IRS has no authority regarding a U.S. Citizen living and working in the United States in private enterprises. It limits their authority to those areas under the territorial control of congress.

FMS system of records .014

The authority for the collection of Federal tax debts has been delegated to the Treasury Financial Management Service (FMS) and not the IRS. The authority section of FMS system of records .014 as extracted from Federal Register of June 14, 2005 (Volume 70, Number 113,, pages 34529 – 34531 states the following regarding responsibility for enforcement:

2. THE ASSISTANT SECRETARY (ENFORCEMENT) reports to the Secretary through the Deputy Secretary and is responsible for the following functions.
 - a. Coordinates all Treasury law enforcement matters, including the formulation of policies for all Treasury enforcement activities.
 - b. Ensures cooperation and proper levels of Treasury participation in law enforcement matters with other Federal departments and agencies.
 - c. Provides Departmental oversight and supervision of the **U.S. Customs Service (USCS), U.S. Secret Service (USSS), Bureau of Alcohol, Tobacco and Firearms (BATF), the Federal Law Enforcement Training Center (FLETC), and the Financial Crimes Enforcement Network (FinCEN).**

Accordingly, the Office of Law Enforcement is responsible for **coordinating and monitoring** of a wide variety of special emphasis and high priority law enforcement issues that relate to the activities of the **BATF, USCS, FLETC, USSS, and IRS.**

Note that the IRS is monitored by the Office of Law Enforcement.

The above is verified by Treasury Directive: 27-03 which can be obtained at <http://www.treas.gov/regs/td27-03.htm>.



DEPARTMENT OF THE TREASURY ORDER

DATE: June 6, 1972

NUMBER: 120-01

SUBJECT: Establishment of the Bureau of Alcohol, Tobacco and Firearms

By virtue of the authority vested in me as Secretary of the Treasury, including the authority in Reorganization Plan No. 26 of 1950, it is ordered that:

1. The purpose of this Order is to transfer, as specified herein, the functions, powers and duties of the Internal Revenue Service arising under laws relating to alcohol, tobacco, firearms, and explosives (including the Alcohol, Tobacco and Firearms Division of the Internal Revenue Service) to the Bureau of Alcohol, Tobacco and Firearms (hereinafter referred to as the Bureau) which is hereby established. The Bureau shall be headed by the Director, Alcohol, Tobacco and Firearms (hereinafter referred to as the Director). The Director shall perform his duties under the general direction of the Secretary of the Treasury (hereinafter referred to as the Secretary) and under the supervision of the Assistant Secretary (Enforcement, Tariff and Trade Affairs, and Operations) (hereinafter referred to as the Assistant Secretary).
2. The Director shall perform the functions, exercise the powers, and carry out the duties of the Secretary in the administration and enforcement of the following provisions of law:
 - a. Chapters 51, 52, and 53 of the Internal Revenue Code of 1954 and sections 7652 and 7653 of such Code insofar as they relate to the commodities subject to tax under such chapters;
 - b. Chapters 61 to 80, inclusive, of the Internal Revenue Code of 1954, insofar as they relate to activities administered and enforced with respect to chapters 51, 52, and 53;
 - c. The Federal Alcohol Administration Act (27 U.S.C. Chapter 8);
 - d. 18 U.S.C. Chapter 44 (relating to firearms);
 - e. Title VII, Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. Appendix, sections 1201-1203);
 - f. 18 U.S.C. 1262-1265; 1952; 3615 (relating to liquor traffic);

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Treasury Order 120-01 dated June 6, 1972, Page 1

g. Act of August 9, 1939 (49 U.S.C. Chapter 11); insofar as it involves matters relating to violations of the National Firearms Act;

h. 18 U.S.C. Chapter 40 (relating to explosives); and

i. Section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934) relating to the control of the importation of arms, ammunition and implements of war.

All functions, powers and duties of the Secretary which relate to the administration and enforcement of the laws specified in paragraph 2 hereof are delegated to the Director. Regulations for the purposes of carrying out the functions, powers and duties delegated to the Director may be issued by him with the approval of the Secretary.

All regulations prescribed, all rules and instructions issued, and all forms adopted for the administration and enforcement of the laws specified in paragraph 2 hereof, which are in effect or in use on the effective date of this Order, shall continue in effect as regulations, rules, instructions and forms of the Bureau until superseded or revised.

All existing activities relating to the collection, processing, depositing, or accounting for taxes (including penalties and interest), fees, or other moneys under the laws specified in paragraph 2 hereof, shall continue to be performed by the Commissioner of Internal Revenue to the extent not now performed by the Alcohol, Tobacco and Firearms Division or the Assistant Regional Commissioners (Alcohol, Tobacco and Firearms), until the Director shall otherwise provide with the approval of the Secretary.

All existing activities relating to the laws specified in paragraph 2 hereof which are now performed by the Bureau of Customs, shall continue to be performed by such Bureau until the Director shall otherwise provide with the approval of the Secretary.

The terms "Director, Alcohol, Tobacco and Firearms Division" and "Commissioner of Internal Revenue" wherever used in regulations, rules, and instructions, and forms, issued or adopted for the administration and enforcement of the laws specified in paragraph 2 hereof, which are in effect or in use on the effective date of this Order, shall be held to mean the Director.

The terms "Assistant Regional Commissioner" wherever used in such regulations, rules, instructions, and forms, shall be held to mean Regional Director.

The terms "internal revenue officer" and "officer, employee or agent of the internal revenue" wherever used in such regulations, rules, instructions and forms, in any law specified in paragraph 2 above, and in 18 U.S.C. 1114, shall include all officers and employees of the United States engaged in the administration and enforcement of the laws administered by the Bureau, who are appointed or employed by, or pursuant to the authority of, or who are subject to the directions, instructions or orders of, the Secretary.

The above terms, when used in regulations, rules, instructions and forms of government agencies other than the Internal Revenue Service, which relate to the administration and enforcement of the laws specified in paragraph 2 hereof, shall be held to have the same meaning as if used in regulations, rules, instructions and forms of the Bureau.

There shall be transferred to the Bureau all positions, personnel, records, property, and unexpended balances of appropriations, allocations, and other funds of the Alcohol, Tobacco and Firearms Division of the Internal Revenue Service, including those of the Assistant Regional Commissioners (Alcohol, Tobacco and Firearms), Internal Revenue Service.

In addition, there shall be transferred to the Bureau such other positions, personnel, records, property, and unexpended balances of appropriations, allocations, and other funds, as are determined by the Assistant Secretary for Administration, in consultation with the Assistant Secretary, the Director, and the Commissioner of Internal Revenue, to be necessary or appropriate to be transferred to carry out the purposes of this Order.

There shall be transferred to the Chief Counsel of the Bureau such functions, powers and duties, and such positions, personnel, records, property, and unexpended balances of appropriations, allocations, and other funds, of the Chief Counsel of the Internal Revenue Service as the General Counsel of the Department shall direct.

All delegations inconsistent with this Order are revoked.

This Order shall become effectively July 1, 1972.

/s/ Charles E. Walker
Acting Secretary of the Treasury

Treasury Order 120-01 dated June 6, 1972, Page 3

Federal Debt Collection

Before one can understand the method of theft by which the federal government, and the IRS operate they must learn what the laws state in that regard. Here the following major acts will be covered, two as enacted by congress and the other as adopted by most states. These are as follows:

Act	Page
Federal Tax Lien Act	155
Uniform Federal Lien Registration Act (not law)	157
Federal Debt Collection Procedure	159

It is also important to remember that the three listed acts/procedures do not supercede one another, but complement the lawful means for the federal government to collect debt.

Federal Tax Lien Act

The Federal Tax Lien Act of 1966, P.L. 89-719 legislative history, Pg. 3722 states, "The entire taxing and monetary systems are hereby placed under the Uniform Commercial Code."

Senate Report No. 1708, and Public Law 89--719, 80 Stat. 1125

Senate Report No. 1708 states, in part, at the very beginning of the Senate Report:

"Since the adoption of the Federal income tax in 1913, the nature of commercial financial transactions has changed appreciably. * * * In an attempt to take into account these changed commercial transactions, and to secure greater uniformity among the several states, a Uniform Commercial Code was promulgated somewhat over 10 years ago by the American Law Institute and the national Conference of Commissioners on Uniform State laws. * * * **This bill is in part an attempt to conform the lien provisions of the internal revenue laws to the concepts developed in this Uniform Commercial Code. It represents an effort to adjust the provisions in the internal revenue laws relating to the collection of taxes of delinquent persons to the more recent developments in commercial practice (permitted and protected under State law)** and to deal with a multitude of technical problems which have arisen over the past 50 years."

Therefore, Public Law 89--719, 80 Stat. 1125 conformed the lien provisions of the internal revenue laws to the concepts developed in this Uniform Commercial Code. Within most state versions of the UCC there are three requirements, which must be met when filing a Notice of Lien:

1. There must be a valid UCC-1 Form filed, upon which is shown the alleged debtor's signature and the creditor's signature. Without these two signatures on this instrument, there is an invalid Notice of Lien filed.
2. There must be a financing statement/security agreement signed by the alleged debtor and the secured party (the IRS agent). Without this any Notice of Lien filed, is invalid and a dolus.
3. There must be a valid court order, based on a court judgment wherein the alleged debtor has had due process opportunity to contest the alleged debt. Without this instrument and due process, there is no lawful authority and the Notice of Lien is invalid.

Lack of any of the above is sufficient cause for the recording officer to immediately reject any attempt to file a Notice of Lien by any IRS agent. There is no actual Lien placed upon any debtor until a court hearing and due process is afforded, otherwise it is an attempt of taking of property in violation of the 5th amendment as stated in 26 CFR Part 600 at Section 601.106 (f) (1) I which reads as follows:

(1) Rule I. An exaction by the U.S. Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the U.S.

Federal Debt Collection

Constitution. Accordingly, an Appeals representative in his or her conclusions of fact or application of the law, shall hew to the law and the recognized standards of legal construction. It shall be his or her duty to determine the correct amount of the tax, with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination as between taxpayers.

In the notes under IRC section 6321 – Lien for taxes the following appears:

Short Title

Pub. L. 89-719, Sec. 1(a), Nov. 2, 1966, 80 Stat. 1125, provided that: "This Act [enacting sections 3505, 7425, 7426, and 7810 of this title, amending sections 545, 6322 to 6325, 6331, 6332, 6334, 6335, 6337 to 6339, 6342, 6343, 6502, 6503, 6532, 7402, 7403, 7421, 7424, 7505, 7506, and 7809 of this title, sections 1346, 1402, and 2410 of Title 28, Judiciary and Judicial Procedure, and section 270a of former Title 40, Public Buildings, Property, and Works, redesignating section 7425 as 7427 of this title, and enacting provisions set out as notes under sections 6323 and 7424 of this title, and under section 1346 of Title 28] may be cited as the 'Federal Tax Lien Act of 1966'."

Therefore, the Federal Tax Lien Act impacts the following sections of the IRC:

- 26 USC Sec. 1. Tax imposed
- 26 USC Sec. 3505. Liability of third parties paying or providing for
- 26 USC Sec. 545. Undistributed personal holding company income
- 26 USC Sec. 6321. Lien for taxes
- 26 USC Sec. 6322. Period of lien
- 26 USC Sec. 6323. Validity and priority against certain persons
- 26 USC Sec. 6324. Special liens for estate and gift taxes
- 26 USC Sec. 6325. Release of lien or discharge of property
- 26 USC Sec. 6331. Levy and distraint
- 26 USC Sec. 6332. Surrender of property subject to levy
- 26 USC Sec. 6334. Property exempt from levy
- 26 USC Sec. 6335. Sale of seized property
- 26 USC Sec. 6337. Redemption of property
- 26 USC Sec. 6339. Legal effect of certificate of sale of personal property and deed of real property
- 26 USC Sec. 6342. Application of proceeds of levy
- 26 USC Sec. 6343. Authority to release levy and return property
- 26 USC Sec. 6502. Collection after assessment
- 26 USC Sec. 6503. Suspension of running of period of limitation
- 26 USC Sec. 6532. Periods of limitation on suits
- 26 USC Sec. 7402. Jurisdiction of district courts
- 26 USC Sec. 7403. Action to enforce lien or to subject property to payment of tax
- 26 USC Sec. 7421. Prohibition of suits to restrain assessment or collection
- 26 USC Sec. 7424. Intervention
- 26 USC Sec. 7427. Income tax return preparers
- 26 USC Sec. 7505. Sale of personal property acquired by the United States
- 26 USC Sec. 7506. Administration of real estate acquired by the United States
- 26 USC Sec. 7809. Deposit of collections

It also impacts the following:

- 28 USC Sec. 1346. United States as defendant
- 28 USC Sec. 1402. United States as defendant
- 28 USC Sec. 2410. Actions affecting property on which United States has lien

To determine what changes were made to these sections one must refer to the section and the notes following them. The individual sections can be viewed at the GPO web site <http://www.gpoaccess.gov/uscode/index.html>. Doing a search in each for 89-719 will reveal the changes made to bring the section into alignment with the UCC.

Uniform Federal Lien Registration Act

The National Conference of Commissioners on Uniform State Laws states the purpose of this act as follows:

To provide for the registration of federal liens by procedures consistent with the normal recording of ownership and security interests in real property in local real estate records, and the normal recording of liens on personal property in the office for filing secured interests in personal property.

What this does, when adopted into state law is to bring the filing of federal liens into line with the Federal Tax Lien Act as covered above. Once a state adopts it into law they are in reality forcing applicability of the UCC as adopted by the state. The Uniform Federal Lien Registration Act has been adopted by the states shown below.

State Adoptions		
Alabama	Louisiana	North Carolina
Alaska	Maine	North Dakota
Arizona	Maryland	Oklahoma
Arkansas	Michigan	Oregon
California	Minnesota	Pennsylvania
Colorado	Mississippi	South Dakota
Delaware	Montana	Texas
Florida	Nebraska	Virginia
Idaho	Nevada	Washington
Illinois	New Hampshire	West Virginia
Iowa	New Jersey	Wisconsin
Kansas	New Mexico	Wyoming

The following states have not:

States not Adopting	
Connecticut	New York
Georgia	Ohio
Hawaii	Rhode Island
Indiana	South Carolina
Kentucky	Tennessee
Massachusetts	Utah
Missouri	Vermont

But remember, the Federal Debt Collection Procedure, and the IRC state that Notices of, or liens as well as levies will be filed in accordance with state law

Prefatory Note

At the beginning of the act the Prefatory Note states the following. Note the bolded text:

This Act is a **successor to the Revised Federal Tax Lien Registration Act** as revised by the Conference in 1966 and does not make any drafting changes to the previous Act except as required **to prescribe the**

Federal Debt Collection

method of perfecting the employer liability lien, provided by the Pension Reform Act, and any other similar liens.

Since most of the policy decisions made in drafting this Act were derived from the Revised Uniform Federal Tax Lien Registration Act as it was revised in 1966, it would appear helpful to include here the Prefatory Note which was included with the earlier Act in 1966.

"Section 6323 of the United States Internal Revenue Code of 1954, as amended by P.L. 89-719, Federal Tax Lien Act of 1966 provides that liens for an unpaid federal tax shall not be valid as against mortgagees, pledges, judgment creditors, purchasers and holders of other security interest until notice of the tax lien has been filed in an office designated by the law of the state in which the property subject to the lien is situated, or, in the absence of a valid state designation, in the federal district court for the place where the property is situated. Under federal law, personal property is deemed situated at the residence of the taxpayer regardless of its physical location.

Thus the new federal act would invalidate any provision of a state law which required filing of liens for property other than real estate at more than one office or at any state office other than that associated with the residence of the taxpayer. State law requiring filing at the physical location of personal property or at both physical location and residence of the taxpayer is not permissible and if a state law includes such a provision the Internal Revenue Service would, for that state, file liens in the federal district court rather than in a state office.

"The new federal legislation provides for filing of **certain types of certificates and notices affecting previously filed liens** which some of the existing state legislation does not provide for. The effectiveness of these additional notices as a communication to interested persons depends on their being filed in the same office where the notice of lien is filed. It is necessary, therefore, that state law be broadened to permit filing and indexing of these additional notices.

"In addition to the above reasons for new state legislation, there is another reason for revising existing state laws concerned with federal tax liens. Many of the existing laws are no longer appropriate in the states (all but three in December, 1966) which have enacted the **Uniform Commercial Code. It is highly desirable that the place for filing and searching for federal tax liens be the same place as that designated by the state law under the Uniform Commercial Code for filing and searching for a security interest in the same property.** Unfortunately, complete coordination of federal tax lien filing with the rules for filing under the Uniform Commercial Code cannot be fully achieved by state legislation. The United States Supreme Court has held that the Congressional permission to a state to designate the office for filing of federal tax liens cannot be taken advantage of by the states in such a way as to require the federal tax collector to specify the particular property to which the lien applies. *United States v. Union Central Life Insurance Company*, 363 U.S. 291 (1961). **The Internal Revenue Service has interpreted this decision to preclude a state requirement for filing federal tax liens in conformity with the Uniform Commercial Code because of the Code's differing requirements for various types of property and its requirement for filing in two offices in some cases.** Rev. Rul. 64-170, 1964-1 Cum. Bull. 499. P.L. 89-719 continues this interpretation.

Nevertheless, it is possible to go a long way toward bringing federal tax lien filing into conformity with the Uniform Commercial Code and it is highly desirable to do so in order to accommodate to commercial convenience so far as possible within the limitations of federal law. States which departed from the uniformity of the Commercial Code by amendment as to the place of filing may now wish to conform their Commercial Code to the original uniform version at the same time they change the federal tax lien requirements. The Act presented here calls for filing on taxpayers who are corporations or partnerships in the office of the Secretary of State and in all other cases in an office in the place where the taxpayer resides. No provision is possible calling for filing of the tax lien at the place where particular kinds of property are physically located. Any attempt to deviate from the proposed place of filing in this Code risks non-compliance with Federal Law. The federal act does permit filing of notices as to real property in an office at the place where the real property is situated. It has no such permission for other kinds of property. Section 1 of the Act contained herein complies with the federal requirement.

"The present Act was prepared in light of Public Law 89-719 of 1966 amending Section 6323 of the Internal Revenue Code of 1954. The Internal Revenue Service has reviewed the Act and believes it meets the requirement of federal law. The Conference recommends that it be adopted and that existing legislation concerning federal tax liens be repealed."

Note: In the above make note of the act it stated "required **to prescribe the method of perfecting the employer liability lien, provided by the Pension Reform Act, and any other similar liens**". The words of importance are "perfecting" and "employer liability lien" since in the previous chapter it was shown that it is only in regards to Business Master Files (BMFs) that there is statutory authorization for making a Substitute for Return (SFR). It was also proven that the SFRs that the IRS creates regarding Individual Master Files (IMFs) are "dummy" SFRs, meaning "Sham; make-believe, pretended: imitation". Therefore, not real.

Note also the references to the Uniform Commercial Code and Public Law 89-719 of 1966, showing that it complements the Federal Tax Lien Act

Federal Debt Collection Procedure

To implement guidance congress passed what is known as The Federal Debt Collection Procedure, which is covered in the next paragraph. As will be uncovered, within that procedure is the fact that other federal laws offer other methods of enforcement.

The Federal Debt Collection Procedure (FDCP) is contained in Title 28, Chapter 176. You are reminded that Title 28 has been enacted as positive law. It encompasses sections 3001 through 3308 of Title 28.

The main purpose here is to prove that the FDCP does apply to taxation. This is stated very clearly in Title 28 section 3002 – Definitions. In section 3002(3)(B) where it states "an amount that is owing to the United States on account of a fee, duty, lease, rent, service, sale of real or personal property, overpayment, fine, assessment, penalty, restitution, damages, interest, **tax**, bail bond forfeiture, reimbursement, recovery of a cost incurred by the United States, or other source of indebtedness to the United States, but that is not owing under the terms of a contract originally entered into by only persons other than the United States;"

As you can see, taxation is included within the provisions of the FDCP, which is positive law. However, the question arises as to if it is the only method available in regards to taxation. For an answer a look at Title 28 Section 3001 is necessary. In subsection (a) it states "**Except as provided in subsection (b), the (FOOTNOTE 1) chapter provides the exclusive civil procedures for the United States**

As it refers to subsection (b) a look is in order. In subsection (b) the following appears "**To the extent that another Federal law specifies procedures for recovering on a claim or a judgment for a debt arising under such law, those procedures shall apply to such claim or judgment to the extent those procedures are inconsistent with this chapter.**

Notice where subsection (b) states '**To the extent that another Federal law specifies procedures for recovering on a claim or a judgment for a debt arising under such law, those procedures shall apply to such claim or judgment to the extent those procedures are inconsistent with this chapter**'. In other words, any procedure stated in law can be used but only regarding those areas that differ, or are inconsistent with the FDCP.

Such law does exist within the IRC. It is in the assessment, lien and levy areas that the law exists. Except for the perfection of judgment it makes little difference as the two processes parallel each other in requirements.

Tax Division Judgment Collection Manual

In the Tax Division Judgment Collection Manual of the Department of Justice (online at http://www.assetprotectionbook.com/Judgment_collection_manual.htm) the following is the TOC for the manual. By clicking on any line you will be taken to that point on the internet. Those items in bold red should be read initially.

I. **Introduction**

Federal Debt Collection

- A. Timeliness
- B. Referral or Retention
- C. Using Paralegals
- D. Reporting Activities
- II. **Prejudgment: Protecting the Government's Ability to Collect Taxes**
 - A. Introduction: Preserving the Status Quo
 - B. **The Importance of the Notice of Federal Tax Lien**
 - C. The Presuit Letter and the Complaint
 - D. Lis Pendens
 - E. Prejudgment Remedies Under the Federal Debt Collection Procedures Act
 - F. Injunctions and Receiverships
 - G. Preparing for Collection by Obtaining Copies of Tax Returns
- III. **Entering Judgment, Stays of Collection, and Obtaining a Judgment Lien**
 - A. **What is a Judgment?**
 - B. Form of Judgment
 - C. The Judgment Should Include an Award of Costs
 - D. Ten-Percent Surcharge for Costs of Collection
 - E. Stays of Collection
 - 1. Automatic Stay of Collection of a Judgment
 - 2. Motions to Stay Collection of a Judgment
 - 3. Posting a Bond as a Condition of a Stay
 - F. **Judgment Lien**
 - 1. **United States District Courts**
 - 2. **The Court of Federal Claims**
 - 3. United States Bankruptcy Courts
- IV. **Collecting the Judgment**
 - A. An Overview
 - B. **Demand for Payment and Instituting Rule 69 Discovery**
 - C. More on Finding Taxpayers' Assets
 - 1. Tax Returns
 - 2. Additional Rule 69 Discovery
 - 3. Fraudulent Conveyances & Nominee Ownership
 - 4. More on Nominees, Alter Egos and Successors
 - 5. Using Computerized Database Services to Locate Debtors' Assets
 - 6. Other Sources of Information on Collecting Judgments
 - D. Evaluating Collection Potential
 - 1. **Priority: The Federal Tax Lien**
 - 2. **Priority: The Judgment Lien**
 - 3. Effect, if any, of State Exemption Statutes
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 - E. Liquidating Assets
 - 1. Administrative Collection by the IRS
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 - a. Receivers
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 - c. PALS
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 - 3. **The Federal Debt Collection Procedures Act**
 - a. Notice and Other Preconditions
 - b. **Garnishment**
 - c. Court-Ordered Installment Payments
 - 4. Collecting Specific Assets
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 - b. Securities and Notes
 - c. **Wages**
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- V. **Settlements**

- VI. **Reporting Collection Activities to the Case Management System**
 VII. **Closing of Cases and Reference of Judgments for Further Collection Activity**
 A. When and Where
 B. Steps to Refer the Judgment to the IRS

EXHIBITS (in PDF Format)

- Exhibit 1** - Letter to Internal Revenue Service Campus
Exhibit 2 - Internal Revenue Service Campuses Addresses and Telephone List
Exhibit 3 - Final Judgment
Exhibit 4 - Agreed Judgment
Exhibit 5 - Order Granting Summary Judgment to Plaintiff United States of America
Exhibit 6 - Title 26 IRS §6673(b) Penalty and Costs Assessment Data
Exhibit 7 - Letter to United States Attorney re: Filing of Abstract of Judgment, Abstract of Judgment Form, and Instructions
Exhibit 8 - Demand Letter to Counsel
Exhibit 9 - Form 433-A - Collection Information Statement for Wage Earners and Self-Employed Individuals
Exhibit 10 - United States' Interrogatories to Judgment Debtor
Exhibit 11 - United States' Request for Production of Documents to Judgment Debtor
Exhibit 12 - Motion to Compel Answers to Interrogatories and Request for Production
Exhibit 13 - Judgment Creditor: Motion to Compel-Sample of Authorities
Exhibit 14 - Nominees, Alter Egos and Successors
Exhibit 15 - Bibliography of helpful collections sources
Exhibit 16 - Motion for Order of Sale
Exhibit 17 - Order of Sale
Exhibit 18 - Treasury Department Certification Form
Exhibit 19 - United States' Motion for Appointment of Receiver
Exhibit 19A - Order Appointing Receiver for Real Property
Exhibit 20 - Letter to Prospective Buyer
Exhibit 21 - United States' Motion for Confirmation of Sale
Exhibit 21A - Order Confirming Judicial Sale
Exhibit 22 - Receiver's Deed
Exhibit 23 - United States' Motion for Order of Distribution
Exhibit 23A - Order Distributing Proceeds of Judicial Sale
Exhibit 24 - United States' Motion for Order to Vacate
Exhibit 24A - Order to Vacate
Exhibit 25 - Notice for a Writ of Execution or Garnishment
Exhibit 26 - Notice and Motion for Court-Ordered Installment Payments
Exhibit 26A - Order Setting Hearing on United States' Motion for Installment Payment Order
Exhibit 27 - Tax Doc Judgment Collection Activity Codes
Exhibit 28 - Letter to Technical Support - Referral of Judgment Collection
Exhibit 29 - Technical Support - Advisory Groups
Exhibit 30 - Letter to Immigration and Naturalization Service - Request for Border Check

Note the bolded and underlined text. Title 28 Section 3003(b) states “**This chapter shall not be construed to curtail or limit the right of the United States under any other Federal law or any State law - (1) to collect taxes or to collect any other amount collectible in the same manner as a tax;.....**”

It also states **Judgments in suits that do not involve an assessed tax, and in which the tax lien and levy procedures are therefore not available, must be collected under the procedures contained in the Federal Debt Collection Procedures Act (or under procedures provided by state law)**

Therefore, the procedure in the IRC is still valid to use.

Conclusion

In this chapter we briefly covered the following:

- Federal Tax Lien Act
- Uniform Federal Lien Registration Act (not law)
- Federal Debt Collection Procedure

Of these the first two are of the most importance as they relate to aligning the IRC process to the Uniform Commercial Code, and giving a uniform filing system for the states that have enacted the Uniform Federal Lien Registration Act into state law. It was also shown that the Federal Debt Collection Procedure is the preferred method in some circumstances, and that it parallels the requirements as given in the IRC.

The Uniform Federal Lien Registration Act however, due to the failure of the states to give proper guidance to the County Clerks that results in the acts of theft as perpetuated by the federal government. This will be covered in the chapter "The State's Contribution to the Fraud on page 229.

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Basic Information to Know

First, there are two basic taxes of concern. These are the income tax, and the employment tax. Most people make the mistake of lumping them together. It has been held:

"Withholding requirements is located in the Internal Revenue Code in Subtitle C - "Employment Taxes". The "Withholding Tax" is not the same as the income tax; it is a separate entity." Central Illinois Publishing Co. v. U.S., 551 Ed. 2d. 82

The "employment tax" is where the IRS commits their theft through lies and manipulation. To assist in understanding what "employment" they refer to a look at Title 5 section 5514 is in order.

Title 5 section 5514 - Installment deduction for indebtedness to the United States

This section is as follows (abbreviated):

Sec. 5514. Installment deduction for indebtedness to the United States

(a)(1) **When the head of an agency or his designee determines that an employee, member of the Armed Forces or Reserve of the Armed Forces, is indebted to the United States for debts to which the United States is entitled to be repaid at the time of the determination by the head of an agency or his designee, or is notified of such a debt by the head of another agency or his designee the amount of indebtedness may be collected in monthly installments, or at officially established pay intervals, by deduction from the current pay account of the individual.**

The deductions may be made from basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an individual not entitled to basic pay, other authorized pay. The amount deducted for any period may not exceed 15 percent of disposable pay, except that a greater percentage may be deducted upon the written consent of the individual involved. If the individual retires or resigns, or if his employment or period of active duty otherwise ends, before collection of the amount of the indebtedness is completed, deduction shall be made from subsequent payments of any nature due the individual from the agency concerned. All Federal agencies to which debts are owed and which have outstanding delinquent debts shall participate in a computer match at least annually of their delinquent debt records with records of Federal employees to identify those employees who are delinquent in repayment of those debts. The preceding sentence shall not apply to any debt under the Internal Revenue Code of 1986. Matched Federal employee records shall include, but shall not be limited to, records of active Civil Service employees government-wide, military active duty personnel, military reservists, United States Postal Service employees, employees of other government corporations, and seasonal and temporary employees. The Secretary of the Treasury shall establish and maintain an interagency consortium to implement centralized salary offset computer matching, and promulgate regulations for this program. Agencies that perform centralized salary offset computer matching services under this subsection are authorized to charge a fee sufficient to cover the full cost for such services.

(2)

(3)

(4) **The collection of any amount under this section shall be in**

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accordance with the standards promulgated pursuant to sections 3711 and 3716-3718 of title 31 or in accordance with any other statutory authority for the collection of claims of the United States or any agency thereof.

(5)

Notice the bolded and underlined text. It is very evident as to whom is considered an "employee". Note also the statement "The collection of any amount under this section shall be in accordance with the standards promulgated pursuant to sections 3711 and 3716-3718 of title 31 **or in accordance with any other statutory authority for the collection of claims of the United States or any agency thereof.**". Therefore this applies to collections associated with Title 26 and the IRS. Therefore, proper use of the "notice" process, administrative garnishment, et al, is specifically set out in this section, as being applicable exclusively to officers, agents and employees of agencies of the United States (26 USC § 3401(c)). Even then, however, the process must comply with provisions of 31 USC § 3530(d), and standards set forth in §§ 3711 & 3716-17

Misapplication of IRC sections 3121, 3401, and 3402

By threats, coercion, and the actions of venal DOJ Attorney's and Judges private sector employers are forced to falsely report as "**employees**" those that are not by statute and their remuneration as "**wages**" when by taxing statutes it is not. Further, they are forced to demand a Form W-4 from all as a condition of employment. These actions cause a direct violation of the Constitutional rights of Americans who are employed in the private sector and living within the United States. This initial fraud by force and/or coercion lays the foundation for the unlawfully applied assessment-lien-levy process, which will be covered later. Additionally, the regulation at 26 CFR 31-3402(f)(2)-1 requires no Form W-4 from those who are not "**employees**" by definition. Refer to pages 72 and 74 regarding the definition of "**employee**", page 89 for the definition of "**wages**".

Abuse of Authority

The IRS uses the statement "Our legal right to ask for information is Internal Revenue Code sections 6001, 6011 and 6012(a) **and their regulations** (Notice 609 - see extract below). They say that you must file a return or statement with us for any tax you are liable for. Your response is mandatory under these sections. Code section 6109 requires that you provide your social security number or individual taxpayer identification number on what you file."

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

Emphasis is placed on the words "and their regulations" as it indicates that the IRS is well aware that enforcement of the code sections is by the regulations that are implemented for them and entered in the Federal Register. It is only those regulations so entered and having final rule (regulation) status that has general applicability and legal effect (Title 1 CFR part 5.9) as shown on the Action line of the Federal Register entry. Additionally, the Secretary cannot make law, only regulations so the Authority line of the Federal Register entry must be traceable to a Statute or Act of congress for the regulation to have the force of law behind it. In regards to the section and regulation citations, it must be understood that 26 United States Code (USC/IRC) is prima facie evidence of the law and must be judicially noticed (1 USC § 204(a)); the Federal Register is prima facie evidence of original documents, and the Code of Federal Regulations must be judicially noticed (44 USC §§ 1507 & 1510). It has been held by the courts that regulations are required for enforcement:

It is common for various Congressional acts to be entirely enforceable only through regulations. Any given act may simply authorize a defined federal official to perform certain acts in accordance with regulations he promulgates; until the regulations are implemented, the act in question might compel nothing. An example of such an act is the Bank Secrecy Act ("BSA") P.L.91-508, 84 Stat. 1114, the amended version of which is codified at 31 U.S.C., §§ 5311, et seq. Throughout this particular act, language such as "the Secretary may require," "the

Secretary may by regulations require," "as the Secretary may require," repeatedly appears in the Act's sections up through §242. In *California Bankers Assn. v. Shultz*, 416 U.S. 21, 26, 94 S.Ct. 1494 (1974), the Court noted that the BSA entirely depended upon regulations:

"[W]e think it important to note that the Act's civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary; if the Secretary were to do nothing, the Act itself would impose no penalties on anyone."

See also *United States v. Reinis*, 794 F.2d 506, 508 (9th Cir. 1986) (a person cannot be prosecuted for violating the currency reporting law unless he violates an implementing regulation); and *United States v. Murphy*, 809 F.2d 1427, 1430 (9th Cir. 1987) (the reporting act is not self-executing and can impose no reporting duties until legislative/substantive regulations have been promulgated).

In *California Bankers*, supra, the Supreme Court not only noted that the BSA depended entirely upon regulations, but that also the federal income tax laws were similarly drafted:

"The Internal Revenue Code, for example, contains a general authorization to the Secretary of the Treasury to prescribe by regulation records to be kept by both business and individual taxpayers, 26 U.S.C. § 6001, which has been implemented by the Secretary in various regulations," 416 U.S., at 45.

This covers the following sections of Title 26 Internal Revenue Laws, hereafter referred to as such, or as the IRC:

section:	Title:	Page:
6001	Notice or regulations requiring records, statements, and special returns	165
6011	General requirement of return, statement, or list	167
6012	Persons required to make returns of income	169

Title 26 section 6001 - Notice or regulations requiring records, statements, and special returns.

This section makes the statement "Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe" without identifying the taxes addressed by this section. Since enforcement of a section is dependent upon regulations it is the regulations for this section that identify the taxes concerned. This section of code has regulations in the following Code of Federal Regulations and their parts:

- 26 CFR part 1 - Income Taxes
- 26 CFR part 31 - Employment taxes and collection of income tax at source
- 26 CFR part 55 - Excise tax on real estate investment trusts and regulated investment companies
- 26 CFR part 156 - Excise tax on greenmail
- 27 CFR part 19 - Distilled spirits plants
- 27 CFR part 53 - Manufacturers excise taxes--firearms and ammunition

Pertinent facts in regards to these parts/sections in Title 26 CFR are shown in the following table. Since 26 CFR parts 55 (Excise tax on real estate investment trusts and regulated investment companies) and 156 (Excise tax on greenmail) do not apply to most, they are omitted from listing as are those pertaining to alcohol, tobacco, and firearms taxable activities enforced by the IRS, ATF, or TTB. Therefore, only those regulations in 26 CFR parts 1 and 1 are to be considered:

26 USC section 6001 Regulations

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CFR part/Sec	Facts
1.6001-1	Applies to Subtitle A source document giving legislative/substantive regulatory (rule) authority of law: T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 7122, 36 FR 11025, June 8, 1971; T.D. 7577, 43 FR 59357, Dec. 20, 1978; T.D. 8308, 55 FR 35593, Aug. 31, 1990
1.6001-2	Refers to returns required to be made by every individual, estate, or trust which is liable for one or more qualified State individual income taxes (T.D. 6516, 25 FR 13032, Dec. 20, 1960, T.D. 7577, 43 FR 59357, Dec. 20, 1978)
31.6001-1	General - no authorizing regulations. Refers to Sec's. 31.6001-2 to 31.6001-5, inclusive, for additional records required with respect to the Federal Insurance Contributions Act, the Railroad Retirement Tax Act, the Federal Unemployment Tax act, and the collection of income tax at source on wages.
31.6001-2	Refers to every employer liable for tax under the Federal Insurance Contributions Act (T.D. 6516, 25 FR 13032, Dec. 20, 1960, T.D. 7001, 34 FR 1003, Jan. 23, 1969)
31.6001-3	General - no authorizing regulations. Refers to every employer liable for tax under the Railroad Retirement Tax Act
31.6001-4	Refers to Every employer liable for tax under the Federal Unemployment Tax Act (T.D. 6516, 25 FR 13032, Dec. 20, 1960, T.D. 6658, 28 FR 6642, June 27, 1963)
31.6001-5	Refers to every employer required under section 3402 to deduct and withhold income tax upon the wages of employees shall keep records of all remuneration paid to (including tips reported by) such employees (T.D. 6516, 25 FR 13032, Dec. 20, 1960, T.D. 6606, 27 FR 8516, Aug. 25, 1962)
31.6001-6	General - no authorizing regulations.

In regards to the above regulations from 26 CFR part 1 Income Tax it is noted that 26 CFR 601.101(a) states that "The Internal Revenue Service is the agency by which these functions are performed. Within an internal revenue district, the internal revenue laws are administered by a district director of internal revenue. The Director, Foreign Operations District, administers the internal revenue laws applicable to taxpayers residing or doing business abroad, foreign taxpayers deriving income from sources within the United States, and taxpayers who are required to withhold tax on certain payments to nonresident aliens and foreign corporations, provided the books and records of those taxpayers are located outside the United States."

A look at 26 CFR sec. 1-6001-1 verifies certain facts. In subsection (a) it states "any person subject to tax under subtitle A of the Code (including a qualified State individual income tax which is treated pursuant to **section 6361(a) as if it were imposed by chapter 1 of subtitle A**), or any person required to file a return of information with respect to income, shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.

Here it can be seen that it applies to those subject to tax under subtitle A of the Code or any person required to file a return of information with respect to income. It must be remembered that where a tax is imposed a liability, that is who must pay that tax must be shown: "Liability for taxation must clearly appear." (Higley v. C.I.R., 69 F.2d 160 at 162-163 (8th Cir. 1934).

Within subtitle A of Title 26 (Income Taxes), section 1461 of Title 26 U. S. Code is the only section that makes anyone liable for the federal Subtitle A income tax. section 1461 makes a withholding agent for foreign entities having income in the U. S. liable for federal income tax. The only section of Title 26 where "withholding agent" is defined is 7701(a)(16). It reads as follows:

"The term 'withholding agent' means any person required to deduct and withhold any tax under the provisions of section 1441, 1442, 1443, or 1461."

These sections are within Chapter 3 of the IRC. Chapter 3 is entitled "Withholding of Tax on Nonresident Aliens and Foreign Corporations" and are as follows:

- section 1441 Withholding of tax on nonresident aliens.

- section 1442 Withholding of tax on foreign corporations.
- section 1443 Foreign tax-exempt organizations.
- section 1461 Liability for withheld tax.

As for “any person required to file a return of information with respect to income”, it must be noted that the base term “income” is not defined in the tax code. Included in the code are definitions for “gross”, “net”, “taxable”, and “ordinary” income (26 USC sections 61 through 64) but not the base term. It has been defined however by the court as stated in Conner v US 303 F sup 1187 Federal District court, Houston, never overruled. It was also recognized by congress as previously shown.

Notice that this regulation therefore applies to the internal revenue laws applicable to taxpayers residing or doing business abroad, foreign taxpayers deriving income from sources within the United States, taxpayers who are required to withhold tax on certain payments to nonresident aliens and foreign corporations, and to those U.S. Citizens residing abroad as determined in the definition of “**wages**” (refer to page 89).

Subsections (d) must also be looked at. Subsection (d) states that “**The district director may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the district director to determine whether or not such person is liable for tax under subtitle A of the Code, including qualified State individual income taxes, which are treated pursuant to section 6361(a) as if they were imposed by chapter 1 of subtitle A**”.

Notice here that it states that notice requiring returns, statements, or the keeping of records must be by notice of the district director. Since the term “income” is used exclusively in this section as opposed to remuneration, pay, or other such term it can only apply to “income”, which does not include payment for labor.

Those indicated in 26 part 31 (Employment taxes and collection of income tax at source) apply to the titles and subject matter as shown in the table 26 USC section 6001 Regulations on page 165. Since these requirements are applicable to “employers”, they again do not apply to an individual who is not an “employer” within the meaning of the term as defined, and they **do not apply to the average John or Jane Q. Citizen**.

To complete discussion of IRC section 6001, a look at those other sections of code that are referred to or cross-referenced within the section should be looked at.

Summary of Associated Sections for Title 26 section 6001

Within IRC section 6001 IRC the following sections are referred to. By looking at these sections, a better look at the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force:

Summary of Associated Sections for Title 26 section 6001

Section	Legislative/sub. Regulations
874 - Allowance of deductions and credits	None
911 - Citizens or residents of the United States living abroad	26 CFR part 1
4403 - Record requirements	None
6033 - Returns by exempt organizations	None
6053 - Reporting of tips	None

As can be seen from the table IRC section 6001 is clearly limited in its application and of no effect to John or Jane Q. Public.

Title 26 section 6011 - General requirement of return, statement, or list

This section pertains to the requirement to furnish a return. In 6011(a) the very first sentence reads, “**When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary.**” Since it states, “required by regulations” it is again evidence of the fact that the IRS is aware that enforcement relies on regulations. These regulations for IRC

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section 6011 are listed in the table shown below. Since 26 CFR parts 40 (Excise tax procedural regulations), 55 (Excise tax on real estate investment trusts and regulated investment companies) and 156 (Excise tax on greenmail) do not apply to most they are not listed. It should be noted that there are entries in 26 CFR part 1 for this section but they are without statutory backing.

26 USC section 6011 Regulations

CFR part/Sec	Title
31.6011(a)-1	Returns under Federal Insurance Contributions Act - Forms 941, 942, 943A, 943PR, W-2, 941VI, 941c, 941cPR, 1040, 1040SS, 1040PR (T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 7001, 34 FR 1004, Jan. 23, 1969; T.D. 7001, 34 FR 1826, Feb. 7, 1969; T.D. 7200, 37 FR 16544, Aug. 16, 1972; T.D. 7351, 40 FR 17144, Apr. 17, 1975; T.D. 7396, 41 FR 1903, Jan. 13, 1976)
31.6011(a)-2	Returns under Railroad Retirement Tax Act - Forms CT-1, CT-2 (T.D. 6516, 25 FR 13032, Dec. 20, 1960; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7396, 41 FR 1903, Jan. 13, 1976)
31.6011(a)-3	Returns under Federal Unemployment Tax Act - Form 940 (T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 7200, 37 FR 16544, Aug. 16, 1972)
31.6011(a)-3A	Returns of the railroad unemployment repayment tax - Form 940 (T.D. 8105, 51 FR 40168, Nov. 5, 1986. Redesignated and amended at T.D. 8227, 53 FR 34736, Sept. 8, 1988)
31.6011(a)-4	Returns of income tax withheld - Forms 941, 942, 943, 945 (T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 7096, 36 FR 5217, Mar. 18, 1971; T.D. 7200, 37 FR 16544, Aug. 16, 1972; T.D. 7577, 43 FR 59359, Dec. 20, 1978; T.D. 7580, 43 FR 60159, Dec. 26, 1978; T.D. 8504, 58 FR 68035, Dec. 23, 1993; T.D. 8624, 60 FR 53510, Oct. 16, 1995; T.D. 8672, 61 FR 27008, May 30, 1996)
31.6011(a)-5	Monthly returns - Forms 941, 941PR, 941VI, 945, W-3, W-2 (T.D. 6516, 25 FR 13032, Dec. 20, 1960; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7351, 40 FR 17145, Apr. 17, 1975; T.D. 7580, 43 FR 60154, Dec. 26, 1978; T.D. 8637, 60 FR 66133, Dec. 21, 1995)
31.6011(a)-6	Final returns - Forms 940, 942, 943, CT-1, CT-2 (T.D. 6516, 25 FR 13032, Dec. 20, 1960; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7396, 41 FR 1904, Jan. 14, 1976; T.D. 8637, 60 FR 66133, Dec. 21, 1995)
31.6011(a)-7	Execution of returns - Form W-2 (T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6606, 27 FR 8516, Aug. 25, 1962; T.D. 6883, 31 FR 6590, May 3, 1966; T.D. 7276, 38 FR 11345, May 7, 1973; T.D. 7396, 41 FR 1904, Jan. 13, 1976; T.D. 7580, 43 FR 60159, Dec. 26, 1978)
31.6011(a)-8	Composite return in lieu of specified form (T.D. 7200, 37 FR 16544, Aug. 16, 1972)
31.6011(a)-9	Instructions to forms control as to which form is to be used (T.D. 7351, 40 FR 17145, Apr. 17, 1975)
31.6011(b)-1	Employers' identification numbers (T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6606, 27 FR 8517, Aug. 25, 1962; T.D. 7012, 34 FR 7693, May 15, 1969)
31.6011(b)-2	Employees' account numbers (T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6606, 27 FR 8517, Aug. 25, 1962)

From the above it is shown that the requirements are those of an "employer" by fact of the forms prescribed, and to individuals required to complete a Form 1040 (more on this requirement coming).

To complete discussion of IRC section 6011, a look at those other sections of code that are referred to or cross-referenced within the section should be looked at.

Summary of Associated Sections for Title 26 section 6011

By looking at these sections, a better look at the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force:

Summary of Associated Sections for Title 26 section 6011

Section	Legislative/sub. Regulations
911 - Citizens or residents of the United States living abroad	26 CFR part 1
6501 - Limitations on assessment and collection	27 CFR part 70
6724 - Waiver; definitions and special rules	None
Title 42 section 405 - Evidence, procedure, and certification for payments	20 CFR parts 401, 402, 404, 422 42 CFR parts 405, 1005, 1006

As shown in the table IRC section 6011 is clearly limited in its application and of no effect to John or Jane Q. Public.

Title 26 section 6012 - Persons required to make returns of income

IRC section 6012(a) pertains to Returns with respect to income taxes under subtitle A and 6012(b) pertains to Returns made by fiduciaries and receivers. Subsection (a) states that this requirement to file a return is limited to subtitle A by stating "**Returns with respect to income taxes under subtitle A** shall be made by the following".

The regulation at 26 CFR section 301-6012-1 states: "For provisions with respect to persons required to make returns of income, see Secs. **1.6012-1** to **1.6012-4**, inclusive, of this chapter (Income Tax Regulations)."

26 CFR sections 1.6012-1 through 1.6012-4 are as follows:

section:	Subject:	Federal Register Entry::
1.6012-1	Individuals required to make returns of income	T.D. 6500, 25 FR 12108, Nov. 26, 1960
1.6012-2	Corporations required to make returns of income	T.D. 6500, 25 FR 12108, Nov. 26, 1960
1.6012-3	Returns by fiduciaries	T.D. 6500, 25 FR 12108, Nov. 26, 1960
1.6012-4	Miscellaneous returns	T.D. 7332, 39 FR 44231, Dec. 23, 1974

Since it is the individual that is the object of this publication a look at 1.6012-1 is in order. Subpart (a)(2) establishes the minimum amount required to trigger a filing obligation. Item 6 in subsection (a) states the form to use "**Form 1040 is prescribed for general use in making the return required under this paragraph. Form 1040A is an optional short form which, in accordance with paragraph (a)(7) of this section, may be used by certain taxpayers.**" Subsection (b) pertains to Return of nonresident alien individual

Here it is stating that gross income is the object of taxation, and it has been shown that income does not include the source (refer to page 16). Therefore, if you have no income, or it is below the amount specified you have no requirement to file. Another pointer as to the meaning of this regulation is found in Although this section has no legislative or substantive regulation backing itself, a look at the sections referred to within its text is appropriate in an attempt to learn the intent of congress.

Summary of Associated Sections for Title 26 section 6012

Within IRC section 6012 reference is made to several sections within the IRC. Now a look at these sections and their regulations will be made in the following table.

Summary of Associated Sections for Title 26 section 6012

Section	Legislative/sub. Regulations
1 - Tax imposed	26 CFR parts 1, 301
106 - Contributions by employer to accident and health plans	None
882 - Tax on income of foreign corporations connected with	26 CFR part 1

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United States business	
911 - Citizens or residents of the United States living abroad	26 CFR part 1
6014 - Income tax return--tax not computed by taxpayer	None
6032 - Returns of banks with respect to common trust funds	None
6033 - Returns by exempt organizations	None
6034 - Returns by trusts described in section 4947(a)(2) or claiming charitable deductions under section 642(c)	None
6037 - Return of S corporation	None
6062 - Signing of corporation returns	None
6072 - Time for filing income tax returns	None
6104 - Publicity of information required from certain exempt organizations and certain trusts	26 CFR part 301
6513 - Time return deemed filed and tax considered paid	27 CFR part 70
6652 - Failure to file certain information returns, registration statements, etc.	None
Title 38 - 1503 - Determinations with respect to annual income	Enacted into positive law therefore is legal evidence of the law

Examination of the sections listed above and the location of regulations that have statutory backing show that they have no applicability to John or Jane Q. Public.

Conclusion to Abuse of Authority

The IRS fails to honor the legal bounds of their authority **that they themselves have stated**. They disregard the following facts:

- Title 5 section 5514 establishes the base for the definition of “employee” as stated in IRC section 3401(c) and its regulations (refer to pages 163 and 72),
- The IRS, knowing full well by virtue of the Forms W-2 and 1099-MISC from private sector employers are erroneous, as are the employer’s submitted Form 941’s pretend that they are correct and disavow any wrongdoing themselves. Refer to page 127.
- Based on this the IRS disregards the limitations on authority as evidenced in the regulations for IRC section 6001. Refer to page 165.
- This disregard is continued as they ignore what forms (forms are applicable to “employers) are called out in the regulations for IRC section 6011. Refer to page 167
- They disregard the fact that IRC section 6012(a) pertains to Returns with respect to income taxes under subtitle A and 6012(b) pertains to Returns made by fiduciaries and receivers. Refer to page 169. 26 CFR 601.401 spells out what the “employment taxes are. Refer to page 107.

Lien and Levy through Dummy Returns and Straw men

Here the “how” of the IRS’s false application of the assessment-lien-levy process will be addressed. First let’s look at what the IRS states in regards to the differences between a lien and a levy

A levy is a legal seizure of your property to satisfy a tax debt. Levies are different from liens. A lien is a claim used as security for the tax debt, while a levy actually takes the property to satisfy the tax debt.

If you do not pay your taxes (or make arrangements to settle your debt), the IRS may seize and sell any type of real or personal property that you own or have an interest in. For instance,

- We could seize and sell property that you hold (such as your car, boat, or house), or
- We could levy property that is yours but is held by someone else (such as your wages, retirement accounts, dividends, bank accounts, licenses, rental income, accounts receivables, the cash loan value of your life insurance, or commissions).

We usually levy only after these three requirements are met:

- We assessed the tax and sent you a Notice and Demand for Payment;
- You neglected or refused to pay the tax; and
- We sent you a *Final Notice of Intent to Levy and Notice of Your Right to A Hearing* (levy notice) at least 30 days before the levy. We may give you this notice in person, leave it at your home or your usual place of business, or send it to your last known address by certified or registered mail, return receipt requested. Please note: if we levy your state tax refund, you may receive a Notice of Levy on Your State Tax Refund, Notice of Your Right to Hearing after the levy.

Keep these differences in mind as the assessment-lien-levy process is covered in the following paragraphs:

Assessment-Lien-L Levy Process

Here the order of execution in the assessment-lien-levy process will be addressed. There are many sections of code in IRC chapters 61 through 64 that have bearing on the information pertaining to this process. However, since the only regulations regarding the three key elements (assessment, lien, and levy) that are backed by statutes are found only in 27 CFR - Alcohol, Tobacco Products and Firearms those sections not related with such regulations will not be covered except by exception.

Regarding the fact that the regulations backed by statute are predominately located in 27 CFR instead of 26 CFR some history is in line. The Bureau of Alcohol, Tobacco, and Firearms (BATF) was not created until the advent of Treasury Order 120-01 dated June 6, 1972. This Treasury Order transferred the powers, functions, and duties relating to ATF taxable activities to the newly formed BATF. The background is shown in the Treasury Decision (T.D.) Federal Register entry at 55 FR 47604 is shown on page 111. The page at T.D. ATF-301, 55 FR 47604, Nov. 14, 1990 has several important facts indicated on it. The Summary and Background text gives in a very understandable form, the facts concerning the take-over of tax functions by the BATF in regards to ATF taxable activities. In two places, Administrative Procedure Act and Paperwork Reduction Act, it states the “final rule” status of T.D. ATF-301.

The majority of the regulations that are of concern are located in the Procedures and Administration part 70 of 27 CFR. The page at T.D. ATF-301, 55 FR 47605, Nov. 14, 1990 shows the sections of code in the IRC that are enforceable through regulations in 27 CFR part 70. This page is shown on page 112 of this file

The ATF authority in regards to Title 26 is restricted to those sections concerning the National Firearms Act, sections 5801-5872 with regulations found in 27 CFR Part 479.

The Alcohol and Tobacco Tax and Trade Bureau (TTB) of the Department of the Treasury regulates the alcohol and tobacco industries and Special Occupational Tax and for the collection of Firearms and Ammunition Excise Taxes imposed on manufacturers and importers of these products. In this regard they are responsible for the administration and enforcement of the following laws:

- Internal Revenue Code of 1986, 26 USC (IRC)
- Chapter 32 Sections 4181-4182 (Firearms and Ammunition Excise Taxes)
- Chapter 51 (Distilled Spirits, Wines, and Beer)
- Chapter 52 (Tobacco Products and Cigarette Papers and Tubes),

Steps of the Assessment – Lien - Levy Process

The Assessment – Lien – Levy Process involves the sections listed in the table below, and in the order given. Though other sections may sometimes apply these are the critical sections that are applicable to all. For each one be sure to study the applicable regulations and IRM parts given.

Assessment – Lien – Levy Process

IRC Section	Page
IRC sec. 6020 - Returns prepared for or executed by Secretary	172
IRC sec. 6201 - Assessment authority	180

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IRC sec. 6203 - Method of assessment	182
IRC sec. 6205 - Special rules applicable to certain employment taxes	188
IRC sec. 6301 - Collection authority	189
IRC sec. 6303 - Notice and demand for tax	189
IRC sec. 6321 - Lien for taxes	190
IRC sec. 6323 - Validity and priority against certain persons	194
IRC sec. 6330 - Notice and opportunity for hearing before levy	204
IRC sec. 6331 - Levy and distraint	205
IRC sec. 6332 - Surrender of property subject to levy	212
IRC sec. 6335 - Sale of seized property	217
IRC sec. 6502 - Collection after assessment	218
IRC sec. 6621 - Determination of rate of interest	219
IRC sec. 7321 - Authority to seize property subject to forfeiture	286
IRC sec. 7608 - Authority of internal revenue enforcement officers	300

Title 26 section 6020 - Notice or regulations requiring records, statements, and special returns.

Subsection 6020(a) addresses returns prepared for or executed by Secretary by stating “If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person.

In subsection (b)(1) it states “**If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefore, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise**” It then goes on to state in subsection (b)(2) “**Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.**”

Noting the bolded and underlined text, this section provides two basis for the information:

- If all information is provided to the Secretary, the return prepared will be based on that information.
- If not provided then the return so prepared will be based on the Secretary’s own knowledge and from such information as he can obtain through testimony or otherwise.

It also states that any return prepared by the Secretary will be prima facie good and sufficient for all legal purposes.

Note that subsection (b) uses the vague wording “any return required” without listing them. However, the Internal Revenue Manual (IRM) provides information in this regard. Although the IRM is not law, the Supreme Court has ruled that “Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required”.

“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required. *Service v. Dulles*, 354 U.S. 363, 388 (1957); *Vitarelli v. Seaton*, 359 U.S. 535, 539-540 (1959). The BIA, by its Manual, has declared that all directives that “inform the public of privileges and benefits available” and of “eligibility requirements” are among those to be published. The requirement that, in order to receive general assistance, an Indian must reside directly “on” a reservation is clearly an important substantive policy that fits within this class of directives. Before the BIA may extinguish the entitlement of these otherwise eligible beneficiaries, it must comply, at a minimum, with its own internal procedures.” - [Morton v. Ruiz, 415 U.S. 199, 94 S.Ct. 1055, 39 L.Ed.2d 270 (1974)]

Therefore, the IRM is a valuable tool as it details the IRS procedure to comply with the law and in some instances their means to circumvent the law. Therefore, a look at what the IRM states in regards to IRC section 6020 is in order.

First though, the fact that everyone is not required to file a Form 1040 is made very clear in Prepared Testimony of Commissioner of Internal Revenue, Charles O. Rossotti, before The Senate Finance Committee on Promoted Tax Schemes on April 11, 2002. Some excerpts are as follows. Page 67 of the subject testimony is shown on page 174 :

Enforcement Action Against Non-filers IRS has implemented a multi-functional, comprehensive effort called the National Non-filer Strategy. The overall goal of this strategy is to bring taxpayers back into compliance and keep them there. In addition to nonfilers, the IRS will reach out to individual taxpayers **who are not legally required to file, but are potentially entitled to refunds or credits.**

Notice that he admitted that there are some (the majority) that are not legally required to file, but are potentially entitled to refunds or credits. He then went on to state the following:

On the civil side, we have both the Questionable W-4 processing and Automated Substitute for Return (ASFR) programs. As previously described, each year, approximately 600,000 questionable W-4s (QW4s) are forwarded to the IRS from employers. **A W-4 is considered questionable if the employee claims more than 10 exemptions or claims to be exempt from withholding.** After data is inputted and reviewed, the subsequent cases are forwarded to the Fresno Service Center where the actual leads are worked.

Even the Government Accounting Office in their publication GAO-03-913R Reliability of IRS's Form W-4 Information has stated that there is no legal authority to take the above action. Then, continuing he stated:

For those who refuse to file a return, the Service Center ASFR Unit prepares a substitute return for the individual under the **authority of the IRC 6020 (B)** and issues a Statutory Notice of Deficiency. After the **"dummy"** return is posted, the IRS sends a letter informing the taxpayer of the proposed assessment and of all appeal rights.

So here you have the former commissioner admitting to congress the IRS's method of deceiving the American Citizenry.

Internal Revenue Manual Sections Regarding IRC Section 6020

In the Collection Process (Part 5) of the IRM there are three major sections of the IRM that are of concern regarding IRC section 6020, these are as follows and covered on the pages shown::

IRM Section	Page
AIMS/Processing Handbook at Part 4.19.1	175
General Handbook at Part 5.1	177

We are working on this problem in two ways. First, we are using our authority under IRS sections 6700 and 7408 to investigate promoters and to potentially take injunctive action.

In FY 2000, as part of a special project, we identified 26 potentially abusive web sites. These were subsequently reviewed for Abusive Tax Promoter Examination (IRC Section 6700) and possible injunctive action (IRC Section 7408). Seven of these have been formally opened for IRC 6700 Examinations and possible injunctive action. Based on this promising initiative, we developed and implemented last month new computer methods and techniques to detect abusive tax schemes marketed over the Web.

In addition, we have met with the FTC to explore cooperative efforts in this area. We are actively seeking several abusive tax scheme web sites as test cases for making referrals to FTC and to help establish a referral procedure.

The FTC has regulatory and injunctive authority regarding false advertising in the media. This would include Internet advertising, as well as TV, radio, newspapers, and magazines. In our meetings with FTC, they indicated they would review referrals from the IRS for false or misleading advertising on the Internet. If the referral meets the standards established by FTC, then our FTC contacts indicated a willingness to act against the Internet web site.

There are, however, significant limitations to this approach. Disclosure rules (IRC 6103) prevent us from adding information from our internal databases or adding data obtained from investigative/examination work to enhance the referral. Therefore, the referral would need to stand on the content of the web site alone.

Another weakness in this methodology is that promoters of organized tax evasion schemes often maintain multiple web sites. These sites have different names, but use the same or similar web pages from site to site. An FTC action may close one site or several, but promoters can have new sites set up in anywhere from a few days to only a few hours, oftentimes, with new company names.

Finally, another consideration is that many promoters have become more sophisticated with their web page offerings and do not make blatant offers to establish abusive tax schemes, and some potentially abusive web sites are more political in nature than promotional. This would make them difficult injunctive cases for FTC, due to "Freedom of Speech" considerations.

Enforcement Action Against Non-filers

IRS has implemented a multi-functional, comprehensive effort called the National Non-filer Strategy. The overall goal of this strategy is to bring taxpayers back into compliance and keep them there. In addition to nonfilers, the IRS will reach out to individual taxpayers who are not legally required to file, but are potentially entitled to refunds or credits.

On the civil side, we have both the Questionable W-4 processing and Automated Substitute for Return (ASFR) programs. As previously described, each year, approximately 600,000 questionable W-4s (QW4s) are forwarded to the IRS from employers. A W-4 is considered questionable if the employee claims more than 10 exemptions or claims to be exempt from withholding. After data is inputted and reviewed, the subsequent cases are forwarded to the Fresno Service Center where the actual leads are worked.

For those who refuse to file a return, the Service Center ASFR Unit prepares a substitute return for the individual under the authority of the IRC 6020 (B) and issues a Statutory Notice of Deficiency. After the "dummy" return is posted, the IRS sends a letter informing the taxpayer of the proposed assessment and of all appeal rights.

IRS Criminal Investigation vigorously pursues prosecution and prison sentences for individuals who violate the tax laws, including non-filers. In FY 2001, it had 269 prosecution recommendations, 257 indictments/informations and 219 convictions. There was an 83.9 percent incarceration rate and an average of 43 months to serve in prison.

FALSE REPRESENTATIONS OF FACTS TO CLAIM IMPROPER DEDUCTIONS OR CREDITS

What They Are

Although they are sometimes grouped together, this category of promoted schemes is different from those that depend on false descriptions of the law. These devices, marketed primarily to individuals and small businesses, entice the promoters' targets into misrepresenting the facts so they can claim improper deductions or credits. In this regard, they are potentially more serious because it is less obvious to many people that they are bogus and some may believe that they are less likely to be detected by IRS.

Nonfiled Returns at 4.12

4.12.1.16 (05-03-1999)

TC 150 Posted

1. Do not submit a delinquent or substitute return if TC 150 has posted.
 - A. **A TC 150 posting with no taxability followed by a TC 240 posting for \$500 (W-4 penalty) indicates that the service center has posted a dummy return.**
 - B. If a TC 150 has posted, any adjustments must be made as subsequent adjustments (i.e. TC 300).

Note where it states “**A TC 150 posting with no taxability followed by a TC 240 posting for \$500 (W-4 penalty) indicates that the service center has posted a dummy return.**” This clearly ties the return to being a “dummy” as defined on page 176. Further the TC 240 posting for a QW-4 shows that the IRS has initiated the scheme of fraud as spoken of by former Commissioner Rossotti in sworn testimony to congress (page 173).

Campus Examination Process at Part 4.19.1

In the AIMS/Processing Handbook the following is stated:

4.19.1.9.3.1 (01-01-2006))

Substitute for Return Procedures

1. The examination begins when compliance check reveals filing delinquencies with potential for tax assessment.
2. Cases selected for SFR procedures should be controlled on IDRS with appropriate activity codes
3. Initial case folder will contain:
 - A. Form 3198 stapled to inside left of case file folder.
 - B. Compliance check information on fact of filing stapled to inside left under Form 3198.
 - C. Labels (cross through any labels showing an incorrect address).
 - D. Letters and information to be sent to the taxpayer (copy of 30/90 day letter.)
 - E. Form 5600, Statutory Notice Worksheet, if case is going 90 days (include reports, current ENMOD and AMDIS prints).
 - F. Form 5564, Notice of Deficiency Waiver.
 - G. History sheet of actions.
 - H. File copies of taxpayer letters and correspondence/telephone communications in date order with most current date on top.
 - I. Examination workpapers.
 - J. IDRS transcripts, research, IRP transcripts, any pertinent information.
 - K. Form 6754, Classification Checklist.
 - L. RTVUE, original return, amended return, or photocopy of return. m. Form 5546, Examination Return Charge out, or AMDIS print.
 - M. Current TXMOD or IMFOLT
 - N. AMDISA and ENMOD prints
 - O. **Copy of dummy SFR 1040.** If push code 036 was used to establish TC 150, a dummy 1040 SFR is not required.
4. Substitutes for Returns (SFR) are established as follows:
 - A. Prepare a dummy/SFR for each tax period.
 - B. Use a current year tax form for each dummy/SFR.
 - C. Cross out the tax period and write the SFR tax period in red using YYYYMM format.
 - D. Using the non-filers name from Master File, enter a bracket in front of the last name in red.
 - E. Use the non-filers correct social security number.
 - F. Use either single or married filing separate filing Status for each dummy/SFR. For married filing separate, show the spouses name and SSN (if available). DO NOT use joint filing Status.
 - G. Use the current date as the received date in MMDDYYYY format.
 - H. Code the entity with a "P" code (partial entity) in red above the first name area. No address will be entered on dummy SFRs. (Forms 2363, Master File Entity Change, must be used to update addresses to Master File.)

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- I. Allow exemptions for 65 or over, if applicable.
- J. Enter Return Processing Codes L (dummy return) and K (delinquent return statute cleared) to the right of line 23 on form 1040 in red.
- K. Write "Exam/SFR" across the top margin of the return in red.
- L. Enter Computer Condition Code (CCC) 3 in the filing Status block of the return. This generates a TC 570 to prevent prepaid credits from being refunded erroneously.
5. If push code 036 was used, the TC 150 DLN will establish automatically, and the above steps, in item #4, are not required. Use the following procedures to post an IMF SFR using AM 424 Push Code 036:
 - A. Check master file using INOLES or IMFOLE to verify that the name line is for a period equal to or earlier than the tax period being input and that the name line is for a non-joint filing status
 - B. If all name lines are for a subsequent tax period, prepare Form 2363 to change the name line to the earliest tax period and filing status being established.
 - C. If the name line relating to the year being processed reflects filing status married filing joint, prepare form 2363 to change the name line to married filing separate or single. Make sure the filing status is equal to or prior to the earliest tax period being established.
 - D. If the case is not on AIMS, establish the tax period by using Push Code 036 and CC AM424.
 - E. If case is on AIMS, correct the Push code to 036 via CC AM424.
 - F. There is no "**Dummy SFR**" to submit to Submission Processing when Push code 36 is used, in the top margin of Form 5344, write "Original Return – SFR."
 - G. Place an IMFOLT in the case file in lieu of a tax return and notate "EXAM SFR" across the top margin of the IMFOLT.
6. Issue 30-day letter including report of Individual Income Tax Examination Changes.
7. Complete form 13496 with a live signature or computer facsimile signature when the 30 day letter is sent to the taxpayer. See IRM 20.1.2.1.4
8. Compute proposed tax as single or married filing separate status based on last return taxpayer filed.
9. Prepare Form 3198, Special Handling Notice, to advise AIMS/closing of any changes to the Master File name, address or filing status.
10. Returns submitted must have the taxpayer's signature.
11. All years for the same non-filer are kept together. Hand-carry the returns to the Receipt and Control Unit at the Campus. The Receipt and Control Unit process the returns within six days of receipt (12 days during peak periods) using the correct Document Locator Number (DLN) for dummy/SFRs.

Note that in item 3 (O) it references a "Copy of **dummy SFR 1040**". In the above step-by step instructions in item 4 the process is given for initially creating a "**dummy SFR**".

Note that item 5 step F it states that there is no "**Dummy SFR**" to submit to Submission Processing in regards to an original return. Most important is what is stated in item 10 "Returns submitted must have the taxpayer's signature."

It must also be realized that the word "**dummy**" has a very specific legal meaning. In Black's Law Dictionary, 6th Edition the term "Dummy" is stated as follows:

Dummy, n. One who purchases property and holds legal title for another, usually to conceal the identity of the true owner: **a straw man** (q.v.).

Dummy, adj. **Sham; make-believe, pretended: imitation**. Person who serves in place of another, or who serves until the proper person is named or available to take his place (e.g. dummy corporate directors: dummy owners of real estate).

Note where it states a "straw man" when used as a noun, and when used as an adjective it means "**Sham; make-believe, pretended: imitation**". Therefore, it is not real. Remember the definition of a "straw man" also.

Black's Law Dictionary, 6th Edition defines a straw man as follows:

Straw man or party. A “front”; **a third party who is put up in name only to take part in a transaction.** Nominal party to a transaction; one who acts as an agent for another for the purpose of taking title to real property and executing whatever documents and instruments the principal may direct respecting the property. Person who purchases property for another to conceal identity of real purchaser, **or to accomplish some purpose otherwise not allowed.**

Note the emphasized text, especially where it states “or to accomplish some purpose otherwise not allowed.”

Note the difference concerning a IMF as opposed to a BMF. There is no Return Processing Code "L" (**dummy return**) required in the SFR regarding a BMF. Also note that the forms listed in regards to the BMF are in agreement with those called out in the regulations for IRC section 6011 (see page 167).

General Handbook at Part 5.1

In the IRM General Handbook the following is stated in regards to IRC section 6020:

**5.1.4.12 (04-01-2005)
Prompt Assessments**

1. A prompt assessment is a manually processed assessment of a secured return when collection appears to be at risk and the intention is to proceed with collection action immediately following the period for Notice and Demand.
2. See IRM 5.7.6.4 for prompt assessment procedures for Trust Fund Recovery Penalty cases.
3. **A prompt assessment of employment, excise, and partnership tax returns prepared and signed under authority of IRC 6020(b) may be requested provided that Letter 1085(DO), 30 day letter, Proposed IRC 6020(b) Assessment, or Letter 1616(DO), 30 day Letter, Proposed IRC 6020(b) Assessment (Partnership Return) has been sent to the taxpayer and the appeal period has lapsed.**
4. The initiator must always determine prior to the recommendation:

If the taxpayer is... Then

In bankruptcy prior to initiating a prompt Contact Technical Services assessment	
Quickly placing property beyond the reach of the government	Collection action may be pursued although the 10 day notice and demand period and the 30 day notice of intent to levy has not expired. Refer to Jeopardy Levy Without a Jeopardy Assessment.
An in business pyramiding, taxpayer	Do not do a prompt assessment where the proposed plan of action is to enter into an installment agreement.

5. The initiator will establish and document in the case history a plan of action for ultimate resolution of the balance due. A prompt assessment will not be recommended in the following instances:
 - A. Taxpayer will be granted or already has an existing installment agreement
 - B. Assessment will be reported as currently not collectible
 - C. No distrainable assets
 - D. Pyramiding tax liabilities and no enforcement action is pending.
6. All applicable penalties must be computed by the revenue officer.

Note that it states that a “prompt assessment of employment, excise, and partnership tax returns prepared and signed under authority of IRC 6020(b) may be requested provided that Letter 1085(DO), 30 day letter, Proposed IRC 6020(b) assessment, or Letter 1616(DO), 30 day Letter, Proposed IRC 6020(b) Assessment

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(Partnership Return) has been sent to the taxpayer and the appeal period has lapsed". It thereby ties the need for a prompt assessment to IRC section 6020 and identifies the requirement for 60 and 30 day letters.

5.18.2.1 (10-01-2005)

IRC 6020(b)

1. IRC 6020(b) provides a way to prepare returns and secure assessments from non-filing taxpayers who:
 - Have an open filing requirement
 - Do not file a return as required

5.18.2.2 (05-01-2006)

What is Business Returns IRC 6020(b) Processing

1. Internal Revenue Code 6020(b) is the authority given to the Commissioner of the Internal Revenue Service to prepare and process returns for non-filing business taxpayers.
2. Delegation Order No. 182 (Rev. 7), extends 6020(b) authority to Internal Revenue Agents; Tax Auditors; Revenue Officers, GS-9 and above; Collection Support Function Managers, GS-9 and above; Automated Collection Branch Unit Managers, GS-11 and above; Customer Service Collection Branch Managers, GS-10 and above; and Tax Resolution Representatives, GS-9 and above.

This regards BMFs only.

5.18.2.3 (05-01-2006)

Logistics of 6020(b) Processing

3. Process a return under the provisions of IRC 6020(b) for Business Master File (BMF) returns if:
 - The entity appears to be liable for the return
 - The person required to file the return does not file it
 - Attempts to secure the returns fail
2. The following BMF returns with corresponding Master File Tax (MFT) codes are the returns usually prepared under the provisions of IRC 6020(b):

TAX RETURN	RETURN TITLE	RETURN MFT
Form 720	Quarterly Federal Excise Tax Return	03
Form 940	Employer's Annual Federal Unemployment Tax Return	10
Form 941	Employer's Quarterly Federal Tax Return	01
Form 943	Employer's Annual Return for Agricultural Employees	11
Form 1065	U.S. Partnership Return of Income	06
Form 2290	Federal Use Tax Return on Highway Motor Vehicles	60

3. **Note:**
4. **The A6020(b) process at the Ogden Campus works Forms 941/943/940 for three (3) tax years prior to current year (2002, 2003, 2004 currently; 2003, 2004, 2005 starting in January 2006).**
5. Do **NOT** propose assessments on cases with the following characteristics: **See LEM 5.18.2.1**

Again note the forms for which a SFR can be prepared. In all instances regarding IRC section 6020 one thing has remained constant, that being that the forms so identified are business related and conform to those given in the regulations for IRC 6011(page 167).

Legislative/substantive Regulatory Backing for Title 26 section 6020

This section is supported by regulations having the backing of statute in Title 27 CFR parts 53 and 70. 27 CFR part 53 is Manufacturers excise taxes--firearms and ammunition and part 70 is Procedure and administration. Since IRC section 6020(b) relates to the forms given in the regulations for IRC section 6011 enforcement

belongs to the IRS. Regardless, the regulations that are backed by statute are the only ones that can apply to any U.S. Citizen living and working within the U.S. means that those in 27 CFR are applicable.

Summary of Associated Sections for Title 26 section 6020

In the Section Referred to in Other Sections it states that IRC section 6020 is referred to in sections 6229, 6248, 6501, 6651, 6664 of the IRC. These sections are tabled as follows and have statutory backed regulations as indicated.

Summary of Associated Sections for Title 26 section 6020

Section	Legislative/sub. Regulations
6229 - Period of limitations for making assessments	None
6248 - Period of limitations for making adjustments	None
6501 - Limitations on assessment and collection	27 CFR part 70
6651 - Failure to file tax return or to pay tax	27 CFR parts 24, 25, 70
6664 - Definitions and special rules	None

The 27 CFR parts listed and the enforcement authority for each are listed below:

27 CFR Part:	Subject:	Enforcement:
24	Wine	TTB
25	Beer	TTB
70	Procedure and administration	ATF/TTB

As previously stated since IRC section 6020 involves the forms listed in the regulations for IRC section 6011 enforcement is by the IRS.

Application of IRC section 6020 According to Statutes of Congress

In looking at the Title 26 CFR for IRC section 6020 only one was noted, 301.6020-1 and it was noticed that it has no entry into the Federal Register. However, it was located as called out in 27 CFR parts 53 and 70. These parts are Manufacturers excise taxes--firearms and ammunition and Procedure and administration respectively. 27 CFR part 53 is entered in the Federal Register with final rule status by T.D. ATF-308, 56 FR 303, Jan. 3, 1991. For part 70, it was originally located in part 70.61 by T.D. ATF-251, 52 FR 19314, May 22, 1987 but relocated to part 70.42 by T.D. ATF-301, 55 FR 47604, Nov. 14, 1990. The Treasury Decision (T.D.) Federal Register entry at 55 FR 47604 is shown on page 111.

Title 27 CFR part 70.42 – Returns

Upon looking at this regulation it can be seen that it mirrors IRC section 6020 requirements except as to whom is authorized to make the returns, i.e. **appropriate TTB officers**. The regulations having the authority of statute must be adhered to, and these are located within 27 CFR parts 53 and 70.

Application of IRC section 6020 Unlawfully by IRS

It is in regards to this section that the IRS establishes the base for accomplishing unlawful liens and levies. Through their internal procedures they generate a "dummy substitute for return" (SFR) against the Form 1040A (note that this form is not one authorized via IRC sections 6001 and 6011 and their regulations) and enter it in the Individual Master File (IMF) of the individual(s) concerned. The following apply to the unlawful IRS execution of this section:

- IRC section 6011 regulations authorize SFRs for Forms 940, 941, 943, 720, 2290, CT-1, and 1065. No authority to issue SFR for Form 1040. Refer to page 168. This is as stated in IRM section 5.18.2.3 (page 178)
- "Dummy" legally defined as "Sham; make-believe, pretended: imitation". See page 176,
- Admission to congress that it is a "dummy" return. Refer to page 173,
- That it is a "dummy" is made evident in the IRS's Internal Revenue Manual in IRM 4.19.1.9.3.1 covered on page 175,
- Admitted also in the following IRM sections:
 - 4.12.1.16 (page 175)

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- 4.19.1.9.3.1 (page 175)
- 5.18.2.1 thru 5.18.2.3 (page 178)
- IRC section 6205 shows limitation of IRS authority. See page 188.

Title 26 section 6201 - Assessment authority

The section states very plainly in subsection (a) what the assessment authority extends to by the wording “The Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, **which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:**” It then lists (1) **Taxes shown on return** and (2) **Unpaid taxes payable by stamp**.

Item (3) of subsection (a) is regarding **Erroneous income tax prepayment** in regards to subtitle A. Subsection (d) contains the following “**In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under subpart B or C of part III of subchapter A of chapter 61**”.

Here it is important to note that in subsection (a) it states the authority of Secretary extends to taxes “**which have not been duly paid by stamp** at the time and in the manner provided by law. Such authority shall extend to and include the following:”

- (1) **Taxes shown on return**
- (2) **Unpaid taxes payable by stamp**

Also subsection (d) states “In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under **subpart B or C of part III of subchapter A of chapter 61** by **a third party** and the taxpayer has fully cooperated.”. Subparts B and C of subchapter A of chapter 61 consists of the following sections. Note that in respect to remuneration section 6041A only pertains to the **payments of remuneration for services**, not to the remuneration received for services. Note what the other sections pertain to:

- Subpart B - Information Concerning Transactions with Other Persons
 - Sec. 6041. Information at source
 - Sec. 6041A. **Returns regarding payments of remuneration for services** and direct sales
 - Sec. 6042. Returns regarding payments of dividends and corporate earnings and profits
 - Sec. 6043. Liquidating; etc., transactions
 - Sec. 6044. Returns regarding payments of patronage dividends
 - Sec. 6045. Returns of brokers
 - Sec. 6046. Returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock
 - Sec. 6046A. Returns as to interests in foreign partnerships
 - Sec. 6047. Information relating to certain trusts and annuity plans
 - Sec. 6048. Returns as to certain foreign trusts
 - Sec. 6049. Returns regarding payments of interest
 - Sec. 6050A. Reporting requirements of certain fishing boat operators
 - Sec. 6050B. Returns relating to unemployment compensation
 - Sec. 6050D. Returns relating to energy grants and financing
 - Sec. 6050E. State and local income tax refunds
 - Sec. 6050F. Returns relating to social security benefits
 - Sec. 6050G. Returns relating to certain railroad retirement benefits
 - Sec. 6050H. Returns relating to mortgage interest received in trade or business from individuals
 - Sec. 6050I. Returns relating to cash received in trade or business
 - Sec. 6050J. Returns relating to foreclosures and abandonments of security
 - Sec. 6050K. Returns relating to exchanges of certain partnership interests
 - Sec. 6050L. Returns relating to certain dispositions of donated property

Sec. 6050M. Returns relating to persons receiving contracts from Federal executive agencies

Sec. 6050N. Returns regarding payments of royalties

Subpart C - Information Regarding Wages Paid Employees

Sec. 6051. Receipts for employees

Sec. 6052. Returns regarding payment of wages in the form of group-term life insurance

Sec. 6053. Reporting of tips

Note too that Subpart C - Information Regarding Wages Paid Employees pertains only to those who are **“employees”** within the meaning of the IRC.

Legislative/substantive Regulatory Backing for Title 26 section 6201

As was the case with IRC section 6020 a single entry exists in 26 CFR, located at 301.6201-1. This regulation, like 301.6020-1 has no entry into the Federal Register as a final rule/regulation. However, it was located as called out in 27 CFR part 70 Procedure and administration. Again showing that it is only enforceable through TTB taxable activities. Since they are stamp related, the IRS has responsibility for assessment with the legislative/substantive regulations found in 27 CFR part 70.

Summary of Associated Sections for Title 26 section 6201

In the Section Referred to in Other Sections it states that IRC section 6201 is referred to in sections 73, 6157, 6213, 6311, 6654, and 6655 of the IRC.

These sections are tabled as follows and have statutory backed regulations as indicated.

Summary of Associated Sections for Title 26 section 6201

Section	Legislative/sub. Regulations
73 - Services of child	None
6157 - Payment of Federal unemployment tax on quarterly or other time period basis	26 CFR part 31
6213 - Restrictions applicable to deficiencies; petition to Tax Court	None
6311 - Payment of tax by commercially acceptable means	26 part 301, and 27 parts 19, 24, 25, 53, 70
6654 - Failure by individual to pay estimated income tax	None
6655 - Failure by corporation to pay estimated income tax	None

This section is derived from section 3182 of Revised Statutes of 1874. It can be traced back even further to the Statutes at Large enacted on Dec. 24, 1872. The types of taxes authorized by Congress to be assessed are described in crystal clarity in Statutes at Large enacted on Dec. 24, 1872, chap. 13, sec. 2, vol. 17, page 402 (shown following this paragraph) which describes authorized assessment of taxes by the Secretary and apply **only to tobacco and distilled spirits**. The intent of Congress has not changed, as there has been no amendment to the Statute at Large to date.

Commissioner of internal revenue to make certain assessments, &c., for deficiencies in returns of distilled spirits; 1868, ch. 186, § 20.

SEC. 2. That the commisioner of internal revenue is hereby authorized and required thereafter to make the inquiries, determinations, and assessments of the following taxes, to wit:

For deficiencies imposed by the provisions of section twenty of an act entitled “ An act imposing taxes on distilled spirits and tobacco, and for other purposes,” approved July twentieth, eighteen hundred and sixty-eight, as amended by subsequent acts.

Statutes at Large enacted on Dec. 24, 1872, chap. 13, sec. 2, vol. 17, page 402

Application of IRC section 6201 According to Statutes of Congress

The regulation, as backed by Statute of Congress is located in 27 CFR part 70.71, which is covered in the following paragraph.

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Title 27 CFR part 70.71 – Returns

Note that it is applicable to **stamp related activities**, and enforced by **TTB officers**

Application of IRC section 6201 Unlawfully by IRS

This can be stated very simply – they ignore the fact that the authority is tied to alcohol, tobacco, and firearms or stamp act taxable activities and proceed with only a “dummy” SFR (not real, phony, fake) and without an assessment that meets statutory requirements. These are proven in the section itself as shown on page 180:

Title 26 section 6203 - Method of assessment

Title 26 section 6203 states that **“The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary”** and **“Upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of the assessment.”**

Here note that the liability is to be recorded in the office of the Secretary and **that a copy of the record of the assessment shall be furnished the taxpayer upon request.**

Legislative/substantive Regulatory Backing for Title 26 section 6203

For IRC section 6203 a single entry exists in 26 CFR, located at 301.6203-1. This regulation has no entry into the Federal Register as a final rule/regulation. However, it was located as called out in 27 CFR part 70 Procedure and administration. Again showing that it is only enforceable through ATF taxable activities.

Further, this single interpretive regulation plainly states:

26 CFR §301.6203-1, Method of assessment. ...The amount of the assessment shall, in the case of a tax shown on a return by the taxpayer, **be the amount so shown...**

Meaning that in regards to a filed return **the assessment is the amount shown on the return, therefore no one else can change it.**

Summary of Associated Sections for Title 26 section 6203

IRC section 6203 is associated with the sections shown in the following table, which also gives the location of any legislative or substantive regulations for each.

Summary of Associated Sections for Title 26 section 6203

Section	Legislative/sub. Regulations
6303 - Notice and demand for tax	27 CFR part 70

This section is only enforceable through regulations located in 27 CFR - Alcohol, Tobacco, and Firearms.

Application of IRC section 6203 According to Statutes of Congress

IRC section 6203 is enforceable only through the regulation at 27 CFR part 70.72, covered in the following paragraph.

Title 27 CFR part 70.72 – Method of assessment

Upon examination, this regulation clearly shows who signs it (**appropriate TTB officer**), the information to be shown, and the availability of a copy.

Application of IRC section 6203 Unlawfully by IRS

IRC section 6203 states “The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary. Upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of the assessment.”

26 CFR Sec. 301.6203-1 Method of assessment, details the stringent requirements in regards to an assessment in that the assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide:

- (a) Identification of the taxpayer,
- (b) The character of the liability assessed,
- (c) The taxable period, if applicable, and
- (d) The amount of the assessment.

It further states that the date of the assessment is the date the summary record is signed by an assessment officer.

It also explicitly states “If the taxpayer requests a copy of the record of assessment, he shall be furnished a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable, and the amounts assessed.

However, the IRS uses the “dummy SFR” generated in IRC section 6020 to generate false amounts to be used in generating Notices of Federal Tax Liens. These amounts do not constitute assessments that meet the requirements of IRC section 6203 or regulation at 301.6203-1 (having no legal effect) in that they do not exist as required by regulation.

In this regard, numerous attempts at obtaining copies of the 1040A “dummy return assessments as entered in Individual Master Files have been ignored, delayed under faulted excuses, or attempted to be satisfied by a RACS Report 006 that fails to meet the requirements of 26 CFR section 301.6203-1, or of 27 CFR part 70.72 where authority has been placed by Federal Register entry at T.D. ATF-301, 55 FR 47611, Nov. 14, 1990. Again, by referring to T.D. ATF-301, 55 FR 47605, Nov. 14, 1990 as shown on page 112 of this document you will see 26 USC section 6203 listed under the authority citation for part 70.

That the IRS is well aware that a lawfully completed Summary of Assessment must exist is shown within their Internal Revenue Manual:

3.17.63.14.4 (10-01-2004)

Account 6110 Withholding Tax Assessments—Principal (Nominal Account, CR Normal Balance)

This account is used to summarize the total amounts of assessments of tax class 1 **Principal** as provided by the Internal Revenue Code. The balance of this account represents total tax class 1 **Principal** assessments for the year.

All **principal** assessments must be recorded on Summary Record of Assessments (Assessment Certificate).

The Assessment Certificate is the legal document that permits collection activity.

1. Total tax class 1 assessments for the month will be summarized on computer generated Form 2162 which will become the external subsidiary.

3.17.63.14.5 (10-01-2004)

Account 6111 Withholding Tax Assessments—Penalty (Nominal Account, CR Normal Balance)

This account is used to summarize the total amounts of assessments of tax class 1 **Penalties** as provided by the Internal Revenue Code. The balance of this account represents total tax class 1 **penalty** assessments for the year.

All **penalty** assessments must be recorded on summary Record of Assessments (Assessment Certificate).

The Assessment Certificate is the legal document that permits collection activity.

1. Total tax class 1 assessments for the month will be summarized on computer generated Form 2162 which will become the external subsidiary.

3.17.63.14.6 (10-01-2004)

Account 6112 Withholding Tax Assessments—Interest (Nominal Account, CR Normal Balance)

This account is used to summarize the total amounts of assessments of tax class 1 **Interest** as provided by the Internal Revenue Code. The balance of this account represents total tax class 1 **interest** assessments for the year.

All **interest** assessments must be recorded on Summary Record of Assessments (Assessment Certificate).

The Assessment Certificate is the legal document that permits collection activity.

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1. Total tax class 1 assessments for the month will be summarized on computer generated Form 2162 which will become the external subsidiary.

3.17.63.14.7 (10-01-2004)

Account 6120 Individual Income Tax Assessments—Principal (Nominal Account, CR Normal Balance)

This account is used to summarize the total amounts of assessments of tax class 2 **Principal** as provided by the Internal Revenue Code. The balance of this account represents total tax class 2 **principal** assessments for the year.

All **principal** assessments must be recorded on Summary Record of Assessments (Assessment Certificate).

The Assessment Certificate is the legal document that permits collection activity.

1. Total tax class 2 assessments for the month will be summarized on computer generated Form 2162 which will become the external subsidiary.

3.17.63.14.8 (10-01-2004)

Account 6121 Individual Income Tax Assessments—Penalty (Nominal Account, CR Normal Balance)

This account is used to summarize the total amounts of assessments of tax class 2 **Penalties** as provided by the Internal Revenue Code. The balance of this account represents total tax class 2 **penalty** assessments for the year.

All **penalty** assessments must be recorded on Summary Record of Assessments (Assessment Certificate).

The Assessment Certificate is the legal document that permits collection activity.

1. Total tax class 2 assessments for the month will be summarized on computer generated Form 2162 which will become the external subsidiary.

3.17.63.14.9 (10-01-2004)

Account 6122 Individual Income Tax Assessments—Interest (Nominal Account, CR Normal Balance)

This account is used to summarize the total amounts of assessments of tax class 2 **Interest** as provided by the Internal Revenue Code. The balance of this account represents total tax class 2 interest assessments for the year.

All **interest** assessments must be recorded on Summary Record of Assessments (Assessment Certificate).

The Assessment Certificate is the legal document that permits collection activity.

Total tax class 2 **Assessments** for the month will be summarized on computer generated Form 2162 which will become the external subsidiary.

Note Item 2 in all the above IRM sections: "All principal (or penalty/interest) assessments must be recorded on Summary Record of Assessments (Assessment Certificate). **The Assessment Certificate is the legal document that permits collection activity.**"

Further, within the IRM they openly admit that they will camouflage the fact that they have no valid assessment. This appears in the following IRM parts:

11.3.13.9.4 (01-01-2006)

Requests for 23C Assessment Records

1. To ascertain assessment information, requests may be made for the records used in campus processing of the taxpayer's accounts. These requests may contain language with one or more of the following phrases:
 - A. all my information in system of records 24.030
 - B. my 23C document
 - C. my summary record of assessment
 - D. copies of the Form 4340, *Certificate of Assessments and Payments*, prepared about me
 - E. my section 6203 information
 - F. the Summary Record of Assessment and all supporting documentation
 - G. my summary of account
2. Occasionally, requesters submit FOIA requests for such material to be used in the context of IRS enforcement activities. A response that merely advises the requester that "there is no Form 23C with your name on it" opens the door for the requester to assert that the IRS has not made a valid assessment when challenging a statutory notice of deficiency. Responses to these requests shall provide a brief explanation similar to that in IRM Exhibit 11.3.13-9.

3. To ensure consistency of treatment, and to avoid misinterpretation of the FOIA response, Disclosure personnel shall strictly follow this IRM subsection.
4. Requests of the type listed above that are received in the field offices shall be reviewed and compared to the inventory management system database. If this is the first such request, the field will respond by providing a transcript of the account and written explanation of the information (Document 11734), where applicable.
 - A. Disclosure personnel processing these requests must search both the Master File and the Non-Master File (NMF) for records responsive to the request. NMF records are available through the Automated Non-Master File (ANMF) system. The ANMF database at both the Cincinnati and Philadelphia Campuses shall be researched for each request to ensure that a complete search for all assessments has been conducted.
 - B. The response must clearly explain that the information contained in the transcript meets the legal requirement of IRC 6203 and is the equivalent of what was requested.
5. The requester shall also be informed, either by telephone contact or in the response letter, that if he/she insists on a Form 23C (or other information from the list in (1) above), that the request must be resubmitted to the appropriate campus. The address where the requester should submit the request must be provided.

Note:

Disclosure personnel can use the Document Locator Number (DLN) for the assessment transaction code to provide information regarding which campus would have the responsive records.

6. Field offices that receive subsequent requests for the same type of information (see (1) above) from the same requester, will transfer the request to the appropriate campus. Receipt of the subsequent request will be construed to indicate that the requester is now aware of the nature of the information available and still wants the specific product originally requested (Form 23C, Summary Record of Assessment, RACS-006). Since the requester was originally directed to the campus for such products, the new request to a field office is considered misdirected. Since there may be more than one assessment involved, or more than one tax year involved, it is possible that more than one campus will have to be contacted. Only the appropriate portion of the request should be sent to each campus.

Note:

The Cincinnati Accounting function will house all historical files related to 23C records assessed by functions in the Brookhaven and Memphis Campuses.

7. The transfer procedures shall be followed, and the contacted campus must accept the transfer. See IRM 11.3.13.5.11.
8. When FOIA requests of the above type are received in the campuses, either by transfer or by direct submission from the requester, the Disclosure Office will work the case and provide responsive records in accordance with the procedures listed in IRM Exhibit 11.3.13-8.

Note:

Since 23C and RACS documents are not retrieved by taxpayer name or identifying number, they are not subject to the Privacy Act. Any request for these documents shall be processed under the FOIA and billed in accordance the fee provisions of that statute.

9. If in all contacts with the requester it appears that the requester does not understand the IRS procedures on assessments, Disclosure personnel will provide additional information as suggested in the sample paragraph in IRM Exhibit 11.3.13-9.
10. In all instances, carefully word responses to the requester (either on the telephone or in writing). Even though the Form 23C is rarely used, and there is generally no identifying information on either the signed RACS Automated Summary or the paper Form 23C, Disclosure personnel shall avoid making statements like "there are no records responsive to your request."
11. Disclosure personnel are authorized to request preparation of Form 4340, Certificate of Assessments and Payments by completing Form 4338 (BMF) or Form 4338-A (IMF). Per IRM 21.2.3.4.2.1, *Form 4340, Certificate of Assessments, Payments and Other Specified Matters*, the Form 4338 should be

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submitted to the Compliance and Accounting function in the appropriate Campus. Do not certify Forms 4340 in response to FOIA requests. See IRM 11.3.13.9.28.

Exhibit 11.3.13-8 (01-01-2006)

Procedures for Processing Requests for 23C

REQUEST	HANDLED BY	FIELD OFFICE ACTION*	CAMPUS ACTION	REQUESTER TO BE SUPPLIED WITH THESE DOCUMENTS
All info in my SOR 24.030	Receiving Office	Work Case	Work Case	MFTRA X for available years**
My 23C Document	Campus	Transfer to Appropriate Campus	Work Case	23C, if it exists, with MFTRA X; if not, RACS 006 with MFTRA X**
<u>My Summary Record of Assessment</u>	Campus	Transfer to Appropriate Campus		<u>RACS 006, if it exists, with MFTRA X; if not, 23C</u> **
Form 4340	Receiving Office	Send Form 4338 to Appropriate Campus Accounting Branch	Send Form 4338 to Appropriate Campus Accounting Branch	Form 4340 via MFTRA J**
Section 6203 Information	Campus	Transfer to Appropriate Campus	Work Case	MFTRA with explanation of the information therein**
"All Supporting Documents"	Receiving Office	Work Case	Work Case	Documents that specifically generated the assessment, if they exist, (e.g., underreporter documents, the exam file, etc. used to determine the deficiency.)** The original return should not be requested unless it is part of an administrative file.
Summary of Account	Receiving Office	Work Case	Work Case	MFTRA X for available years**

*** NOTE: In field offices only, the first response in all of the above inquiries will include a transcript, an explanation of the information therein, the language from IRM Exhibit 11.3.13-9, and a statement that the information contained in the transcript meets the legal requirement of IRC 6203 and is the equivalent of what was requested. Inform the requester that if he insists on receiving Form 23C, the request should be resubmitted to the appropriate campus for completion (indicate to the requester the campus where the assessment was made). All subsequent requests from the requester are to be handled as shown above.**

** NMF research must be conducted as stated in IRM 11.3.13.9.4(4). If this research reflects account information, all of the responses addressed above must reflect the NMF data as well as the master file data.

In the above, note the bolded text. IRM Exhibit 11.3.13-9 is shown in the following paragraph and clearly shows their purposeful lie.

In the IRM Exhibit at 11.3.13-9 (01-01-2006) the following is stated regarding response to requests for 23C:

**Exhibit 11.3.13-9 (01-01-2006)
Response to Requests for 23C**

It is unclear to us what records you are seeking. Your request appears to be based on your understanding that a signed assessment record would contain data about your specific and identifiable assessment(s). Such is not the case. During processing at the IRS Campus, Summary Records of Assessment are automated listings of an entire day's or week's total amounts processed. They are listed by date, are signed by an authorized assessment officer, but do not contain data that would identify any individual taxpayer. This procedure is in accordance with Federal regulations and is effective in every IRS Campus. In the rare instances when our automated systems cannot be used (e.g., during power failures or in jeopardy assessments), we do prepare a paper Form 23C, strictly as a backup system. However, even in these instances the Form 23C is a summary of assessment amounts and thus lacks data specific to any particular person.

Therefore, as previously shown the IRM recognizes the need for a proper assessment for any legal action to occur, only to turn around and state that they will not recognize the need. Note the bolded and underlined portions above where they deny the very specific requirements as stated in IRC 6203 and it's regulations. In this regard, they thumb their nose at congress and its statutes.

**11.3.13.9.18 (01-01-2006)
Automated Lien System**

If a request is received for information contained in the Automated Lien System (ALS) database for all liens in any given county or state, **the requester will be contacted and informed that only BMF liens are subject to disclosure from the ALS and information pertaining to individuals is not available. If BMF data is not being sought, the requester shall be informed that the requested information is exempt from disclosure pursuant to FOIA exemptions (b)(6) and (b)(7)(C).**

Note:

This subsection does not apply where a requester is seeking his/her own information in the ALS data base. In response to a request for a taxpayer's own records, conduct a search and process any records located.

If the request is for BMF data, it must be transferred to the Baltimore Disclosure office following the procedures in IRM 11.3.13.5.11. That office will complete processing of the request in accordance with the following procedures.

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A formal request for an estimate of the cost for the ALS extract for the particular state(s) or other geographical area and any other parameters of the search, will be sent to the attention of the Program Analyst for ALS, at S:C:CP:FP:TI.

If the FOIA request contains a commitment to pay, regardless of the cost involved, the extract and the costs involved will be provided to the Disclosure office by the ALS Program Analyst within 1-2 weeks after receipt of the formal written request.

If the FOIA request does not contain a commitment to pay, or the commitment is not sufficient to cover the estimated cost, the cost estimate only, and not the extract itself, will be provided to the Disclosure office within 1-2 weeks after receipt of the formal written request. The extract will be created and provided to the Disclosure office within two weeks of receipt of a formal commitment to pay the estimated cost.

Note:

Disclosure personnel shall follow guidance in IRM 11.3.5 to determine if fees must be prepaid or the requester notified of the cost estimate if it exceeds the agreed amount, prior to release of the extract data.

Title 26 section 6205 - Special rules applicable to certain employment taxes

This section of code is as follows (abbreviated):

Sec. 6205. Special rules applicable to certain employment taxes

(a) Adjustment of tax

(1) **General rule**

If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of wages or compensation, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary may by regulations prescribe.

(2) **United States as employer**

For purposes of this subsection

(3) **Guam or American Samoa as employer**

For purposes of this subsection

(4) **District of Columbia as employer**

For purposes of this subsection

(5) **States and political subdivisions as employer**

For purposes of this subsection

(b) Underpayments

If less than the correct amount of tax imposed by section **3101, 3111, 3201, 3221, or 3402** is paid or deducted with respect to any payment of wages or compensation and the underpayment cannot be adjusted under subsection (a) of this section, the amount of the underpayment shall be assessed and collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary may by regulations prescribe.

Note in subsection (a)(1) that it applies to IRC sections 3101, 3111, 3201, 3221, or 3402. Also note that the same sections are listed in subsection (b). Subsections (a)(2) through (a)(5) clearly show who the “employers” are.

Legislative/substantive Regulatory Backing for Title 26 section 6205

Title 26 section 6205 is enforced by regulations that are backed by statute in 26 CFR part 31. There are two regulations, covered in the following paragraphs.

Title 26 CFR 31.6205-1 Adjustments of underpayments.

When reading this regulation note the references to IRC sections IRC sections 3101, 3111, 3201, 3221, or 3402. Also, note the use of the terms “**employee**” and “**wages**”.

Title 26 CFR 31.6205-2 Adjustments of underpayments of hospital insurance taxes.

Note that this regulation only applies to the **wages of State and local government employees**.

Summary of Associated Sections for Title 26 section 6205

Within IRC section 6205 the sections as shown in the following table are referenced:

Summary of Associated Sections for Title 26 section 6205

Section	Legislative/sub. Regulations
3101 – Rate of Tax	None
3111 – Rate of Tax	None
3201 - Rate of Tax	None
3221 - Rate of Tax	None
3402 - Income tax collected at source	26 CFR part 31

From the above it is evident that IRC section 6205 can only apply to **government employees**.

Application of IRC section 6205 According to Statutes of Congress

In the above paragraphs concerning this section of code it should be noted that it is the “employer” that is responsible for the correction of any deficiency. This is even made more evident by the reference to the Form 941.

Application of IRC section 6205 Unlawfully by IRS

If you will remember, in the paragraph concerning Abuse of Authority on page 164 that it was the private sector employers that have been threatened, coerced, or otherwise convinced into falsely reporting their workers as “employees” when they aren’t within the meaning of the code. Further, they falsely report as “wages” the remuneration paid to their workers when it isn’t by tax code definition.

With that in mind, you should be able to see the connection with IRC section 6205, especially knowing the basis for the definition of “employee” is founded on Title 5 section 5514 (refer to page 163).

Title 26 section 6301 - Collection authority

This section of code simply states “The Secretary shall collect the taxes imposed by the internal revenue laws.”

Legislative/substantive Regulatory Backing for Title 26 section 6301

Title 26 section 6301 is enforceable by regulations backed by statutes in 27 CFR part 70 only. To be more specific in 27 CFR part 70.51 Collection authority.

Application of IRC section 6301 According to Statutes of Congress

According to the only regulation that is backed by statute the collection authority states that **the tax must be collected by appropriate TTB officers**:

Application of IRC section 6301 Unlawfully by IRS

Title 26 section 6301 is enforceable by regulations backed by statutes in 27 CFR part 70 only. Very simply put, they ignore the lack of authority.

Title 26 section 6303 - Notice and demand for tax

This section states **“within 60 days, after the making of an assessment of a tax pursuant to section 6203, give notice to each person liable for the unpaid tax”**. This is the 60-day notice that is required to be given following the assessment made pursuant to IRC section 6203 (refer to page 182)

Legislative/substantive Regulatory Backing for Title 26 section 6303

IRC section 6303 is enforceable through the regulation at 27 CFR part 70.81.

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Summary of Associated Sections for Title 26 section 6303

This section references IRC section 6203 as covered on page 182.

Application of IRC section 6303 According to Statutes of Congress

IRC section 6303 is enforced as given in 27 CFR part 70.81. This part is covered in the following paragraph.

Title 27 CFR part 70.81 – Notice and demand for tax

You will notice that this regulation states “the **appropriate TTB officer** shall, after the making of an assessment of a tax pursuant to Sec. 70.71 of this part, give notice to each person liable for the unpaid tax”. Therefore, it is the appropriate TTB officer that must give the notice.

The reference to Sec. 70.71 relates to the regulation that enforces IRC section 6201 regarding returns and is shown on page 182.

Application of IRC section 6303 Unlawfully by IRS

Again, the IRS completely ignores the lack of authority and issues the notice of demand. There is no legitimate assessment on which to base the 60-day period. Refer to IRC sections 6201 and 6203 on pages 180 and 182 respectively.

Title 26 section 6321 - Lien for taxes

This section applies only to “**any person made liable to pay any tax**”. Since the IRS has stated that their legal right to ask questions is IRC sections 6001, 6011, and 6012(a), it is the taxes given in the regulations for IRC 6001 that this can apply to. It was shown previously in covering that section (refer to page 165) that the taxes are business related. Further, as the lien relies on the assessment, the regulations, being found in 27 CFR removes it from IRS authority unless stamp act activities are involved.

UCC Related

The following appears after the section text, clearly showing that it is activated through the UCC as covered on page 155.

Short Title

Pub. L. 89-719, Sec. 1(a), Nov. 2, 1966, 80 Stat. 1125, provided that: “This Act [enacting sections 3505, 7425, 7426, and 7810 of this title, amending sections 545, 6322 to 6325, 6331, 6332, 6334, 6335, 6337 to 6339, 6342, 6343, 6502, 6503, 6532, 7402, 7403, 7421, 7424, 7505, 7506, and 7809 of this title, sections 1346, 1402, and 2410 of Title 28, Judiciary and Judicial Procedure, and section 270a of former Title 40, Public Buildings, Property, and Works, redesignating section 7425 as 7427 of this title, and enacting provisions set out as notes under sections 6323 and 7424 of this title, and under section 1346 of Title 28] may be cited as the ‘Federal Tax Lien Act of 1966’.”

In the Tax Division Judgment Collection Manual of the Department of Justice the following is stated:

If the taxpayer neglects or refuses to pay the tax after demand, then, pursuant to I.R.C. §§ 6321 and 6322, a federal tax lien comes into existence and attaches to all property and rights to property belonging to the taxpayer. The tax lien dates from the date of assessment, and continues until the tax liability has been satisfied or becomes unenforceable by reason of lapse of time.⁵⁷ The federal tax lien attaches not only to all property or rights to property belonging to the taxpayer on the date the tax lien arose, but also attaches to all after-acquired property or rights to property.

Internal Revenue Manual Sections Regarding IRC Section 6321

In the Collection Process (Part 5) of the IRM there are major sections of the IRM that are of concern regarding IRC section 6321, these are as follows and covered on the pages shown:

IRM Section	Page
Federal Tax Liens at Part 5.12	191
Legal Reference Guide for Revenue Officers at Part 5.17	191

Federal Tax Liens at Part 5.12

5.12.2.1 (05-20-2005)

Purpose and Effect of Filing a Notice of Federal Tax Lien (NFTL).

1. The purpose of filing the NFTL is to protect the Government's right of priority against certain third parties, typically a purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor (For additional information see IRM 5.17.2, the Legal Reference Guide for Federal Tax Liens).

Note:

The NFTL is not a negotiating tool and is to be used only in accordance with IRM 5.17.2 and 5.12.

Legal Reference Guide for Revenue Officers at Part 5.17

5.17.2.2 (10-31-2000)

The General Tax Lien

1. The law generally defines a lien as a charge or encumbrance that one person has on the property of another as security for a debt or obligation. Essentially, this concept can be reduced to a simple metaphor — i.e., a special "sticker" similar to what a moving company puts on the furniture, boxes, and other contents of a house when it takes the owner's property from one place to another. The lien (or "sticker") does not change the ownership or other qualities of the property to which it is affixed; it merely identifies the property as having some kind of claim against it.
2. Liens may be divided into three general categories: common-law liens, consensual liens, and statutory liens. This section deals with the statutory liens provided for by the Internal Revenue Code of 1986. The principal lien considered in this section is the "general" tax lien, **sometimes referred to as the assessment lien**. The general tax lien is provided for by IRC 6321 and is a very broad lien; it generally encompasses the Service's right to use any property of the taxpayer as security for a tax debt.
3. In addition to the general tax lien there are two special liens for estate and gift taxes which arise at the date of death or the date of the gift, respectively. These liens are provided for by IRC 6324. (Special estate tax liens applicable to cases involving a closely held business or farm property are provided for by IRC 6324A and 6324B, respectively. Questions concerning these liens should be referred to counsel).

Here the tax lien is defined. Make note that it is the general tax lien that is provided for by IRC 6321

5.17.2.2.1 (10-31-2000)

When and How the Tax Lien Arises

1. The federal tax lien arises when any "person" liable to pay any federal tax fails to pay the tax after a demand by the Government for payment. IRC 6321. **For federal tax law purposes, a "person" is defined to include individuals, trusts, estates, partnerships, associations, companies or corporations. The lien is effective from the date the Government assesses the tax, even though the notice and demand for payment ordinarily gives the taxpayer an additional 10 days after assessment to pay the tax.** Thus, if the taxpayer neglects or refuses to pay the assessed tax, then the lien is deemed to relate back to the assessment date. I.R.C. 6322. The general tax lien created by the assessment is perfected and choate as of the **date of the assessment**. United States v. Fidelity Philadelphia Trust Company, 459 F. 2d 771 (3rd Cir. 1972).

Notice the definition of person as including individuals, trusts, estates, partnerships, associations, companies or corporations. Note also the reference to 10 days and the assessment requirement.

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Legislative/substantive Regulatory Backing for Title 26 section 6321

This section is only enforceable by regulation in 27 CFR is at 70-141, which will be covered in a following paragraph.

Summary of Associated Sections for Title 26 section 6321

Within IRC section 6321, certain sections of code are given in the cross-references and section referrals that appear at the end. These will be addressed as to applicability in the following table.

Summary of Associated Sections for Title 26 section 6321

Section	Legislative/sub. Regulations
6155 - Payment on notice and demand	27 CFR part 53, 70
6303 - Notice and demand for tax	27 CFR part 70
6320 - Notice and opportunity for hearing upon filing of notice of lien	None
6322 - Period of lien	None
6323 - Validity and priority against certain persons	27 CFR part 70
6325 - Release of lien or discharge of property	26 CFR part 401 27 CFR part 70
6601 - Interest on underpayment, nonpayment, or extensions of time for payment, of tax	27 CFR part 70
6651 - Failure to file tax return or to pay tax	27 CFR part 24, 25, 70
6671 - Rules for application of assessable penalties	27 CFR part 70
7403 - Action to enforce lien or to subject property to payment of tax	27 CFR part 70
Title 29 section 1368 - Lien for liability	29 CFR part 4062, 4068
Title 30 section 934 - Fund" defined; liability of operators to United States for repayments to fund; procedures applicable; rate of interest	20 CFR part 718, 725, 726

As can be seen, the only section in the above table that is driven by regulations in 26 CFR is that for IRC section 6325 - Release of lien or discharge of property. The others are primarily driven by regulations that exist only in 27 CFR, with others in Titles 29 and 30 of little concern for the average citizen. The 27 CFR parts indicated pertain to the following:

<u>27 CFR Part:</u>	<u>Subject:</u>	<u>Authority:</u>
24	Wine	TTB
25	Beer	TTB
70	Procedure and administration	ATF/IRS/TTB

Application of IRC section 6321 According to Statutes of Congress

The Statutes of Congress authorize liens for taxes only through the regulation at 27 CFR part 70.141, covered in the following paragraph.

Title 27 CFR part 70.141 – Lien for taxes.

Upon examination you want to notice where it states “If **any person liable to pay** any tax under provisions of 26 U.S.C. enforced and administered by the Bureau neglects or refuses to pay the same after demand”. Again, think back to what the IRS has stated as being their **legal** right to ask for information. The IRS has stated that their legal right to ask questions is **IRC sections 6001, 6011, and 6012(a)**.

Application of IRC section 6321 Unlawfully by IRS

The IRS, using the dummy SFR created by their actions regarding IRC section 6020 (refer to page 179), and without benefit of any assessment meeting the requirements of law (refer to page 182) generate a Notice of Lien per their Internal Revenue Manual. This section of code and sections 6323, 6330, and 6331 are intertwined and inter-dependent on each other so close attention needs to be made. The best way to show the steps unlawfully made by the IRS is through their own Internal Revenue Manual (IRM). In regards to IRC section 6321 the following appears in IRM 5.12.2.1 as covered on page 191.

1. A Federal Tax Lien (FTL) is created by statute and attaches to a taxpayer's property and rights to property for the amount of the liability. **This is the "statutory" or "silent" FTL.** Requirements for creating a FTL are contained in IRC 6321. The following must happen:
 - A. **An assessment must have been made.**
 - B. **A demand for payment must have been made.**
 - C. **The taxpayer must have neglected or refused to pay within 10 days of notification.**
2. The FTL will continue until the liability is satisfied or becomes unenforceable by lapse of time or a bond is accepted in the amount of the liability.

The first thing to notice is the wording "This is the "statutory" or "silent" FTL". What this means is best shown in Revenue Ruling 2003-108 where the following is stated:

ISSUE

When a **notice of federal tax lien** has not been filed, does actual knowledge of a **statutory tax lien** affect the lien priority of a purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor?

FACTS

Prior to becoming a purchaser, security interest holder, mechanic's lienor, or judgment lien creditor, a third party has actual knowledge of a **statutory tax lien**, with respect to which no **notice of federal tax lien** has been filed.

LAW AND ANALYSIS

Section 6323(a) of the Internal Revenue Code provides that the **statutory tax lien imposed by I.R.C. § 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof has been filed. Section 6323(a) is silent as to the effect of actual knowledge of a statutory tax lien upon this priority when a notice of federal tax lien has not been filed.**

In *United States v. Beaver Run Coal Co.*, 99 F.2d 610 (3d Cir. 1938), the issue was whether a mortgage lien had priority over the Government's statutory tax lien as to particular property in the taxpayer's possession. **The court held that the mortgagee was protected against the statutory tax lien even though the mortgagee had actual knowledge of a possible tax liability because a notice of federal tax lien was not filed.**

In enacting the Federal Tax Lien Act of 1966, Congress had the opportunity to overrule *Beaver Run Coal Co.*, or to **otherwise indicate that actual knowledge of a statutory tax lien is relevant for purposes of section 6323(a), but did not do so.** See *TKB International, Inc. v. United States*, 995 F.2d 1460, 1466 n. 4 (9th Cir. 1993) (noting that Congress in 1954 declined to limit the protections of section 6323(a) to parties without notice or knowledge of the statutory tax lien). Cf. I.R.C. § 6323(b) (actual notice or knowledge of existence of statutory tax lien relevant for certain superpriority provisions).

HOLDING

For purposes of I.R.C. § 6323(a), a purchaser, holder of a security interest, mechanic's lienor or judgment lien creditor is **protected against a statutory tax lien for which a notice of federal tax lien has not been filed notwithstanding actual knowledge of the statutory tax lien.**

Therefore, until the notice of a federal tax lien is **actually filed** the lien notice of IRC section 6321 **does not** secure any property for the government.

Again, note the following three requirements regarding the lien action of IRC 6321:

- A. **An assessment must have been made.**
- B. **A demand for payment must have been made.**

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C. The taxpayer must have neglected or refused to pay within 10 days of notification.

Regarding the assessment it was previously pointed out in IRC section 6203 what the assessment requirements are by regulation (refer to page 182). The demand for payment was covered in the discussion of IRC section 6303 on page 189. Regarding the requirement where the taxpayer must have **neglected or refused to pay within 10 days of notification**, this requirement ties IRC section 6321, 6323, and 6331 actions together as shall be shown.

It is also important to note the references to **statutory tax lien** and **notice of federal tax lien**. Section 6321 creates a statutory tax lien, but can lawfully only do so through regulations that are backed by statute. As shown these regulations only exist in 27 CFR part 70, more specifically 27 CFR part 70.141. The notice of federal tax lien will be addressed in the coverage of IRC sections 6323 and 6331.

Title 26 section 6323 - Validity and priority against certain persons

This is probably the most important section to thoroughly understand regarding the fact that the IRS is without legislative authority to issue Notices of Federal Tax Liens or Levys. So it would be to your benefit to spend some time on this section of code.

In subsection (a) it states "The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien **creditor until notice thereof which meets the requirements of subsection (f)** has been filed by the Secretary". Therefore, this is the creation of the Notice of Federal Tax Lien (NFTL). Remember, the Federal Tax Lien (FTL) is the assessment lien created by IRC section 6321 (refer to page 190, and to IRM 5.12.2.1 on page 191).

Subsection (f)(1)(A) states that it will be filed **under State laws**, or in (f)(1)(B), With clerk of district court In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated one office which meets the requirements of subparagraph (A). In (f)(1)(C) it names the Recorder of Deeds of the District of Columbia if the property subject to the lien is situated in the District of Columbia.

In the very last paragraph it states "**The filing of a notice of lien shall be governed solely by this title and shall not be subject to any other Federal law establishing a place or places for the filing of liens or encumbrances under a national filing system.**"

Of importance is the fact that the filing must be done **according to state laws**. This in itself leads to another means that the government(s) have perpetuated fraud and made it easy for the theft of property. More on this will be given in the paragraph on Application of IRC section 6323 Unlawfully by IRS and State Governments on page 204.

Internal Revenue Manual Sections Regarding IRC Section 6323

In the Collection Process (Part 5) of the IRM there are two major sections of the IRM that are of concern regarding IRC section 6323, these are as follows and covered on the pages shown:

IRM Section	Page
Federal Tax Liens at Part 5.12	194
Legal Reference Guide for Revenue Officers at Part 5.17	199

Federal Tax Liens at Part 5.12

5.12.2.17 (03-01-2004)

Lien Priorities

- 1. The Federal Tax Lien (FTL) is not valid against purchasers, holders of security interests, mechanics lienors, and judgment lien creditors until a Notice of Federal Tax Lien (NFTL) has been filed. The filing of the NFTL notifies creditors that the FTL exists. The FTL becomes valid against those creditors discussed above at the time the NFTL is filed.** Refer to IRC 6323.

Exceptions exist for ten "superpriorities."

- Securities

- B. Motor Vehicles
 - C. Retail purchases
 - D. Casual sales
 - E. Possessory liens
 - F. Real property tax and special assessment liens
 - G. Small repairs and improvements of residential real property.
 - H. Attorney liens
 - I. Certain insurance contracts
 - J. Deposit secured loans
2. These priorities are fully defined in the IRM, 5.17.2, Legal Reference Guide (LRG) for Revenue Officers.
 3. Purchase money security interests and purchase money mortgages have priority over a previously filed NFTL, if protected under local law. See Rev. Rul. 68-57).

Note that it refers to both, a Federal Tax Lien (FTL) and a Notice of Federal Tax Lien (NFTL). It further states that a FTL is not valid against certain items until a NFTL has been filed. It then states that the filing of the NFTL notifies creditors that the FTL exists. The FTL becomes valid against those creditors discussed above at the time the NFTL is filed.

It therefore establishes that the FTL and NFTL are separate entities.

**5.12.2.4.1 (05-20-2005)
Criteria for Filing a NFTL**

1. In general, a NFTL should be filed in the following situations:

If	Then
	you may file a NFTL.

Note:

there is an Unpaid Balance of Assessment (UBA) below \$5,000 and filing the lien will promote payment compliance.	This will also apply to additional assessments on currently open cases and those being reported as currently not collectable. You should take into account if assets are owned or the possibility of future assets being acquired during the collection statute period. In the case of accrual only liens, consider the amount of the accruals. (Accrual liens are discussed further in IRM 5.12.2.6(2).
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If there is a UBA of any amount for an entity and the entity is not adhering to compliance requirements such as federal tax deposits, return filings, etc.	file a NFTL.
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file a NFTL

Note:

the aggregate UBA is \$5,000 or more	Determine the need to file a NFTL when there are additional assessments. Use the transaction code date as the date of assessment for the liability.
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an installment agreement does not meet streamlined, guaranteed, or in-business trust fund express criteria	file a NFTL.
an open account with	file a NFTL.

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an aggregate UBA of \$5,000 or more is being reported as currently not collectible

a case involving both assessed and unassessed periods will be reported currently not collectible

the property is exempt by the Federal Bankruptcy Code or state insolvency proceeding
the taxpayer resides outside the U.S. and has known assets

the NFTL filing may be held up to include both period types on the NFTL.

Note:

You may also choose to file a NFTL on the current assessments and wait for the unassessed periods to be assessed, and then file for those periods as well.

file a NFTL to protect the government's interest.

file a NFTL. Contact requirements are waived.

Note:

Even though there is no mandatory NFTL filing requirement prior to service of a Notice of Levy, before levying the Service should consider, for purposes of lien priority, filing a NFTL.

2. Accrued interest and penalties added to tax should be collected during the limitation period for collecting the tax. Therefore a NFTL may be filed on accruals only modules if all assessed liabilities have been full paid. The limitation period does not apply to bad checks, fraud penalty or certain other penalties that carry a separate collection statute expiration date.
3. Examples of when it is appropriate to file a notice of Federal Tax Lien are listed below:
 - A. After your initial analysis of a law firm with three quarters of Form 941 liabilities, you determine that all notices requesting payment have been sent. You then make a field visit on 4/3/2004 to the taxpayer at the last known address. The office is closed and you leave a 2246 (calling card) with Publication 1 and 594 in a sealed envelope under the door. The calling card instructs the taxpayer to contact you by 4/12/2004. On 4/13/2004 you still do not receive any communication from the taxpayer. In this situation it is appropriate to file the Notice of Federal Tax Lien.
 - B. During a field visit to a self employed taxpayer you request full payment of the tax liability of \$4,000. As part of your compliance check you also inform the taxpayer that they are not current with their estimated tax payments and they must make those payments as well. The taxpayer makes payment for a portion of the tax liability (\$1,000) and tells you they will make their estimated payments in 30 days. In this situation since the taxpayer is not in compliance and has not made full payment of the liability a NFTL may be filed.

Most importantly, remember what is stated in the note prior to item 5: “Even though **there is no mandatory NFTL filing requirement prior to service of a Notice of Levy**, before levying the Service should consider, for purposes of lien priority, filing a NFTL”. In other words, an NFTL is not required to be filed before any levy action can be taken, but that a filing should be considered to establish the priority of the lien over any others that may arise.

5.12.2.6 (02-01-2007) Preparing the NFTL

1. The correct and timely preparation of the NFTL is the responsibility of the person assigned the balance due account.
2. Revenue officers will use ICS to prepare NFTLs for cases in their inventories, except NFTLs with special conditions (see IRM 5.12.2.6.4).
3. Group managers will create modules that require a NFTL for revenue officers on ICS for:
 - A. periods that are not assigned to the revenue officer, or

B. do not exist on ICS.

4. Revenue officers will use ICS to create liens that require expedited processing, i.e., prompt assessments and/or jeopardy or termination situations.

Note:

Functional managers (other than revenue officers) may at their discretion have lower graded employees input NFTLs to the Automated Lien System. The manager is responsible for the accuracy of those documents.

5. NFTLs must show the taxpayer's last known address. Employees will not include SSN's. The word "Local" will be used ONLY if it is part of the street name. "Local" alone is not sufficient for mailing purposes. Further, a city, state and zip code, must be input to the appropriate data fields.
6. Multiple assessments against the same taxpayer may be included on one Form 668(Y)(c)

<p>If</p> <p>there are one or more balance dues with multiple assessments</p> <p>there are multiple assessments on one balance due</p> <p>an unassessed accrued amount remains outstanding and the assessed amount is paid</p>	<p>Then</p> <p>prepare a separate entry in each column for each balance due. The dollar amount for each unpaid balance of assessment will be shown.</p> <p>show the assessment dates and unpaid balance of all unpaid assessments including those penalties which carry a separate collection statute.</p> <p>file a NFTL on the total accrued amount as of the date the NFTL is requested.</p> <p>the NFTL should state the taxpayer's name correctly. Take the actions necessary to correct master file.</p>
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Note:

<p>the taxpayer's name on the balance due is incorrect</p>	<p>There may be instances when the name on the NFTL does not agree with what is on the balance due, e.g., if the statute has been extended on one taxpayer on a joint assessment, only the name of the still liable taxpayer should appear on the NFTL.</p>
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<p>the balance due has the name of a third party, i.e., accountant, attorney, etc., and a NFTL is being filed</p>	<p>ensure that the address on the NFTL is the taxpayer's. A NFTL should never show the name and/or address of a third party or the names of corporate officers. When dealing with "c/o" be sure that the name and address on the NFTL is that of the taxpayer.</p>
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7. Where a partnership is the taxpayer and employment taxes are involved, the NFTL should be prepared showing the words "a partnership " after the partnership name and list the names of known general partners, e.g.,
 - A. XYZ, a partnership
 - B. A, a partner
 - C. B, a partner
 - D. C, a partner

Note:

When a general partner is listed on the NFTL, a copy of L3172 must be provided. See IRM 5.12.1.2.5

8. File a NFTL in the jurisdiction where each general partner resides as well as where the partnership is located. When the place of filing changes, file a separate NFTL, i.e., file two NFTLs if the partnership and one of the general partners lives in a different jurisdiction, etc. Provide multiple address information to CLU, if appropriate, or create the NFTL.

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9. The NFTL should be prepared for a corporation showing the words "a corporation" after the corporate name, e.g., XYZ, Inc., a corporation.
10. **Revenue officers at the GS-9 level and above have the authority to issue Form 668(Y)(c). The employee's name and identification number should be typed in the lower portion of the form and the title inserted in the appropriate block.**
11. **Signatures are not required.** However, documents generated by the ALS have facsimile signatures.
12. Use the period when beginning (07-01-92) rather than the ending date (06-30-93) when preparing a NFTL for a Form 2290, Heavy Highway Vehicle Use Tax Return. This is very important when there is more than one period for a specific TIN. The period beginnings must be used to separate each assessment to ensure that we receive the module satisfaction indicator from the master file when each module is satisfied.

Here note the following:

- **Multiple assessments against the same taxpayer may be included on one Form 668(Y)(c)**
- Revenue officers at the GS-9 level and above have the **authority to sign Form 668(Y)(c)**
- **The employee's name and identification number should be typed in the lower portion of the space for his/her signature and the title inserted in the appropriate block.**

Remember, it is the NFTL being discussed here, not the FTL..

5.12.2.8 (02-01-2007)

Place for Filing of Notice of Federal Tax Lien

1. It is important that Notices of Federal Tax Lien be filed in the proper jurisdiction to protect the governments' interest amongst other creditors. State law dictates the place of filing.
2. Individuals:
 - A. Real Property - file the NFTL in the recorder's office for the county where the real property is located;
 - B. Personal Property (tangible or intangible) - In general, file the NFTL at the recorder's office for the county where the taxpayer resides at the time the NFTL is recorded because that is where the property is deemed to be located.
3. Corporations and Partnerships:
 - A. Personal Property - file the NFTL in the state and county where the principal executive office of the business is located. The principal executive office is deemed to be the residence of the corporation or partnership. Do not confuse the principal executive office with the principal place of business.
 - B. Real Property - file in the recorder's office for the county where the real property is physically located.
4. Clerk of the United States District Court - File with the office clerk if the state has not designated one office within the state that comports with federal law.
5. Recorder of deeds of the District of Columbia - Personal property whether tangible or intangible, is deemed to be located in the District of Columbia if the taxpayer's residence is located there or outside the United States at the time the notice of lien is filed.

Note:

- Exhibit 5.12.2-4, State Filing Locations, gives the filing locations for each state, the District of Columbia and Puerto Rico. Names of recording offices may be different in different states. many states now designate the Secretary of State as the one office for filing notices of lien against personal property of corporations, partnerships, and other entities.
6. A NFTL encumbers motor vehicles, airplanes and vessels in the same manner as other personal property when a NFTL is filed in the recording office designated by state law as the residence of the taxpayer. Do not file Form 668(Y)(c) with Departments of Vehicles, FAA, or the U.S. Coast Guard or similar agencies. (See IRC 6323(f)(5)).
 7. Consult Area Counsel if there is any uncertainty regarding lien filing locations. Also, see IRM 5.17.2, Federal Tax Liens, for additional information.

Here the filing requirements of the NFTL are given. It should be noted that it is in the recording office designated by state law as the residence of the taxpayer.

Legal Reference Guide for Revenue Officers at Part 5.17

5.17.2.3 (10-31-2000)

Filing Notice of the Federal Tax Lien

1. The federal tax lien arises (**and is perfected**) when the Service meets the requirements of IRC 6321, i.e., an **assessment and a notice and demand for payment**. However, the law provides that in order for the federal tax lien to have priority against certain competing lien interests, the Service must file a **Notice of the Federal Tax Lien (NFTL) pursuant to IRC 6323**.
2. **The Service's filing of a NFTL generally requires a supervisor's approval**. This involves reviewing the taxpayer's information, verifying the outstanding liability, and determining that the filing of the notice of lien is appropriate under the circumstances. This determination includes consideration of the value of the assets as it relates to the tax debt due.

Notice in item 1 that the wording "The **federal tax lien** arises (**and is perfected**) when the Service meets the requirements of IRC 6321, i.e., an **assessment** and a **notice and demand for payment**." Appear. Of importance is that they are referencing to a federal tax lien, or FTL. They then go on to state "However, the law provides that in order for the **federal tax lien to have priority against certain competing lien interests**, the Service **must file a Notice of the Federal Tax Lien (NFTL) pursuant to IRC 6323**."

Again this highlights the difference between a NFTL and a FTL. The FTL is required to be "perfected" while the NFTL does not. Black's Law Dictionary defines the term as shown below:

Perfect or perfected. Complete; finished; executed; enforceable; without defect; merchantable; marketable. Brought to a state of perfection. As to *perfect* Equity; Obligation; Ownership; Title; and Usufruct, see those titles.

Note in the definition that denotes something that is complete, finished. In other words an FTL is complete and finished, whereas a NFTL is not as it has not been perfected.

Note also in item 2 that the filing of a NFTL generally requires a supervisor's approval which involves reviewing the taxpayer's information, verifying the outstanding liability, and determining that the filing of the notice of lien is appropriate under the circumstances.

5.17.2.3.1 (10-31-2000)

Purpose and Effect of Filing Notice

1. **The filing of a NFTL is not a step required to give rise to or to perfect the lien. The act of filing protects the Government's right of priority as against certain third parties**, typically a purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor. IRC 6323(a). Generally speaking, unless the Service properly files a notice of its federal tax lien, its assessment lien is not valid against such creditors. The full extent of the priorities between the Service and other lien claimants is discussed in later sections.

Note that a filing of a NFTL **is not a step required to give rise to or to perfect the lien**. In other words a perfected FTL can be filed even though a NFTL has not been filed. It then goes on to state that if a NFTL has not been filed the assessment lien (perfected lien) will not be valid against certain creditors.

5.17.2.3.4 (10-31-2000)

Contents of Notice of Federal Tax Lien

1. The Secretary of Treasury prescribes the form and content of the NFTL and the NFTL is valid notwithstanding any other provisions of law regarding the form or content. IRC 6323(f)(3). The NFTL is valid if it is in a form as would be valid if it were filed with the clerk of the United States District Court. State law may not require that the NFTL be in any particular form or contain any particular items to be recordable. Generally speaking the Service files a NFTL on a Form 668; the form and contents of the NFTL are described in Treas. Reg. 301.6323(f)-1(c).

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Legislative/substantive Regulatory Backing for Title 26 section 6323

Regulations supporting this section that have the backing of law are listed as being in 27CFR parts 70 and 301. However, there is no part 301 in the 27 CFR. Since part 70 is Procedure and Administration and part 301 of the 26 CFR is the same, a look there revealed that there were entries regarding this section. Looking at them they closely stated what was said in the section itself. It is 27 CFR parts 70.143 through 70.148, and 70.232 that are backed by statute and the appropriate ones addressed later beginning on page 202.

Summary of Associated Sections for Title 26 section 6323

The other sections of code associated with IRC section 6323 are listed in the following table, along with their legislative/substantive regulatory backing.

Summary of Associated Sections for Title 26 section 6323

Section	Legislative/sub. Regulations
Title 11 - section 724 - Treatment of certain liens	None
Title 18 - section 3613 - Civil remedies for satisfaction of an unpaid fine	None
NOTE: the following sections are from Title 26:	
4101 - Registration and bond (petroleum Products)	26 CFR part 48
6320 - Notice and opportunity for hearing upon filing of notice of lien	None
6321 - Lien for taxes	27 CFR part 70
6324 - Special liens for estate and gift taxes	None
6325 - Release of lien or discharge of property	26 CFR part 401 27 CFR part 70
6332 - Surrender of property subject to levy	27 CFR part 70
7403 - Action to enforce lien or to subject property to payment of tax	27 CFR part 70
7424 - Intervention	27 CFR part 70
NOTE: the following section is from Title 30:	
934 - ``Fund" defined; liability of operators to United States for repayments to fund; procedures applicable; rate of interest	20 CFR parts 718, 725, 726
NOTE: the following section is from Title 42:	
9607 - Liability	40 CFR part 304

From the above it is made increasingly clear that IRC section 6323 has very limited application. The legislative/substantive regulations having lawful power of execution in regards to taxation are found in 26 CFR - Internal Revenue Code - part 48 - Manufacturers and retailers excise taxes, or 27 CFR - Alcohol, Tobacco Products and Firearms - part 70 - Procedure and administration.

Application of IRC section 6323 According to Statutes of Congress

The regulations having the effect of a Statute are located in 27 CFR part 70. The ones of interest for our purposes are those associated with the various subsections of IRC section 6323 as follows. Interestingly enough, it is the last one listed that really connects the filing of notices to the UCC and reveals how county court clerks are lacking in guidance, therefore readily filing these fraudulent instrument of theft.

Regulation:	Title	Page
70.143	Definitions	201
70.145	Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors - Invalidity of lien without notice	202
70.146	45-day period for making disbursements	202
70.147	Priority of interest and expenses	202
70.148	Place for filing notice; form	
70.232	Protection for commercial transactions financing agreements	

These are covered in the following paragraphs

Title 27 CFR part 70.143 – Definitions.

In this rule subsections (a), (c), (g) are of prime interest because they are referenced to in Title 27 CFR part 70.232. These appear as follows:

(a) Security interest--(1) In general. **The term security interest means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability.** A security interest exists at any time:

(i) If, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien (as provided in paragraph (a)(2) of this section) arising out of an unsecured obligation; and

(ii) To the extent that, at such time, the holder has parted with money or money's worth (as defined in paragraph (a)(3) of this section). For purposes of paragraph (a)(1) of this section, a contract right (as defined in Sec. 70.232(c)(2)(i) of this part) is in existence when the contract is made. An account receivable (as defined in Sec. 70.232(c)(2)(ii) of this part) is in existence when, and to the extent, a right to payment is earned by performance. A security interest must be in existence, within the meaning of paragraph (a) of this section, at the time as of which its priority against a tax lien is determined. For example, to be afforded priority under the provisions of Sec. 70.145(a) of this part, a security interest must be in existence within the meaning of paragraph (a) of this section before a notice of lien is filed.

(2) Protection against a subsequent judgment lien. For purposes of paragraph (a) of this section, a security interest is deemed to be protected against a subsequent judgment lien on:

(i) The date on which all actions required under local law to establish the priority of a security interest against a judgment lien have been taken, or

(ii) If later, the date on which all required actions are deemed effective, under local law, to establish the priority of the security interest against a judgment lien.

For purposes of paragraph (a)(2) of this section, the dates described in paragraphs (a)(2) (i) and (ii) of this section shall be determined without regard to any rule or principle of local law which permits the relation back or the making of any requisite action retroactive to a date earlier than the date on which the action is actually performed. For purposes of paragraph (a) of this section, a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of this section.

(3) Money or money's worth. For purposes of paragraph (a) of this section, the term "money or money's worth" includes money, a security (as defined in paragraph (d) of this section), tangible or intangible property, services, and other consideration reducible to a money value. Money or money's worth also includes any consideration which otherwise would constitute money or money's worth under the preceding sentence which was parted with before the security interest would otherwise exist if, under local law, past consideration is sufficient to support an agreement giving rise to a security interest. A relinquishing or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights is not a consideration in money or money's worth. Nor is love and affection, promise of marriage, or any other consideration not reducible to a money

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value a consideration in money or money's worth.

(4) Holder of a security interest. For purposes of paragraph (a) of this section, the holder of a security interest is the person in whose favor there is a security interest. For provisions relating to the treatment of a purchaser of commercial financing security as a holder of a security interest, see Sec. 70.232(e) of this part.

(g) Judgment lien creditor. **The term judgment lien creditor means a person who has obtained a valid judgment, in a court of record and of competent jurisdiction, for the recovery of specifically designated property or for a certain sum of money. In the case of a judgment for the recovery of a certain sum of money, a judgment lien creditor is a person who has perfected a lien under the judgment on the property involved. A judgment lien is not perfected until the identity of the lienor, the property subject to the lien, and the amount of the lien are established. Accordingly, a judgment lien does not include an attachment or garnishment lien until the lien has ripened into judgment, even though under local law the lien of the judgment relates back to an earlier date.** If recording or docketing is necessary under local law before a judgment becomes effective against third parties acquiring liens on real property, a judgment lien under such local law is not perfected with respect to real property until the time of such recordation or docketing. If, under local law, levy or seizure is necessary before a judgment lien becomes effective against third parties acquiring liens on personal property, then a judgment lien under such local law is not perfected until levy or seizure of the personal property involved. The term "judgment" does not include the determination of a quasi-judicial body or of an individual acting in a quasi-judicial capacity such as the action of State taxing authorities.

Here it is important to notice that it mentions the court ordered judgement and the security interest document. It also refers to 70.148, which is covered below. The IRS must follow this because they are not, excepted from the UCC § 9-402 and must comply with § 9-403, and all other sections of the UCC as dictated by the Pub. Law 89-719.

Title 27 CFR part 70.145 – Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors.

Upon looking at this regulation that it mirrors IRC section 6323(a) thru (c).

Title 27 CFR part 70.146 – 45-day period for making disbursements.

When looking at this regulation notice how it relates to IRC section 6323(d).

Title 27 CFR part 70.147 – Priority of interest and expenses.

By comparing it to IRC section 6323(e) it can be seen that it follows that subsection:

Title 27 CFR part 70.148 – Place for filing notice; form.

Note that subsection (a)(1) gives the place of filing as "**determined under state law**". Also subsection (c)(1) identifies the form as TTB Form 5651.2 - Notice of Federal Tax Lien under Internal Revenue Laws, not the Form 668 as called out in the non-statutory backed regulations in 26 CFR part 301.

In subsection (c)(2) it states that it "must **identify the taxpayer, the tax liability giving rise to the lien, and the date the assessment arose regardless of the method used to file the notice of Federal tax lien.** It also addresses the date of the assessment.

Title 27 CFR part 70.232 Protection for commercial transactions financing agreements.

This regulation is of particular importance. It was included in T.D. ATF-301, 55 FR 47644, Nov. 14, 1990. Since any changes to it are negligible we will go to the present version. In its present form it reads as follows (abbreviated):

Sec. 70.232 Protection for commercial transactions financing agreements.

(a) In general. Even though a notice of a lien imposed by 26 U.S.C. 6321 **is filed in accordance with Sec. 70.148 of this part**, the lien is not valid with respect to a security interest which:

- (1) Comes into existence after the tax lien filing.
- (2) Is in qualified property covered by the terms of a commercial transactions financing agreement entered into before the tax lien filing, and
- (3) Is protected under local law against a judgment lien arising, as of the time of the tax lien filing, out of an unsecured obligation.

See Sec. 70.143 (a) and (e) of this part for definitions of the terms "security interest" and "tax lien filing," respectively. For purposes of this section, **a judgment lien is a lien held by a judgment lien creditor as defined in Sec. 70.143(g) of this part.**

Notice that in subsection (a) direct reference is made to Sec.70.148 (refer to page 202), Sec. 70.143 (a), (e), (e), and (g) which was covered on page 201. There we discovered the following "Here it is important to notice that it mentions the court ordered judgement and the security interest document. It also refers to 70.148. The IRS must follow this because they are not, excepted from the UCC § 9-502 and must comply with § 9-503, and all other sections of the UCC as dictated by the Pub. Law 89-719."

This is the important parts of Title 27 CFR part 70.232 in that they directly tie to the UCC requirements. There are three

Within Article 9 there are three criteria that have to be met when filing a Notice of Lien and/or Levy. If the three criteria are not met, there is a violation of the Statute. These requirements are:

1. There must be a valid UCC-1 Form filed, upon which is shown the alleged debtors signature and the creditors signature. Without these two signatures on the instrument, there is an invalid Notice of Lien filed.
2. There must be a financing statement/security agreement signed by the alleged debtor and the secured party, the IRS agent, as specified in § 9-502 of the UCC. This financing statement is also mentioned in § 9-503 of the UCC. Without this any Notice of Lien and/or Levy, is invalid and without force and effect.
3. There must be a valid Court order, based on a court judgment wherein the alleged debtor has had due process opportunity to contest the alleged debt. Without due process, there is no lawful authority and the Notice of Lien and/or Levy is invalid.

Title 27 CFR part 70.232 confirms the validation that the IRS agent needs in filing a Notice of Lien and/or Levy, in that it mentions two of the criteria, to wit: (i) the Court ordered judgment; (ii) and, the security interest document as it refers to 70.148, 70.143(a), (c) and (g). The IRS must follow this because they are not, excepted from the UCC § 9.402 and must comply with § 9.-403, and all other sections of the UCC as dictated by the Pub. Law 89-719.

The officer recording any Notice of Lien and/or Levy, must require of, regardless whether it is private man, private corporation or any state or federal government agency, as it is mandatory under the UCC as adopted by Congress in 1963, P.L. 88-243 and put under the Federal Tax Lien Act of 1966, to have one of three instruments to validate that the Notice of Lien and/or Levy is not bogus. Without this safeguard the IRS officer can freely, wantonly, and with no regard for the truth create a bogus Notice of Lien and/or Levy with no authorizing documentation, other than his word that a debt is due and owing on a computer generated notice.

This should alert any recorder that the one being subjected to Lien and/or Levy must be a Federal or State employee as listed in 27 CFR Part: 70. One must remember the word taxpayer and person in the legal context of this process **is NOT the "private" man or entity corporation because they are not involved with "trade or business", and are not an "employee as these terms are defined in the taxing statutes.**

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Application of IRC section 6323 Unlawfully by the IRS and State Governments

The states have willingly signed up with the Uniform Federal Lien Registration Act as drafted by the National Conference of Commissioners on Uniform State Laws. This will be covered in the next chapter in greater detail. Within that act, which is not law, section 3 reads as follows:

SECTION 3. [**Execution of Notices and Certificates.**] Certification of notices of liens, certificates, or other notices affecting federal liens by the Secretary of the Treasury of the United States or his delegate, or by any official or entity of the United States responsible for filing or certifying of notice of any other lien, entitles them to be filed and no other attestation, certification, or acknowledgment is necessary.

It should be noted that recommendations and advice from the IRS were sought in the drafting of the act. Since the states have written their code to read the same, or close to the same as this section, they themselves have become a partner with the federal government in theft through fraud.

Note the wording “**Certification of notices of liens, certificates, or other notices affecting federal liens**”. The statement includes “**Certification of notices of liens, certificates, or other notices affecting federal liens**”; not just to the NFTLs alone. Note again that it states, “entitles them to be filed and no other **attestation, certification, or acknowledgment is necessary**”.

This is particularly true since the comment that appears directly beneath the above section of the Uniform Federal Lien Registration Act is not required, and does not appear in the state codes:

Comment

This section addresses only the validity of the filing and not the validity of the lien.

A deeper explanation is given in the following chapter “The State’s Contribution to the Fraud” on page 229

If you remember, IRM 5.17.2.3 covered on page 199 stated “The federal tax lien arises (**and is perfected**) when the Service meets the requirements of IRC 6321, i.e., an assessment and a notice and demand for payment. **However, the law provides that in order for the federal tax lien to have priority against certain competing lien interests, the Service must file a Notice of the Federal Tax Lien (NFTL) pursuant to IRC 6323**”. The state’s agreement, and laws as in agreement with the Uniform Federal Lien Registration Act allows to file a **Notice of the Federal Tax Lien** which as determined in the preceding sections is based only upon the false reporting of “wages” and unlawful requirement of Form W-4s as coerced from private sector employers. Since the state law, in accordance with the Uniform Federal Lien Registration Act, which states “entitles them to be filed and no other **attestation, certification, or acknowledgment is necessary**” then a misreading causes the clerk to file a NFTL as if it were a FTL without the perfection as required for a Federal Tax Lien, leaving the IRS free to perform levy and distraint backed by nothing but Notices of Federal Tax Liens based on “dummy SFR’s” and not backed by assessments.. Theft of the highest order, for it violates the Constitution of the United States, Statutes of Congress, and most of all the Highest Law of all, that of GOD.

Title 26 section 6330 - Notice and opportunity for hearing before levy

Note that in subsection (a)(2)(C) it states that the notice must be “sent by certified or registered mail to the person’s last known address not less than 30 days before the day of the first levy with respect to the amount of the unpaid tax for the taxable period. This is the 30-day notice.

I did not address subsections (b) through (f) for a very simple reason. Who ever heard of a “fair hearing” from the IRS?

Legislative/substantive Regulatory Backing for Title 26 section 6330

There are no regulations having the backing of statute for IRC 6330.

Summary of Associated Sections for Title 26 section 6330

Within IRC section 6330 the sections as shown in the following table are referenced:

Summary of Associated Sections for Title 26 section 6330

Section	Legislative/sub. Regulations
6159 - Agreements for payment of tax liability in installments	27 CFR part 70
6320 - Notice and opportunity for hearing upon filing of notice of lien	None
6331 - Levy and distraint	27 CFR part 70
6502 - Collection after assessment	27 CFR part 70
6531 - Periods of limitation on criminal prosecutions	None
6532 - Periods of limitation on suits	27 CFR part 70
7421 – Prohibition of suits to restrain assessment or collection	None
7443A - Special trial judges	None
7463 - Disputes involving \$50,000 or less	None
7803 - Commissioner of Internal Revenue; other officials	None

From the table it is abundantly clear that use of this section of code is restricted to alcohol, tobacco, and firearm related taxable activities.

Application of IRC section 6330 According to Statutes of Congress

There are no statutes of congress giving this section the force of law. Therefore, its use is governed by other sections having such force. However, the non-statutory regulation at 26 CFR 301.6331-2 restates the intent of the codified section.

Application of IRC section 6330 Unlawfully by IRS

In spite of the fact that a lawful assessment does not exist, the IRS will issue a 30-day letter, such as the CP 90, CP 297, or L-1058 and proceed down their path of fraud.

Title 26 section 6331 - Levy and distraint

Note the first sentence in subsection (a) "If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand". This is the **10-day requirement of notice before levy**.

Next note where it states "**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**". Keep this in mind for it will again be brought up in the paragraph concerning unlawful enforcement of this section.

IRC section 6331(d) restates the requirement for the 30-day notice covered in IRC 6330 on page 204. However, unlike section 6330 section 6331 is backed by statute.

Legislative/substantive Regulatory Backing for Title 26 section 6331

Legislative/substantive regulatory backing for IRC section 6331 exists solely in 27 CFR part 70.

Interpretive Regulations for Title 26 section 6331

A break from the ordinary concentration on legislative or substantive regulations will be made here. A look at 26 CFR 301.6331-1 will show that the interpretive regulation details the "who", "what for", and "by who" associated with the levy or notice thereof..

301.6331-1(a)(1) makes it very clear on what a notice of levy may be issued. A "Notice of Levy" can **only be made on accrued salaries or wages when the "Notice of Levy" is served on the employer of federal or District of Columbia employees. In the case of any other property already possessed by the Secretary the "Notice of Levy" is served on the person who has such property**. This is a proper procedure for the IRS to adopt since section 6331(b) provides for a levy on any other property already possessed.

It is in 301.6331-1(a)(4) that the "who" is plainly stated as follows:

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- Federal employees.
- State and municipal employees
- Seamen, or fishermen
- Noncompetent Indians

Summary of Associated Sections for Title 26 section 6331

Within IRC section 6331 there are numerous sections of code referred to, either in the text of the section or at the end as being referred to or cross referenced. These sections and their regulations are tabled below so as to provide a more in-depth analysis of the regulatory constraints regarding IRC section 6331-1(a)(1):

Summary of Associated Sections for Title 26 section 6331

Section	Legislative/sub. Regulations
72 - Annuities; Certain Proceeds of Endowment and Life Insurance Contracts	26 CFR part 1
3401 - Definitions	26 CFR part 1
6159 - Agreements for payment of tax liability in installments	27 CFR part 70
6330 - Notice And Opportunity For Hearing Before Levy	None
6332 - Surrender of property subject to levy	27 CFR part 70
6334 - Property exempt from levy	27 CFR part 70
6335 - Sale of seized property	27 CFR part 70
6343 - Authority to release levy and return property	26 CFR part 1 27 CFR part 70
6402 - Authority to make credits or refunds	26 CFR parts 1, 301 27 CFR parts 17, 25, 53
6502 - Collection after assessment	27 CFR part 70
6651 - Failure to file tax return or to pay tax	27 CFR parts 24, 25, 70
6656 - Failure to make deposit of taxes	27 CFR parts 25, 70
6672 - Failure to collect and pay over tax, or attempt to evade or defeat tax	27 CFR part 70
6851 - Termination assessments of income tax	26 CFR part 1
6861 - Jeopardy assessments of income, estate, gift, and certain excise taxes	None
6862 - Jeopardy assessment of taxes other than income, estate, gift, and certain excise taxes	27 CFR part 70
7122 - Compromises	27 CFR part 70
7206 - Fraud and false statements	None
7421 - Prohibition of suits to restrain assessment or collection	None
7429 - Review of jeopardy levy or assessment procedures	27 CFR part 70

The following sections in the above table are backed by regulations having statutory power in 26 CFR:

- Section 72 - Annuities; Certain Proceeds of Endowment and Life Insurance Contracts
- Section 3401 – Definitions
- Section 6343 - Authority to release levy and return property
- Section 6402 - Authority to make credits or refunds
- Section 6851 - Termination assessments of income tax

As can be seen, IRC section 72 has very limited application. IRC section 3401 is covered in detail in the chapter on definitions on pages 74 and 91. The fact that IRC sections 6343, 6402, and 6851 are backed by regulations having statutory authority indicates that the IRS has the ability to correct the errors caused by fraudulent application.

All others in the IRC that are listed either lacked regulatory backing by statute, or reliance was on regulations existing solely in 27 CFR. Those in other titles have no bearing on the normal American Citizen.

Application of IRC section 6331 According to Statutes of Congress

IRC section 6331 is enforced through the following sections of 27 CFR:

Title 27 CFR part 70.161 – Place for filing notice; form

Examine this regulation and note that in subsection (a) it states “**within 10 days after notice and demand, the appropriate TTB officer who initiated the assessment may proceed to collect the tax by levy, provided the taxpayer has been furnished the notice described in Sec. 70.162(a) of this part.**” It then goes on to state “**The appropriate ATF officer may also levy upon property with respect to which there is a lien provided by 26 U.S.C. 6321 for the payment of the taxes**”

It also states that .” **Levy may be made by serving a Notice of Levy on any person in possession of, or obligated with respect to, property or rights to property subject to levy, including receivables, bank accounts, evidences of debt, securities, and salaries, wages, commissions, or other compensation**”.

In subsection (a)(4) it covers the certain types of compensation that can be levied upon federal employees as follows:

be made upon the salary or wages of any officer or employee (including members of the Armed Forces), or elected or appointed official, of the United States, the District of Columbia, or any agency or instrumentality of either, by serving a notice of levy on the employer of the delinquent taxpayer.

It then defines what is meant by the term “**employer**”:

As used in this paragraph, the term “**employer**” means:

(A) **The officer or employee of the United States, the District of Columbia, or of the agency or instrumentality of the United States or the District of Columbia, who has control of the payment of the wages,**
or

(B) **Any other officer or employee designated by the head of the branch, department, or agency, or instrumentality of the United States or of the District of Columbia as the party upon whom service of the notice of levy may be made.**

It continues on and states:

(ii) **State and municipal employees.** Salaries, wages, or other compensation of any officer, employee, or elected or appointed official of a State or Territory, or of any agency, instrumentality, or political subdivision thereof, are also subject to levy to enforce collection of any Federal tax.

(iii) **Seamen.** Notwithstanding the provisions of section 12 of the Seamen's Act of 1915 (46 U.S.C. 601), wages of seamen, apprentice seamen, or fishermen employed on fishing vessels are subject to levy. See 26 U.S.C. 6334(c).

(5) **Noncompetent Indians.** Solely for purposes of 26 U.S.C. 6321 and 6331, any interest in restricted land held in trust by the United States for an individual noncompetent Indian (and not for a tribe) shall not be deemed to be property, or a right to property, belonging to such Indian.

It also makes it clear that a **TTB officer** is responsible for enforcement.

Application of IRC section 6331 Unlawfully by IRS

First, remember that IRC 6331(a) stated very plainly whom levy could be made on: “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,**

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by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official.”

To further validate this fact one only needs to look at the Treasury Financial Manual where at Section 4080 the following appears (emphasis added):

Section 4080-Levy for Unpaid Tax Liability

The IRS collects delinquent Federal taxes by levy **on the accrued salary or wages of any officer, employee, or elected official of the United States or the District of Columbia.**

Since the levy is served against the take-home pay of the employee, agencies should not permit employees to increase any voluntary allotment after notice of levy has been received until the tax liability is liquidated or other arrangements satisfactory to the IRS are made.

In the above, one must use the definitions within the taxing statutes. Note that it is in agreement with IRC section 6331(a). Now, in TFM 4080.10 and 4080.20 connect the bolded and underlined portions:

4080.10-Service of Levy

An IRS agent serves notice of levy on wages, salary, and other income of individuals. See TFM subsection 4080.20. The agent serves the notice in person or by mail. Service by mail is limited to the United States, its territories and possessions, and ships at sea. The notice includes the original and four copies. All copies must be signed and dated, and the time of receipt entered on the forms. The employer agency returns the original to the IRS agent and keeps one copy. IRS or the employer agency forwards one copy to the employee.

The person designated under TFM subsection 4080.20 honors all applicable notices of levy, whether served in person or received by mail. The General Accounting Office makes no disallowance nor does it raise charges against any disbursing officer or designated person for complying with notices of levy.

Above, notice who the levy is served to. It references it as being a person designated under TFM subsection 4080.20, which is as follows:

4080.20-Designation of Individuals to Receive Service of Notice of Levy

Each Government agency should designate one or more persons on whom notice of levy for delinquent taxes of the agency's employees may be served. These designees receive written statements from such employees regarding exemptions for dependents as provided for in the IRC.

Therefore, the fact that it is individuals of “government agencies” who are designated to receive the Notices, it is evident that what is stated in IRC section 6331(a) is valid. A further validation of who levy can be made on can be made by looking at the forms involved. These are the following:

- A. Form 668-A(c) - Notice of Levy
- B. Form 668-W(c) - Notice of Levy on Wages, Salary, and Other Income
- C. Form 668-B - Levy

If you will notice, both the Form 668-A and 668-W designates them as “notices” and that’s all they are, notices as the courts have held. They merely notify that a levy action is pending and have no legal effect in implementing a levy in fact. The difference between the 668-A and 668-W is that the 668-A is served to financial institutions, such as banks, credit unions, etc. The 668-W is served to the employers.

Another thing to notice, and the one that really points out who levy can be made on is that if we look at the backs of the Form 668-A and 668-W it will be seen that subsection (a) of IRC 6331 has been omitted. A partial of the back of 668-A shown on page 209, the Form 668-W is similar. Now, looking at the back of the Form 668-B you would notice that subsection (a) of IRC 6331, which is an actual approved levy action and you will see that subsection 6331(a) is shown as illustrated in the partial view shown on page 211.

Another thing to notice is that IRC 6020 and its implementing regulations authorize Substitute for Returns (SFRs) for Forms 940, 941, 943, 720, 2290, CT-1, and 1065 only, not a Form 1040. These are business type forms. Therefore the Form 668-B is not used in regards to individuals. The implementing regulation is 27 CFR part 70.42. IRM References are:

IRM Part:	Page:
4.19.1.9.3.1	175
5.18.2.1 thru 5.18.2.3	178

SEC. 6331. LEVY AND DISTRAINT.

(b) Seizure and Sale of Property.—The term “levy” as used in this title includes the power of distraint and seizure by any means. Except as otherwise provided in subsection (e), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

(c) Successive Seizures.—Whenever any property or right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the United States for which levy is made, the Secretary may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

Form 668-A Back (Partial)

In addition, on the front of the Form 668-B (shown on page 210) there are provisions for concurrence signatures. This is to ensure that the proper steps and safeguards have been taken.

At this point, it is to be remembered that up until this section of code there has been only one filing. That being the Notice of Federal Tax Lien as covered in regards to IRC section 6323 on page 204.

The statement in IRC section 6331(a) states who a levy can be made on and stipulates that a ten-day period must elapse following notice and demand before this levy is made. The 10-day period existing within IRC is required not only by IRC section 6331 and the implementing regulation at 27 CFR part 70.161 that states “(1) In general. If any person liable to pay any tax neglects or refuses to pay the tax within 10 days after notice and demand, the appropriate ATF officer who initiated the assessment may proceed to collect the tax by levy”. Here though the IRS has used the Notice of Federal Tax Lien (NFTL) filed as stated in the coverage of IRC section 6323 to form the basis of their issuance of notices of federal tax liens to financial institutions and private sector employers. This possible due to the wording in the state codes as adopted from the Uniform Federal Lien Registration Act, which was covered on page 157.

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Form **668-B**
(Rev. August 2001)

Department of the Treasury – Internal Revenue Service
Levy

Due from _____ Originating Internal Revenue Territory Office _____

Kind of Tax	Tax Period Ended	Date of Assessment	Taxpayer Identification Number	Unpaid Balance of Assessment	Statutory Additions	Total
				\$	\$	\$
Total amount due						\$

The amounts shown above are now due, owing, and unpaid to the United States from the above taxpayer for internal revenue taxes. Notice and demand have been made for payment. Chapter 64 of the Internal Revenue Code provides a lien for the above tax and statutory additions. Section 6331 of the Code authorizes collection of taxes by levy on all property or rights to property of a taxpayer, except property that is exempt under section 6334.

Therefore, under the provisions of Code section 6331, so much of the property or rights to property, either real or personal, as may be necessary to pay the unpaid balance of assessment shown, with additions provided by law, including fees, costs, and expenses of this levy, are levied on to pay the taxes and additions.

Dated at _____, 20____
(Place) (Date)

Signature of Revenue Officer _____ Telephone number _____ Date _____

Concurrence	Printed name of Group Manager	Signature	Date
	Printed name of Territory Manager	Signature	Date
	Printed name of Area Director, if required	Signature	Date

(Printed name of taxpayer or taxpayer's representative) was asked to be present during inventory.

The above named individual was present at inventory. Yes No

(Signature of Revenue Officer)

Perfect or perfected. Complete; finished; executed; enforceable; without defect; merchantable; marketable. Brought to a state of perfection.

As to *perfect* Equity; Obligation; Ownership; Title; and Usufruct, see those titles.

What they fail to do is to perfect the judgment as required by law. The definition of perfection is defined in Black's Law Dictionary as shown here.

Note that the term means "complete", "finished", etc. Now remembering that the NFTL created per IRS section 6321 was a statutory lien, and never perfected. As such, the unlawful actions of the state governments via the Uniform Federal Lien Registration Act, which was covered on page 157 has allowed them to seize property without perfected judgments.

To wrap it up, "Levy may be made by serving a notice of levy on any person in possession of, or obligation with respect to, property or rights to property subject to levy, including receivables, bank accounts, evidence of debt, securities, and salaries, wages and other compensation." However, this regulation clearly outlines on whom a "notice of levy" may issue: As shown on page 205 in 301.6331-1(a)(4) Certain Types of Compensation; "Levy may be made upon the salary or wages of any officer or employee (including members of the Armed Forces), or elected or appointed official, of the United States, the District of Columbia, or any agency or instrumentality of either, by serving a notice of levy on the employer of the delinquent taxpayer. As used in this subdivision, the term "employer" means (a) the officer or employer or employee of the United States, the District of Columbia, or of the agency or instrumentality of the United States or the District of Columbia, who has control of the payment of the wages, or (b) any other officer or employee designated by the head of the branch, department, agency, or instrumentality of the United States or of the District of

Sec. 6331. Levy and Distraint

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

(b) Seizure and Sale of Property.-The term "levy" as used in this title includes the power of distraint and seizure by any means. Except as otherwise provided in subsection (e), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

(f) Uneconomical Levy.-No levy may be made on any property if the amount of the expenses which the Secretary estimates (at the time of levy) would be incurred by the Secretary with respect to the levy and sale of such property exceeds the fair market value of such property at the time of levy.

Form 668-B Back (Partial)

Columbia as the party upon whom service of the notice of levy may be made. If the head of such branch, department, agency or instrumentality designates an officer or employee other than one who has control of the payment of the wages, as the party upon whom service of the notice of levy may be made, such head shall promptly notify the Commissioner of the name and address of each officer or employee so designated and the scope or extent of his authority as such designee."

This makes it very clear on what and on whom a notice of levy may be issued. A "Notice of Levy" can only be made on accrued salaries or wages when the "Notice of Levy" is served on the employer of federal or District of Columbia employees. In the case of any other property already possessed by the Secretary the "Notice of

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Levy" is served on the person who has such property. This is a proper procedure for the IRS to adopt since section 6331(b) provides for a levy on any other property already possessed, but does not specifically state how much levy is to be carried out. In the case of a seizure, section 6502(b) (refer to page 218) tells us that the levy is made when the "Notice of Seizure" is given. Of vital importance is the attachment or execution under any judicial process that is required by IRC section 6332 (page 212).

This is federal fraud and theft pure and simple.

From all above it is evident that the IRS has misapplied the provisions of IRC section 6331 to finalize its theft of Constitutionally protected property.

Title 26 section 6332 - Surrender of property subject to levy.

This section of code, and its regulations is extremely important. In subsection (a) it details the requirement for any person in possession of property subject to levy to surrender such. The wording is as follows "**Except as otherwise provided in this section, any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary, surrender such property or rights (or discharge such obligation) to the Secretary, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.**"

It then gives special rules for life insurance and endowment contracts, and for banks. Regarding banks it states "Any bank (as defined in section 408(n)) shall surrender (**subject to an attachment or execution under judicial process**) any deposits (**including interest thereon**) in such bank only after 21 days after service of levy."

Emphasis must be placed on the fact that in both of the above, **an attachment or execution under any judicial process** must issue with the levy.), . In G.M. Leasing Corp. v. United States, 429 U.S. 338 (1977), the United States Supreme Court held that a judicial warrant for tax levies is necessary to protect against unjustified intrusions into privacy. The Court further held that forcible entry by IRS officials onto private premises without prior judicial authorization was also an invasion of privacy. There are only a few instances where a notice of levy may be used

This section then goes on in stating the extent of personal liability and penalty for violation. It also states the effect of honoring the levy, and defines "**person** as "**The term ``person,''**" as used in subsection (a), **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 surrender the property or rights to property, or to discharge the obligation.**

Legislative/substantive Regulatory Backing for Title 26 section 6332

Title 26 section 6332 is enforceable by legislative or substantive regulations in 27 CFR part 70.

Summary of Associated Sections for Title 26 section 6332

Within IRC section 6332 there are sections of code referred to, either in the text of the section or at the end as being referred to or cross referenced. These sections and their regulations are tabled below so as to provide a more in-depth analysis of the regulatory constraints regarding IRC section 6332.

Summary of Associated Sections for Title 26 section 6332

Section	Legislative/sub.
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	Regulations
26 USC 6323 - Validity and priority against certain persons	27 CFR parts 70, 301
26 USC 6342 - Application of proceeds of levy	27 CFR part 70
29 USC section 1368 - Lien for liability	29 Parts 4062, 4068
30 USC section 934 - ``Fund" defined; liability of operators to United States for repayments to fund; procedures applicable; rate of interest	20 Parts 718, 725, 726

As can be seen, the only legislative or substantive regulations for Title 26 are located solely in 27 CFR.

Application of IRC section 6332 According to Statutes of Congress

Title 26 section 6332 is enforceable by legislative or substantive regulations in 27 CFR part 70, more specifically in 27 CFR part 70.163 that generally follow what is stated in IRC section 6332. The definition of "person" is stated as **"In addition to the definition given in Sec. 70.11 of this part, the term ``person," as used in 26 U.S.C.A 6332(a) and this section, includes an officer or employee of a corporation or a member or employee of a partnership, who is under a duty to surrender the property or rights to property or to discharge the obligation. In the case of a levy upon the salary or wages of an officer, employee, or elected or appointed official of the United States, the District of Columbia, or any agency or instrumentality of either, the term ``person" includes the officer or employee of the United States, of the District of Columbia, or of such agency or instrumentality who is under a duty to discharge the obligation. As to the officer or employee who is under such duty, see Sec. 70.161(a)(4)(i) of this part.**

Note that it is an appropriate TTB officer that enforces. More importantly note the difference in the definitions of "person" given in subsection (d). Validating, in the case of salary and wages, what was stated regarding IRC section 6331.

Application of IRC section 6332 Unlawfully by IRS

The IRS intentionally and knowingly disregards the requirement

Again, playing on the ignorance of most Americans regarding the difference of meanings assigned certain terms out of their ordinarily understood meanings the IRS improperly applies this statute to commit fraud. The law requires the surrender of "property subject to levy" upon which a levy "has been made." Again, the average person doesn't know exactly what all this means. You now know, from section 6331 that a levy "has been made" when a "Notice of Levy" is given to some other delegate of the Secretary of the Treasury who has such property in his possession (or, in the case of accrued salaries or wages, to the head (or designated payroll agent) of a Federal or District of Columbia agency or instrumentality). Now it becomes clear that this Code section was directed to other Treasury Secretary Delegates or heads of Federal or District of Columbia agencies or instrumentalities who may have possession of property, rights to property, or accrued salaries or wages belonging to the delinquent taxpayer. In addition, the law requires them to surrender such property when the "Notice of Levy" is served on them.

A "Notice of Levy" is not a "levy," you need to get this straight. Congress never authorized such an action and Congress never authorized an agent/officer with such authority over private citizens. The IRS agents/officers have been taking property without authority or judicial process for so long now that, now, nobody questions their actions.

Section 6332(d) also states there are penalties for failure to turn over property after a "**Levy**" has been served. **The Notice of Levy is not the same as a Levy.** In United States law, however, there is no authority for securing or issuing a Notice of Distraint premised on non-filing, bogus filing, or any other act relating to the 1040 return. See United States v. O'Dell, Case No. 10188, Sixth Circuit Court of Appeals, March 10, 1947. In G.M. Leasing Corp. v. United States, 429 U.S. 338 (1977), the United States Supreme Court held that a judicial warrant for tax levies is necessary to protect against unjustified intrusions into privacy. The Court further held that forcible entry by IRS officials onto private premises without prior judicial authorization was also an invasion of privacy. There are only a few instances where a notice of levy may be used. Treasury Regulation 301.6331-1(a)(1), which states:

"Levy may be made by serving a **notice of levy** on any person in possession of, or obligation with respect to, property or rights to property subject to levy, including receivables, bank

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accounts, evidence of debt, securities, and salaries, wages and other compensation." However, this regulation clearly outlines on whom a "**notice of levy**" may issue which states: 301.6331-1(a)(4) Certain Types of Compensation (refer to page 205 **Levy** may be made upon the salary or wages of any officer or employee (including members of the Armed Forces), or elected or appointed official, of the United States, the District of Columbia, or any agency or instrumentality of either, by serving a notice of levy on the employer of the delinquent taxpayer. As used in this subdivision, the term "employer" means (a) the officer or employer or employee of the United States, the District of Columbia, or of the agency or instrumentality of the United States or the District of Columbia, who has control of the payment of the wages, or (b) any other officer or employee designated by the head of the branch, department, agency, or instrumentality of the United States or of the District of Columbia as the party upon whom service of the notice of levy may be made. If the head of such branch, department, agency or instrumentality designates an officer or employee other than one who has control of the payment of the wages, as the party upon whom service of the notice of levy may be made, such head shall promptly notify the Commissioner of the name and address of each officer or employee so designated and the scope or extent of his authority as such designee."

This makes it very clear on what and on whom a **notice of levy** may be issued. A "**Notice of Levy**" can only be made on accrued salaries or wages when the "**Notice of Levy**" is served on the employer of federal or District of Columbia employees. In the case of any other property already possessed by the Secretary the "Notice of Levy" is served on the person who has such property. This is a proper procedure for the IRS to adopt since section 6331(b) provides for a levy on any other property already possessed, but does not specifically state how much levy is to be carried out

In most cases the person is in possession of a "**notice of levy**" not a "**levy**." You now know that this penalty would only apply if you have "property subject to levy" and you fail to surrender it upon demand by the Secretary. This was all discussed earlier and, unless you're a person having such property in your possession or control, this penalty cannot apply. There are no penalties for asking questions. The IRS agent will get upset and probably threaten you, but this is their normal procedure. Please note that there would be penalties if you do not comply with a lawful levy that is issued by an authorized agent/officer.

Of course, the IRS likes to intimidate people into turning property over to them by serving "**Notices of Levy**" on them; as if this "makes" a **levy** and as if the person must surrender to the IRS any property he has belonging to the alleged delinquent taxpayer. This is not the case, but, as long as enough people fall to this fear tactic, the IRS is going to continue using this ploy since it is far less expensive and far more efficient than having to go to court.

So the question comes down to this: What to do if you are ever served with a "**Notice of Levy**?" Ask questions. We need not be intimidated by the IRS, even though you will be. Further, if you ask questions, you will no doubt be audited and harassed. This is the intimidation you, and all of us, face. When will we stand up for what is right? In addition, if the government wants to compel you to surrender any property belonging to the delinquent taxpayer, then go to court and get an order just like any other garnishment proceedings.

A person may think they can avoid being sued by complying with a "Notice of Levy" and turning over the property to the IRS. It is true that you would avoid being sued by the Department of Justice, but you would then expose yourself to **being sued by the person whose property you turned over. His cause of action would be against the person taking the property since they turned the property over without a court order, without his consent or permission, and without being required to surrender the property under any statute.** He would have a cause of action against the IRS for acting outside their congressionally mandated authority and against you for turning over to the IRS without judicial process.

No protection is offered by section 6332(e) where it states "Effect of honoring levy--**Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary, surrenders such property or rights to property (or discharges such obligation) to the Secretary (or who pays a liability under subsection(d)(1)) shall be discharged from any obligation or liability to the delinquent taxpayer and**

any other person with respect to such property or rights to property arising from such surrender or payment.

This section relies on 6331, and both sections require a **levy** on property, not a **notice of levy**. Because there is no judicial process and no levy has been made, the person taking property based on a "Notice of Levy" is not relieved from liability to the person owning the **property. This section is what is referred to as the immunity section for turning over property. In addition, it would provide immunity if the person followed the law, but did he? Did he receive a levy or a notice of levy? Lease note the title of this sub-section; it reads "effect of honoring levy." It does not say "effect of honoring a notice of levy."**

The IRS will attempt to make you believe they have the authority pursuant to section 6331, however, the Federal Register proves them wrong. The Parallel Table of Authorities and Rules reads as follows: "Entries in the table are taken directly from the rule making authority citation provided by Federal agencies in their regulations." Regulations are binding on the agency, not on you. As a matter of law this section is to enforce taxes in CFR 27 Part 70.

27 CFR Part 70 is exclusively for the enforcement of Alcohol, Tobacco and Firearms*. Unless you are providing services or are involved in this type of activity, the taking of money on a Notice of Levy is simply theft. I must again insist that you carefully read IRC sections 7321 (refer to page 286) and 7608 (refer to page 300) to determine if the person issuing the "**notice of levy**" or "**levy**" is authorized to perform such an act against a private citizen.

Title 26 section 6334 - Property exempt from levy

In this section note where it states " A principal residence shall not be exempt from levy if a judge or magistrate of a **district court of the United States** approves (in writing) the levy of such residence." It then goes on to state in (B) "The **district courts of the United States shall have exclusive jurisdiction to approve a levy under subparagraph (A).** Subparagraph (A) involves Residences in small deficiency cases (\$5,000 or less). What is significant here is that it is a **district court of the United States**, not a **United States District Court** that has the authority, therefore the plaintiff must be the United States of America (refer to Special Note on page 247).

Legislative/substantive Regulatory Backing for Title 26 section 6334

Legislative/substantive regulatory backing for IRC section 6331 exists solely in 27 CFR part 70.

However, the interpretive regulation at 26 CFR 301.6334-1 bears a look due to a change brought about by TD 9189 as entered in the Federal Register at Volume 70, Number 43, pages 10885-10886. Subsection (d) of 26 CFR 301.6334 was changed to read as follows:

(d) Levy allowed on principal residence. **The Service will seek approval, in writing, by a judge or magistrate of a district court of the United States prior to levy of property that is owned by the taxpayer and used as the principal residence of the taxpayer, the taxpayer's spouse, the taxpayer's former spouse, or the taxpayer's minor child.**

Notice that it states a judge or magistrate must approve any levy on the principal residence of the taxpayer. This pertains to a levy on real property only, not personal property. The legislative or substantive regulation that deals with this requirement is located at 27 CFR part 70.241 covered on page 216. Again, note that it is a **district court of the United States**, not a **United States District Court** that has the authority, therefore the plaintiff must be the United States of America (refer to Special Note on page 247).

Summary of Associated Sections for Title 26 section 6334

Within IRC section 6334 there are numerous sections of code referred to, either in the text of the section or at the end as being referred to or cross referenced. These sections and their legislative/substantive regulations are tabled below so as to provide a more in-depth analysis of the regulatory constraints regarding IRC section 6334.

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Summary of Associated Sections for Title 26 section 6334

Section	Legislative/sub. Regulations
121 - Exclusion of gain from sale of principal residence	26 CFR part 301
151 - Allowance of deductions for personal exemptions	None
6305 - Collection of certain liability	None
6323 - Validity and priority against certain persons	27 CFR part 70, 301
6331 – Levy and Distraint	27 CFR part 70

From the above, IRC sections 121 and 151 lack backing by statute unless you have income. IRC sections 6323 and 6331 have legislative or substantive regulations located solely within 27 CFR – Alcohol, Tobacco, and Firearms.

Application of IRC section 6334 According to Statutes of Congress

IRC section 6334 is enforced through sections 70.241 through 245 of 27 CFR. These are as given in the following paragraphs. It should be noted that these regulations are found in Title 27--Alcohol, Tobacco Products and Firearms, Chapter I--Alcohol and Tobacco Tax and Trade Bureau, Department of The Treasury, Part 70 Procedure and Administration, Subpart D **Collection of Excise and Special (Occupational) Tax**. Note the emphasized text for that is exactly what the income tax is.

Title 27 CFR part 70.241 – Property exempt from levy.

When looking at this regulation note where it states in subsection (a)(13) that “**Principal residence exempt in absence of certain approval or jeopardy. Except to the extent provided in Sec. 70.166 of this part, the principal residence of the taxpayer (within the meaning of 26 U.S.C. 1034) is exempt from levy.**” Section 70.166 and ” 26 U.S.C. 1034 have both been repealed. Also note that the enforcement is by a **TTB officer**.

Title 27 CFR part 70.242 – Wages, salary and other income

This regulation addresses wages, salary, and other income that can be levied. In subsection (a) it lists the following references:

- Section 70.243 of this part describes the sum that will be exempt from levy for each of the taxpayer's payroll periods.
- Payroll periods are described in Sec. 70.244
- Section 70.245 of this part describes the manner in which the taxpayer is to claim any dependent exemptions and the manner in which the employer is to compute the exempt amount and pay the balance to the appropriate TTB officer.

These sections are covered in following paragraphs. Note also that the amounts are to be paid to the **appropriate TTB officer**.

Title 27 CFR part 70.243 – Exempt amount

This regulation is regarding exempt amounts from levy and is enforced by a **TTB officer**.

Title 27 CFR part 70.244 – Payroll period

This regulation regarding payroll period duplicates what is stated in IRC section 6334.

Title 27 CFR part 70.245 – Computation of exempt amount and payment of amounts not exempt from levy to the appropriate TTB officer

This regulation is enforced by an “**appropriate TTB officer**”.

Application of IRC section 6334 Unlawfully by IRS

The IRS, lacking any authority by legislative/substantiated regulations proceeds as if they did. Since legislative/substantiated regulations exist at 27 CFR parts 70.241 through 70.245, and that it has been decided by the Supreme Court that the Secretary cannot, by interpretive regulations add anything that is not in the statute(s) it is plain that they lack authority.

Title 26 section 6335 - Sale of seized property.

This section covers the sale of seized property. It states that the owner will be given notice in writing by the Secretary and spells out the method of delivery in regards to seizure, and notice of sale. In subsection (d) it states **“The time of sale shall not be less than 10 days nor more than 40 days from the time of giving public notice under subsection (b). The place of sale shall be within the county in which the property is seized, except by special order of the Secretary.”**

Legislative/substantive Regulatory Backing for Title 26 section 6335

Legislative/substantive regulatory backing for IRC section 6335 exists solely in 27 CFR part 70.

Summary of Associated Sections for Title 26 section 6335

Within IRC section 6335 there are sections of code referred to, either in the text of the section or at the end as being referred to or cross referenced. These sections and their regulations are tabled below so as to provide a more in-depth analysis of the regulatory constraints regarding IRC section 6335.

Summary of Associated Sections for Title 26 section 6335

Section	Legislative/sub. Regulations
6331- Levy and distraint	27 cfr Part 70
6337 - Redemption of property	27 cfr Part 70
6338 - Certificate of sale; deed of real property	27 cfr Part 70
6339 - Legal effect of certificate of sale of personal property and deed of real property	27 cfr Part 70
6340 - Records of sale	27 cfr Part 70
6343 - Authority to release levy and return property	27 cfr Part 70
6502 - Collection after assessment	27 cfr Part 70
7426 - Civil actions by persons other than taxpayers	27 cfr Part 70

Therefore, the regulations for enforcement are located only in 27 cfr Part 70.

Application of IRC section 6335 According to Statutes of Congress

IRC section 6335 is enforced through section 70.181 of 27 CFR. This is shown in the following paragraph. It should be noted that this regulation are found in Title 27--Alcohol, Tobacco Products and Firearms, Chapter I--Alcohol and Tobacco Tax and Trade Bureau, Department of The Treasury, Part 70 Procedure and Administration, Subpart D **Collection of Excise and Special (Occupational) Tax**. Note the emphasized text for that is exactly what the authority to enforce extends to.

§ 70.181 Disposition of seized property.

Examination of this regulation will show that a **TTB officer** is responsible for enforcement.

Application of IRC section 6335 Unlawfully by IRS

The Internal Revenue Code, at § 6335(a), defines the "notice" instrument by use -- **notice is to be served to whomever seizure has been executed against after the seizure is effected**. In short, the notice merely conveys information, **it is not cause for action**. The term "notice" is clarified by definition in Black's Law Dictionary, 6th Edition, and other law dictionaries. Use of the "notice of levy" instrument to effect seizure is prima facie evidence of fraud by design.

Proper use of the "notice" process, administrative garnishment, et al, is specifically set out in 5 USC § 5514 (page 163), as being applicable exclusively to officers, agents and employees of agencies of the United States (26 USC § 3401(c)). Even then, however, the process must comply with provisions of 31 USC § 3530(d), and standards set forth in §§ 3711 & 3716-17. In accordance with provisions of 26 CFR, Part 601.401, Subpart D, (refer to page 107) the employer, meaning the United States agency the employee is employed by, is responsible for promulgating regulations and carrying out garnishment.

Even if IRS was the agency responsible for collecting from an "employee," due process would still be required, as noted above, so authority to collect would ensue only after securing a court order from a court of competent

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jurisdiction, which in the several States would mean a judicial court of the State. In United States law, however, there is no authority for securing or issuing a Notice of Distraint premised on non-filing, bogus filing, or any other act relating to the 1040 return. See *United States v. O'Dell*, Case No. 10188, Sixth Circuit Court of Appeals, March 10, 1947. In *G.M. Leasing Corp. v. United States*, 429 U.S. 338 (1977), the United States Supreme Court held that a judicial warrant for tax levies is necessary to protect against unjustified intrusions into privacy. The Court further held that forcible entry by IRS officials onto private premises without prior judicial authorization was also an invasion of privacy. There are only a few instances where a notice of levy may be used. Treasury Regulation 301.6331-1(a)(1), (refer to page 205 which states:

"Levy may be made by serving a notice of levy on any person in possession of, or obligation with respect to, property or rights to property subject to levy, including receivables, bank accounts, evidence of debt, securities, and salaries, wages and other compensation." However, this regulation clearly outlines on whom a "notice of levy" may issue which states: 301.6331-1(a)(4) (refer to page 205) Certain Types of Compensation; "**Levy may be made upon the salary or wages of any officer or employee (including members of the Armed Forces), or elected or appointed official, of the United States, the District of Columbia, or any agency or instrumentality** of either, by serving a notice of levy on the employer of the delinquent taxpayer. As used in this subdivision, **the term "employer" means (a) the officer or employer or employee of the United States, the District of Columbia, or of the agency or instrumentality of the United States or the District of Columbia, who has control of the payment of the wages,** or (b) any other officer or employee designated by the head of the branch, department, agency, or instrumentality of the United States or of the District of Columbia as the party upon whom service of the notice of levy may be made. If the head of such branch, department, agency or instrumentality designates an officer or employee other than one who has control of the payment of the wages, as the party upon whom service of the notice of levy may be made, such head shall promptly notify the Commissioner of the name and address of each officer or employee so designated and the scope or extent of his authority as such designee."

Use of the "notice of levy" instrument to effect seizure is prima facie evidence of fraud by design.

The IRS, lacking any authority by legislative/substantiated regulations proceeds as if they did. Since legislative/substantiated regulations exist only at 27 CFR parts 70.181 and that it has been decided by the Supreme Court that the Secretary cannot, by interpretive regulations add anything that is not in the statute(s) it is plain that they lack authority.

Title 26 section 6502 - Sale of seized property.

In subsection (a) this section states "Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by **levy or by a proceeding in court**, but only if the levy is made or the proceeding begun--

- (1) within 10 years after the assessment of the tax, or
- (2) if--
 - (A) there is an installment agreement between the taxpayer and the Secretary, prior to the date which is 90 days after the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer at the time the installment agreement was entered into; or
 - (B) there is a release of levy under section 6343 after such 10-year period, prior to the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer before such release.

In (b) it states the date when levy is considered made as "**The date on which a levy on property or rights to property is made shall be the date on which the notice of seizure provided in section 6335(a) is given.**

Legislative/substantive Regulatory Backing for Title 26 section 6502

Legislative/substantive regulatory backing for IRC section 6331 exists solely in 27 CFR part 70.

Summary of Associated Sections for Title 26 section 6502

Within IRC section 6502 there are numerous sections of code referred to, either in the text of the section or at the end as being referred to or cross referenced. These sections and their regulations are tabled below so as to provide a more in-depth analysis of the regulatory constraints regarding IRC section 6502.

Summary of Associated Sections for Title 26 section 6502

Section	Legislative/sub. Regulations
302 - Distributions in redemption of stock	None
4961 - Abatement of second tier taxes where there is correction	None
6013 - Joint returns of income tax by husband and wife	None
6015 - Relief from joint and several liability on joint return	None
6103 - Confidentiality and disclosure of returns and return information	20 parts 26 part 301 42 part 401
6255 - Definitions and special rules	None
6330 - Notice and opportunity for hearing before levy	None
6331 - Levy and distraint	27 part 70
6503 - Suspension of running of period of limitation	27 part 70
6672 - Failure to collect and pay over tax, or attempt to evade or defeat tax	27 part 70
6694 - Understatement of taxpayer's liability by income tax return preparer	None
6703 - Rules applicable to penalties under sections 6700, 6701, and 6702	None

As can be seen, the only rule in 26 CFR is the one pertaining to 6103 - Confidentiality and disclosure of returns and return information.

Application of IRC section 6502 According to Statutes of Congress

IRC section 6335 is enforced through section 70.224 of 27 CFR. This is shown in the following paragraph. It should be noted that this regulation are found in Title 27--Alcohol, Tobacco Products and Firearms, Chapter I--Alcohol and Tobacco Tax and Trade Bureau, Department of The Treasury, Part 70 Procedure and Administration, Subpart D **Collection of Excise and Special (Occupational) Tax**.

§ 70.224 Collection after assessment.

This regulation mirrors the requirements of IRC section 6502.

Application of IRC section 6502 Unlawfully by IRS

The IRS, lacking any authority by legislative/substantiated regulations proceeds as if they did. Since legislative/substantiated regulations exist at 27 CFR part 70.224, and that it has been decided by the Supreme Court that the Secretary cannot, by interpretive regulations add anything that is not in the statute(s) it is plain that they lack authority.

Title 26 section 6621 - Determination of rate of interest

This section addresses the determination of rate of interest.

Legislative/substantive Regulatory Backing for Title 26 section 6621

Legislative/substantive regulatory backing for IRC section 6621 exists solely in 27 CFR part s 46, and 70.

Summary of Associated Sections for Title 26 section 6621

Within IRC section 6621 there are numerous sections of code referred to, either in the text of the section or at the end as being referred to or cross referenced. These sections and their regulations are tabled below so as to provide a more in-depth analysis of the regulatory constraints regarding IRC section 6621.

Since Title 10 is Armed Forces, Title 14 is Coast Guard, Title 15 is Commerce and Trade, Title 19 is Customs Duties, Title 29 is Labor, Title 30 is Mineral Lands and Mining, and Title 41 is Public Contracts those sections as referred to in IRC 6621 will not be listed.

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Title 28 is Judiciary and Judicial Procedure, and Title 42 is The Public Health and Welfare

Summary of Associated Sections for Title 26 section 6621

Section	Legislative/sub. Regulations
42 - Low-income housing credit	26 parts 1, 301
45D - Electricity produced from certain renewable resources	26 part 1
148 - Arbitrage	26 part 1
412 - Minimum funding standards	None
453A - Special rules for nondealers	26 part 1
460 - Special rules for long-term contracts	26 parts 1, 301
664 - Charitable remainder trusts	26 part 1
668 - Interest charge on accumulation distributions from foreign trusts	None
852 - Taxation of regulated investment companies and their shareholders	26 part 1
1258 - Recharacterization of gain from certain financial transactions	None
1291 - Interest on tax deferral	26 part 1
2057 - Family-owned business interests	None
6325 - Release of lien or discharge of property	26 part 401 27 part 70
6332 - Surrender of property subject to levy	27 part 70
6343 - Authority to release levy and return property	26 part 301 27 part 70
6427 - Fuels not used for taxable purposes	26 part 48
6601 - Interest on underpayment, nonpayment, or extensions of time for payment, of tax	27 part 46
6602 - Interest on erroneous refund recoverable by suit	None
6611 - Interest on overpayments	27 part 70
6654 - Failure by individual to pay estimated income tax	None
6655 - Failure by corporation to pay estimated income tax	None
7426 - Civil actions by persons other than taxpayers	27 cfr Part 70
5 USC 5596 - Back pay due to unjustified personnel action	None
28 USC 1961 - Interest	None
28 USC 2411 - Interest	None
28 USC 2644 - Interest	None
42 USC 7413 – Federal Enforcement	40 parts 22, 61
42 USC 7511d - Enforcement for Severe and Extreme ozone nonattainment areas for failure to attain	None
42 USC 7524 – Civil Penalties	40 Parts 22, 79, 89—92, 94
42 USC 7661a – Permit programs	40 Parts 64, 68

As can be seen, those that are falsely used by the IRS are enforceable only by regulations in 27 CFR.

Application of IRC section 6621 According to Statutes of Congress

Unless those sections associated with 26 CFR parts 1, 301 and 401 apply to your case they have no bearing. Of interest is the fact that IRC section 6325 - Release of lien or discharge of property is appropriate in all cases, not just 27 CFR. The same holds true for IRC section 6343 - Authority to release levy and return property.

IRC section 6621 is enforced through regulations in parts 46, and 70 of 27 CFR. Since part 46 pertains to Miscellaneous regulations relating to tobacco products and cigarette papers and tubes we will ignore it. This leaves 27 CFR part 70.93

This is shown in the following paragraph. It should be noted that this regulation is found in Title 27--Alcohol, Tobacco Products and Firearms, Chapter I--Alcohol and Tobacco Tax and Trade Bureau, Department of The Treasury, Part 70 Procedure and Administration, Subpart D **Collection of Excise and Special (Occupational) Tax**. Note the emphasized text for that is exactly what the authority extends to.

§ 70.93 Interest rate.

This regulation follows IRC section 6621 but is **TTB officer** enforceable only.

Application of IRC section 6621 Unlawfully by IRS

The IRS, lacking any authority by legislative/substantiated regulations proceeds as if they did. Since legislative/substantiated regulations exist at 27 CFR part 70.93 and that it has been decided by the Supreme Court that the Secretary cannot, by interpretive regulations add anything that is not in the statute(s) it is plain that they lack authority.

Summary of Assessment-Lien-Levy Process Abuses

To begin, this assessment-lien-levy process could not even occur except for the misapplication of IRC sections 3121, 3401, and 3402, as covered on page 164, which in turn leads to the forced violations of IRC sections 6001, 6011, and 6012. The latter are covered in detail in the paragraph Abuse of Authority on page 164.

With that said, the assessment-lien-levy abuses will be stepped through:

- 1) **IRC section 6020** is used by the IRS to initiate the abuse. By using the “wages” as wrongfully reported by coerced and threatened private sector employers to generate a “dummy substitute for return” (SFR) and enter it in the Individual Master File (IMF) of the individual(s) concerned. That it is a “dummy” is made evident in the IRS’s Internal Revenue Manual in IRM 4.19.1.9.3.1 covered on page 175 where the process for the IMF only indicates “dummy” and not the BMF.

It is also evident, by the wordings in IRC sections 6001, 6011, and 6020(b) that the returns authorized to be made by the secretary are those as listed in the regulations for IRC section 6011 as covered on page 168. This is also shown in the IRM at 5.18.2.3 - Logistics of 6020(b) Processing (refer to page 178

- 2) **IRC section 6201** is enforceable through regulations having the backing of statute that are located solely in 27 CFR - Alcohol, Tobacco, and Firearms part 70 – Procedure and Administration. The IRS simply ignores this fact, and that IRC section 6201 addresses stamp-act related activities
- 3) **IRC section 6203** pertains to assessment, who makes and signs the summary record of assessment, and what it contains. The IRS uses the falsely reported “wages”, as addressed in step 1 above. To generate false amounts for the “dummy SFRs” and input them into the Automated Information Management System (AIMS). These assessments do not meet the requirements of IRC section 6203 or regulation at 301.6203-1 (having no legal effect) in that they do not exist as required by regulation. Again, this section is supported solely by legislative/substantive regulations found in 27 CFR - Alcohol, Tobacco, and Firearms part 70 – Procedure and Administration. That the IRS is well aware that a That the IRS is well aware that a lawfully completed summary of assessment must exist is shown within their Internal Revenue Manual at the following:

15)

- a) - Account 6110 Withholding Tax Assessments—Principal (refer to page 183)
- b) - Account 6111 Withholding Tax Assessments—Penalty (refer to page 183)
- c) - Account 6112 Withholding Tax Assessments—Interest (refer to page 183)
- d) - Account 6120 Individual Income Tax Assessments—Principal (refer to page 184)
- e) - Account 6121 Individual Income Tax Assessments—Penalty (refer to page 184)

Item 2 in all the above IRM sections state “All principal (or penalty/interest) assessments must be recorded on Summary Record of Assessments (Assessment Certificate). **The Assessment Certificate is the legal document that permits collection activity**. Therefore, collection cannot lawfully be made without the summary record of assessment.

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- 4) [IRC section 6205](#) concerns certain employment taxes. The IRS uses the figures based on the coerced false reporting of private sector employers as covered in the paragraph Abuse of Authority on page 164. They have no lawful figures as pertains to an American Citizen working within the U.S. and employed in the private sector on which to base any claim. Further, the legislative/substantive regulations as backed by statute are only located within 26 CFR part 31. By looking at 26 CFR 31.6205-1 and 31.6205-2 it is very clear that this section applies only to “employers” and “employees” as defined within the IRC
- 16)
- 5) [IRC section 6301](#) Collection authority is enforceable by regulations backed by statutes in 27 CFR part 70 only. To be more specific in 27 CFR part **70.51** Collection authority. Therefore, enforcement is only lawful in regards to Alcohol, Tobacco, and Firearms or Stamp Act related activities.
- 6) [IRC section 6303](#) - Notice and demand for tax pertains to the requirement for a 60-day notice after the making of an assessment. The IRS has no lawful assessment to serve as a base point for this section as shown in the previously listed sections. Further, legislative/substantive regulations backed by statute are located solely within 27 CFR part **70**, Procedure and Administration. Therefore, enforcement is only lawful in regards to Alcohol, Tobacco, and Firearms or Stamp Act related activities.
- 17)
- 7) [IRC section 6321](#) - Lien for taxes. The IRS, using the dummy SFR created by their actions regarding IRC section 6020 (refer to page 179), and without benefit of any assessment meeting the requirements of law (refer to page 182) generate a Notice of Lien per their Internal Revenue Manual. This section of code and sections 6323, 6330, and 6331 are intertwined and inter-dependent on each other. IRM 5.12.2.1 (refer to page 191) states that “A Federal Tax Lien (FTL) is created by statute and attaches to a taxpayer's property and rights to property for the amount of the liability. **This is the "statutory" or "silent" FTL** It then lists the three requirements for creation of a Federal Tax Lien (FTL) as being that an assessment must have been made, a demand for payment made, and a refusal to pay within 10 days must have occurred.
- 18)
- The meaning of "statutory" or "silent" FTL” is given in Revenue Ruling 2003-108 as covered on page 193. Section 6321 creates a statutory tax lien, but can lawfully only do so through regulations that are backed by statute. As shown these regulations only exist in 27 CFR part 70, more specifically 27 CFR part 70.141
- 8) [IRC section 6323](#) - Validity and priority against certain persons. Here the states have joined the federal government in the perpetuation of the theft of government. They have willingly signed up with the Uniform Federal Lien Registration Act as drafted by the National Conference of Commissioners on Uniform State Laws. In doing so they have allowed the federal government to file Notices of Federal Tax Liens without the necessity of any **attestation, certification, or acknowledgment**. Perfection is required before the Federal Tax Lien (FTL as opposed to an NFTL) can have any legal effect. This means that the IRS in fact never perfects the lien, which is required before property can lawfully be seized.
- 9) [IRC section 6330](#) - Notice and opportunity for hearing before levy. In spite of the fact that a lawful assessment does not exist, the IRS will issue a 30-day letter, such as the CP 90, CP 297, or L-1058 and proceed down their path of fraud.

There are no statutes of congress giving this section the force of law. Therefore, its use is governed by other sections having such force. However, the interpretive regulation at 26 CFR 301.6330-1 restates the intent of the codified section.
- 10) [IRC section 6331](#) – Levy and Dstraint. Subsection (a) states very clearly whom levy can be made on as **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**”. This is also shown in the Treasury Financial Manual at Section 4080 (refer to page 208) with the employer being shown and referred to in the Treasury Financial Manual at 4080.10 and 4080.20 (refer to pages 208 and 208). The lack of reference to IRC section 6331(a) on the back of the notices pertaining to notices of federal

tax levy are a clear indication of an intentional hiding of whom a levy may be served against. The subsection is shown on the back of an actual levy form (668-B).

Based on nothing more than a filed Notice of Federal Tax Lien and with no valid assessment the IRS unlawfully sends Notices of Federal Tax Levies to the financial institutes and private sector employers and thereby commit unconstitutional theft. The definition of perfection is defined in Black's Law Dictionary and states that the term means "complete", "finished", etc.

- 11) [IRC section 6332](#) - Surrender of property subject to levy in very clear words states the requirement for **an attachment or execution under judicial process**, which again is totally ignored by the IRS.
- 12) [IRC section 6335](#) – The Internal Revenue Code, at § 6335(a), defines the "notice" instrument by use -- **notice is to be served to whomever seizure has been executed against after the seizure is effected**. In short, the notice merely conveys information, **it is not cause for action**. The term "notice" is clarified by definition in Black's Law Dictionary, 6th Edition, and other law dictionaries. Use of the "notice of levy" instrument to effect seizure is prima facie evidence of fraud by design

Proper use of the "notice" process, administrative garnishment, et al, is specifically set out in 5 USC § 5514 (page 163), as being applicable exclusively to officers, agents and employees of agencies of the United States (26 USC § 3401(c)). Even then, however, the process must comply with provisions of 31 USC § 3530(d), and standards set forth in §§ 3711 & 3716-17. In accordance with provisions of 26 CFR, Part 601.401, Subpart D, (refer to page 107) the employer, meaning the United States agency the employee is employed by, is responsible for promulgating regulations and carrying out garnishment.

Even if IRS was the agency responsible for collecting from an "employee," due process would still be required, as noted above, so authority to collect would ensue only after securing a court order from a court of competent jurisdiction, which in the several States would mean a judicial court of the State. In United States law, however, there is no authority for securing or issuing a Notice of Distraint premised on non-filing, bogus filing, or any other act relating to the 1040 return. See United States v. O'Dell, Case No. 10188, Sixth Circuit Court of Appeals, March 10, 1947. In G.M. Leasing Corp. v. United States, 429 U.S. 338 (1977), the United States Supreme Court held that a judicial warrant for tax levies is necessary to protect against unjustified intrusions into privacy. The Court further held that forcible entry by IRS officials onto private premises without prior judicial authorization was also an invasion of privacy. There are only a few instances where a notice of levy may be used. Treasury Regulation 301.6331-1(a)(1), (refer to page 205 which states:

"Levy may be made by serving a notice of levy on any person in possession of, or obligation with respect to, property or rights to property subject to levy, including receivables, bank accounts, evidence of debt, securities, and salaries, wages and other compensation." However, this regulation clearly outlines on whom a "notice of levy" may issue which states: 301.6331-1(a)(4) (refer to page 205) Certain Types of Compensation; "**Levy may be made upon the salary or wages of any officer or employee (including members of the Armed Forces), or elected or appointed official, of the United States, the District of Columbia, or any agency or instrumentality of either, by serving a notice of levy on the employer of the delinquent taxpayer. As used in this subdivision, the term "employer" means (a) the officer or employer or employee of the United States, the District of Columbia, or of the agency or instrumentality of the United States or the District of Columbia, who has control of the payment of the wages, or (b) any other officer or employee designated by the head of the branch, department, agency, or instrumentality of the United States or of the District of Columbia as the party upon whom service of the notice of levy may be made. If the head of such branch, department, agency or instrumentality designates an officer or employee other than one who has control of the payment of the wages, as the party upon whom service of the notice of levy may be made, such head shall promptly notify the Commissioner of the name and address of each officer or employee so designated and the scope or extent of his authority as such designee.**"

Use of the "notice of levy" instrument to effect seizure is prima facie evidence of fraud by design.

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The IRS, lacking any authority by legislative/substantiated regulations proceeds as if they did. Since legislative/substantiated regulations exist only at 27 CFR parts 70.181 and that it has been decided by the Supreme Court that the Secretary cannot, by interpretive regulations add anything that is not in the statute(s) it is plain that they lack authority.

- 13) [IRC section 6502](#) - The IRS, lacking any authority by legislative/substantiated regulations proceeds as if they did. Since legislative/substantiated regulations exist at 27 CFR part 70.224, and that it has been decided by the Supreme Court that the Secretary cannot, by interpretive regulations add anything that is not in the statute(s) it is plain that they lack authority.
- 14) [IRC section 6621](#) - The IRS, lacking any authority by legislative/substantiated regulations proceeds as if they did. Since legislative/substantiated regulations exist at 27 CFR part 70.93 and that it has been decided by the Supreme Court that the Secretary cannot, by interpretive regulations add anything that is not in the statute(s) it is plain that they lack authority.
- 15) [IRC section 7321](#) - This section, which is without any legislative or substantive regulatory support reads as follows “Any property subject to forfeiture to the United States under any provision of this title may be seized by the Secretary.
- 16) [IRC section 7608](#) - Note that subsection (a) pertains to **Enforcement of subtitle E and other laws pertaining to liquor, tobacco, and firearms**. It should be further noted that only in this subsection are agents given the authority to **carry firearms** (subsection (a)(1)). This authority **does not** exist in subsection (b), which covers Enforcement of laws relating to internal revenue **other than subtitle E**. That the IRS is aware of this is evident in their Internal Revenue Manual at 5.10.2.16.4 Armed Escorts where the following is stated in item 1: **Revenue officers are not authorized to carry or use firearms or secondary weapons, such as mace or pepper spray**, and must be alert to situations that may call for the use of an armed escort. Employee safety is the number one priority. A revenue officer should request an armed escort when there is a fear or concern for personal safety or if circumstances develop where the employee feels threatened.”

This section of the IRC is abused at will by IRS agents as they perform searches and seizures **while carrying firearms** as based on unlawful summons signed by venal judges. The only final rule authorities giving legal effect are found in 27 CFR parts 70 (Procedure and administration), and 46 (Miscellaneous regulations relating to tobacco products and cigarette papers and tubes). Concentration will be on 27 CFR part 70, subpart 33 as part 46 applies only to those involved in such activities.

In 70.33, Authority of enforcement officers of the Bureau it gives the following authorities to “Any special agent or other officer of the Bureau by whatever term designated, whom the Director or a special agent in charge charges with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of the laws administered and enforced by the Bureau pertaining to commodities subject to regulation by the Bureau, the enforcement of which such officers are responsible, may perform the following functions

- a) Carry firearms;
- b) Execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under authority of the United States;
- c) In respect to the performance of such duty, make arrests without warrant for any offense against the United States committed in his presence, or for any felony cognizable under the laws of the United States if he has reasonable grounds to believe that the person to be arrested has committed, or is committing, such felony; and
- d) In respect to the performance of such duty, make seizures of property subject to forfeiture to the United States.

The wording “to “Any special agent or other officer of the Bureau” and “enforcing any of the criminal, seizure, or forfeiture provisions of the laws administered and enforced by the Bureau” limit activity to the TTB not the IRS. 27 CFR part 70.33 was entered in the Federal Register at T.D. ATF-6, 38 FR

32445, Nov. 26, 1973 as part 70.28 (refer to page 301). In 1978, it was amended by T.D. ATF-48, 43 FR 13531, Mar. 31, 1978 and redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990.

Summary of Fraudulent Tax Law Application

To summarize the fraudulent actions of the federal government, we will summarize key sections of code and their regulations. If you notice, I said “federal government”, not just the IRS. The IRS can only perpetuate this fraud with the backing of the administrative, legislative, and judicial branches of government.

To think that they steal from the people only to gain money is thinking in error. It has been shown and proven in the past that when the fraud is lessened the federal government actually gains money. In other words, the theft is actually from the base of the economy. The true intent is complete dominance and control over your lives, it is to instill socialism, I refer you to Chapter 1 on page 1.

On page 226 the “Key Code Section Authorities obtained from the Cornell University Law School are shown. The Parallel Table of Authorities can be obtained from <http://www.gpoaccess.gov/cfr/about.html>.

The part played by the state governments is included in the next chapter, “The State’s Contribution to the Fraud”.

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CFR parts for which 26 USC 6020 provides authority

This is a list of parts within the Code of Federal Regulations for which this US Code section provides rulemaking authority. It is taken from the Parallel Table of Authorities provided by NARA at http://www.access.gpo.gov/nara/cfr/parallel/parallel_table.html. It is not guaranteed to be accurate or up-to-date, though we do refresh the database weekly. More limitations on accuracy are described at the NARA site.

- ◆ [27 CFR 53](#)
- ◆ [27 CFR 70](#)

CFR parts for which 26 USC 6203 provides authority

This is a list of parts within the Code of Federal Regulations for which this US Code section provides rulemaking authority. It is taken from the Parallel Table of Authorities provided by NARA at http://www.access.gpo.gov/nara/cfr/parallel/parallel_table.html. It is not guaranteed to be accurate or up-to-date, though we do refresh the database weekly. More limitations on accuracy are described at the NARA site.

- ◆ [27 CFR 70](#)

CFR parts for which 26 USC 6303 provides authority

This is a list of parts within the Code of Federal Regulations for which this US Code section provides rulemaking authority. It is taken from the Parallel Table of Authorities provided by NARA at http://www.access.gpo.gov/nara/cfr/parallel/parallel_table.html. It is not guaranteed to be accurate or up-to-date, though we do refresh the database weekly. More limitations on accuracy are described at the NARA site.

- ◆ [27 CFR 53](#)
- ◆ [27 CFR 70](#)

CFR parts for which 26 USC 6321 provides authority

This is a list of parts within the Code of Federal Regulations for which this US Code section provides rulemaking authority. It is taken from the Parallel Table of Authorities provided by NARA at http://www.access.gpo.gov/nara/cfr/parallel/parallel_table.html. It is not guaranteed to be accurate or up-to-date, though we do refresh the database weekly. More limitations on accuracy are described at the NARA site.

- ◆ [27 CFR 70](#)

CFR parts for which 26 USC 6323 provides authority

This is a list of parts within the Code of Federal Regulations for which this US Code section provides rulemaking authority. It is taken from the Parallel Table of Authorities provided by NARA at http://www.access.gpo.gov/nara/cfr/parallel/parallel_table.html. It is not guaranteed to be accurate or up-to-date, though we do refresh the database weekly. More limitations on accuracy are described at the NARA site.

- ◆ [27 CFR 301](#)
- ◆ [27 CFR 70](#)

CFR parts for which 26 USC 6331 provides authority

This is a list of parts within the Code of Federal Regulations for which this US Code section provides rulemaking authority. It is taken from the Parallel Table of Authorities provided by NARA at http://www.access.gpo.gov/nara/cfr/parallel/parallel_table.html. It is not guaranteed to be accurate or up-to-date, though we do refresh the database weekly. More limitations on accuracy are described at the NARA site.

- ◆ [27 CFR 70](#)

CFR parts for which 26 USC 7601 provides authority

This is a list of parts within the Code of Federal Regulations for which this US Code section provides rulemaking authority. It is taken from the Parallel Table of Authorities provided by NARA at http://www.access.gpo.gov/nara/cfr/parallel/parallel_table.html. It is not guaranteed to be accurate or up-to-date, though we do refresh the database weekly. More limitations on accuracy are described at the NARA site.

- 27 CFR 70

CFR parts for which 26 USC 7602 provides authority

This is a list of parts within the Code of Federal Regulations for which this US Code section provides rulemaking authority. It is taken from the Parallel Table of Authorities provided by NARA at http://www.access.gpo.gov/nara/cfr/parallel/parallel_table.html. It is not guaranteed to be accurate or up-to-date, though we do refresh the database weekly. More limitations on accuracy are described at the NARA site.

- 27 CFR 29
- 27 CFR 296
- 27 CFR 46
- 27 CFR 70

CFR parts for which 26 USC 7603 provides authority

This is a list of parts within the Code of Federal Regulations for which this US Code section provides rulemaking authority. It is taken from the Parallel Table of Authorities provided by NARA at http://www.access.gpo.gov/nara/cfr/parallel/parallel_table.html. It is not guaranteed to be accurate or up-to-date, though we do refresh the database weekly. More limitations on accuracy are described at the NARA site.

- 27 CFR 70

CFR parts for which 26 USC 7604 provides authority

This is a list of parts within the Code of Federal Regulations for which this US Code section provides rulemaking authority. It is taken from the Parallel Table of Authorities provided by NARA at http://www.access.gpo.gov/nara/cfr/parallel/parallel_table.html. It is not guaranteed to be accurate or up-to-date, though we do refresh the database weekly. More limitations on accuracy are described at the NARA site.

- 27 CFR 70

CFR parts for which 26 USC 7605 provides authority

This is a list of parts within the Code of Federal Regulations for which this US Code section provides rulemaking authority. It is taken from the Parallel Table of Authorities provided by NARA at http://www.access.gpo.gov/nara/cfr/parallel/parallel_table.html. It is not guaranteed to be accurate or up-to-date, though we do refresh the database weekly. More limitations on accuracy are described at the NARA site.

- 27 CFR 70

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CFR parts for which 26 USC 7606 provides authority

This is a list of parts within the Code of Federal Regulations for which this US Code section provides rulemaking authority. It is taken from the Parallel Table of Authorities provided by NARA at http://www.access.gpo.gov/nara/cfr/parallel/parallel_table.html. It is not guaranteed to be accurate or up-to-date, though we do refresh the database weekly. More limitations on accuracy are described at the NARA site.

- 27 CFR 24
- 27 CFR 25
- 27 CFR 270
- 27 CFR 275
- 27 CFR 296
- 27 CFR 41
- 27 CFR 44
- 27 CFR 45
- 27 CFR 46
- 27 CFR 70

CFR parts for which 26 USC 7608 provides authority

This is a list of parts within the Code of Federal Regulations for which this US Code section provides rulemaking authority. It is taken from the Parallel Table of Authorities provided by NARA at http://www.access.gpo.gov/nara/cfr/parallel/parallel_table.html. It is not guaranteed to be accurate or up-to-date, though we do refresh the database weekly. More limitations on accuracy are described at the NARA site.

- 27 CFR 296
- 27 CFR 70

Key Code Section Authorities (Page 3 of 3)

The State's Contribution to the Fraud

Introduction

In the previous chapter the actions of the IRS were covered. Since the NFTLs and FTLs must be filed in accordance with state laws it stands to reason that the state's have constructed their laws in such a manner that they allow a NFTL to be filed as though it was a FTL. To begin, a more in-depth look at the Uniform Federal Lien Registration Act as drafted by the National Conference of Commissioners on Uniform State Laws will be made.

Uniform Federal Lien Registration Act

Prefatory Note

At the beginning of the act the Prefatory Note states the following. Note the bolded text:

This Act is a **successor to the Revised Federal Tax Lien Registration Act** as revised by the Conference in 1966 and does not make any drafting changes to the previous Act except as required **to prescribe the method of perfecting the employer liability lien, provided by the Pension Reform Act, and any other similar liens.**

Since most of the policy decisions made in drafting this Act were derived from the Revised Uniform Federal Tax Lien Registration Act as it was revised in 1966, it would appear helpful to include here the **Prefatory Note which was included with the earlier Act in 1966.**

Since most of the policy decisions made in drafting this Act were derived from the Revised Uniform Federal Tax Lien Registration Act as it was revised in 1966, it would appear helpful to include here the Prefatory Note that was included with the earlier Act in 1966.

"Section 6323 of the United States Internal Revenue Code of 1954, as amended by P.L. 89-719, Federal Tax Lien Act of 1966 provides that liens for an unpaid federal tax shall not be valid as against mortgagees, pledges, judgment creditors, purchasers and holders of other security interest until notice of the tax lien has been filed in an office designated by the law of the state in which the property subject to the lien is situated, or, in the absence of a valid state designation, in the federal district court for the place where the property is situated. Under federal law, personal property is deemed situated at the residence of the taxpayer regardless of its physical location.

Thus the new federal act would invalidate any provision of a state law which required filing of liens for property other than real estate at more than one office or at any state office other than that associated with the residence of the taxpayer. State law requiring filing at the physical location of personal property or at both physical location and residence of the taxpayer is not permissible and if a state law includes such a provision the Internal Revenue Service would, for that state, file liens in the federal district court rather than in a state office.

"The new federal legislation provides for filing of **certain types of certificates and notices affecting previously filed liens** which some of the existing state legislation does not provide for. The effectiveness of these additional notices as a communication to interested persons depends on their being filed in the same office where the notice of lien is filed. It is necessary, therefore, that state law be broadened to permit filing and indexing of these additional notices.

"In addition to the above reasons for new state legislation, there is another reason for revising existing state laws concerned with federal tax liens. Many of the existing laws are no longer appropriate in the states (all but three in December, 1966) which have enacted the **Uniform Commercial Code. It is highly desirable that the place for filing and searching for federal tax liens be the same place as that designated by the state law under the Uniform Commercial Code for filing and searching for a security interest in the same property.** Unfortunately, complete coordination of federal tax lien filing with the rules for filing under the

The State's Contribution to the Fraud

Uniform Commercial Code cannot be fully achieved by state legislation. The United States Supreme Court has held that the Congressional permission to a state to designate the office for filing of federal tax liens cannot be taken advantage of by the states in such a way as to require the federal tax collector to specify the particular property to which the lien applies. *United States v. Union Central Life Insurance Company*, 363 U.S. 291 (1961). **The Internal Revenue Service has interpreted this decision to preclude a state requirement for filing federal tax liens in conformity with the Uniform Commercial Code because of the Code's differing requirements for various types of property and its requirement for filing in two offices in some cases.** Rev. Rul. 64-170, 1964-1 Cum. Bull. 499. P.L. 89-719 continues this interpretation.

"Nevertheless, it is possible to go a long way toward bringing federal tax lien filing into conformity with the Uniform Commercial Code and it is highly desirable to do so in order to accommodate to commercial convenience so far as possible within the limitations of federal law. States which departed from the uniformity of the Commercial Code by amendment as to the place of filing may now wish to conform their Commercial Code to the original uniform version at the same time they change the federal tax lien requirements. The Act presented here calls for filing on taxpayers who are corporations or partnerships in the office of the Secretary of State and in all other cases in an office in the place where the taxpayer resides. No provision is possible calling for filing of the tax lien at the place where particular kinds of property are physically located. Any attempt to deviate from the proposed place of filing in this Code risks non-compliance with Federal Law. The federal act does permit filing of notices as to real property in an office at the place where the real property is situated. It has no such permission for other kinds of property. Section 1 of the Act contained herein complies with the federal requirement.

"The present Act was prepared in light of Public Law 89-719 of 1966 amending Section 6323 of the Internal Revenue Code of 1954. The Internal Revenue Service has reviewed the Act and believes it meets the requirement of federal law. The Conference recommends that it be adopted and that existing legislation concerning federal tax liens be repealed."

Note: In the above make note of the act it stated "required to prescribe the method of perfecting the employer liability lien, provided by the Pension Reform Act, and any other similar liens". The words of importance are "employer liability lien" since in the previous chapter it was shown that it is only in regards to Business Master Files (BMFs) that there is statutory authorization for making a Substitute for Return (SFR). It was also proven that the SFRs that the IRS creates regarding Individual Master Files (IMFs) are "dummy" SFRs, meaning "Sham; make-believe, pretended: imitation". Therefore, not real.

Note also the references to the Uniform Commercial Code. One needs to realize that the UCC was adopted by most states, but is not identical among the several states. Therefore applying the facts stated above regarding Pub. L. 89-719 must take into account the variances between the UCC as adopted by each state. The Duke University Law web site states the following:

The Uniform Commercial Code (UCC), a comprehensive code addressing most aspects of commercial law, is generally viewed as one of the most important developments in American law. The UCC text and draft revisions are written by experts in commercial law and submitted as drafts for approval to the National Conference of Commissioners on Uniform State Laws, (now referred to as the Uniform Law Commissioners) and the American Law Institute. These quasi-public organizations meet and decide whether to endorse these drafts or to send them back to the experts for revision. The revision process may result in several different revisions of the original draft. Once a draft is endorsed, the Uniform Law Commissioners recommend that the states adopt these rules. **The UCC is a model code so it does not have legal effect unless UCC provisions are enacted by the individual legislatures as statutes that are applicable to their respective jurisdictions. Currently, the UCC has been enacted (with some local variations) in 49 states, the District of Columbia, the Virgin Islands, as well as partially in Louisiana.**

Sections of the Uniform Federal Lien Registration Act.

Here a look at the sections within the act will be made. The sections will be shown as they appear in the Act. Therefore, the numbering may be different than in your state code. Since there are 50 states it will be up to you to locate your state code and the Uniform Federal Lien Registration Act as it appears within. In the paragraph "State Web Page Addresses" on page 235 you will find the listing of the Internet web page for your

state. From there you are on your own. Each section of the Act will be followed by notes pertaining to that section/

Section 1

This section reads as follows:

SECTION 1. [Scope.] This Act **applies only to federal tax liens and to other federal liens notices of which under any Act of Congress or any regulation adopted pursuant thereto are required or permitted to be filed in the same manner as notices of federal tax liens.**

Comment

This Act is a successor to the Revised Federal Tax Lien Registration Act as revised by the Conference in 1966. The changes made in the previous Act are brought about by the provisions of the Pension Reform Act which prescribes the method of perfecting the employer liability lien to be the same as for federal tax liens.

Therefore, the Act has been changed and now applies to the employer liability lien established by Section 4068(a) of the Pension Reform Act as well as a federal tax lien. Other similar liens that may be perfected like a federal tax lien, such as the provisions for collection of federal fines contained in proposed revisions to the federal criminal laws, are within the scope of this Act.

Note:

Again notice that it includes more than the Notice of Liens, one of which is "certificates".

Section 2

This section is as follows:

SECTION 2. [Place of Filing.]

(a) **Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens** must be filed in accordance with this Act.

(b) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be filed in the office of the [] of the [] in which the real property subject to the liens is situated.

(c) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(1) if the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in this State, as these entities are defined in the internal revenue laws of the United States, in the office of the Secretary of State;

(2) if the person against whose interest the lien applies is a trust that is not covered by paragraph (1), in the office of the Secretary of State;

(3) if the person against whose interest the lien applies is the estate of a decedent, in the office of the Secretary of State;

(2) (4) in all other cases, in the office of the [] of the [] where the person against whose interest the lien applies resides at the time of filing of the notice of lien.

Comment

The State's Contribution to the Fraud

1. In order to accommodate to commercial convenience so far as possible within the limitations of Section 6323 of the Internal Revenue Code, filing with the Secretary of State is provided for the lien on tangible and intangible personal property of partnerships and corporations (as those terms are defined in Section 7701 of the Internal Revenue Code of 1954 and the implementing regulations) thus including within "partnerships" such entities as joint ventures and within "corporations" such entities as joint stock corporations and business trusts.

Because most purchases and secured transactions involving personal property of natural persons relate to consumer goods or farm personal property, searches for liens against those persons are more likely to be made at the local level. Thus, with few exceptions a search for corporation federal tax liens with the Secretary of State and for natural persons with an officer in the county of residence will normally be in the same office as searches for security interests under the Uniform Commercial Code.

Section 6323 of the Internal Revenue Code "locates" all tangible and intangible personal property at the residence of the taxpayer even though it is physically located elsewhere in the same or in another state. State law cannot vary this requirement. State law does affect the result, however, in that state law determines the "residence" of a taxpayer. See IRC Section 6323(f)(2). Filing at the physical location of personal property of a taxpayer who is not a resident of the state of location of the property cannot be required.

2. The coverage of this Act now extends beyond federal tax liens as described in the Comment to Section 1.

3. In some jurisdictions, a question may be raised concerning the propriety of incorporating federal law by reference. In others, the place of filing described in this Act may not correspond to the place of filing under the Uniform Commercial Code. Alteration of this Act in these respects may create the peril that the notices will be filed in the federal district court, thus eliminating the benefits of this Act.

4. An amendment to the Uniform Federal Lien Registration Act was promulgated by the Uniform Law Commissioners in 1982. Two new subparagraphs (2) and (3) were inserted under Section 2(c). The new paragraphs locate the appropriate filing offices for notice of federal liens against personal property held in trusts or estates. The amendment does not change the Act substantively. It had been assumed that federal liens could be filed against personal property held in trusts or estates at least under Section 2(c)(4) (Section 2(c)(2) prior to the 1982 amendment). However, Section 2(c)(4) does not designate a specific office in which notice of federal liens should be filed. New Section 2(c)(2) and (3) explicitly provide for filing in the office of the Secretary of State. The amendment was suggested by the Internal Revenue Service.

Note:

Again notice that it includes more than the Notice of Liens, one of which is "certificates".

Section 3

Section 3 reads as follows:

SECTION 3. [Execution of Notices and Certificates.] Certification of notices of liens, certificates, or other notices affecting federal liens by the Secretary of the Treasury of the United States or his delegate, or by any official or entity of the United States responsible for filing or certifying of notice of any other lien, entitles them to be filed and no other attestation, certification, or acknowledgment is necessary.

Comment

This section addresses **only the validity of the filing and not the validity of the lien.**

A valid lien is backed by a court-approved assessment. Refer to the paragraph." Court approved Assessments" on page 235.. **Here is where the County Clerks, due to lack of guidance from their state or county higher-ups normally stop and simply file the notices, making the IRS extremely happy and free to issues fraudulent levies.** The reason being in that what is laid out as a Comment in the act is not made

evident in the state code itself. **THEY FAIL TO VERIFY THE VALIDITY OF THE LIEN.** Remember, the purpose of Uniform Federal Lien Registration Act was to accomplish the following:

Many of the existing laws are no longer appropriate in the states (all but three in December, 1966) which have enacted the Uniform Commercial Code. It is highly desirable that the place for filing and searching for federal tax liens be the same place as that designated by the state law under the Uniform Commercial Code for filing and searching for a security interest in the same property. Unfortunately, complete coordination of federal tax lien filing with the rules for filing under the Uniform Commercial Code cannot be fully achieved by state legislation. The United States Supreme Court has held that the Congressional permission to a state to designate the office for filing of federal tax liens cannot be taken advantage of by the states in such a way as to require the federal tax collector to specify the particular property to which the lien applies. *United States v. Union Central Life Insurance Company*, 363 U.S. 291 (1961). The Internal Revenue Service has interpreted this decision to preclude a state requirement for filing federal tax liens in conformity with the Uniform Commercial Code because of the Code's differing requirements for various types of property and its requirement for filing in two offices in some cases. Rev. Rul. 64-170, 1964-1 Cum. Bull. 499. P.L. 89-719 continues this interpretation.

"Nevertheless, it is possible to go a long way toward bringing federal tax lien filing into conformity with the Uniform Commercial Code and it is highly desirable to do so in order to accommodate to commercial convenience so far as possible within the limitations of federal law

Therefore, the provisions of the UCC apply and give the means of validating the lien. I refer you back to Title 27 CFR Part 70.232 on page 202.

Note:

Note the wording "Certification of **notices of liens, certificates, or other notices affecting federal liens**". The statement includes not only "**notices of liens**"; but also includes **certificates, or other notices affecting federal liens**. Note again that it states, "entitles them to be filed and no other **attestation, certification, or acknowledgment is necessary**".

Input in most counties is done using software designed for that specific purpose. However, this software most often does not accommodate an appropriate document type for a "Notice of Federal Tax Lien". A typical listing only includes the following regarding federal liens:

- Federal Tax Lien Real Property
- Lien Fed
- Lien Fed-R
- Lien Ftl Personal Property
- Lien Ftl-R Personal Property
- Lien Ftl-R Real Property

Notice what is missing? There is no document type for a Notice of Federal Tax Lien. This even though Section 3 of the Act, and state code includes **notices of liens** in its body. Whether by unintended or purposeful omission this lack of capability cannot justify the misfiling of any document. Where automated procedures are lacking manual procedures can be implemented. By reading section 3, and disregarding what the comment following it in the Act stated the counties take anything handed to them by anyone claiming to be a federal agent and file it as if it was a Federal Tax Lien. This, together with the handling of the following sections of the Act is what enables the IRS to commit theft.

Section 4

This section of the Act is as follows:

SECTION 4. [Duties of Filing Officer.]

The State's Contribution to the Fraud

(a) If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate described in subsection (b) is presented to a filing officer who is:

(1) the Secretary of State, he shall cause the notice to be marked, held, and indexed in accordance with the provisions of [Section 9-503(4),] of the Uniform Commercial Code as if the notice were a financing statement within the meaning of that Code; or

(2) any other officer described in Section 2, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the title and address of the official or entity certifying the lien, and the total amount appearing on the notice of lien.

(b) If a certificate of release, non-attachment, discharge, or subordination of any lien is presented to the Secretary of State for filing he shall:

(1) cause a certificate of release or non-attachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the Uniform Commercial Code, but the notice of lien to which the certificate relates may not be removed from the files; and

(2) cause a certificate of discharge or subordination to be marked, held, and indexed as if the certificate were a release of collateral within the meaning of the Uniform Commercial Code.

(c) If a refiled notice of federal lien referred to in subsection (a) or any of the certificates or notices referred to in subsection (b) is presented for filing to any other filing officer specified in Section 2, he shall permanently attach the refiled notice or the certificate to the original notice of lien and enter the refiled notice or the certificate with the date of filing in any alphabetical lien index on the line where the original notice of lien is entered.

(d) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien filed under this Act [or reference previous federal tax lien registration act)], naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate is [\$_____]. Upon request, the filing officer shall furnish a copy of any notice of federal lien, or notice or certificate affecting a federal lien, for a fee of [\$_____] per page.

Comment

1. It is the practice of the Internal Revenue Service to regard a "certificate of discharge" as primarily referable to specific pieces of property, so a certificate of discharge corresponds to a release under Section 9-406 of the Uniform Commercial Code. A "certificate of release" in tax practice is equivalent to a "termination statement" in Section 9-404 of the Uniform Commercial Code in the sense that it is a general statement applicable to all property or types of property referred to in the termination statement.

2. It is expected that the Pension Benefit Guaranty Corporation will adopt the same practices as the Internal Revenue Service or other practices as the circumstances may require.

Note:

Here what is of utmost importance is what is stated in subsections (a)(1) and (a)(2) for they tie the filing into the Uniform Commercial Code. Also note that the county clerk must comply with subsection (d) above and that subsection (c) again notes that this Act applies not only to notices, but certificates and other documents.

At no place does the Act, or the state code stipulate that all notices, certificates, etc. shall be filed as if they were Federal Tax Liens. It stipulates that they be properly filed. As shown in the preceeding chapter the lien is perfected with the filing of the assessment lien. **The Assessment Certificate is the legal document that permits collection activity** (IRM 3.17.63.14.4 through 9 on page 183). Notice that it is a "certificate", one of

the items listed in Section 3 of the Act. By all indications the county clerks are not only lumping everything together as FTLs, but handing the agent a filing receipt that indicates it as a "FTL" filing.

But then, most states copycat this federal fraud themselves so constitutional rights are of no concern to them.

Court approved Assessments

The IRS has the choice of either following the Federal Debt Collection Procedure, or the state's Uniform Commercial Code in the filing of a NFTL or FTL. As the assessment requirement (IRC section 6203) precedes IRC section 6323 a valid assessment **must exist prior to any filing of a NFTL or FTL.**

In the Federal Debt Collection Procedure this is clearly stated in the paragraph "The Federal Debt Collection Procedure" on page 159. There it also states that filing can be made pursuant to **state judgment execution laws.** The problem for the IRS in using the state judgment execution laws is that most states have signed on to the Uniform Commercial Code (UCC). However as enacted there are variances between the individual state UCC's that would require the IRS to reference each state UCC they file in to adhere to the law.

State Web Page Addresses

Click on your state as listed below to get the property code and website information

<u>State</u>	<u>Web Site</u>
Alabama	http://www.alabama.gov/government/index.php
Alaska	http://www.state.ak.us/
Arizona	http://az.gov/webapp/portal/
Arkansas	http://www.state.ar.us/
California	http://www.ca.gov/state/portal/myca_homepage.jsp
Colorado	http://www.colorado.gov/
Connecticut	http://www.ct.gov/
Delaware	http://www.delaware.gov/
Florida	http://www.myflorida.com/
Georgia	http://www.georgia.gov/00/home/0,2061,4802,00.html
Hawaii	http://www.hawaii.gov/portal/
Idaho	http://www.accessidaho.org/
Illinois	http://www.illinois.gov/
Indiana	http://www.state.in.us/
Iowa	http://www.iowa.gov/state/main/index.html
Kansas	http://www.accesskansas.org/
Kentucky	http://kentucky.gov/

The State's Contribution to the Fraud

<u>State</u>	<u>Web Site</u>
Louisiana	http://www.louisiana.gov/wps/portal/
Maine	http://www.state.me.us/
Maryland	http://www.maryland.gov/portal/server.pt?space=CommunityPage
Massachusetts	http://www.mass.gov/portal/index.jsp?pageID=mg2homepage&L=1&L0=Home&sid=massgov2
Michigan	http://www.michigan.gov/
Minnesota	http://www.state.mn.us/cgi-bin/portal/mn/jsp/home.do?agency=NorthStar
Mississippi	http://www.state.ms.us/index.jsp
Missouri	http://www.state.mo.us/
Montana	http://www.state.mt.us/
Nebraska	http://www.state.ne.us/
Nevada	http://www.nv.gov/
New Hampshire	http://www.nh.gov/
New Jersey	http://www.state.nj.us/
New Mexico	http://www.state.nj.us/
New York	http://www.state.ny.us/
North Carolina	http://www.ncgov.com/
North Dakota	http://discovernd.com/
Ohio	http://ohio.gov/
Oklahoma	http://www.ok.gov/
Oregon	http://www.oregon.gov/
Pennsylvania	http://www.govspot.com/state/pa.htm
Rhode Island	http://www.ri.gov/index.php
South Carolina	http://www.myscgov.com/SCSGPortal/static/home_tem4.html
South Dakota	http://www.state.sd.us/
Tennessee	http://www.state.tn.us/
Texas	http://www.state.tx.us/

State	Web Site
Utah	http://www.utah.gov/main/index
Vermont	http://vermont.gov/
Virginia	http://www.virginia.gov/cmsportal/
Washington	http://access.wa.gov/
West Virginia	http://www.wv.gov/
Wisconsin	http://www.wisconsin.gov/state/home/app?COMMAND=gov.wi.state.cpp.command.LoadPortalHome
Wyoming	http://wyoming.gov/

Other Abuses of the Taxing Statutes

6682	False information with respect to withholding	238
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7302	Property used in violation of internal revenue laws	240
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Title 26 section 6682 - False information with respect to withholding

It is to be noted that this section of the IRC has no regulatory entries in the Federal Register; therefore, it has no legal effect and is not enforceable in regards to U.S. Citizens working and living within the 50 State Republics. It is well known that U.S. companies, either being unaware of the definition of "wages" within the IRC, or taking advice from faulted counsel, or bowing to threats and pressure from the IRS demand a W-4 Form from all and therefore normally report remuneration as "wages" which are not such within the meaning of IRC section 3401(a)(8)(A)(i) with regulations at 26 CFR section 31.3401-1 and IRC section 3121 and Title 42 section 409 with regulations at 20CFR section 404.2

There exists the possibility that the IRS, being fully aware that a W-4 Form is not required of all are treating those demanded as "voluntary W-4 Forms under IRC section 3402. In regards to this, it should be noted that the use of the word "shall" in 26 CFR Sec. 31.3402(f)(2)-1(a) where it states "On commencement of employment. On or before the date on which an individual commences employment with an employer, the individual shall furnish the employer with a signed withholding exemption certificate relating to his marital status and the number of withholding exemptions which he claims, which number shall in no event exceed the number to.." cannot be considered as mandatory by reason of the requirements of the Administrative Committee of the Federal Register's regulations in Title 1 CFR section 5.9 as stated on page 28 of this document.

Without authority having legal effect, this section is unenforceable against U.S. Citizens living and working within the 50 Sovereign Republics for private sector employers. Still, the IRS offices issue penalties unlawfully using this section as their authority to do so. In regards to this section the Government Accounting office stated in GAO-03-913R Reliability of IRS's Form W-4 Information by the Government Accounting Office on page 3 of the report that:

"Under current law, IRS does not have statutory authority to impose a penalty to enforce employer compliance with the reporting requirement. The reporting requirement was promulgated in Treasury regulations."

Summary of Associated Sections for Title 26 section 6682

Within IRC section 6682 there are two sections of code referred to in the text of the section. By looking at these sections, a better look at the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force:

Summary of Associated Sections for Title 26 section 6682

Section	Legislative/sub. Regulations
3402 - Income tax collected at source	26 CFR part 31
3406 - Backup withholding	26 CFR part 31, 35a

Although these two sections, 3402 and 3406 are backed by regulations carrying enforcement provisions by statute there is no statutory backing for IRC section 6682 itself. Therefore, IRC section 6682 is not enforceable.

Internal Revenue Manual Sections Regarding IRC Section 6682

In the IRM IRC section 6682 is covered as shown in the following paragraph(s)

AIMS/Processing Handbook at Part 4.4.9

In the AIMS Processing Handbook within part 4.4.9 IRC section 6682 is referred to as shown in the following paragraph.

4.4.9.2.2.1 (02-08-1999)

Dummy Present on MF

1. A TC 150 posting with no tax liability followed by a TC 240 posting for \$500 (W-4 penalty) indicates that the campus has posted a **dummy return**. Any adjustments must be made as subsequent adjustments (i.e. TC 300).

This further establishes the fact that IRC section 6682 is not lawfully imposed.

Title 26 section 7301- Property subject to tax

The first thing to note in regards to this section is that there are no regulations having legal effect. It reads as follows:

Sec. 7301. Property subject to tax

(a) Taxable articles

Any property on which, or for or in respect whereof, any tax is imposed by this title which shall be found in the possession or custody or within the control of any person, for the purpose of being sold or removed by him in fraud of the internal revenue laws, or with design to avoid payment of such tax, or which is removed, deposited, or concealed, with intent to defraud the United States of such tax or any part thereof, may be seized, and shall be forfeited to the United States.

(b) Raw materials

(c) Equipment

(d) Packages ...

(e) Conveyances ...

Speak of vagueness here we have it. Outside of the general statement “any tax is imposed by this title”, it is without any definite statement about what the taxes are. Note that it does not include monies held by banks, employers, agents, creditors, etc. which is due or owing to any individual. There are no regulations of legal effect to implement this code section on its own. Further, in it congress **has not named any court as having jurisdiction**:

1812) That Congress “ . . . must declare the court that shall have jurisdiction of the offense.”
U.S. v. Hudson; 11 U.S. 7.

Summary of Associated Sections for Title 26 section 7301

Within IRC section 7301 there are numerous sections of code referred to, either in the text of the section or at the end as being referred to or cross referenced. By looking at these sections, a better look at the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force:

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Summary of Associated Sections for Title 26 section 7301

Section	Legislative/sub. Regulations
7206 - Fraud and false statements	None
7303 - Other property subject to forfeiture	None
7323 - Judicial action to enforce forfeiture	27 CFR part 72
7324 - Special disposition of perishable goods	27 CFR part 72
7401 - Authorization	27 CFR part 70

Summary of Associated Sections for Title 26 section 7301 (Cont.)

The State's Contribution to the Fraud

Section	Legislative/sub. Regulations
7851 - Applicability of revenue laws	27 CFR part 24
Title 18 section 924 – Penalties	Positive Law
Title 28 section 1355 - Fine, penalty or forfeiture	Positive Law
Title 31 Miscellaneous section 9703.11\ Department of the Treasury Forfeiture Fund	Positive Law

As can be seen, the sections of code listed that have statutory backing are all found in 27 CFR - Alcohol, Tobacco, and Firearms.

Title 26 section 7302 - Property used in violation of internal revenue laws

This section reads as follows:

Sec. 7302. Property used in violation of internal revenue laws
 It shall be unlawful to have or possess any property intended for use in violating the provisions of the internal revenue laws, or regulations prescribed under such laws, or which has been so used, and no property rights shall exist in any such property. A search warrant may issue as provided in chapter 205 of title 18 of the United States Code and the Federal Rules of Criminal Procedure for the seizure of such property. Nothing in this section shall in any manner limit or affect any criminal or forfeiture provision of the internal revenue laws, or of any other law. The seizure and forfeiture of any property under the provisions of this section and the disposition of such property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such property, shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and disposition of property or proceeds, for violation of the internal revenue laws.

Note the use of the word “shall”, which was covered previously as meaning “may” when necessary to avoid conflict with the constitution. This indicates that it is restricted to specific property only. A look at the regulations of legal effect show that the legislative/substantive regulations are found in 27 CFR parts 24 (Wine) (refer to T.D. ATF-301, 55 FR 47605, Nov. 14, 1990 on page 112 and 252 (Exportation of liquors (reference figure not included)). It therefore is property in regards to the wine making and exportation of liquors that is the property covered.

Summary of Associated Sections for Title 26 section 7302

Within IRC section 7302 there are numerous sections of code referred to, either in the text of the section or at the end as being referred to or cross referenced. By looking at these sections, a better look at the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force:

Summary of Associated Sections for Title 26 section 7302

Section	Legislative/sub. Regulations
5117 - Prohibited purchases by dealers	27 CFR part 194
5314 - Special applicability of certain provisions	27 CFR part 250 – Reserved (not used at present)
5686 - Penalty for having, possessing, or using liquor or property intended to be used in violating provisions of this chapter	None
5753 – Forfeitures	27 CFR part 270 - Reserved (not used at present)
7321 - Authority to seize property subject to forfeiture	None

Summary of Associated Sections for Title 26 section 7302 (Cont.)

The State's Contribution to the Fraud

Section	Legislative/sub. Regulations
7323 - Judicial action to enforce forfeiture	27 CFR part 72
7324 - Special disposition of perishable goods	27 CFR part 72
7327 - Customs laws applicable	27 CFR part 72
7613 - Cross references	None
7851 - Applicability of revenue laws	27 CFR part 24
Title 18 section 3401 - Misdemeanors; application of probation laws	28 CFR part 52 32 CFR parts 516, 1290
Title 28 section 1355 - Fine, penalty or forfeiture	Positive Law
Title 31 section 9703.\1\ Department of the Treasury Forfeiture Fund	Positive Law

Interesting to note that there was no sections listed that was backed by regulations within 26 CFR. The majority were enforceable only through regulations located in 27 CFR – Alcohol, Tobacco, and Firearms.

Title 26 section 7303 - Other property subject to forfeiture

This section reads as follows:

Sec. 7303. Other property subject to forfeiture

There may be seized and forfeited to the United States the following:

(1) Counterfeit stamps

Every stamp involved in the offense described in section 7208 (relating to counterfeit, reused, cancelled, etc., stamps), and the vellum, parchment, document, paper, package, or article upon which such stamp was placed or impressed in connection with such offense.

(2) False stamping of packages

Any container involved in the offense described in section 7271 (relating to disposal of stamped packages), and of the contents of such container.

(3) Fraudulent bonds, permits, and entries

All property to which any false or fraudulent instrument involved in the offense described in section 7207 relates.

Note that item (1) is regarding counterfeit stamps and calls out section 7208, which is offenses relating to stamps. In item (2) section 7271 Penalties for offenses relating to stamps is called out, and in item (3) section 7207 Fraudulent returns, statements, or other documents. The only one of these three sections having regulations of final rule legal effect is section 7207 and they are located in 27 CFR part 70.

Summary of Associated Sections for Title 26 section 7303

Within IRC section 7303 there are numerous sections of code referred to, either in the text of the section or at the end as being referred to or cross referenced. By looking at these sections, a better look at the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force:

Summary of Associated Sections for Title 26 section 7303

Section	Legislative/sub. Regulations
7207 - Fraudulent returns, statements, or other documents	27 CFR part 70
7208 - Offenses relating to stamps	None
7271 - Penalties for offenses relating to stamps	None
7321 - Authority to seize property subject to forfeiture	None
7327 - Customs laws applicable	27 CFR part 72

Summary of Associated Sections for Title 26 section 7303 (Cont.)

The State's Contribution to the Fraud

Section	Legislative/sub. Regulations
7401 – Authorization	27 CFR part 70
7851 - Applicability of revenue laws	27 CFR part 24
Title 28 section 1355 - Fine, penalty or forfeiture	Positive Law

Note again, the driving regulations are either in 27 CFR - Alcohol, Tobacco, and Firearms or there are none.

Title 26 section 7403 - Action to enforce lien or to subject property to payment of tax

This section is of extreme importance for it shows that court action is required to enforce a lien. Subsection (a) reads as follows:

Filing

In any case where there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or his delegate, at the request of the Secretary, may direct a civil action to be filed in a **district court of the United States** to enforce the lien of the United States under this title with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest, to the payment of such tax or liability. For purposes of the preceding sentence, any acceleration of payment under section 6166(g) shall be treated as a neglect to pay tax.

As was the case for section 6321 the only regulations of legal effect are found in 27 CFR part 70, more specifically, part 70.192 – Action to enforce lien or to subject property to payment of tax. Subsection (a) of this regulation reads as follows:

Civil actions. In any case where there has been a refusal or neglect to pay any tax (with respect to the provisions of 26 U.S.C. enforced and administered by the Bureau) or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or designated delegate at the request of the Director, Bureau of Alcohol, Tobacco and Firearms, or the Chief Counsel for the Bureau or designated delegate, may direct a civil action to be filed in any **court of the United States** to enforce the lien of the United States under the Internal Revenue Code with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which the delinquent has any right, title or interest, to the payment of such tax or liability. In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Director or the Chief Counsel for the Bureau during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity.

It is important to note that in IRC section 7403 it states: “**may direct a civil action to be filed in a district court of the United States**” This is not the same as a **United States District Court**. It means that the plaintiff has to be the United States of America, and only applies to insular possessions only, see Special Note on page 247 In 27 CFR part 70.192 it is worded as “ **may direct a civil action to be filed in any court of the United States**”. This signifies that this regulation, as it is applicable to excise taxes enforceable can be filed in the applicable Article I court.

Summary of Associated Sections for Title 26 section 7403

Within IRC section 7403 there are numerous sections of code referred to, either in the text of the section or at the end as being referred to or cross referenced. By looking at these sections, a better look at the statutory

jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force:

Summary of Associated Sections for Title 26 section 7403

Section	Legislative/sub. Regulations
5004 – Lien for tax	27 CFR part 19
6166 - Extension of time for payment of estate tax where estate consists largely of interest in closely held business	None
6321 - Lien for taxes	27 CFR part 70
6331 - Levy and distraint	27 CFR part 70
7424 - Intervention	None
Title 31 section 3713 - Priority of Government claims	Positive Law

As can be seen, the sections appearing in the IRC only find statutory backing through regulations that exist only in 27 CFR - Alcohol, Tobacco, and Firearms.

Jurisdiction of Federal Government

Jurisdiction Defined

Here we will examine jurisdiction according to two sources and according to Supreme Court decisions.

According to the Cornell Law School

The subject of court jurisdiction is covered in the Cornell Law School in "jurisdiction: an overview" which gives it as follows:

One of the most fundamental questions of law is whether a given court has **jurisdiction** to preside over a given case. A **jurisdictional** question may be broken down into three components: 1) **jurisdiction** over the person (in personam), 2) **jurisdiction** over the subject matter, or res, and 3) **jurisdiction** to render the particular judgment sought. The term **jurisdiction** is really synonymous with the word "power". Any court possesses **jurisdiction** over matters only to the extent granted to it by the Constitution, or legislation of the sovereignty on behalf of which it functions. The question of whether a given court has the power to determine a **jurisdictional** question is included in this subject header. Such a legal question is referred to as "**jurisdiction to determine jurisdiction.**"

Subject matter **jurisdiction** is the court's authority to decide the issue in controversy such as a contracts issue, or a civil rights issue. State courts have general **jurisdiction**, meaning that they can hear any controversy except those prohibited by state law (some states, for example, deny subject matter **jurisdiction** for a case that does not involve state citizens and did not take place in the state) and those allocated to federal courts of exclusive **jurisdiction** such as bankruptcy issues (see 28 USCA. § 1334). **Federal courts have limited jurisdiction in that they can only hear cases that fall both within the scope defined by the Constitution in Article III section 2 and Congressional statutes (See 28 U.S.C.A. §1251, §1253, §1331, §1332).**

Territorial **jurisdiction** is the court's power to bind the parties to the action. This law determines the scope of federal and state court power. State court territorial **jurisdiction** is determined by the Due Process Clause of the Constitution's Fourteenth Amendment and the federal court territorial **jurisdiction** is determined by the Due Process Clause of the Constitution's Fifth Amendment.

According to the United States Court Publications

Here federal court jurisdiction is given in their publication UFC99, which can be viewed or downloaded at <http://www.uscourts.gov/UFC99.pdf>. The following is extracted from that publication:

Before a federal court can hear a case, or "exercise its jurisdiction," certain conditions must be met. First, under the Constitution, federal courts exercise only "judicial" powers. This means that federal judges may interpret the law only through the resolution of actual legal disputes, referred to in Article III of the Constitution as "Cases or Controversies." A court cannot attempt to correct a problem on its own initiative, or to answer a hypothetical legal question.

Second, assuming there is an actual case or controversy, the plaintiff in a federal lawsuit also must have legal "standing" to ask the court for a decision. That means the plaintiff must have been aggrieved, or legally harmed in some way, by the defendant.

Third, the case must present a category of dispute that the law in question was designed to address, and it must be a complaint that the court has the power to remedy. In other words, the court must be authorized, under the Constitution or a federal law, to hear the case and grant appropriate relief to the plaintiff. Finally, the case cannot be "moot," that is, it must present an ongoing problem for the court to resolve. The federal courts, thus, are courts of "limited" jurisdiction because they may only decide certain types of cases as provided by Congress or as identified in the Constitution.

Although the details of the complex web of federal jurisdiction that Congress has given the federal courts is beyond the scope of this brief guide, it is important to understand that there are two main sources of the cases coming before the federal courts: “federal question” jurisdiction, and “diversity” jurisdiction.

In general, federal courts may decide cases that involve the United States government, the United States Constitution or federal laws, or controversies between states or between the United States and foreign governments. A case that raises such a “federal question” may be filed in federal court. Examples of such cases might include a claim by an individual for entitlement to money under a federal government program such as Social Security, a claim by the government that someone has violated federal laws, or a challenge to actions taken by a federal agency.

A case also may be filed in federal court based on the “diversity of citizenship” of the litigants, such as between citizens of different states, or between United States citizens and those of another country. To ensure fairness to the out-of-state litigant, the Constitution provides that such cases may be heard in a federal court. An important limit to diversity jurisdiction is that only cases involving more than \$75,000 in potential damages may be filed in a federal court. Claims below that amount may only be pursued in state court. Moreover, any diversity jurisdiction case regardless of the amount of money involved may be brought in a state court rather than a federal court.

Federal courts also have jurisdiction over all bankruptcy matters, which Congress has determined should be addressed in federal courts rather than the state courts. Through the bankruptcy process, individuals or businesses that can no longer pay their creditors may either seek a court-supervised liquidation of their assets, or they may reorganize their financial affairs and work out a plan to pay off their debts.

Although federal courts are located in every state, they are not the only forums available to potential litigants. In fact, the great majority of legal disputes in American courts are addressed in the separate state court systems. For example, state courts have jurisdiction over virtually all divorce and child custody matters, probate and inheritance issues, real estate questions, and juvenile matters, and they handle most criminal cases, contract disputes, traffic violations, and personal injury cases. In addition, certain categories of legal disputes may be resolved in special courts or entities that are part of the federal executive or legislative branches, and by state and federal administrative agencies.

According to Supreme Court Decisions

There are several key Supreme Court decisions in regards to the jurisdiction of the lower federal courts (those created under Article I and Article IV of the Constitution).

The Supreme Court has determined the general territorial limitations of the lower federal courts. This jurisdiction is made according to territorial restrictions, disregarding the jurisdiction that congress has been allowed to add by statutes:

"As only the judicial power vested in Congress is to create courts whose judges shall hold their office during good behavior, it necessarily follows that, if Congress authorizes the creation of courts and the appointment of judges for a limited time, it must act independently of the Constitution and upon **territory which is not part of the United States within the meaning of the Constitution.**" - *Downes v. Bidwell*, 182 US 244, 266 (1901).

***Balzac v. People of Porto Rico*, 258 U.S. 298 (1922)** This Supreme Court opinion by Chief Justice William Howard Taft identifies United States district courts as territorial courts. Any federal court calling itself a “United States District Court” will be a court that is limited to federal territory and federal property

“since the plurality’s conclusion -- that Congress could under Article I expand the scope of the federal courts’ Article III jurisdiction -- contradicted the fundamental notion that Article III sets forth the exclusive catalog of permissible federal court jurisdiction. Thus, *Union Gas* was wrongly decided, and is overruled. The Eleventh Amendment restricts the judicial power under Article III, and Article I cannot be used to circumvent the constitutional limitations placed upon

Jurisdiction of Federal Government

federal jurisdiction.” Pp. ____ - Seminole Tribe of Florida v. Florida No. 94-12, Argued October 11, 1995 Decided March 27, 1996

58 S.Ct. 543, 303 U.S. 201, Mookini v. U.S., (U.S. Hawaii 1938)

[2] [3] [4] The term '**District Courts of the United States**,' as used in the rules, without an addition expressing a wider connotation, has its historic significance. It describes the constitutional courts created under article 3 of the Constitution. **Courts of the Territories** are legislative courts, properly speaking, and are not District Courts of the United States. We have often held that vesting a territorial court with jurisdiction similar to that vested in the District Courts of the United States does not make it a 'District Court of the United States.' Reynolds v. United States, 98 U.S. 145, 154, 25 L.Ed. 244; The City of Panama, 101 U.S. 453, 460, 25 L.Ed. 1061; In re Mills, 135 U.S. 263, 268, 10 S.Ct. 762, 34 L.Ed. 107; McAllister v. United States, 141 U.S. 174, 182, 183, 11 S.Ct. 949, 35 L.Ed. 693; Stephens v. Cherokee Nation, 174 U.S. 445, 476, 477, 19 S.Ct. 722, 43 L.Ed. 1041; Summers v. United States, 231 U.S. 92, 101, 102, 34 S.Ct. 38, 58 L.Ed. 137; United States v. Burroughs, 289 U.S. 159, 163, 53 S.Ct. 574, 77 L.Ed. 1096.

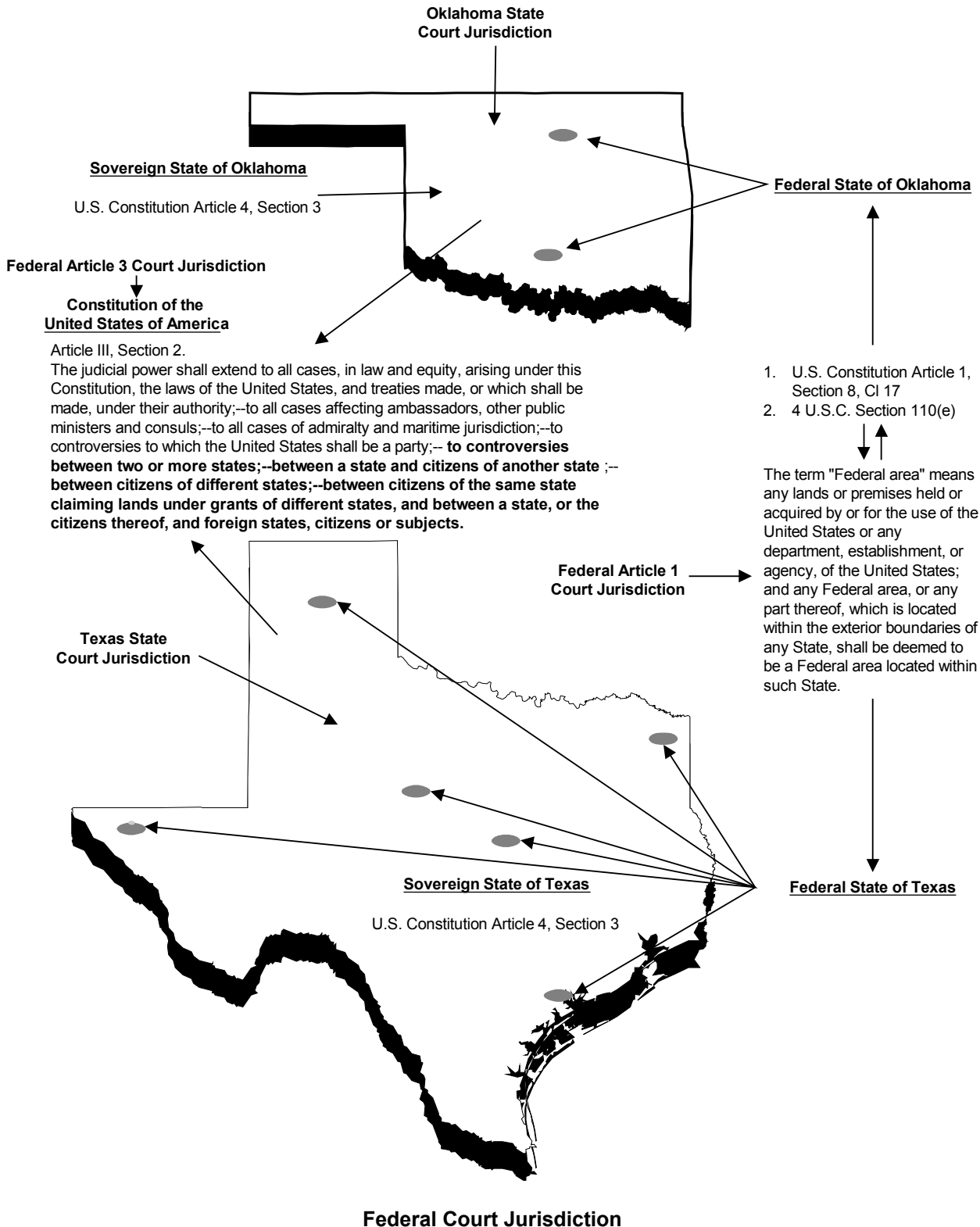
These [territorial] courts then, are not Constitutional courts, in which the judicial power conferred by the Constitution on the general government can be deposited. They are incapable of receiving it. They are legislative courts, created in virtue of the general rights of sovereignty which exists in the government, or in virtue of that clause which enables Congress to make all needful rules and regulations, respecting the territory belonging to the United States. The jurisdiction with which they are invested, is not a part of that judicial power which is defined in the 3d article of the Constitution, but is conferred by Congress, in the execution of those general powers which that body possesses over the territories of the United States. Although admiralty jurisdiction can be exercised in the States in those courts only which are established in pursuance of the 3d article of the Constitution, the same limitation does not extend to the territories. In legislating for them, Congress exercises the combined powers of the general and of the State government. - American Insurance Co. v. 356 Bales of Cotton [1 Pet. 511 (1828)]

In other words, Article I and IV courts only have jurisdiction within territory that is not part of the United States within the meaning of the Constitution, or by statute associated with another Constitutionally granted power of congress. This omits jurisdiction within the 50 State Republics unless allowed by statute. The difference between an Article I court and an Article IV court is that Article I only applies to those territories that belong to congress that are located within the national boundaries as constitutionally established (i.e. Washington D.C. and land ceded to the federal government). In regards to the latter, the agreement of cessation may have jurisdictional provisions within them. Article IV courts are those over the territories outside the national boundaries that are gained through treaties, conquest, etc. The figure on the following page illustrates the basic constraints on federal court jurisdiction (Article IV courts excluded).

Territorial Power of Congress

The following is from the Constitution of the United States of America Analysis and Interpretation:

In the territories, Congress has the entire dominion and sovereignty, national and local, and has full legislative power over all subjects upon which a state legislature might act. It may legislate directly with respect to the local affairs of a territory or it may transfer that function to a legislature elected by the citizens thereof, which will then be invested with all legislative power except as limited by the Constitution of the United States and acts of Congress. In 1886, Congress prohibited the enactment by territorial legislatures of local or special laws on enumerated subjects. The constitutional guarantees of private rights are applicable in territories which have been made a part of the United States by congressional action but not in unincorporated territories. Congress may establish, or may authorize the territorial legislature to create, legislative courts whose jurisdiction is derived from statutes enacted pursuant to this section other than from Article III. Such courts may exercise admiralty jurisdiction despite the fact that such jurisdiction may be exercised in the States only by constitutional courts.



SPECIAL NOTE

An item of interest is the meaning concerning the distinction made between "District Courts of the United States" (Article III/IV courts) and "United States District Courts" (Article I courts). Be sure to read the paragraph concerning "The Trickery of Names.

The Trickery of Names

Regarding the difference between Article I and Article III or IV Court Jurisdiction. The Department of Justice loves to utilize a little trickery of names game. In most of their indictments and other court filings regarding tax issues they will attempt to use Article III Jurisdiction in Article I Courts. They do this by stating "The plaintiff, the United States of America" in key places. They often use both terms "United States" and "United States of America" within a filing. Those two little words "of America" though must be accorded meaning as stated in the following Supreme Court decision:

"We are not at liberty to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be **accorded to every word**. As early as in Bacon's Abridgment, § 2, it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, **no clause, sentence, or word, shall be superfluous, void, or insignificant**.' This rule has been repeated innumerable times." Justice Strong, *United States v. Lexington Mill & E. Co.*, 232 US 399, pp. 409. (1914)

The importance of this is stated in the following cites:

This is where two elements must be considered: First, **the "United States District Court" is a territorial court** (Balzac v. Puerto Rico (1922)), where **the "District Court of the United States" is the first-level Article III court of the United States** (Mookini v. United States (1938)). **Second, the "United States" is the proper principal of interest in courts of the United States other than territorial courts, where the "United States of America, ss, President of the United States" is the principal of interest in insular possession territorial courts (see judicial provisions for Puerto Rico & the Virgin Islands in Title 48 of the United States Code).** The "United States of America" first appeared as a principal of interest via 1918 legislation (see notes following the current 18 U.S.C. § 1001).

NOTE

The "United States of America" first appeared as a principal of interest in federal statutes in 1918 (Oct. 23, 1918, c. 194, 40 Stat. 1015, amending 1909 legislation where the "United States of America" did not appear). The 1918 legislation is precisely reproduced at 18 U.S.C. § 80, 1934 & 1940 editions. This § 80 is as follows:

§ 80. (Criminal Code [1909], section 35, amended.) Presenting false claims. Whoever shall make or cause to be made or present, or cause to be presented, for payment or approval, **to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder**, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter **within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.** [Underscore added for emphasis]

Notice the emphasized text in the above.

The current section is 18 U.S.C. § 1001, and in the notes following the section the following is stated:

Words "or any corporation in which the United States of America is a stockholder" in said § 80 [1940 ed] were omitted as unnecessary in view of definition of "agency" in § 6 of this title.

18 U.S.C. § 6 is as follows:

The term "agency" includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense.

The 50 states are not subject to this authority.

End of note.

The "United States of America" currently identified as principal in Federal civil and criminal prosecution is a political coalition or compact of insular possessions of the United States.

..."If court is created under Article 3 of the federal Constitution, the court is a constitutional court. U.S.C.A. Const. art. 3. ..."**The words 'district court of the United States' commonly describe constitutional courts created under Article III of the Constitution, not the legislative courts which have long been the courts of the Territories.**" - Mookini v. U.S., 303 U.S. 201, 205, 58 S.Ct. 543, 545, 82 L.Ed. 748. (See also Longshoremen v. Juneau Spruce Corp., 324 U.S. 237; Reynolds v. U.S., 98 U.S. 145, 154; McAlister v. U.S., 141 U.S. 174; U.S. v. Burroughs, 289 U.S. 159, 163.

So, the above state that:

- **The "United States District Court" is a territorial court,**
- **The "District Court of the United States" is the first-level Article III court of the United States**
- **The "United States" is the proper principal of interest in courts of the United States other than territorial courts, where the "United States of America, ss, President of the United States" is the principal of interest in insular possession territorial courts**
- **The "United States of America is the principal of interest in insular possession territorial courts (see judicial provisions for Puerto Rico & the Virgin Islands in Title 48 of the United States Code).**

For example, Title 26 section 7402 - Jurisdiction of district courts states the following in subsection (a):

(a) To issue orders, processes, and judgments
The **district courts of the United States**

This is also stated in subsection (b) - To enforce summons, and subsection (c) - For damages to United States officers or employees. So in regards to these three subsections it is the **district courts of the United States** that have jurisdiction with the principal being the **United States of America**.

However, a look at subsection (e) reveals that it is the **United States District Courts** that have jurisdiction. with the **United States** being the proper principal

(e) To quiet title

Jurisdiction of Federal Government

The **United States district courts** shall have jurisdiction of any action brought by the United States to quiet title to property if the title claimed by the United States to such property was derived from enforcement of a lien under this title.

Subsection (f) refers to Title 28 section 1340 for general jurisdiction of the district courts of the United States in civil actions involving internal revenue:

(f) General jurisdiction

For general jurisdiction of the **district courts of the United States** in civil actions involving internal revenue, see section 1340 of title 28 of the United States Code.

Title 28 section 1340 is covered on page 280: To prove that the DOJ and courts deliberately attempts to grab jurisdiction that does not exist for what they want to do one needs to look no further than the Tax Division Judgment Collection Manual of the Department of Justice (refer to page 159), and look at Exhibit 5 - Order Granting Summary Judgment to Plaintiff United States of America. There it clearly shows that they are naming the "United States of America" as the plaintiff in a "United States District Court". Clearly a grab for jurisdiction that does not exist. Exhibit 5 is shown on the next page.

. Here are other good cites

U.S. v. Kirby, 7 Wall. 482. ..."The proposition that a taxing agency can assert a jurisdiction which has the power to destroy the individual persons property, interests and endeavors is absurd, and the law tolerateth not an absurdity."

The term "District Courts of the United States," as used in the rules, without an addition expressing a wider connotation, has its historic significance. It describes the constitutional courts created under article 3 of the Constitution. Courts of the Territories are legislative courts, properly speaking, and are not District Courts of the United States. We have often held that vesting a territorial court with jurisdiction similar to that vested in the District Courts of the United States does not make it a "District Court of the United States." - Mookini v. United States, 303 U.S. 201 (1938)

Identifying the Trickery employed by the DOJ

In the event that the DOJ/IRS files charges against you the very first thing you need to do is look at the court filing against you. The figure on page 253 shows the portion of the filing that it is critical to examine.

Then, using the steps outlined below match them with the numbered areas shown on the figure:

1. Note what court it was filed in, i.e. United States district court or district court of the United States.
2. Then note who the plaintiff is, i.e. the United States of America, or the United States.
3. If the court is a United States district court, and the plaintiff is the United States of America it clearly shows that the DOJ/IRS are attempting to try you in a court that has no jurisdiction to try the case.

When this occurs it becomes very important to challenge the court's jurisdiction for the following reason:

"Jurisdiction' is of two kinds--one of the subject, the other of the parties--and both must exist in order to authorize the court to try and determine the cause. Unless the law gives the court jurisdiction of the subject, jurisdiction cannot be acquired by the consent of the parties; but, if the law gives jurisdiction of the subject, the court may acquire jurisdiction of the parties by their consent...**But if B., without challenging the jurisdiction of the court, should file his answer**

pleading to the merits, neither party could afterwards question the jurisdiction of the court because by their actions they are conclusively presumed to have consented to give the court jurisdiction of their persons--that is, their personal rights--in that case." - State ex rel. Furstenfeld v. Nixon, Mo., 133 S.W. 340, @ 342

Note the emphasized text.

Responding to This Trickery

This is a challenge to the court's jurisdiction and must be made right up front. It should be based on the Failure To State A Claim Upon Which Relief Can Be Granted. In other words, the U.S. District Court is without authority. The DOJ will respond with a bunch of gobbly gook and gobbly geek to include taking IRC 7405 out of context. This too must be responded to. The point is, the cites given above blowholes in whatever the DOJ may throw at you. The Cracking the Code website has many actual court filings available. Use them as guides.

Above all, read each section of code and it's regulations referenced in any court filing against you to see where the jurisdiction lies.

Defensive Planning

When should you begin to plan a defense in the event you are brought to a federal court in regards to taxes? Right now is the time to formulate a contingency plan. Being prepared, or at least having a plan can save time and grief later on. It helps prevent oversight of key elements. In the following paragraphs the steps to be taken immediately, and upon indicted will be covered.

Immediate Steps

If you are aware of the case where William Wallace Lear was set entirely free and defeated the IRS then you should be aware of how he won. If you are not aware of the case, then read the Constructive Notice that forced the DOJ to have the court dismiss all charges against him and his wife with prejudice. It contains a base of what your Constructive Notice should contain (minus everything concerning the Form 1040/PRA/OMB information).

CAUTION

There was a lot of standing up, shouting, and chest pounding about this notice. Most everyone claimed it was the PRA/OMB evidence in the constructive notice that caused the DOJ to give up. This argument is easily defeated by the DOJ. It is what followed the PRA/OMB gibberish in the constructive notice that caused the DOJ and court to quit. It was proof that the IRS is not an agency founded by law submitted in a manner that it had to be introduced in evidence.

The Constructive Notice, as submitted by the Lear's is available for download at <http://one.fsphost.com/ronar/>. Use it , minus the PRA/OMB garbage as a guide only.:

Actions when Charged

When actually charged you must respond to the charges. This involves right up front a challenge to the court's jurisdiction if applicable. Refer to the SPECIAL NOTE on page 247 to make that determination. In spite of what the following cites state, the challenge is best made at the first opportunity. Otherwise, upon appeal the appellate court may consider that by not doing so you effectively granted jurisdiction by arguing your case without a challenge as previously shown:

IN THE UNITED STATES DISTRICT COURT FOR
THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 vs.) CIVIL NO.
)
 _____)
)
 Defendant)
 _____)

**ORDER GRANTING SUMMARY JUDGMENT
TO PLAINTIFF UNITED STATES OF AMERICA**

Upon consideration of plaintiff United States' motion for summary judgment against defendant _____, the Court finds that there are no genuine issues of material fact and that the United States is entitled to judgment as a matter of law. Accordingly, it is

ORDERED that the United States' motion for summary judgment is GRANTED;
and it is further ORDERED that:

Defendant _____ is indebted to the United States for [tax periods and type of tax, or reference chart below] taxes, interest, and statutory additions in the amount of \$ _____, plus interest and statutory additions according to law from _____ until the judgment is paid.

It is further ORDERED that the United States recover its costs of this action.

SIGNED this _____ day of _____, 200_.

UNITED STATES DISTRICT JUDGE

EXHIBIT 5

Tax Division Judgment Collection Manual of the Department of Justice – Exhibit 5

IN THE **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

2

UNITED STATES OF AMERICA,

v. Plaintiff,

John C. Doe
Defendant

§
§
§
§
§
§
§
§
§
§

Case No. 1:00-CV-12345
Judge Joseph E. Smiley

1

Portion of 1st Page of Court Filing

"The jurisdiction of this court is not prima facie general, but special. (b). A man must assign a good reason for coming here. If the true fact is denied, upon which he grounds his right to come here, he must prove it. He, therefore, is the actor in the proof; and, consequently, he has no right, where the point is contested, to throw the onus probandi on the defendant." - Max field 's Lessee V. Levy (1); 4 U.S. 330 (1797)

"Before we can look into the merits of the case, a preliminary inquiry presents itself. HAS THIS COURT JURISDICTION OF THE CASE?" - The Cherokee Nation v. The State of Georgia, 5 Peters 2(1831)

It is important to make this challenge your self. Do not use, or expect a lawyer to make it for you. This because of the following:

- 1) When you hire an attorney, you become a ward of the court and a second class citizen and you admit the jurisdiction of the court in the matter at hand
- 2) You can't hire an attorney if you want to challenge jurisdiction.
- 3) If you want to challenge jurisdiction, the only way you can do it is as a "sui juris" and/or "in propria persona".

In addition to challenging authority you should enter a certified copy (obtainable from your County Court) copy of your Constructive Notice under Rule 902 (4), (5), (8), (9) and (10) of the Federal Rules of Evidence. It also should be sent by certified mail to those you addressed it to. This one-two punch should effectively end the charges against you. However, if the United States District Court still insists on grabbing jurisdiction or allowing the Constructive Notice to be entered as evidence then you have to appeal on those grounds. The following citations are excellent to use in an appeal:

"The legislative authority of the Union must first make an act a crime, *affix* a punishment to it, and declare the Court that shall have jurisdiction of the offense. Certain implied powers must necessarily result to our Courts of justice. .But the jurisdiction of crimes against the state is not among those powers." - Hudson v. Goodwin; 7 U.S. 32, 33, 34 (1812)

Jurisdiction of Federal Government

"No Court in America ever yet thought, nor, I hope, ever will, of acquiring jurisdiction by a fiction. . .it is evident that we are not to assume a voluntary jurisdiction, because we think, or others may think, it may be exercised innocently, or even wisely. **The Court is not to fix the bounds of its own jurisdiction, according to its own discretion. A jurisdiction assumed without authority,** would be equally an usurpation, whether exercised wisely, or unwisely." = Maxfield's Lessee v. Levy (1); 4 U.S. 308, 311, 312 (1797)

Jurisdiction can be challenged at any time. - Brady V. Richardson, 18 Ind. 1; Black V. Harsh, USCA 1972, USS Ct. 1973

All acts of such a forum or court in WANT of jurisdiction being completely void and not just voidable. - Sandes V. Sheriff, 200 NYS 9

(1812) That Congress " . . .must declare the court that shall have jurisdiction of the offense." U.S. v. Hudson; 11 U.S. 7.

Based on the above cites a look at the IRC sections where congress has declared the court that shall have jurisdiction of the offense or action is in order.

Coram Non Judge

A little known, but important fact. It's meaning is derived from Latin for "not in the presence of a judge," is a legal term typically used to indicate a legal proceeding without a judge, with improper venue, or without jurisdiction.

The following gives the Black's Law Dictionary definition and some cites:

"In the presence of a person not a judge. When a suit is brought and determined in a court which has no jurisdiction in the matter, then it is said to be *coram non judge*, and the judgement is void." - Black's Law Dictionary, Sixth Edition, 13th Reprint (1998).

A case is said to be coram non judge when the court in which it is brought has no jurisdiction to settle the dispute. Goldman v. Goldman

Where there is a want of jurisdiction over the persons, as in the *Marshalsea* case, 10 Co. 70.; or over the cause, as if a justice should try a man for murder; or over the process, as in the case cited from *Hobart*; it is the same as though there was no court. It is *coram non judge*.

It is no uncommon thing where there is a court of limited jurisdiction, that their jurisdiction depends upon the existence of certain things, and for want of these the court has no jurisdiction; and every thing done by the court, where these are wanting, is *coram non judge*; and the judge and officer are, in such case, liable in trespass to any person who may be arrested by a warrant issuing from the court. - Grumon v. Raymond, 1 Conn. 40 1814

Title 26 Sections with Congressionally Mandated Jurisdiction

The IRC sections for which congress has mandated jurisdiction are shown in the following table.

Title 26 Court Jurisdiction Granted by Congress

IRC Section	Title	Court
6110(c)	Public inspection of written determinations/ Exemptions from disclosure	United States Tax Court or the United States District Court for the District of Columbia
6110(f)	Resolution of disputes relating to disclosure	United States Tax Court
6110(h)	Disclosure of prior written determinations and related background file documents	United States Tax Court
6110(i)	Special rules for disclosure of Chief Counsel advice	United States Court of Federal Claims

Title 26 Court Jurisdiction Granted by Congress (Cont.)

IRC Section	Title	Court
6226(a)	Judicial review of final partnership administrative adjustments/ Petition by tax matters partner	Tax Court, district court of the United States, or the Court of Federal Claims
6226(b)	Petition by partner other than tax matters partner	Tax Court, the district court of the United States for the district in which the principal place of business of the partnership is located, or the Court of Federal Claims
6226(e)	Jurisdictional requirement for bringing action in district court or Court of Federal Claims	district court of the United States or the Court of Federal Claims
6228(a)	Judicial review where administrative adjustment request is not allowed in full/ Request on behalf of partnership	Tax Court, the district court of the United States for the district in which the principal place of business of the partnership is located, or the Court of Federal Claims
6325(g)	Release of lien or discharge of property/ Filing of certificates and notices	United States district court
6334(e)	Property exempt from levy/ Levy allowed on principal residences and certain business assets in certain circumstances	district courts of the United States
6672(b)	Failure to collect and pay over tax, or attempt to evade or defeat tax/ Preliminary notice requirement	United States district court or Court of Federal Claims
6694(c)	Understatement of taxpayer's liability by income tax return preparer/ Extension of period of collection where preparer pays 15 percent of penalty	United States district court
7323(a)	Judicial action to enforce forfeiture/ Nature and venue	United States district court
7402(a)	Jurisdiction of district courts/ To issue orders, processes, and judgments	district courts of the United States
7402(b)	To enforce summons	district courts of the United States
7402(c)	For damages to United States officers or employees	district courts of the United States
7402(e)	To quiet title	United States district court
7403(a)	Action to enforce lien or to subject property to payment of tax	district court or the United States
7422(e)	Civil actions for refund/ Stay of proceedings	district court or the United States, Court of Federal Claims
7422(f)	Limitation on right of action for refund	United States district court
7422(i)	Special rule for actions with respect to tax shelter promoter and understatement penalties	United States Court of Federal Claims
7429(b)	Review of jeopardy levy or assessment procedures/Judicial review	district courts or the United States
7431(a)	Civil damages for unauthorized inspection or disclosure of returns and return information/ In general	district court or the United States
7432	Civil damages for failure to release lien/ In general	district court or the United States

Jurisdiction of Federal Government

Title 27 Sections with Congressionally Mandated Jurisdiction

This is worth looking at because the sections of the IRC that the IRS uses in their clever little scheme of fraud are enforceable only through legislative or substantive regulations found solely within Title 27 CFR - Alcohol, Tobacco and Firearms. This has been repeatedly shown throughout this document when those IRC sections were discussed.

In this regard, it should be remembered that in covering Treasury Order 120-01 (refer to page 150) it was shown that only the regulatory authority was transferred to Title 27 CFR. **The sections of the IRC affected remained in the IRC.** They knew that the American people do not understand the complexities and relationship of the various elements of federal law, i.e. statutes, codified sections, various types of regulations, etc. This made it extremely easy to impose Title 27 taxes on the unwitting people.

It also serves to indicate what was shown in Internal Revenue Manual 1100 as discussed on page 146 was and is correct.

For the above reason, Title 27 is a relatively small title. Since the codified sections containing all the double-speak and mumble jumbo play with words remain in the IRC the sections of Title 27 tend to be much more forward. To illustrate the size the entire Table of Contents for Title 27 is shown below. The repealed or omitted portions as indicated on the GPO web site are shown in red:

Chapter 1--General Provisions

- Sec. 1 to 5. Repealed.

Chapter 2--Prohibition of Intoxicating Beverages

- Sec. 11 to 40. **Repealed.**
- Sec. 40a. **Repealed.**
- Sec. 41 to 43. **Repealed.**
- Sec. 43a, 43b. **Omitted.**
- Sec. 44 to 57. **Repealed.**
- Sec. 58 to 60. **Repealed.**
- Sec. 61, 62. **Repealed.**
- Sec. 63. **Repealed.**
- Sec. 63a to 63d. **Transferred.**
- Sec. 64. **Repealed.**

Chapter 2a--Beer, Ale, Porter, And Similar Fermented Liquor

- Sec. 64a to 64o. **Repealed.**
- Sec. 64p. **Omitted.**

Chapter 3--Industrial Alcohol

- Sec. 71 to 90a. **Omitted.**

Chapter 4--Penalties

- Sec. 91, 92. **Repealed**

Chapter 5--Prohibition Reorganization Act Of 1930

- 101 to 108. **Repealed.**

Chapter 6--Transportation in Interstate Commerce

- Sec. 121. State statutes as operative on termination of transportation; original packages.
- Sec. 122. Shipments into States for possession or sale in violation of State law.
- Sec. 122a. Injunctive relief in Federal district court.
- Sec. 122b. General provisions.
- Sec. 123. **Repealed.**

Chapter 7--Liquor Law Repeal and Enforcement Act

- Sec. 151 to 167. **Omitted.**

Chapter 8--Federal Alcohol Administration Act

- Sec. 201. Short title.
- Sec. 202. General provisions.
- Sec. 202a to 202c. **Repealed** or **Omitted.**
- Sec. 203. Unlawful businesses without permit; application to State agency.
- Sec. 204. Permits.
- Sec. 205. Unfair competition and unlawful practices.
- Sec. 206. Bulk sales and bottling.
- Sec. 207. Penalties; jurisdiction; compromise of liability.
- Sec. 208. Interlocking directorates.
- Sec. 209, 210. **Omitted.**
- Sec. 211. Miscellaneous provisions.
- Sec. 212. **Omitted.**
- Sec. 213. Declaration of policy and purpose.
- Sec. 214. Definitions.
- Sec. 215. Labeling requirement.
- Sec. 216. Preemption.
- Sec. 217. Report to Congress.
- Sec. 218. Civil penalties.
- Sec. 219. Injunction proceedings; compromise of liability.
- Sec. 219a. Severability.

Chapter 9--Liquor Enforcement Act Of 1936

- 221 to 228. **Repealed.**

Casting aside those either repealed, transferred, or omitted does not leave a whole lot of code sections. Before listing those sections where congress has by statute assigned jurisdiction the following appears in the footnotes throughout Title 27:

As originally enacted subsec. (e) of this section contained a reference to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted "**the district court of the United States for the District of Columbia**" for "**the Supreme Court of the District of Columbia**", and act June 25, 1948, as amended by act May 24, 1949, substituted "**United States District Court for the District of Columbia**" for "**district court of the United States for the District of Columbia**". However, the words "**United States District Court for the District of Columbia**" have been deleted entirely as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "**There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district**", and section 88 of Title 28 which states that "**the District of Columbia constitutes one judicial district**".

The sections of Title 27 – Intoxicating Liquors for which congress has mandated jurisdiction are shown in the following table.

Title 27 Court Jurisdiction Granted by Congress

IRC Section	Title	Court
122a	Injunctive relief in Federal district court.	district courts of the United States, State Courts
205	Unfair competition and unlawful practices.	district courts of the United States, and United States court for any Territory (United States district court?)
207	Penalties; jurisdiction; compromise of liability	district courts of the United States, and United States court for any Territory (United States district court?)
208	Interlocking directorates.	district courts of the United States, and United States court for any Territory (United States district court?)
219	Injunction proceedings; compromise of liability	district courts of the United States

As can be seen in the above table all courts are territorial with the exception of use of state courts regarding section 122a.. This is of importance because it shows that there exists no jurisdiction within the 50 states with the following exception in 122a:

Sec. 122a. Injunctive relief in Federal district court

(a) Definitions

In this section -

(1) the term "attorney general" means the attorney general or other chief law enforcement officer of a State or the designee thereof;

(2) the term "intoxicating liquor" means any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind;

(3) the term "person" means any individual and any partnership, corporation, company, firm, society, association, joint stock company, trust, or other entity capable of holding a legal or beneficial interest in property, but does not include a State or agency thereof; and

(4) the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(b) Action by **State attorney general**

If the attorney general has reasonable cause to believe that a person is engaged in, or has engaged in, any act that would constitute **a violation of a State law regulating the importation or transportation of any intoxicating liquor**, the attorney general may bring a civil action in accordance with this section for injunctive relief (including a preliminary or permanent injunction) against the person, as the attorney general determines to be necessary to -

(1) restrain the person from engaging, or continuing to engage, in the violation; and

(2) **enforce compliance with the State law.**

(c) **Federal jurisdiction**

(1) In general

The district courts of the United States shall have jurisdiction over any action brought under this section by an

attorney general against any person, except one licensed or otherwise authorized to produce, sell, or store intoxicating liquor in such State.

(2) Venue

An action under this section may be brought only in accordance with section 1391 of title 28 or in the district in which the recipient of the intoxicating liquor resides or is found.

(3) Form of relief

(4) **No right to jury trial**

An action under this section shall be tried before the court.

(d) Requirements for injunctions and orders

(e) **Rules of construction**

This section shall be construed only to extend the jurisdiction of Federal courts in connection with State law that is a valid exercise of power vested in the States -

(1) under the twenty-first article of amendment to the Constitution of the United States as such article of amendment is interpreted by the Supreme Court of the United States including interpretations in conjunction with other provisions of the Constitution of the United States; and

(2) under section 122 of this title as such section is interpreted by the Supreme Court of the United States; **but shall not be construed to grant to States any additional power.**

(f) Additional remedies

(1) In general

A remedy under this section is in addition to any other remedies provided by law.

(2) **State court proceedings**

Nothing in this section may be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any State law.

The first thing to notice is the definition for “state” as applies to section 122a: **“the term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.”** Notice that the term “includes” was not used, with “means” being used in its place and that the 50 States of the United States are therefore subject to this section of Title 27.

Next, notice that it is subsection (b) that applies to any action by a State attorney general wherein it states **“a violation of a State law regulating the importation or transportation of any intoxicating liquor”**. Therefore, it regards a violation of State law.

It is subsection (c) that pertains to federal jurisdiction. Here note that it states in subsection (c)(1) **“The district courts of the United States shall have jurisdiction over any action brought under this section by an attorney general against any person, except one licensed or otherwise authorized to produce, sell, or store intoxicating liquor in such State.”** Thereby giving such courts jurisdiction within the venue prescribed in subsection (c)(2), which reads as follows:

(2) Venue

An action under this section may be brought only in accordance with section 1391 of title 28 or in the district in which the recipient of the intoxicating liquor resides or is found.

Here you have to pause and think. Notice that the section can only apply **“in accordance with section 1391 of title 28 or in the district in which the recipient of the intoxicating liquor resides or is found.”** In looking at section 1391 of Title 28, it is found that it pertains to Venue generally and again relates to territorial districts. Therefore, this section applies to the territory under federal control only. Subsection (c)(4) denies a right to trial by jury within the venue of the federal courts.

Jurisdiction of Federal Government

Subsection (e) states **“This section shall be construed only to extend the jurisdiction of Federal courts in connection with State law that is a valid exercise of power vested in the States.”** Meaning that if a valid state law exists and the state refuses to exercise its jurisdiction, then and only then can the federal courts take jurisdictional control.

In retrospect, this coverage of Title 27 jurisdiction has strengthened what was stated concerning the ATF on page 149 remains true. It must be remembered that previously it was shown and proven that the IRS was not created by law (“thought they had” does not constitute law). It was also shown that Treasury Order 120-01 is the event giving birth to what was then known as the BATF, refer to page 150. This was also shown in T.D. ATF-301, 55 FR 47604, Nov. 14, 1990 (refer to page 111). The transfer of the ATF and making of the TTB were not acts of creation by law, but mere realignments of agencies not created by law.

Federal Court Listing

A listing of the various federal courts, showing the source of their creation and their type (Article I, III, or IV) is shown below

Federal Courts

Court	Source	Type
Supreme Court	Constitution, Article III	Article III
United States Courts of Appeals	Act of March 3, 1891 (28 USC ch. 3)	Article III
United States Court of Appeals for the Federal Circuit	Federal Courts Improvement Act of 1982 (28 USC 41, 44, 48)	Article III
United States District Courts	Judiciary Act of 1789 (1 Stat. 76), September 24, 1789, pursuant to Article I, section 8 of the Constitution	Article I
Territorial Courts	Article IV, sec. 3, clause 2, of the Constitution	Article IV ¹
United States Court of International Trade	Act of July 14, 1956 (28 USC 251), established the court as a court of record of the United States under Article III of the Constitution	Article III
United States Court of Federal Claims	28 USC 171, Article I, U.S. Constitution	Article I
United States Court of Appeals for the Armed Forces	Article I of the Constitution of the United States pursuant to act of May 5, 1950, as amended (10 USC 867)	Article I
United States Tax Court	Court of record under Article I of the Constitution of the United States (26 USC 7441).	Article I
United States Court of Appeals for Veterans Claims	(102 Stat. 4105, 38 USC 7251) pursuant to Article I of the Constitution	Article I
District of Columbia Court of Appeals	February 9, 1893 27 Stat. 434; 1934 (48 Stat. 926)	Article I
Superior Court	March 3, 1863 12 Stat. 762	Article I

Note 1: The district court of Puerto Rico is established under Article III.

The district courts of Guam, U.S. Virgin Islands, and Northern Mariana Islands are Article IV courts, however legislation has been introduced to make them Article III courts.

Criminal Jurisdiction

Most people believe that the federal courts have broad jurisdiction. In actuality, the jurisdiction of the lower federal courts (those created under Articles I and IV of the Constitution) is extremely limited. In the following paragraphs, this limitation will become clearer:

Paragraph:

Constitutional Limitations on Federal Power

Page:

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Constitutional Limitations on Federal Power

To understand the importance and implications of this, a look at Title 40 (40 USC) section 255 is in order. In doing so two versions of Title 40 will be looked at, the official version of U.S. Code on GPO Access, and the U.S.C.S. (U.S. Code Service). The U.S.C.S. contains everything that is printed in the official U.S. Code but also include annotations to case law relevant to the particular statute.

Title 40, section 255 United States Code

The importance of this section is what is stated in the last sentence "**Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted.**"

Read the last sentence carefully, its importance will become clear a little later.

Title 40, section 255 United States Code Service

In the 2003 edition of the USCS Title 40 section 255 appears at 40 USCS sections 3111 and 3112. For purposes of brevity, only one page will be shown on the following page. The primary benefit in using the USCS is the citations that are included. In these cites are examples where state jurisdiction has been retained in certain instances according to cessation agreements, and others that show where the federal jurisdiction has precedence over that of the state.

Department of Justice, Criminal Resource Manual

That the Department of Justice/U.S. Attorneys is aware of this is apparent in the DOJ Criminal Resource Manual 664 Territorial Jurisdiction. Here only the comments are shown:

COMMENT: In summary, the United States may exercise plenary criminal jurisdiction over lands within state borders:

- A. Where it reserved such jurisdiction upon entry of the state into the union;
- B. Where, prior to February 1, 1940, it acquired property for a purpose enumerated in the Constitution with the consent of the state;
- C. Where it acquired property whether by purchase, gift or eminent domain, and thereafter, but prior to February 1, 1940, received a cession of jurisdiction from the state; and
- D. Where it acquired the property, and/or received the state's consent or cession of jurisdiction after February 1, 1940, and has filed the requisite acceptance.

§ 3105. Buildings not to be draped in mourning

No building owned, or used for public purposes, by the Federal Government shall be draped in mourning nor may public money be used for that purpose.

(Aug. 21, 2002, P. L. 107-217, § 1, 116 Stat. 1143.)

HISTORY: ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3105	40:286	Mar. 3, 1893, ch. 211, § 3, 27 Stat. 715

The words "On and after March 3, 1893" are omitted as obsolete.

SUBCHAPTER II. ACQUIRING LAND

§ 3111. Approval of sufficiency of title prior to acquisition

(a) **Approval of Attorney General required.** Public money may not be expended to purchase land or any interest in land unless the Attorney General gives prior written approval of the sufficiency of the title to the land for the purpose for which the Federal Government is acquiring the property.

(b) **Delegation.** (1) In general, The Attorney General may delegate the responsibility under this section to other departments and agencies of the Government, subject to general supervision by the Attorney General and in accordance with regulations the Attorney General prescribes.

(2) **Request for opinion of Attorney General.** A department or agency of the Government that has been delegated the responsibility to approve land titles under this section may request the Attorney General to render an opinion as to the validity of the title to any real property or interest in the property, or may request the advice or assistance of the Attorney General in connection with determinations as to the sufficiency of titles.

(c) **Payment of expenses for procuring certificates of title.** Except where otherwise authorized by law or provided by contract, the expenses of procuring certificates of titles or other evidences of title as the Attorney General may require may be paid out of the appropriations for the acquisition of land or out of the appropriations made for the contingencies of the acquiring department or agency of the Government.

(d) **Nonapplication.** This section does not affect any provision of law in effect on September 1, 1970, that is applicable to the acquisition of land or interests in land by the Tennessee Valley Authority.

(Aug. 21, 2002, P. L. 107-217, § 1, 116 Stat. 1144.)

Title 18, section 7 Special maritime and territorial jurisdiction of the United States defined

Title 18, section 7 defines the special maritime and territorial jurisdiction of the United States as "The term "special maritime and territorial jurisdiction of the United States", as used in this title, includes:(1) The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and **out of the jurisdiction of any particular State**, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.(2) Any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, or any of the waters connecting them, or upon the Saint Lawrence River where the same constitutes the International Boundary Line.(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.(4) Any island, rock, or key containing deposits of guano, which may, at the discretion of the President, be considered as appertaining to the United States. (5)

Any aircraft belonging in whole or in part to the United States, or any citizen thereof, or to any corporation created by or under the laws of the United States, or any State, Territory, district, or possession thereof, while such aircraft is in flight over the high seas, or over any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.(6) Any vehicle used or designed for flight or navigation in space and on the registry of the United States pursuant to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies and the Convention on Registration of Objects Launched into Outer Space, while that vehicle is in flight, which is from the moment when all external doors are closed on Earth following

embarkation until the moment when one such door is opened on Earth for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the vehicle and for persons and property aboard.(7) Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States.(8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States.

So far everything discussed all agree as to where federal criminal jurisdiction exists. Now we need to look at the Federal Rules of Criminal Procedure.

Department of Justice U.S. Attorney's Manual

Department of Justice, U.S. Attorney's Manual, Title 9 Criminal Resource Manual

Department of Justice, U.S. Attorney's Manual, Title 9 Criminal Resource Manual, 9-4.000 Statutes Assigned by Citation gives the responsibilities for enforcement by sections of code.

9-4.100 gives the Statutory Responsibilities General to All Criminal Division sections and Offices and states "The assignment of responsibility for the following sections of the United States Code is general in nature and not specific to any Office or section of the Criminal Division. Because of this, all sections and Offices of the Criminal Division are responsible for the sections listed below. It then lists the following in regards to 26 U.S.C.:

9-4.139, 26 U.S.C.: Internal Revenue Code
§,§;7201-7209

9-4.139 26 U.S.C.: Internal Revenue Code

Sections 7201 - 7206, as previously shown cannot be applied outside of the maritime/territorial jurisdiction of the federal government in regards to U.S. Citizens. It is when one looks at 9-4.139, which delineates enforcement responsibilities within 26 U.S.C. where things get interesting. The table from 9.4.139 is reconstructed below.

Jurisdiction of Federal Government

9-4.139 26 U.S.C.: Internal Revenue Code

Statute	Criminal Division section	Telephone #	Agency With Investigative Jurisdiction
§3121(b)17	CES	(202) 514-1187	Treasury
§§4181-4182	DSS	(202) 514-0849	Treasury (ATF)
§§4401-4405	OCRS	(202) 514-3595	Treasury; I.R.S.
§§4411-4414	OCRS	(202) 514-3595	Treasury; I.R.S.
§§4421-4423	OCRS	(202) 514-3595	Treasury; I.R.S.
§§5001-5687 Except	OCRS	(202) 514-3595	Treasury (ATF)
§§5607-5608	AFMLS (Forfeiture only)	(202) 514-1263	Treasury (ATF)
§§5612-5613	AFMLS	(202) 514-1263	Treasury (ATF)
§5615	AFMLS	(202) 514-1263	Treasury (ATF)
§5661(a)	AFMLS (Forfeiture only)	(202) 514-1263	Treasury (ATF)
§5671	AFMLS (Forfeiture only)	(202) 514-1263	Treasury (ATF)
§5673	AFMLS	(202) 514-1263	Treasury (ATF)
§5681(c)	AFMLS (Forfeiture only)	(202) 514-1263	Treasury (ATF)
§5683	AFMLS (Forfeiture only)	(202) 514-1263	Treasury (ATF)
§5685(c)	AFMLS (Forfeiture only)	(202) 514-1263	Treasury (ATF)
§5688	AFMLS	(202) 514-1263	Treasury (ATF)
§5691	OCRS	(202) 514-3595	Treasury (ATF)
§5723(c)-(d) FRAUD	(202) 514-7023	Treasury (ATF)	
§5763	AFMLS	(202) 514-1263	Treasury (ATF)
§5801	DSS	(202) 514-0849	
§5802	DSS	(202) 514-0849	Treasury (ATF)
§5803	DSS	(202) 514-0849	
§5804	DSS	(202) 514-0849	
§§5811-5812	DSS	(202) 514-0849	Treasury (ATF)
§§5821-5822	DSS	(202) 514-0849	Treasury (ATF)
§§5841-5849	DSS	(202) 514-0849	Treasury (ATF)
§§5851-5854	DSS	(202) 514-0849	Treasury (ATF)
§5861	DSS	(202) 514-0849	Treasury (ATF)
§5871	DSS	(202) 514-0849	Treasury (ATF)
§5872(a)	AFMLS	(202) 514-1263	Treasury (ATF)
§60501	AFMLS	(202) 514-1263	Treasury; I.R.S.
§6103	OEO**	(202) 514-6809	All DOJ Components
§7122	AFMLS	(202) 514-1263	Treasury (ATF)

9-4.139 26 U.S.C.: Internal Revenue Code (Cont.)

Jurisdiction of Federal Government

Statute	Criminal Division section	Telephone #	Agency With Investigative Jurisdiction
Customs			
	(Statutes administered by Criminal Division)	Secret Service	
§§7201-7209	All		None
§7212	OEO	(202) 514-6809	FBI
§7213	PIN*	(202) 514-1412	Treasury; I.R.S.
§7214	PIN	(202) 514-1412	FBI
§7262	OCRS	(202) 514-3595	Treasury; I.R.S.
§7272	FRAUD	(202) 514-7023	Treasury; I.R.S.
§7301-7303	AFMLS	(202) 514-1263	Treasury (ATF)
§§7321-7327	AFMLS	(202) 514-1263	Treasury (ATF)
§9012	PIN	(202) 514-1412	FBI; Federal Election Commission
§9042	PIN	(202) 514-1412	FBI; Federal Election Commission

Of importance, here is the investigative authority of the Internal Revenue Service (IRS) and of the Alcohol, Tobacco, and Firearms agency (ATF). These are discussed in the following paragraphs.

9-4.139 26 U.S.C. sections With IRS Investigative Authority

Now, let's see what sections are enforced by the IRS. I left in the entry in regards to §3121(b)17 to show its applicability as it was listed as the responsibility of all sections and Offices of the Criminal Division. Refer to the following table.

Sections Enforced by IRS

STATUTE	SUBJECT
§3121(b)17	Service as an employee of any subversive organization
§4401	Tax on Wagers - Imposition of tax
§4402	Tax on Wagers - Exemptions
§4403	Tax on Wagers - Record requirements
§4404	Tax on Wagers - Territorial extent
§4405	Tax on Wagers - Cross references
§4411	Occupational Tax - Imposition of tax: applies to any person liable for tax imposed by §4401 (Wagers)
§4412	Occupational Tax - Registration
§4413	Occupational Tax - Certain provisions made applicable
§4414	Occupational Tax - Cross references
§4421	Miscellaneous Provisions - Definitions - defines "wager" and "lottery"
§4422	Miscellaneous Provisions - Applicability of Federal and State laws
§4423	Miscellaneous Provisions - Inspection of books
§6050l	Returns relating to cash received in trade or business, etc.
§6103	Confidentiality and disclosure of returns and return information
§7213	Unauthorized disclosure of information
§7262	Violation of occupational tax laws relating to wagering- failure to pay special tax
§7272	Penalty for failure to register

In the above listing, the following should be noted.

1. Since §3121(b)17 pertains to "an employee of any subversive organization", it is non-applicable to those that aren't.
2. §4401 through §4423 all pertain to those that are "wagers" and are located in Chapter 35 - Taxes on Wagering, Subchapters A through C of the IRC.

Jurisdiction of Federal Government

3. §6050I was repealed by Pub. L. 96-167, Sec. 5(a), Dec. 29, 1979, 93 Stat. 1276].

In summary, according to the Department of Justice, U.S. Attorney's Manual the investigative jurisdiction of the IRS is extremely limited.

9-4.139 26 U.S.C. sections With ATF Investigative Authority

Now, let's see what sections are enforced by the ATF. I left in the entry in regards to §3121(b)17 to show its applicability as it was listed as the responsibility of all sections and Offices of the Criminal Division. Refer to the following table.

Sections Enforced by ATF

Statute	Subject/Remark
§3121(b)17	Service as an employee of any subversive organization
§4181	Imposition of tax (on firearms)
§4182	Exemptions (on firearms)
§§5001-5687	All sections are in Subtitle E - Alcohol, Tobacco, and Certain Other Excise Taxes, Chapter 51 - Distilled Spirits, Wines, and Beer
§5607	Located in Subtitle E - Alcohol, Tobacco, and Certain Other Excise Taxes, Chapter 51 - Distilled Spirits, Wines, and Beer
§5608	Located in Subtitle E - Alcohol, Tobacco, and Certain Other Excise Taxes, Chapter 51 - Distilled Spirits, Wines, and Beer
§5612	Located in Subtitle E - Alcohol, Tobacco, and Certain Other Excise Taxes, Chapter 51 - Distilled Spirits, Wines, and Beer
§5613	Located in Subtitle E - Alcohol, Tobacco, and Certain Other Excise Taxes, Chapter 51 - Distilled Spirits, Wines, and Beer
§5615	Located in Subtitle E - Alcohol, Tobacco, and Certain Other Excise Taxes, Chapter 51 - Distilled Spirits, Wines, and Beer
§5661(a)	Located in Subtitle E - Alcohol, Tobacco, and Certain Other Excise Taxes, Chapter 51 - Distilled Spirits, Wines, and Beer
§5671	Located in Subtitle E - Alcohol, Tobacco, and Certain Other Excise Taxes, Chapter 51 - Distilled Spirits, Wines, and Beer
§5673	Located in Subtitle E - Alcohol, Tobacco, and Certain Other Excise Taxes, Chapter 51 - Distilled Spirits, Wines, and Beer
§5681(c)	Located in Subtitle E - Alcohol, Tobacco, and Certain Other Excise Taxes, Chapter 51 - Distilled Spirits, Wines, and Beer
§5683	Located in Subtitle E - Alcohol, Tobacco, and Certain Other Excise Taxes, Chapter 51 - Distilled Spirits, Wines, and Beer
§5685(c)	Located in Subtitle E - Alcohol, Tobacco, and Certain Other Excise Taxes, Chapter 51 - Distilled Spirits, Wines, and Beer
§5688	Disposition and release of seized property - Located in Subtitle E - Alcohol, Tobacco, and Certain Other Excise Taxes, Chapter 51 - Distilled Spirits, Wines, and Beer
§5691	Penalties for nonpayment of special taxes property - Located in Subtitle E - Alcohol, Tobacco, and Certain Other Excise Taxes, Chapter 51 - Distilled Spirits, Wines, and Beer
§5723(c)-(d)	Packages, marks, labels, and notices - Located in Subtitle E--Alcohol, Tobacco, and Certain Other Excise Taxes, Chapter 52--Tobacco Products and Cigarette Papers and Tubes
§5763	Forfeitures - Located in Subtitle E--Alcohol, Tobacco, and Certain Other Excise Taxes, Chapter 52--Tobacco Products and Cigarette Papers and Tubes
§5802	Registration of importers, manufacturers, and dealers - Subtitle E--Alcohol, Tobacco, and Certain Other Excise Taxes, Chapter 53 - Machine Guns, Destructive Devices, and Certain Other Firearms
§5811	Transfer tax (on transferring firearms)
§5812	Transfers
§5821	Making tax (on making firearms)

Sections Enforced by ATF (Cont.)

Statute	Subject/Remark
§5822	Making
§5841	Registration of firearms
§5842	Identification of firearms
§5843	Records and returns
§5844	Importation
§5845	Definitions
§5846	Other laws applicable
§5847	Effect on other laws
§5848	Restrictive use of information
§5849	Citation of chapter
§5851	Special (occupational) tax exemption
§5852	General transfer and making tax exemption
§5853	Transfer and making tax exemption available to certain governmental entities
§5854	Exportation of firearms exempt from transfer tax
§5861	Prohibited acts
§5871	Penalties
§5872(a)	Forfeitures
§6050l	Repealed by Pub. L. 96-167, Sec. 5(a), Dec. 29, 1979, 93 Stat. 1276].
§6103	Confidentiality and disclosure of returns and return information
§7122	Compromises
§7301	Property subject to tax
§7302	Property used in violation of internal revenue laws
§7303	Other property subject to forfeiture
§7321	Authority to seize property subject to forfeiture
§7322	Delivery of seized personal property to United States marshal
§7323	Judicial action to enforce forfeiture
§7324	Special disposition of perishable goods
§7325	Personal property valued at \$100,000 or less
§7326	Disposal of forfeited or abandoned property in special cases
§7327	Customs laws applicable

As can be seen, the ATF handles all enforcement for taxes that relate to alcohol, tobacco, and firearms. Of special interest is the fact that IRC sections 7301 through 7327 are delegated solely to the ATF, not the IRS.

Department of Justice Criminal Tax Manual

Now a look at the Department of Justice Criminal Tax Manual is in order for another look at criminal enforcement of the tax code. Presentation will be limited to those sections that contain the most critical information.

1.00 Organization and Authority

1.01 Tax Division Authority

Within this section the following is stated:

The functions assigned to, and conducted, handled, or supervised by, the Assistant Attorney General, Tax Division, are set forth in Department of Justice Regulations on the Tax Division, sections 0.70 and 0.71 (**28 C.F.R.**)¹ which, for convenience of reference, are reproduced below.

Title 28 -- **Judicial Administration**

PART 0 (Zero) -- **ORGANIZATION OF THE DEPARTMENT OF JUSTICE**

Subpart N -- Tax Division

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§ 0.70 *General functions.*

The following functions are assigned to and shall be conducted, handled, or supervised by, the Assistant Attorney General, Tax Division:

(a) Prosecution and defense in all courts, other than the Tax Court, of civil suits, and the handling of other matters, arising under the internal revenue laws, and litigation resulting from the taxing provisions of other Federal statutes (except civil forfeiture and civil penalty matters arising under laws relating to liquor, narcotics, gambling, and firearms assigned to the Criminal Division by section 0.55(d)).

(b) Criminal proceedings arising under the internal revenue laws, **except the following: Proceedings pertaining to misconduct of Internal Revenue Service personnel, to taxes on liquor, narcotics, firearms, coin-operated gambling and amusement machines, and to wagering, forcible rescue of seized property (26 U.S.C. 7212(b)), corrupt or forcible interference with an officer or employee acting under the Internal Revenue laws (26 U.S.C. 7212(a)), unauthorized disclosure of information (26 U.S.C. 7213), and counterfeiting, mutilation, removal, or reuse of stamps (26 U.S.C. 7208).**

(c)(1) Enforcement of tax liens, and mandamus, injunctions, and other special actions or general matters arising in connection with internal revenue matters.

(2) Defense of actions arising under section 2410 of Title 28 of the United States Code whenever the United States is named as a party to an action as the result of the existence of a Federal tax lien, including the defense of other actions arising under section 2410, if any, involving the same property whenever a tax-lien action is pending under that section.

(d) Appellate proceedings in connection with civil and criminal cases enumerated in paragraphs (a) through (c) of this section and in section 0.71, including petitions to review decisions of the Tax Court of the United States.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 960-81, 46 FR 52346, Oct. 27, 1981]¹

§ 0.71 Delegation respecting immunity matters.

The Assistant Attorney General in charge of the Tax Division is authorized to handle matters involving the immunity of the Federal Government from State or local taxation (except actions to set aside ad valorem taxes, assessments, special assessments, and tax sales of Federal real property, and matters involving payments in lieu of taxes), as well as State or local taxation involving contractors performing contracts for or on behalf of the United States.

Prosecutions for obstruction of justice (18 U.S.C., Secs. 1501-1511), perjury (18 U.S.C., Secs. 1621, 1622), false declarations before a grand jury or court (18 U.S.C., Sec. 1623), fraud and false statements in matters within the jurisdiction of a

government agency (18 U.S.C., Sec. 1001), and conspiracy to defraud the United States (18 U.S.C., Sec. 371) come under Sec. 0.179 (28 C.F.R.). section 0.179a provides, with respect to those offenses, as follows:

§ 0.179a **Enforcement responsibilities.**

(a) Matters involving charges of obstruction of justice, perjury, fraud or false statement, as described in section 0.179, shall be under the supervisory jurisdiction of the Division having responsibility for the case or matter in which the alleged obstruction occurred. The Assistant Attorney General in charge of each Division shall have full authority to conduct prosecution of such charges, including authority to appoint special attorneys to present evidence to grand juries. However, such enforcement shall be preceded by consultation with the Assistant Attorney General in charge of the Criminal Division, to determine the appropriate supervisory jurisdiction. (See 38 CFR 0.55(p).)

(b) In the event the Assistant Attorney General in charge of the Division having responsibility for the case or matter does not wish to assume supervisory jurisdiction he shall refer the matter to the Assistant Attorney General in charge of the Criminal Division for handling by that Division.

[Order No. 630-75, 40 FR 53390, Nov. 18, 1975].

For prosecutions involving the charging of tax crimes as mail fraud, wire fraud, or bank fraud (18 U.S.C. Secs. 1341, 1343, 1344) or as predicates to a RICO charge or as the specified unlawful activity of a money laundering offense, cross reference should be made to Tax Division Directive No. 99 (Mar. 30, 1993), which is contained in Chapter 3.00, infra.

What is important in the above is not only what is stated in § 0.70(b), which ties the listed offenses to criminal acts but also the referencing of 28 C.F.R. and 46 FR 52346, Oct. 27, 1981 to a footnote that states "The contents of the Federal Register are required to be judicially noticed. 44 U.S.C. § 1507." This section of code reads as follows:

Sec. 1507. Filing document as constructive notice; publication in Federal Register as presumption of validity; judicial notice; citation

A document required by section 1505(a) of this title to be published in the Federal Register is not valid as against a person who has not had actual knowledge of it until the duplicate originals or certified copies of the document have been filed with the Office of the Federal Register and a copy made available for public inspection as provided by section 1503 of this title. Unless otherwise specifically provided by statute, filing of a document, required or authorized to be published by section 1505 of this title, except in cases where notice by publication is insufficient in law, is sufficient to give notice of the contents of the document to a person subject to or affected by it. The publication in the Federal Register of a document creates a rebuttable presumption--

- (1) that it was duly issued, prescribed, or promulgated;
- (2) that it was filed with the Office of the Federal Register and made available for public inspection at the day and hour stated in the printed notation;
- (3) that the copy contained in the Federal Register is a true copy of the original; and
- (4) that all requirements of this chapter and the regulations

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prescribed under it relative to the document have been complied with.

The contents of the Federal Register shall be judicially noticed and without prejudice to any other mode of citation, may be cited by volume and page number.

(Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1276.)

Notice that it references section 1505(a) in regards to documents that are required to be filed. According to Title 44 section 1505(a) the following types of documents are listed:

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

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

(2) documents or classes of documents that the President may determine from time to time have general applicability and legal effect; and

(3) documents or classes of documents that may be required so to be published by Act of Congress.

For the purposes of this chapter every document or order which prescribes a penalty has general applicability and legal effect.

Note the very last sentence.

Internal Revenue Manual

Next let's take a look at part 9.9.8.2.1. This part lists the United States Code Statutes for which Criminal Investigation (IRS-CID) has jurisdiction. Since it is the IRS-CID that is involved, section references in the IRC are shown where applicable. The code statutes designated as having IRS-CID jurisdiction are tabled in the following paragraphs, to include the violations and any appropriate IRC referenced sections, or other pertinent remarks.

Paragraph:	Page:
Title 26 Violations	270
Title 31 Violations	277

Title 26 Violations

Since Title 26 is the IRC, it needs to be looked at carefully. In doing so the sections will be covered in the following paragraphs:

<u>Title 26 section:</u>	<u>Page:</u>
Title 26 section 6103 - Confidentiality and disclosure of returns and return information	271
Title 26 section 7201 - Attempt to evade or defeat tax	271
Title 26 section 7202 - Willful failure to collect or pay over tax	272
Title 26 section 7203 - Willful failure to file return, supply information, or pay tax	272
Title 26 section 7204 - Fraudulent statement or failure to make statement to employees	272
Title 26 section 7205 - Fraudulent withholding exemption certificate or failure to supply information	272
Title 26 section 7206 - Fraud and false statements	273
Title 26 section 7207 - Fraudulent returns, statements, or other documents	273
Title 26 section 7208 - Offenses relating to stamps	274
Title 26 section 7209 - Unauthorized use or sale of stamps	274
Title 26 section 7210 - Failure to obey summons	274

Title 26 section:	Page:
Title 26 section 7211 - False statements to purchasers or lessees relating to tax	275
Title 26 section 7212 - Attempts to interfere with administration of internal revenue laws	275
Title 26 section 7215 - Offenses with respect to collected taxes	276
Title 26 section 7231 - Failure to obtain license for collection of foreign items	276
Title 26 section 7232 - Failure to register, or false statement by manufacturer or producer of gasoline, lubricating oil, diesel fuel, or aviation fuel	276
Title 26 section 7261 - Representation that retailers' excise tax is excluded from price of article	276
Title 26 section 7262 - Violation of occupational tax laws relating to wagering- failure to pay special tax	276
Title 26 section 7268 - Possession with intent to sell in fraud of law or to evade tax	276
Title 26 section 7270 - Insurance policies	277
Title 26 section 7275 - Penalty for offenses relating to certain airline tickets and advertising	277

Title 26 section 6103 - Confidentiality and disclosure of returns and return information

As can be seen, this section details the limitations in regards to the confidentiality and disclosure of returns and return information **by officers and employees of the federal and state governments, or others working for them.** Regulations enforceable through Acts, Statutes, or Laws of congress are found in the following:

CFR: Part:

- 20 Part 401 - Privacy and disclosure of official records and information
- 20 Part 402 - Availability of information and records to the public
- 26 Part 301 - Procedure and administration
- 42 Part 401 - General administrative requirements

Title 26 section 7201 - Attempt to evade or defeat tax

This section of code is in regards to an attempt to evade or defeat tax and establishes the punishment. It is important to remember that it uses the wording "**Any person**". Notice that the words "Any person" are bolded and underlined. This is to point out how definitions are subject to change. Note that the word "person" appears only once, therefore leading one to falsely believe that it applies to all "persons" as understood in every day English, or that it has the meaning as given in IRC section 7701(a)(1) as "**where not otherwise distinctly expressed or manifestly incompatible with the intent thereof**"—Person The term "**person**" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation."

You want to note that in the cross references following this section "it states "**Definition of person, see section 7343 of this title.**" Section 7343 gives the definition of "person as -"**The term "person" as used in this chapter 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.**"

Notice that it applies to the whole chapter, which is Chapter 75--Crimes, Other Offenses, and Forfeitures and includes sections 7201 thru 7344. Therefore, in any section within chapter 75 the word "person" is very limited as to whom it applies to.

By searching Title 26 Code of Federal Register (CFR) for regulations pertaining to IRC section 7201 the following result was obtained. The Query Reports and TOC hits are removed and only the following tabled regulations remain:

Search Database:

Title 26 All Volumes (2003)

For: "7201"

Total Hits: 50

<u>Part/section:</u>	<u>Title/Subject:</u>
1.451-4	Accounting for redemption of trading stamps and coupons.

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Part/section:	Title/Subject:
1.1461-1	Payment and returns of tax withheld.
20.6061-1	Signing of returns and other documents.
25.6061-1	Signing of returns and other documents.
48.4061(a)-1	Imposition of tax; exclusion for light-duty trucks, etc.
48.6416(b)(2)-3	Supporting evidence required in case of manufacturers tax involving exportations, uses, sales, or resales.
48.6416(b)(2)-4	Supporting evidence required in case of special fuels tax involving exportations, uses, sales, or resales of special fuels.
301.6020-1	Returns prepared or executed by district directors or other internal revenue officers.
301.6361-1	Collection and administration of qualified taxes.
301.7512-1	Separate accounting for certain collected taxes.
53.6061-1	Signing of returns and other documents.

Because this section is limited, as to whom it applies to (IRC 7343 def. Of “**person**” - **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**) it is obvious that it is applicable only to business type returns. Therefore, further discussion is not warranted.

Title 26 section 7202 - Willful failure to collect or pay over tax

Because this section is limited, as to whom it applies to (IRC 7343 def. Of “**person**” - **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**”) it is obvious that it is applicable only to business type returns. Therefore, further discussion is not warranted.

Title 26 section 7203 - Willful failure to file return, supply information, or pay tax

Because this section is limited, as to whom it applies to (IRC 7343 def. Of “**person**” - **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**”) it is obvious that it is applicable only to business type returns. Therefore, further discussion is not warranted.

Title 26 section 7204 - Fraudulent statement or failure to make statement to employees

Because this section is limited, as to whom it applies to (IRC 7343 def. Of “**person**” - **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**”) it is obvious that it is applicable only to business type returns. Therefore, further discussion is not warranted.

Title 26 section 7205 - Fraudulent withholding exemption certificate or failure to supply information

This section is in regards to “Fraudulent withholding exemption certificate or failure to supply information”. There is no regulations executable by an Act or law of congress for this section. A search for regulations within 26 CFR yielded the following results:

By searching Title 26 Code of Federal Register (CFR) for regulations pertaining to IRC section 7201 the following result was obtained. The Query Reports and TOC hits are removed and only the following tabled regulations remain:

Search Database:
Title 26 All Volumes (2003)
For: "7205"
Total Hits: 21

Part/section:	Title/Subject:
31.3402(q)-1	Extension of withholding to certain gambling winnings.
31.3406(c)-1	Notified payee underreporting of reportable interest or dividend payments.
31.3406(h)-2	Special rules.
48.4081-6	Gasoline; gasohol.

Part/section:	Title/Subject:
35a.3406-2	Imposition of backup withholding for notified payee underreporting of reportable interest or dividend payments.
301.6361-1	Collection and administration of qualified taxes.

Again, none of these is executable by an Act or law of congress. Further discussion therefore is unwarranted.

Title 26 section 7206 - Fraud and false statements

Notice above that it applies to **“any person”**, therefore it is limited as to whom it applies to (IRC 7343 def. Of “person” - **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**) it is obvious that it is applicable only to business type returns. Therefore, further discussion is not warranted.

Title 26 section 7207 - Fraudulent returns, statements, or other documents

The sections in the cross-references and Section Referred to in Other Sections are as follows:

<u>Title and section:</u>	<u>Section Heading/Subject:</u>	<u>Remarks:</u>
7 - 12(a)	Title 7 - agriculture, Chapter 1--Commodity Exchanges Sec. 12. Public disclosure	Legislative/substantive regulations are in 17 CFR and pertain to copyrights.
26 - 6013	Subtitle F--Procedure and Administration, Chapter 61--Information and Returns, Subchapter A--Returns and Records, part II--Tax Returns Or Statements, Subpart B--Income Tax Returns, Sec. 6013. Joint returns of income tax by husband and wife	No legislative/substantive regulations
26 - 6531	Subtitle F--Procedure and Administration, Chapter 66--Limitations, Subchapter D--Periods of Limitation in Judicial Proceedings, Sec. 6531. Periods of limitation on criminal prosecutions	No legislative/substantive regulations
26 - 6685	Subtitle F--Procedure and Administration, Chapter 68--Additions to the Tax, Additional Amounts, and Assessable Penalties, Subchapter B--Assessable Penalties, part I--General Provisions, Sec. 6685. Assessable penalty with respect to public inspection requirements for certain tax-exempt organizations	No legislative/substantive regulations
26 - 7201	Subtitle F--Procedure and Administration, Chapter 75--Crimes, Other Offenses, and Forfeitures, Subchapter A--Crimes, part I--General Provisions, Sec. 7201. Attempt to evade or defeat tax	No legislative/substantive regulations - detailed on page 271
26 -7303	Subtitle F--Procedure and Administration, Chapter 75--Crimes, Other Offenses, and Forfeitures, Subchapter C--Forfeitures, part I--Property Subject to Forfeiture, Sec. 7303. Other property subject to forfeiture	No legislative/substantive regulations
26-7851	Subtitle F--Procedure and Administration, Chapter 80--General Rules, Subchapter B--Effective Date and Related Provisions, Sec. 7851. Applicability of revenue laws	27 part 24

First point of importance from the above is that many have no legislative/substantive regulations of their own. These can only be implemented on call from another section having such rule authority, against the government itself, or those without constitutional protection (nonresident aliens, etc.).

A search for regulations in regards to this section revealed that there are none executable by an Act/law of congress within Title 26 CFR, but there are such regulations within Title 27 CFR part 70 - Procedure and

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administration. A check of the Federal Register indicates that these were transferred to 27 CFR as a result of Treasury Department Order 120-01 as shown at T.D. ATF-301, 55 FR 47604, Nov. 14, 1990 and T.D. ATF-301, 55 FR 47605, Nov. 14, 1990 on pages 111 and 112

Additionally, Title 26 section 7201, as we seen on page 271 was only effective in regards to a “**person**” as defined in IRC 7343 (“**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**”).

Title 26 section 7208 - Offenses relating to stamps

As its title implies, this section of code pertains to any person engaged in counterfeiting, mutilation or removal, use of mutilated, insufficient, or counterfeited stamps, reuse of stamps, and emptied stamped packages.

Since this section begins with “**Any person**”, it is limited as to whom it applies to (IRC 7343 def. Of “person” - **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**) it is obvious that it is applicable only to business type returns. Therefore, further discussion is not warranted.

Title 26 section 7209 - Unauthorized use or sale of stamps

This section addresses the unauthorized use or sale of stamps. Legislative/substantive regulations exist only in Title 27 CFR part 70 - Procedure and administration.

Since this section begins with “**Any person**”, it is limited as to whom it applies to (IRC 7343 def. Of “person” - **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**) it is obvious that it is applicable only to business type returns. Therefore, further discussion is not warranted.

Title 26 section 7210 - Failure to obey summons

This section applies to the requirements as shown in the following table:

Failing Requirements of Summons

Section:	Requirements:	* Legislative/sub. Regulations
6420(e)(2)	Sec. 6420. Gasoline used on farms - (e) Applicable laws - (2) Examination of books and witnesses	None
6421(g)(2)	Sec. 6421. Gasoline used for certain nonhighway purposes, used by local transit systems, or sold for certain exempt purposes - (g) Applicable laws - Examination of books and witnesses	None
6427(j)(2)	Sec. 6427. Fuels not used for taxable purposes - (j) Applicable laws - - Examination of books and witnesses	26 part 48 (Manufacturers and retailers excise taxes)
7602	Sec. 7602. Examination of books and witnesses	27 parts 70 (Procedure and administration)
7603	Sec. 7603. Service of summons	None
7604(b)	Sec. 7604. Enforcement of summons - (b) Enforcement	None

* Self executable via an Act or Law of congress

As shown in the table, the requirements of IRC 7210 apply to a limited scope of activities and since this section begins with “**Any person**”, it is limited as to whom it applies to (IRC 7343 def. Of “person” - **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**) it is obvious that it is applicable only to business type returns. Therefore, further discussion is not warranted.

Title 26 section 7211 - False statements to purchasers or lessees relating to tax

This section has no legislative/substantive regulations of its own, and a search of Title 26 CFR revealed a single instance of reference. This was in 26 CFR part **31.6051-2 Information returns on Form W-3 and Internal Revenue Service copies of Forms W-2.**

Title 26 section 7212 - Attempts to interfere with administration of internal revenue laws

By searching Title 26 Code of Federal Register (CFR) for regulations pertaining to IRC section 7212 the following result was obtained:

This is the search report for the search you ran on Aug 29 09:10:23 2003.
It is a temporary file, and will expire about an hour after the search.

Searching /wais/indexes/2003_cfr_title_26...

Your query was:

7212

The database contains 15,693,534 words in 5,712 documents.
There are no fields in this database.

7212 does not occur in the database.

The search found 0 documents. It took less than a second.

The search was performed by a WAIS Inc server: WAIS Server 2.1.6.
For more information on this product contact the database administrator.

Similar results were obtained by browsing 26 CFR parts 1, 31, and 301 as shown below (absence of any "7212" annotation):

- 1.6851-3 Furnishing of bond to insure payment, cross reference.
- 1.7476-1 Interested parties.
- 1.7476-2 Notice to interested parties.
- 1.7476-3 Notice of determination.
- 1.7519-0T Table of contents (temporary).
- 31.6682-1 False information with respect to withholding.
- 31.7805-1 Promulgation of regulations.
- 301.7209-1 Unauthorized use or sale of stamps.
- 301.7214-1 Offenses by officers and employees of the United States.

A check of the Federal Register indicates that authority was transferred to 27 CFR as a result of Treasury Department Order 120-01 as shown at T.D. ATF-301, 55 FR 47604, Nov. 14, 1990 and T.D. ATF-301, 55 FR 47605, Nov. 14, 1990 (refer to pages 111 and 112).

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It should therefore be noted that IRC section 7212 is executable against U.S. Citizens only through regulations found in 27 CFR, a function of the TTB.

Title 26 section 7215 - Offenses with respect to collected taxes

This section begins with “**Any person**” and therefore is limited as to whom it applies to (IRC 7343 def. Of “person” - **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**) it is obvious that it is applicable only to business type returns. It was also learned that no legislative/substantive regulations exist for this section itself. However, subsection (b) is interesting and so will be presented:

(b) Exceptions

This section shall not apply--

- (1) to any person, if such person shows that there was reasonable doubt as to (A) whether the law required collection of **tax, or** (B) who was required by law to collect tax, and
- (2) to any person, if such person shows that the failure to comply with the provisions of section 7512(b) was due to circumstances beyond his control.

Notice what was stated in subsection (b)(1).

Title 26 section 7231 - Failure to obtain license for collection of foreign items

Since this section applies to “foreign items”, it is limited as to whom it applies to (IRC 7343 def. Of “person” - **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**) it is obvious that it is applicable only to business type returns.

Further, it states “payments described in section 7001”. Section 7001 pertains to the collection of foreign items.

Since this section cannot possibly apply to John or Jane Q. Public, further discussion is not required.

Title 26 section 7232 - Failure to register under section 4101, false representations of registration status, etc.

This section begins with “**Every person...**” and pertains to taxable fuels or aviation fuels. The subject matter, and use of the word “**person**” means that this section does not apply to most, therefore further discussion is unnecessary.

Title 26 section 7261 - Representation that retailers' excise tax is excluded from price of article

This section is applicable only to the articles taxable under chapter 31. Chapter 31 is in regards to retail excise taxes and consists of the following sections.

Title 26 section 7262 - Violation of occupational tax laws relating to wagering- failure to pay special tax

This section is regarding violation of occupational tax laws relating to wagering--failure to pay special tax. Unless you are involved in wagering, and are a “**person**” as described in IRC 7343 (**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**) it is obvious that it is applicable only to business type returns of those engaged in wagering. Therefore, further discussion is not warranted.

Title 26 section 7268 - Possession with intent to sell in fraud of law or to evade tax

This section applies to “**Every person**”; therefore, it is limited as to whom it applies to (**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**). From this, it is obvious that it is applicable only to business type returns. Therefore, further discussion is not warranted.

Title 26 section 7270 - Insurance policies

This section applies to “**any person**”; therefore, it is limited as to whom it applies to (**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**). From this, it is obvious that it is applicable only to business type returns. Therefore, further discussion is not warranted.

Title 26 section 7275 - Penalty for offenses relating to certain airline tickets and advertising

This section applies to “**any person**”; therefore, it is limited as to whom it applies to (**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**). From this, it is obvious that it is applicable only to business type returns. Therefore, further discussion is not warranted.

Title 31 Violations

Title 31 pertains to money and finance. Within Title 31 there are two sections designated for which the IRS-CID has investigative authority. These are the following:

Title	Section	Violation	IRC Reference/Remarks
31	5322	Criminal penalties relating to Title 31 and regulations (except 31-5315 and applicable regulations)	States penalty
31	5324(A)(1)	Cause or attempt to cause a domestic financial institution to fail to file a required report	Pertains to reports required under §§ 5313(a) or 5325 or any regulation prescribed under any such section States penalty
31	5324(A)(2)	Cause or attempt to cause a domestic financial institution to file a required report that contains a material omission or misstatement of fact	Pertains to reports required under §§ 5313(a) or 5325 or any regulation prescribed under any such section States penalty
31	5324(A)(3)	Structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions	States penalty

The legislative/substantive regulations having the force of law are found in 12 CFR part 326 - Minimum-security devices and procedures and Bank Secrecy Act compliance, and 31 CFR part 103 - Financial recordkeeping and reporting of currency and foreign transactions.

Title 26 sections Referenced from Other sections

Title 26 section 7214 - Offenses by officers and employees of the United States

Overall, note that it explicitly applies to **Offenses by officers and employees of the United States**. Then note subsections (a)(1), (2), and (7). Falsely applying the Internal Revenue Laws amounts to extortion as does knowingly demanding more than is authorized by law. Subsection (a)(7) applies whenever any agent makes or signs any fraudulent entry in any book, or makes or signs any fraudulent certificate, return, or statement. Therefore, signing any Notice of Lien or Levy without the proper Delegation Order authority amounts to a fraudulent certificate.

This section has been given the force of law by regulations in 5 CFR part 3101 and 27 CFR part 70, more specifically part 70.333. Next, a look of these regulations will be made. The fact that the regulations are found in two different Titles of the CFR is important, as where the regulation at 27 CFR 70.333 applies to the TTB those at 5 CFR are applicable to the IRS itself.

5 CFR part 3101

This part is found in Title 5--Administrative Personnel, Chapter XXI--Department of the Treasury and contains a listing of the sections included in part 3101. From this listing only two are of interest, 3101.101 General, and 3101.106 Additional rules for Internal Revenue Service employees.

Jurisdiction of Federal Government

Therefore, a look at parts 3101.101 and 3101.106 are in order.

5 CFR part 3101.101

This part states in subsection (a) that Purpose. In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of the Treasury and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. **Employees are required to comply with 5 CFR part 2635, this part, and bureau guidance and procedures established pursuant to this section.**

Important here is the reference to the fact that “Employees are required to comply with 5 CFR part 2635, this part, and bureau guidance and procedures established pursuant to this section. 5 CFR part 2635 will be gotten to, but next a look at 5 CFR part 3101.106 will be made.

5 CFR part 3101.106

This part addresses prohibitions of recommendations and outside employment. Therefore, we move on to 5 CFR 2635.

5 CFR part 2635

This part appears in 5 CFR Chapter XVI--Office of Government Ethics and includes several subparts. Those of interest are covered in the following paragraphs.

5 CFR part 2635.101

As stated within, “**all employees are required to place loyalty to the Constitution, the laws and ethical principles above private gain**” (2635.101(a) and (b)(1)). They are also “**required to endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part (2635.101(b)(14)).**”

5 CFR part 2635.102

The important parts of this subsection are the definitions below:

Agency means an executive agency as defined in 5 U.S.C. 105 and the Postal Service and the Postal Rate Commission. It does not include the General Accounting Office or the Government of the District of Columbia.

Person means an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity. For purposes of this part, a corporation will be deemed to control a subsidiary if it owns 50 percent or more of the subsidiary's voting securities. The term is all-inclusive and applies to commercial ventures and nonprofit organizations as well as to foreign, State, and local governments, including the Government of the District of Columbia. It does not include any agency or other entity of the Federal Government or any officer or employee thereof when acting in his official capacity on behalf of that agency or entity.

In regards to the reference to 5 USC 105, it is a broad reference that defines an agency as “Executive agency” means an Executive department, a Government corporation, and an independent establishment.

The several entities identified as being a “person” should also be noted.

5 CFR part 2635.106

Sec. 2635.106 Disciplinary and corrective action.

(a) Except as provided in Sec. 2635.107, a violation of this part or

of supplemental agency regulations may be cause for appropriate corrective or disciplinary action to be taken under applicable Government wide regulations or agency procedures. Such action may be in addition to any action or penalty prescribed by law.

(b) It is the responsibility of the employing agency to initiate appropriate disciplinary or corrective action in individual cases. However, corrective action may be ordered or disciplinary action recommended by the Director of the Office of Government Ethics under the procedures at part 2638 of this chapter.

(c) A violation of this part or of supplemental agency regulations, as such, does not create any right or benefit, substantive or procedural, enforceable at law by any person against the United States, its agencies, its officers or employees, or any other person. Thus, for example, an individual who alleges that an employee has failed to adhere to laws and regulations that provide equal opportunity regardless of race, color, religion, sex, national origin, age, or handicap is required to follow applicable statutory and regulatory procedures, including those of the Equal Employment Opportunity Commission.

Note the referral in IRC section 6531 in "Section Referred to in Other Sections". This section is regarding periods of limitation on criminal prosecutions and for purposes of this publication will not be covered.

Civil Jurisdiction

Federal Civil Jurisdiction by Code

Remember in the definition of federal jurisdiction by the Cornell Law School on page 244 the following was stated "Federal courts have limited **jurisdiction** in that they can only hear cases that fall both within the scope defined by the Constitution in Article III section 2 and Congressional statutes (See 28 U.S.C.A. §1251, §1253, §1331, §1332).

Since the Tax Court only gains jurisdiction by petition, which in itself grants them jurisdiction nothing further need be said in regards to this court, However, as will be shown it is not a wise decision to petition the Tax Court.

Sections 1251 and 1253 of Title 28 are found in Title 28 - Judiciary and Judicial Procedure, part IV - Jurisdiction and Venue, Chapter 81 - Supreme Court. Since they concern the Supreme Court, which gains its jurisdiction from the Constitution we will go to sections 1331 and 1332. These are located in Title 28 - Judiciary And Judicial Procedure, part IV - Jurisdiction And Venue, Chapter 85 - District Courts; Jurisdiction.

Title 28 section 1331 - Federal question

This section of code reads as follows, "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

From reading the section alone, it would in fact seem to give this court broad powers of jurisdiction. However, note that it stated "under the Constitution, laws, or treaties of the United States". The Supreme Court, as previously shown placed a limitation on this court's territorial jurisdiction. This therefore means that any jurisdiction must be by laws of congress or treaties. This is backed by the fact that no regulations having force of law exist for this section itself. By looking at the sections listed under "Cross References" and "Section Referred to in Other Sections", a glimpse of the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force:

Jurisdiction of Federal Government

Title 28 section 1332 - Diversity of citizenship; amount in controversy; costs

First, in subsection (a) the sum must exceed \$75,000. Next, note where it states the requirements of citizenship. This is the diversity of citizenship as mentioned in definition of jurisdiction according to the United States Court Publications paragraph on page 244. This section of code has no regulations enforceable by an Act of Congress on its own. Jurisdiction by statute is addressed in the Historical and Revision Notes for this section as stated below:

section 41(1) of title 28, U.S.C., 1940 ed., as originally enacted, purported to include all jurisdictional provisions relating to the district courts. **Subsequently, many special jurisdictional provisions were enacted and incorporated in other titles of the U.S.C., 1940 ed., as follows:**

The list of the special jurisdictional provisions that were enacted and incorporated in other titles of 1940 is lengthy. Only two are in Title 26 (the IRC) and these are sections 3633 and 3800. These sections, as they existed in 1940 correspond to IRC section 7402(b) and 7402(a) respectively of the current code. This section of code is covered on page 287.

Title 28 section 1340 - Internal revenue; customs duties

Note that although from reading the section it would appear that this section gives broad authority it does not. Note that in the "Cross References" it refers back to 26 USC section 7323 where the only authority by congress is found in 27 CFR part 72, which deals with Disposition of seized personal property. In the "Section Referred to in Other Sections", it refers back to IRC section 7402 so it appears that the circle is complete in that the only authority is that for IRC section 7604 as found in 27 CFR part 70.24.

Applicability to Title 26

By looking at the sections listed under "Cross References" and "Section Referred to in Other Sections", a glimpse of the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force. Only those pertaining to Title 26 are shown:

Summary of Applicability to Title 26 for Title 28 Section 1340

Section	Legislative/sub. Regulations
7323 - Judicial action to enforce forfeiture	27 CFR part 72
7402 - Jurisdiction of district courts	None
7403 - Action to enforce lien or to subject property to payment of tax	27 CFR part 70
7404 - Authority to bring civil action for estate taxes	None
7405 - Action for recovery of erroneous refunds	None
7421 - Prohibition of suits to restrain assessment or collection	None
7424 - Intervention	None

As can be seen the only jurisdiction for Title 28 section 1340 in regards to taxation is via IRC section 7323 - Judicial action to enforce forfeiture, and section 7403 - Action to enforce lien or to subject property to payment of tax. The legislative/substantive regulations for both are found in **27 CFR - Alcohol, Tobacco Products and Firearms parts 72 and 70 respectively.**

United States Attorney's Manual 6-5.000 Civil Tax Case Responsibility

Since Title 28 sections 1331, 1332, and 1340 have been addressed, federal civil jurisdiction in regards to taxation will be covered by looking at the sections called out in United States Attorney's Manual 6-5.000 Civil Tax Case Responsibility, to include those sections as cross referenced. Since these sections are intertwined with each other, a summary of the appropriate regulations will be shown for each. These sections are as follows and covered in the paragraphs indicated (Title 28 sections covered first):

Title/section/section Heading:	Page:
Title 28 section 1346 - United States as defendant	281
Title 28 section 1391 - Venue generally	282
Title 28 section 1396 - Internal revenue taxes	282
Title 28 section 1402 - United States as defendant	282
Title 28 section 1446 - Procedure for removal	282
Title 28 section 1581 - Civil actions against the United States and agencies and officers thereof	283
Title 28 section 2001 - Sale of realty generally	283
Title 28 section 2410 - Actions affecting property on which United States has lien	283
Title 26 section 6050(i) - Repealed. Pub. L. 96-167, Sec. 5(a), Dec. 29, 1979, 93 Stat. 1276	285
Title 26 section 6323 - Validity and priority against certain persons	194
Title 26 section 6672 - Failure to collect and pay over tax, or attempt to evade or defeat tax	285
Title 26 section 7210 - Failure to obey summons	286
Title 26 section 7323 - Judicial action to enforce forfeiture	286
Title 26 section 7401 - Authorization	287
Title 26 section 7402 - Jurisdiction of district courts	287
Title 26 section 7403 - Action to enforce lien or to subject property to payment of tax	289
Title 26 section 7404 - Authority to bring civil action for estate taxes	289
Title 26 section 7405 - Action for recovery of erroneous refunds	290
Title 26 section 7421 - Prohibition of suits to restrain assessment or collection	290
Title 26 section 7424 - Intervention	292
Title 26 section 7429 - Review of jeopardy levy or assessment procedures	293
Title 26 section 7604 - Enforcement of summons	296
Title 26 section 7608 - Authority of internal revenue enforcement officers	300
Title 26 section 7609 - Special procedures for third-party summonses	301
Title 31 section 3717 - Interest and penalty on claims	304

Title 28 section 1346 - United States as defendant

Of interest are subsections (e) and (f) which grant the district courts original jurisdiction of any civil action against the United States provided in section 6226, 6228(a), 7426, or 7428 (in the case of the United States district court for the District of Columbia) or section 7429 of the Internal Revenue Code of 1986, and of civil actions under section 2409a of title 28 to quiet title to an estate or interest in real property in which an interest is claimed by the United States.

This section has no legislative/substantive regulations backed by a Statute or Act of congress; therefore, it can only apply through such regulations as applicable to another section, within or without Title 28. With this in mind a brief look at those sections referenced in titles 26 and 28, as it is the income tax we are interested in.

Applicability to Title 26

By looking at the sections listed under “Cross References” and “Section Referred to in Other Sections”, a glimpse of the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force. Only those pertaining to Title 26 are shown:

Summary of Applicability to Title 26 for Title 28 section 1346

Section	Legislative/sub. Regulations
6226 - Judicial review of final partnership administrative adjustments	None
6228 - Judicial review where administrative adjustment request is not allowed in full	None
7422 - Civil actions for refund	None
7426 - Civil actions by persons other than taxpayers	27 CFR part 70

Summary of Applicability to Title 26 for Title 28 section 1346 (Cont.)

Section	Legislative/sub. Regulations
7428 - Declaratory judgments relating to status and classification of	None

Jurisdiction of Federal Government

organizations under section 501(c)(3), etc.	
7429 - Review of jeopardy levy or assessment procedures	27 CFR part 70
7441 - Status	None

Again, the above table shows that Title 28 section 1346 is applicable to taxation only through regulations with the authority of any Statute/Act of congress that are located in 27 CFR - Alcohol, Tobacco Products and Firearms - part 70 - Procedure and administration.

Title 28 section 1391 - Venue generally

This section of code has no regulations backed by any Statute/Act of congress; therefore, activation must be through another source code with such regulations. Since the subject of this publication is taxation a look at any of the sections as referenced within Title 28 section 1391 is in order. It was noted that no sections from the internal revenue code were referenced.

Title 28 section 1396 - Internal revenue taxes

This section of code has no regulations backed by any Statute/Act of congress; therefore, activation must be through another source code with such regulations. A look at the sections as referenced within Title 28 section 1396 is in order.

Applicability to Title 26

By looking at the sections listed under "Cross References" and "Section Referred to in Other Sections", a glimpse of the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force. Only those pertaining to Title 26 are shown:

Summary of Applicability to Title 26 for Title 28 section 1396

Section	Legislative/sub. Regulations
7402 - Jurisdiction of district courts	None
7410 - Cross references	None

From the above, jurisdiction of the district court in matters of taxation appears to be lacking by any action of this section.

Title 28 section 1402 - United States as defendant

This section of code has no regulations backed by any Statute/Act of congress; therefore, activation must be through another source code with such regulations. A look at the sections as referenced within Title 28 section 1402 is in order.

Applicability to Title 26

By looking at the sections listed under "Cross References" and "Section Referred to in Other Sections", a glimpse of the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force. Only those pertaining to Title 26 are shown:

Summary of Applicability to Title 26 for Title 28 section 1402

Section	Legislative/sub. Regulations
7429 - Review of jeopardy levy or assessment procedures	27 CFR part 70

From the above, in regards to taxation Title 28 section 1402 is enforceable only through regulations with the authority of any Statute/Act of congress that are located in 27 CFR - Alcohol, Tobacco Products and Firearms - part 70 - Procedure and administration.

Title 28 section 1446 - Procedure for removal

This section of code has no regulations traceable to any Statute/Act of congress giving authority; therefore, activation must be through another source code with such regulations. There is no direct reference to Title 26.

Title 28 section 1581 - Civil actions against the United States and agencies and officers thereof

This section of code pertains to the jurisdiction of The Court of International Trade. It does refer to revenue from imports or tonnage; and tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue. This is the only taxation connection.

Title 28 section 2001 - Sale of realty generally

In the United States Attorney's Manual Civil Tax Case Responsibility the following is stated in regards to this section:

6-5.113Public Sale; Bidding by United States Attorney

In a lien foreclosure suit, the court may order the sale of the property at either a public or private sale subject to the procedures provided in 28 U.S.C. § 2001 et seq. In addition to these procedures for the sale of property, a sale of property may be held pursuant to a stipulation entered into by all parties.

Where it appears likely that the property may be sold at a judicially ordered public sale for less than its fair value and the liens of the United States are prior to all other liens, the United States Attorney should seek from the Treasury Department an authorization to bid on the property on behalf of the United States in accordance with 31 U.S.C. § 3715. Upon receipt of the proper appointment, instructions will be given the United States Attorney concerning the amounts that should be bid for the property and other steps that should be taken to protect the government's interests. The deed to property so purchased for the United States will be taken in the name of the United States. The United States Attorney should have the deed recorded promptly and take any other action required under state law to protect the government's title.

There are no regulations backed by a Statute/Act of congress for this section and no direct reference to Title 26.

Title 28 section 2410 - Actions affecting property on which United States has lien

In the United States Attorney's Manual Civil Tax Case Responsibility the following is stated in regards to this section:

6-5.120Intervention by the United States in Court Actions

If the United States is not party to a civil action, the United States may intervene in such action to assert a federal tax lien on property which is the subject of the action. See 26 U.S.C. § 7424. Where the United States intervenes in a state court action, it has the same right of removal as in cases where it is named a party to an action under 28 U.S.C. § 2410(a).

Intervention may be commenced only with the authorization of the District Counsel and at the direction of the Chief of the appropriate Civil Trial section.

If local IRS officials request the United States Attorney directly to intervene because of an emergency, prior approval should be sought from the Chief of the appropriate Civil Trial section.

6-5.320Actions Under 28 U.S.C. § 2410 -- Allocation of Responsibilities

Suits under 28 U.S.C. § 2410 for interpleader or in the nature of interpleader and quiet title actions filed by tax protesters or otherwise raising substantive tax issues will be handled by the Tax Division. Other § 2410 actions are the responsibility of the United States Attorney.

6-5.322Nature of the Suit

Under 28 U.S.C. § 2410 the United States has consented to be sued in any suit instituted in a federal or state court having jurisdiction of the subject matter (1) to quiet title to; (2) to foreclose a mortgage or other lien upon; (3) to partition; (4) to condemn; or (5) of interpleader or in the nature of interpleader with respect to, real or personal property on which the United States has or claims a mortgage or other lien. By this statute, the United States has waived its sovereign immunity to suit, subject to specified conditions which must be strictly complied with as a jurisdictional prerequisite for maintenance of the suit.

Jurisdiction of Federal Government

Where a judicial sale is held and the tax lien of the United States is discharged, the United States may redeem the sold realty within 120 days from the date of sale, or within such longer period as may be allowed under local law. A revolving fund has been authorized for such purpose. The amount which the United States must pay in the exercise of its right of redemption, whether it relates to a sale under 28 U.S.C. § 2410(c) or a sale in foreclosure other than the plenary judicial proceedings (26 U.S.C. § 7425(d)(1)), is set forth in a formula contained in 28 U.S.C. § 2410(d). If you deem that redemption is advisable, please contact the Chief of the appropriate Civil Trial section.

Where the United States asks, by way of affirmative relief, for foreclosure of its own lien, and property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale, as may be directed by the IRS. See USAM 6-5.113.

6-5.323 Procedures

A. Notice to Tax Division and IRS. In foreclosure, partition, condemnation and, except as provided in paragraph B, most quiet title actions, it is not necessary to forward the summons and complaint to the local District Counsel or the Tax Division, but the local IRS Special Procedures Function should be asked to provide the information necessary to prepare an answer. A copy of the government's answer should not be forwarded to the Tax Division. It is unnecessary for the United States Attorney to correspond with the Tax Division with regard to these cases unless an offer in compromise is submitted or an appellate issue arises. These matters and any questions should be directed to the Chief of the appropriate Civil Trial section (the former Tax Lien Unit has been abolished, and its remaining duties transferred to the various Civil Trial sections).

B. Quiet title actions. Tax protesters frequently use quiet title actions in an attempt to remove federal tax liens from real property. These types of quiet title actions are brought either by the taxpayer or by the nominee who is holding title on behalf of the taxpayer. The taxpayer is often attempting (improperly) to contest the merits of the tax assessment. The plaintiff may properly use section 2410 to contest the procedural validity, or, in the case of a nominee, to contest the validity of the IRS' alter ego/nominee determination. These quiet title actions and any other quiet title actions raising substantive tax issues should be referred to the appropriate Civil Trial section for handling.

C. Offer in Compromise. If an offer in compromise is made, promptly submit the matter to the Chief of the appropriate Civil Trial section, with your recommendation and sufficient supporting data. A copy of any compromise offer together with a copy of the complaint, should at the same time be forwarded to the local IRS District Counsel. This procedure is not applicable to those applications for release of the government's right to redemption with respect to which authority has been delegated to United States Attorneys. See USAM 6-6.140 and 6-6.700. See also the Tax Resource Manual at 51-52 for the appropriate form application and instructions.

D. Appeal. If an appeal is taken by another party to the proceeding, the United States Attorney should promptly advise the Chief of the appropriate Civil Trial section and inform us of the time limitation involved. If a decision is rendered adverse to the government on an issue contested by your office, please submit your recommendation with sufficient data to evaluate the question of appeal.

E. Priority. Please note that 26 U.S.C. § 6323 will govern the determination of the priority of the federal tax lien in most of these cases. The Chief of the appropriate Civil Trial section should be contacted should any interpretative problems arise concerning the priority to be accorded to the tax lien. The local District Counsel of the IRS may also be called upon for advice.

F. Closing. The United States Attorney should notify the IRS Special Procedures Function when the case is closed.

6-5.324 Removal of Actions from State Courts

Most cases under 28 U.S.C. § 2410 are filed in the state courts. The United States as a general rule does not seek to remove such cases to the federal courts unless there is a real dispute respecting the rights of the United States and a substantial amount or important

principle is involved. Where it appears to be desirable to remove an action involving tax claims to a federal court and circumstances permit, the matter should be discussed with the Tax Division. Since 28 U.S.C. § 1446(b) provides only 30 days in which to remove a case, the suit should be brought to the attention of the Tax Division at the earliest possible moment. The judgment of the United States Attorney is relied upon in deciding whether to remove, but removal should not be effected without prior approval of the Chief of the appropriate Civil Trial section.

The section has no regulatory backing therefore a look at the sections mentioned within the text is in order.

Applicability to Title 26

By looking at the sections listed under “Cross References” and “Section Referred to in Other Sections”, a glimpse of the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force. Only those pertaining to Title 26 are shown:

Summary of Associated Sections for Title 28 section 1332

Section	Legislative/sub. Regulations
6327 – Cross references	None
7424 - Intervention	27 CFR part 70
7425 - Discharge of liens	None
7437 - Cross references	None
7810 - Revolving fund for redemption of real property	None

Therefore, the only 1st-tier door of any authority is based on regulations found only in 27 CFR - Alcohol, Tobacco Products and Firearms - part 70 - Procedure and administration.

Title 26 section 6050(i) - Repealed. Pub. L. 96-167, Sec. 5(a), Dec. 29, 1979, 93 Stat. 1276

Since this section of code was repealed, no discussion is necessary.

Title 26 section 6672 - Failure to collect and pay over tax, or attempt to evade or defeat tax

In the United States Attorney’s Manual Civil Tax Case Responsibility the following is stated in regards to this section:

6-5.620Responsibilities of United State Attorney on Receipt of Complaint

The United States Attorney is responsible for sending a copy of all complaints filed against the United States in tax refund suits immediately to the Tax Division, the local IRS District Counsel, and the Internal Revenue Service Center. In tax refund suits involving the 100-percent penalty imposed by 26 U.S.C. § 6672, the complaint should be forwarded to the District Director to the attention of the Special Procedures Function rather than to the Service Center.

The first thing to notice is that in subsection (a) General Rule, the taxes **are not stated**. In that respect it is vague so one would either have to know which taxes they are liable for, or go to the regulations.

Secondly, note in subsection (b)(1) where it states that **“In general No penalty shall be imposed under subsection (a) unless the Secretary notifies the taxpayer in writing by mail to an address as determined under section 6212(b) or in person that the taxpayer shall be subject to an assessment of such penalty.”**

Then note in subsection (b)(2) where it states **“The mailing of the notice described in paragraph (1) (or, in the case of such a notice delivered in person, such delivery) shall precede any notice and demand of any penalty under subsection (a) by at least 60 days.”**

Jurisdiction of Federal Government

Regulations enforceable through Acts, Statutes, or Laws of congress are found in the following:

CFR: **Part:**
27 Part 70- Procedure and administration

Therefore, this section of code is lawfully enforceable in alcohol, tobacco, or firearm related acts only.

Summary of Associated Sections for Title 26 section 6672

By looking at the sections listed under “Cross References” and “Section Referred to in Other Sections”, a glimpse of the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force:

Summary of Associated Sections for Title 26 section 6672

Section	Legislative/sub. Regulations
Title 20 section 1099 - Exemption from State disclosure requirements	34 CFR parts 600, 602, 668
Title 26 section 3403 - Liability for tax	None
Title 26 section 6103 - Confidentiality and disclosure of returns and return information	20 CFR parts 401, 402 26 CFR part 301 42 CFR part 401
Title 26 section 6331 - Levy and distraint	27 CFR part 70
Title 26 section 6501 – Limitations on assessment and collection	27 CFR part 70
Title 26 section 7103 - Cross references - Other provisions for bonds	None
Title 26 section 7202 - Willful failure to collect or pay over tax	None
Title 26 section 7421 - Prohibition of suits to restrain assessment or collection	None
Title 26 section 7501 - Liability for taxes withheld or collected	None

From the above it is made increasingly clear that IRC section 6672 has very limited application. In regards to the IRC it shows that section 6331, Levy and Distraint is only enforceable via regulations having the necessary powers backed by any Acts, Statutes, or Laws of Congress that are located in **27 CFR - Alcohol, Tobacco Products and Firearms - part 70 - Procedure and administration**. The same holds true for IRC section 6501.

Title 26 section 7210 - Failure to obey summons

Title 26 section 7210 is found in Subtitle F--Procedure and Administration, Chapter 75--Crimes, Other Offenses, and Forfeitures. This section was covered in federal criminal jurisdiction on page 274.

Title 26 section 7321 - Authority to seize property subject to forfeiture

This section, which is without any legislative or substantive regulatory support reads as follows, “Any property subject to forfeiture to the United States under any provision of this title may be seized by the Secretary.

There are no CFR parts for which 26 USC 7321 provides authority.

Title 26 section 7323 - Judicial action to enforce forfeiture

Regulations enforceable through Acts, Statutes, or Laws of congress are found in the following:

CFR: **Part:**
27 Part 72 - Disposition of seized personal property

Accordingly, it is directly enforceable via regulations having the necessary powers backed by any Acts, Statutes, or Laws of Congress that are located in **27 CFR - Alcohol, Tobacco Products and Firearms - part 72- Disposition of seized personal property**.

Summary of Associated Sections for Title 26 section 7323

By looking at the sections listed under “Cross References” and “Section Referred to in Other Sections”, a glimpse of the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force:

Summary of Associated Sections for Title 28 section 7323

Section	Legislative/sub. Regulations
7324 - Special disposition of perishable goods	27 CFR part 72
7401 - Authorization	27 CFR part 70
Title 28 section 1355 - Fine, penalty or forfeiture	Positive Law

From the above it is made increasingly clear that IRC section 7323 has very limited application. In regards to the IRC it shows that section 7324, Special disposition of perishable goods is only enforceable via regulations having the necessary powers backed by any Acts, Statutes, or Laws of Congress that are located in **27 CFR - Alcohol, Tobacco Products and Firearms - part 72 - Disposition of seized personal property**. IRC section 7401 is only enforceable via regulations having the necessary powers backed by any Acts, Statutes, or Laws of Congress that are located in **27 CFR - Alcohol, Tobacco Products and Firearms - part 70 - Procedure and administration**.

Title 26 section 7401 - Authorization

In the United States Attorney's Manual Civil Tax Case Responsibility the following is stated in regards to this section:

6-5.110 Suits to Collect Tax and Foreclose Tax Liens -- Generally

Tax collection suits are brought by the Department at the request of the IRS pursuant to 26 U.S.C. § 7401 and are usually handled by Tax Division attorneys. If asked to file the complaint on behalf of the Tax Division, the United States Attorney should promptly forward advice as to the date the complaint was filed.

Occasionally, the local IRS office may contact the United States Attorney's Office (USAO) directly with a request to institute suit due to time limitations, but complaints should not be filed on an emergency basis without prior approval of the Chief of the appropriate Civil Trial section.

Regulations enforceable through Acts, Statutes, or Laws of congress are found in the following:

CFR: **Part:**
 27 Part 70 - Procedure and administration

From the above it is made increasingly clear that IRC section 7401 has very limited application. It shows that it is only enforceable via regulations having the necessary powers backed by any Acts, Statutes, or Laws of Congress that are located in **27 CFR - Alcohol, Tobacco Products and Firearms - part 70 - Procedure and administration**.

Title 26 section 7402 - Jurisdiction of district courts

In the United States Attorney's Manual Civil Tax Case Responsibility the following is stated in regards to this section:

6-5.112 Writ of Ne Exeat

A writ of ne exeat republica is issued by a court to restrain a person from going beyond the jurisdiction of the court until the person has satisfied a claim or has given bond for the satisfaction of the liability. Writs of ne exeat republica are expressly authorized by 26 U.S.C. § 7402(a). This remedy is used infrequently and should not be sought without prior written approval of the Chief of the appropriate Civil Trial section.

In subsection (a) it states "The **district courts of the United States** at the instance of the United States shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws. The

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remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws.”

This is repeated in subsection (b) where it states “If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, or other data, **the district court of the United States** for the district in which such person resides or may be found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.”

It is also repeated in subsection (c) “Any officer or employee of the United States acting under authority of this title, or any person acting under or by authority of any such officer or employee, receiving any injury to his person or property in the discharge of his duty shall be entitled to maintain an action for damages therefore, in the **district court of the United States**, in the district wherein the party doing the injury may reside or shall be found.

In subsection (e) however it stipulates **United States district courts** in stating “The **United States district courts** shall have jurisdiction of any action brought by the United States to quiet title to property if the title claimed by the United States to such property was derived from enforcement of a lien under this title”.

Subsection (f) states “For general jurisdiction of the district courts of the United States in civil actions involving internal revenue, see section 1340 of title 28 of the United States Code.”

Note that the meaning of a writ of ne exeat republica, from section 6-5.112 of the United States Attorney’s Manual is as follows:

A writ of ne exeat republica is issued by a court to restrain a person from going beyond the jurisdiction of the court until the person has satisfied a claim or has given bond for the satisfaction of the liability. Writs of ne exeat republica are expressly authorized by 26 U.S.C. § 7402(a). This remedy is used infrequently and should not be sought without prior written approval of the Chief of the appropriate Civil Trial section

Additionally, the words “the **district court of the United States** for the district in which such person resides or may be found shall have jurisdiction by appropriate process” as appearing in subsection (b) is extremely important for it requires the court to have proper jurisdiction before issuing summons. It also uses the word “resides”, which legally has a different meaning than the term “domiciled” as shall be seen later. Be sure to refer to the Special Note on page 247 for the difference between a **United States district court** and a **district court of the United States**. In any event, neither court has jurisdiction.

In subsection (f) it points to section 1340 of Title 28 for general jurisdiction of the district courts of the United States in civil actions involving internal revenue.

This section of code has no legislative/substantive regulations of its own, therefore would need to be triggered by the action of another section and its regulations.

Summary of Associated Sections for Title 26 section 7402

By looking at the sections listed under “Cross References” and “Section Referred to in Other Sections”, a glimpse of the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force:

Summary of Associated Sections for Title 26 section 7402

Section	Legislative/sub. Regulations
7407 - Action to enjoin income tax return preparers	None
7408 - Action to enjoin promoters of abusive tax shelters, etc.	None

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7409 - Action to enjoin flagrant political expenditures of section 501(c)(3) organizations	None
7604 - Enforcement of summons	27 CFR part 70
Title 28 section 1340 - Internal revenue; customs duties	Positive Law

Therefore, of the sections called out above only one has enforcement authority of an Act of Congress (7604). Based on this, section 7402 of the IRC and section 1340 of Title 28 are enforceable only to the extent of the regulations of 27 CFR part 70.24. This will be looked at next.

27 CFR part 70.24 - Enforcement of summons

Within 27 CFR part 70, IRC section 7604 is referenced within part 70.24 - Enforcement of Summons. The authority for enforcement is by an **appropriate TTB** officer.

Title 26 section 7403 - Action to enforce lien or to subject property to payment of tax

In this section of code in subsection (a) it states “the Attorney General or his delegate, at the request of the Secretary, may direct a civil action to be filed in a **district court of the United States** to enforce the lien of the United States under this title with respect to such **tax** or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest, to the payment of such **tax** or liability.” The words “**district court of the United States**” is extremely important for it requires the court to have proper jurisdiction before any action is taken. It also uses the word “**tax**”, therefore showing applicability to taxation. Be sure to refer to the Special Note on page 247 for the difference between a **United States district court** and a **district court of the United States**. In any event, the **district court of the United States has no jurisdiction within the 50 states**.

Regulations enforceable through Acts, Statutes, or Laws of congress for IRC section 7403 are found only in the following:

CFR: Part:

27 27 CFR - Alcohol, Tobacco Products and Firearms - part 70 - Procedure and administration

Summary of Associated Sections for Title 26 section 7403

By looking at the sections listed under “Cross References”, a glimpse of the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force:

Summary of Associated Sections for Title 26 section 7403

Section	Legislative/sub. Regulations
5004 - Lien for tax (Subtitle E)	27 CFR part 19
6321 - Lien for taxes	27 CFR part 70
6331 - Levy and distraint	27 CFR part 70
7424 - Intervention	27 CFR part 70
Title 31 section 3717 - Interest and penalty on claims	Positive Law

From the above it is made clear that IRC section 7403 has very limited application. It shows that section 7403, Action to enforce lien or to subject property to payment of tax is only enforceable via regulations having the necessary powers backed by any Acts, Statutes, or Laws of Congress that are located in **27 CFR - Alcohol, Tobacco Products and Firearms - parts 19 and 70**. Additionally, no jurisdiction for action exists within the 50 states.

Title 26 section 7404 - Authority to bring civil action for estate taxes

In this section is stated “may be commenced in any court of the United States having jurisdiction to subject the property of the decedent to be sold”. Therefore, as a **United States District Court** is a territorial court with jurisdiction so limited, and the **district courts of the United States** have jurisdiction only in the insular possessions their exists no federal jurisdiction within the 50 states.

Jurisdiction of Federal Government

It should be noted that there are no regulations having the implementing power of an Act, Statute, or law as passed by congress.

Title 26 section 7405 - Action for recovery of erroneous refunds

This section states it all “**Any portion of a tax imposed by this title**, refund of which is erroneously made, within the meaning of section 6514, may be recovered by civil action brought in the name of the United States.”

Therefore, it pertains only to taxes imposed by Title 26. **it does not have anything to do with the refund of amounts collected that were not taxes**. Therefore it has no effect on refunds made IAW § 6401(c) (page 318).

There are no regulations having the implementing power of an Act, Statute, or law as passed by congress for this section of code. However, it is to be noted that this section is referred to in sections 6514, 6532, and 6602 of the IRC so these must be examined.

Summary of Associated Sections for Title 26 section 7405

By looking at the sections listed under “Cross References” and “Section Referred to in Other Sections”, a glimpse of the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force:

Summary of Associated Sections for Title 26 section 7405

Section	Legislative/sub. Regulations
6514 - Credits or refunds after period of limitation	27 CFR part 70
6532 - Periods of limitation on suits	27 CFR part 70
6602 - Interest on erroneous refund recoverable by suit	27 CFR part 70

Therefore, it is obvious that IRC section 7405 is enforceable only through IRC sections 6514, 6532, and 6602, which are implemented via regulations found only in 27 CFR - Alcohol, Tobacco Products and Firearms - part 70 - Procedure and administration.

Title 26 section 7421 - Prohibition of suits to restrain assessment or collection

In the United States Attorney’s Manual Civil Tax Case Responsibility the following is stated in regards to this section:

6-5.330 Injunction Actions

section 7421(a), 26 U.S.C., provides, generally, that no suit for the purpose of restraining the assessment of any tax shall be maintained by any person in any court, whether or not such person is the person against whom such tax was assessed. In light of 26 U.S.C. § 7421, injunctive relief may be had only upon satisfaction of the twofold test laid down in *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1 (1962).

Since injunction cases are often set for hearing on very short notice, the Tax Division, in some instances, will consent to a status quo arrangement whereby the District Director will agree to take no collection activity for a specified period of time in order to afford the IRS an opportunity to conduct an investigation and prepare a defense letter. On occasion, however, it may be necessary to consent to a temporary restraining order to accomplish the same purpose. See Fed. R. Civ. P. 65(b). In either case, prior authorization should be obtained from the Chief of the appropriate Civil Trial section. Of course, any suit attempting to restrain the collection of taxes must be served upon the Attorney General. The United States Attorney, however, should immediately notify the appropriate Civil Trial section when served with such a suit; if a temporary restraining order is set for hearing or an early hearing on a preliminary injunction is set, please telephone the Chief of the appropriate Civil Trial section so that the necessary pleading can be prepared and forwarded to the United States Attorney.

Note where it states “**that no suit for the purpose of restraining the assessment of any tax shall be maintained by any person in any court, whether or not such person is the person against whom such tax**

was assessed". As we further look at IRC section 7421, it will become evident that there are exceptions in regards to this "no suit" rule.

Here it should be noted that no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court **Except as provided** in sections 6015(e), 6212(a) and (c), 6213(a), 6225(b), 6246(b), 6330(e)(1), 6331(i), 6672(c), 6694(c), and 7426(a) and (b)(1), 7429(b), and 7436 of the IRC is mentioned in the text. Additionally, 4961, 6015, 6207, 6213, 6246, 6330, 6331, 6672, 6694, 6703, 6904 of the IRC are listed in the "Section Referred to in Other Sections" portion of section 7405. Title 31 section 3713(b) is also referred to.

Since there are no regulations having the implementing power of an Act, Statute, or law as passed by congress for this section of code the sections referred to need to be looked at.

Summary of Associated Sections for Title 26 section 7421

By looking at the sections referred to in the text of section 7421 and those listed under "Section Referred to in Other Sections", a glimpse of the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force:

Summary of Associated Sections for Title 26 section 7421

Section	Legislative/sub. Regulations
4961 - Abatement of second tier taxes where there is correction	None
6015 - Relief from joint and several liability on joint return	None
6207 - Cross references (Assessment)	None
6212 - Notice of deficiency	None
6213 - Restrictions applicable to deficiencies; petition to Tax Court	None
6225 - Assessments made only after partnership level proceedings are completed	None
6246 - Restrictions on partnership adjustments	None
6330 - Notice and opportunity for hearing before levy	None
6331 - Levy and distraint	27 CFR part 70
6672 - Failure to collect and pay over tax, or attempt to evade or defeat tax	27 CFR part 70
6694 - Understatement of taxpayer's liability by income tax return preparer	None
6703 - Rules applicable to penalties under sections 6700, 6701, and 6702	None
6904 - Prohibition of injunctions	None
7426 - Civil actions by persons other than taxpayers	27 CFR part 70
7429 - Review of jeopardy levy or assessment procedures	27 CFR part 70
7436 - Proceedings for determination of employment status	None
Title 31 section 3713- Priority of Government claims	Positive Law

IRC section 7421 stated that **Except as provided** in sections 6015(e), 6212(a) and (c), 6213(a), 6225(b), 6246(b), 6330(e)(1), 6331(i), 6672(c), 6694(c), and 7426(a) and (b)(1), 7429(b), and 7436, no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

Therefore, from the table above it can be seen that **exceptions do exist for** 6015(e), 6212(a) and (c), 6213(a), 6225(b), 6246(b), 6330(e)(1), 6331(i), 6672(c), 6694(c), and 7426(a) and (b)(1), 7429(b), and 7436. Now to look at what these exceptions are.

1. IRC section 6015(e) pertains to a petition for review by the **Tax Court** for those seeking relief under subsection (b) Procedures for relief from liability applicable to all joint filers or subsection (c) Procedures to limit liability for taxpayers no longer married or taxpayers legally separated or not living together.

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2. IRC section 6212(a) pertains to a notice of deficiency in respect to any tax imposed by subtitles A or B or chapter 41, 42, 43, or 44.
3. IRC section 6212(c) pertains to a notice of deficiency in respect to any tax imposed by subtitles A or B or chapter 41, 42, 43, or 44 to which the taxpayer has filed a petition to the Tax Court
4. IRC section 6213(a) addresses the (a) Time for filing petition and restriction on assessment.
5. IRC section 6225(b) pertains to Assessments made only after partnership level proceedings are completed - premature action may be enjoined.
6. IRC section 6246(b) addresses restrictions on partnership adjustments - premature action may be enjoined.
7. IRC section 6330(e)(1) pertains to a Notice and opportunity for hearing before levy - Suspension of collections and statute of limitations
8. IRC section 6331(i) is in regards to levy and distraint. Subsection (i) addresses no levy during pendency of proceedings for refund of divisible tax. **This section has legislative/substantive regulations at 27 CFR part 70.**
9. IRC section 6672(c) addresses failure to collect and pay over tax, or attempt to evade or defeat tax, Extension of period of collection where bond is filed. **This section has legislative/substantive regulations at 27 CFR part 70.**
10. IRC section 6694(c) is in regards to Understatement of taxpayer's liability by income tax return preparer, Extension of period of collection where preparer pays 15 percent of penalty.
11. IRC section 7426 (a) and (b)(1) pertains to civil actions by persons other than taxpayers, actions permitted (7426(a)), and injunction by district court (7426(b)(1)).
12. IRC section 7429(b) is in regards to review of jeopardy levy or assessment procedures, judicial review.
13. IRC section 7436 addresses proceedings for determination of employment status.

From these exceptions, it again becomes readily apparent that IRC section 7421 is either dependant upon legislative/substantive regulations found only in 27 CFR, or is otherwise of no impact on the average U.S. Citizen.

Title 26 section 7424 - Intervention

In the United States Attorney's Manual Civil Tax Case Responsibility the following is stated in regards to this section:

6-5.120 Intervention by the United States in Court Actions

If the United States is not party to a civil action, the United States may intervene in such action to assert a federal tax lien on property which is the subject of the action. See 26 U.S.C. § 7424. Where the United States intervenes in a state court action, it has the same right of removal as in cases where it is named a party to an action under 28 U.S.C. § 2410(a).

Intervention may be commenced only with the authorization of the District Counsel and at the direction of the Chief of the appropriate Civil Trial section.

If local IRS officials request the United States Attorney directly to intervene because of an emergency, prior approval should be sought from the Chief of the appropriate Civil Trial section.

Briefly, this section of code allows the federal government to intervene to assert a lien arising from the IRC in any case in which it is not a party to. It is enforceable only through **legislative/substantive regulations at 27 CFR part 70.**

It is noted that sections 1444, 2409a, and 2410 of Title 28 are referred to in the text of this section. These references are addressed in the following paragraph.

Summary of sections Referred to in Title 26 section 7424

By looking at the sections referenced in the text of IRC section 7424, a further glimpse of the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force:

Summary of Associated Sections for Title 26 section 7424

Section	Legislative/sub. Regulations
Title 28 section 1444 - Foreclosure action against United States	Positive Law
Title 28 section 2409 - partition actions involving United States	Positive Law
Title 28 section 2410 - Actions affecting property on which United States has lien	Positive Law

Therefore, in regards to taxation the only regulations of implementing legal effect are located not in Title 26 CFR **but are located in Title 27 CFR.**

Title 26 section 7429 - Review of jeopardy levy or assessment procedures

In the United States Attorney's Manual Civil Tax Case Responsibility the following is stated in regards to this section:

6-5.300 Suits Against the United States or its Officers and Employees -- Generally

The general rule is that upon being served with a summons and complaint in a suit involving the internal revenue laws or otherwise connected with tax administration, a copy of the summons and complaint should be forwarded to the appropriate Civil Trial section of the Tax Division and to the local IRS District Counsel. While the general rule applies to interpleaders or suits in the nature of interpleaders and quiet title actions brought by tax protesters or raising substantive tax issues, different procedures apply to other types of § 2410 actions as provided in USAM 6-5.323. Special additional rules for tax refund suits are set out at USAM 6-5.620 et seq.

A. Jeopardy Assessment Cases. In suits under 26 U.S.C. § 7429 for review of jeopardy assessments, the appropriate Civil Trial section should immediately be notified by telephone of the commencement of the case since an expedited hearing within 20 days is required by statute. In these cases, we request notification within one working day of day on which the United States Attorney receives notice of the commencement of suit.

In this section, it is the matter of jurisdiction that is of importance. Therefore the subsections of this section that pertain to such are shown. The tax court is omitted as only fools go there:

(b) Judicial review

(1) Proceedings permitted

Within 90 days after the earlier of--

- (A) the day the Secretary notifies the taxpayer of the Secretary's determination described in subsection (a)(3), or
- (B) the 16th day after the request described in subsection (a)(2) was made,

the taxpayer may bring a civil action against the United States for **a determination under this subsection in the court with jurisdiction determined under paragraph (2).**

(2) Jurisdiction for determination

(A) In general

Except as provided in subparagraph (B), the district courts

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of the United States shall have exclusive jurisdiction over any civil action for a determination under this subsection.

(e) Venue

(1) District court

A civil action in a district court under subsection (b) shall be commenced only in the judicial district described in section 1402(a)(1) or (2) of title 28, United States Code.

This IRC section pertains to reviews of jeopardy levy or assessment procedures by the **district courts of the United States**. refer to the Special Note on page 247 for the difference between a **United States district court** and a **district court of the United States**. In any event, neither court has jurisdiction. It also places the burden of proof on the Secretary. The only regulations having the force of law are **located in Title 27 CFR**. Now to look at the regulatory provisions for those IRC sections mentioned in the text or in the "Section Referred to in Other Sections".

Summary of Associated Sections for Title 26 section 7429

By looking at the sections mentioned in the text of IRC section 7429 or listed under "Section Referred to in Other Sections", a glimpse of the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force:

Summary of Associated Sections for Title 26 section 7429

Section	Legislative/sub. Regulations
6213 - Restrictions applicable to deficiencies; petition to Tax Court	None
6851 - Termination assessments of income tax	26 CFR part 1
6852 - Termination assessments in case of flagrant political expenditures of section 501(c)(3) organizations	None
6861 - Jeopardy assessments of income, estate, gift, and certain excise taxes	None
6862 - Jeopardy assessment of taxes other than income, estate, gift, and certain excise taxes	27 CFR part 70
6331 - Levy and distraint	27 CFR part 70
Title 28 section 1402 - United States as defendant	Positive Law

From the above, it is evident that this section of code does not have any applicability in regards to the average U.S. Citizen.

Title 26 section 7602 - Examination of books and witnesses

This section of code has legislative or substantive regulations in Title 27 CFR Parts 29, 46, and 70. There are no legislative or substantive regulations in Title 26 CFR.

Summary of Associated Sections for Title 26 section 7602

By looking at the sections referenced in the text of IRC section 7602, a further glimpse of the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force:

Summary of Associated Sections for Title 26 section 7602

Section	Legislative/sub. Regulations
Title 26 section 4424 - Disclosure of wagering tax information	None
Title 26 section 6038A - Information reporting with respect to certain foreign corporations and partnerships	26 Part 1

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Title 26 section 6038C - Information with respect to foreign corporations engaged in U.S. business	None
Title 26 section 6048 - Information with respect to certain foreign trusts	None
Title 26 section 6103 - Confidentiality and disclosure of returns and return information	20 Parts 401, 402, 26 Part 301, 27 Part 53, 42 Part 401
Title 26 section 6230 - Additional administrative provisions	26 Part 301
Title 26 section 6420 - Gasoline used on farms	None
Title 26 section 6421 - Gasoline used for certain nonhighway purposes, used by local transit systems, or sold for certain exempt purposes	None
Title 26 section 6427 - Fuels not used for taxable purposes	26 Part 48
Title 26 section 7210 - Failure to obey summons	None
Title 26 section 7603 - Service of summons	27 Part 70
Title 26 section 7604 - Enforcement of summons	27 Part 70
Title 26 section 7605 - Time and place of examination	27 Part 70
Title 26 section 7609 - Special procedures for third-party summonses	27 Part 70
Title 26 section 7610 - Fees and costs for witnesses	27 Part 70

It is evident from what these associated sections cover that the power of summons extends only to those engaged in specific privileged occupations:

"The terms "excise tax" and "privilege tax" are synonymous. The two are often used interchangeably." *American Airways v. Wallace* 57 F.2d 877, 880

"Excises are taxes laid upon the manufacture, sale or consumption of commodities within the country, upon licenses to pursue certain occupations and upon corporate privileges; the requirement to pay such taxes involves the exercise of privilege." *Flint vs. Stone Tracy Co.* 220 U.S. 107 (1911).

"...taxation on income was in its nature an excise..." *Brushaber v. Union Pacific R. Co.*, 240 U.S. 1 (1916)

A look at previous sections of code from which IRC section 7602 was derived from will help dispel the lack of clarity resulting from the migration.

Revised Statutes of 1874 background for Title 26 Section 7602

Revised Statutes 3165 and 3173 from 1874 appear as follows and form part of the background for this section:

<p>Revenue officers who may administer oaths and take evidence.</p> <p>30 June, 1864, c. 173, s. 52, v. 13, p. 242.</p>	<p style="text-align: center;"><small>RIGHT OF CONVICTION. [REPEALED.]</small></p> <p>SEC. 3165. Every collector, deputy collector, and inspector is authorized to administer oaths and to take evidence touching any part of the administration of the internal-revenue laws with which he is charged, or where such oaths and evidence are authorized by law to be taken.</p> <p>3 Mar., 1865, c. 78, s. 1, v. 13, p. 471.</p>
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Revised Statute 3165 of 1874

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Sec. 3173. It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, stamp, or tax imposed by law, when not otherwise provided for, on or before the first Monday of March in each year, and in other cases before the day of levy, to make a list or return, verified by oath or affirmation, to the deputy collector of the district where located, of the articles or objects charged with a special duty or tax, the quantity of goods, wares, and merchandise made or sold, and charged with a specific or ad valorem duty or tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, under the direction of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: *Provided, That if any person liable to pay any duty or tax, or owning,*

Annual returns of persons liable to tax.

30 June, 1864, c. 172, ss. 11, 13, v. 13, pp. 225, 226.

13 July, 1866, c. 184, s. 9, v. 14, p. 101.

2 Mar., 1867, c. 169, s. 1, v. 14, p. 471.

24 Dec., 1872, c. 13, s. 1, v. 17, p. 401.

Revised Statute 3173 of 1874

As can be seen R.S. 3165 concerns only the administering of oaths and taking evidence. R.S. 3173 though is key as it is the only one of the background statutes that provides authority for examinations involving, or relating to, individual annual tax returns. In this section, Congress specifies that, as regards any person other than those engaged in certain activities, it is only in the case of refusal or neglect to file a return (when allegations of obligation exist) that the authority to conduct examinations, issue summonses, etc. arises. Note also how concise it is regarding the types of taxes to which it applies.

Therefore, the misconstruction of 7602(a) by which the government suggests that it has the authority to look into anyone's affairs at its pleasure unravels. Such an inquiry can only have a legitimate purpose as to most Americans-- both Constitutionally and per the relevant statutes-- when credible (sworn) evidence of taxable activity goes un rebutted (or unacknowledged), thus establishing a basis upon which a demand for the production of a return can be properly made. Otherwise, such Americans are legally invisible to the government insofar as the tax structure is concerned, meaning that the apparent paradox cannot arise in the first place.

Title 26 section 7604 - Enforcement of summons

In the United States Attorney's Manual Civil Tax Case Responsibility the following is stated in regards to this section:

6-5.210 Summons Litigation -- Enforcement Cases -- Direct Referrals

Requests for enforcement of most administrative summonses, except for cases raising novel or sensitive issues, generally will be referred directly to the United States Attorneys by the District Counsel. District Counsel will forward to the Tax Division summons cases of a sensitive nature or raising novel issues, including summonses involving:

- attorneys
- churches
- newspapers and newspaper reporters
- tax accrual workpapers (tax pool analysis)
- foreign document requests
- treaty partners or other matters with international implications
- John Doe summonses
- section 60501
- novel/complex Fifth Amendment claims
- computer software and other non-traditional items
- state/local agencies and courts
- designated summonses
- consent directives
- other unique issues as may be determined from time to time

With respect to summonses directly referred to the USAO, it is not necessary to obtain authorization from the Tax Division prior to instituting court proceedings *except* if a case involving sensitive or novel issues, as described above, is directly referred to the United States

Attorney by District Counsel. The usual procedure for enforcing a summons is to file a petition requesting an order to show cause why the summons should not be enforced. See Tax Resource Manual at 26 *et seq.* **Attachment of the summoned person under 26 U.S.C. § 7604(b) should not be utilized as a means of seeking enforcement of a summons without receiving the prior written authorization of the Chief of the appropriate Civil Trial section.**

After review, the Tax Division may refer to the United States Attorney for handling some cases referred to the Division by District Counsel.

Notice where it states “the **United States district court** for the district in which such person **resides or is found** shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, records, or other data.” In this statement the words “resides” or “is found” are of significance. First, the term “resides” must be addressed.

Most people are unaware that the words “reside” and “domicile” have different meanings. In Black’s Law Dictionary, 6th Edition it is defined and explained as follows:

Domicile. A person's legal home. That place where a man has his true, fixed, and permanent home and principal establishment, and to which whenever he is absent he has the intention of **returning**. Generally, physical presence within a state and the intention to make it one's home are the requisites of establishing a "domicile" therein, The permanent residence of a person or the place to which he intends to return even though he may actually reside elsewhere. A person may have more than one residence but only one domicile. **The legal domicile of a person is important since it, rather than the actual residence, often controls the jurisdiction of the taxing authorities and determines where a person may exercise the privilege of voting and other legal rights and privileges.** The established, fixed, permanent, or ordinary dwellingplace or place of residence of a person, as distinguished' from his temporary and transient, though, actual, place of residence. It is his legal residence, as distinguished from his temporary place of abode; or his home, as distinguished from a place to which business or pleasure may temporarily call him. See also Abode; Residence.

"Citizenship," "habitancy," and "residence" are severally words which in particular cases may mean precisely the same as "domicile." while in other uses may have different meanings.

"Residence" signifies living in particular locality while "domicile" means living in that locality with intent to make it a fixed and permanent home

For purpose of federal diversity jurisdiction, “citizenship” and “domicile” are synonymous.

Jurisdiction of Federal Government

Make particular note of the bolded sections, with perhaps the most important being the words “The legal domicile of a person is important since it, rather than the actual residence, often controls the **jurisdiction of the taxing authorities** and determines where a person may exercise the privilege of voting and other legal rights and privileges.”

A good example of how this applies is found in Title 10 section 1408(c)(4):

Sec. 1408. Payment of retired or retainer pay in compliance with court orders

(a) Definitions. - In this section:

(1) The term "court" means -

(A) any court of competent jurisdiction of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(B) any court of the United States (as defined in section 451 of title 28) having competent jurisdiction;

(C) any court of competent jurisdiction of a foreign country with which the United States has an agreement requiring the United States to honor any court order of such country; and

(D) any administrative or judicial tribunal of a State competent to enter orders for support or maintenance (including a State agency administering a program under a State plan approved under part D of title IV of the Social Security Act), and, for purposes of this subparagraph, **the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.**

(2) The term "court order" means a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or a court ordered, ratified, or approved property settlement incident to such previously issued decree), or a support order, as defined in section 453(p) of the Social Security Act (42 U.S.C. 653(p)), which -

(A) is issued in accordance with the laws of the jurisdiction of that court;

(c) Authority for Court To Treat Retired Pay as Property of the Member and Spouse. -

(4) A court may not treat the disposable retired pay of a member in the manner described in paragraph (1) unless the court has jurisdiction over the member by reason of (A) his residence, other than because of military assignment, in the territorial jurisdiction of the court, (B) his domicile in the territorial jurisdiction of the court, or (C) his consent to the jurisdiction of the court.

Notice in section 1408(a)(1)(D) where it defines state: **“the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.”** Looks like the federal territories to me.

Now look in 1408(a)(2)(A) where it states: **“is issued in accordance with the laws of the jurisdiction of that court”** and in 1408(c)(4) where it gives the three conditions having to be met to meet court jurisdiction:

A court may not treat the **disposable retired pay of a member in the manner described in paragraph (1) unless the court has jurisdiction over the member by reason of**

1. His **residence**, other than because of military assignment, in the **territorial jurisdiction** of the court,
2. His **domicile** in the **territorial jurisdiction** of the court, or
3. His consent to the jurisdiction of the court.

Note that the terms "residence" and "domicile" are treated as separate terms and that either has to be in the territorial jurisdiction of the court.

Sound familiar when compared to:

"Jurisdiction' is of two kinds--one of the subject, the other of the parties--and both must exist in order to authorize the court to try and determine the cause. Unless the law gives the court jurisdiction of the subject, jurisdiction cannot be acquired by the consent of the parties; but, if the law gives jurisdiction of the subject, the court may acquire jurisdiction of the parties by their consent...**But if B., without challenging the jurisdiction of the court, should file his answer pleading to the merits, neither party could afterwards question the jurisdiction of the court because by their actions they are conclusively presumed to have consented to give the court jurisdiction of their persons--that is, their personal rights--in that case.**" - State ex rel. Furstenfeld v. Nixon, Mo., 133 S.W. 340, @ 342

And more importantly:

"As only the judicial **power vested in Congress is to create courts whose judges shall hold their office during good behavior, it necessarily follows that, if Congress authorizes the creation of courts and the appointment of judges for a limited time, it must act independently of the Constitution and upon territory which is not part of the United States within the meaning of the Constitution.**" - Downes v. Bidwell, 182 US 244, 266 (1900).

"since the plurality's conclusion -- that Congress could under Article I expand the scope of the federal courts' Article III jurisdiction -- contradicted the fundamental notion that Article III sets forth the exclusive catalog of permissible federal court jurisdiction. Thus, Union Gas was wrongly decided, and is overruled. The Eleventh Amendment restricts the judicial power under Article III, and Article I cannot be used to circumvent the constitutional limitations placed upon federal jurisdiction." Pp. ____ - Seminole Tribe of Florida v. Florida No. 94-12, Argued October 11, 1995 Decided March 27, 1996

58 S.Ct. 543, 303 U.S. 201, Mookini v. U.S., (U.S. Hawaii 1938)

[2] [3] [4] The term '**District Courts of the United States,**' as used in the rules, without an addition expressing a wider connotation, has its historic significance. **It describes the constitutional courts created under article 3 of the Constitution. Courts of the Territories are legislative courts, properly speaking, and are not District Courts of the United States.** We have often held that **vesting a territorial court** with jurisdiction similar to that vested in the **District Courts of the United States** does not make it a '**District Court of the United States.**' Reynolds v. United States, 98 U.S. 145, 154, 25 L.Ed. 244; The City of Panama, 101 U.S. 453, 460, 25 L.Ed. 1061; In re Mills, 135 U.S. 263, 268, 10 S.Ct. 762, 34 L.Ed. 107; McAllister v. United States, 141 U.S. 174, 182, 183, 11 S.Ct. 949, 35 L.Ed. 693; Stephens v. Cherokee Nation, 174 U.S. 445, 476, 477, 19 S.Ct. 722, 43 L.Ed. 1041; Summers v. United States, 231 U.S. 92, 101, 102, 34 S.Ct. 38, 58 L.Ed. 137; United States v. Burroughs, 289 U.S. 159, 163, 53 S.Ct. 574, 77 L.Ed. 1096.

In other words, Article I courts only have jurisdiction within territory which is not part of the United States within the meaning of the Constitution, or where so granted by Statutes that are in keeping with the delegated powers of congress. This omits jurisdiction **within the 50 State Republics.**

Likewise, **district courts of the United States** have been declared as only having jurisdiction over insular areas. Refer to the Special Note on page 247.

This section of code is enforceable only through regulations traceable to a Statute/Act of Congress located within Title 27 CFR only. Therefore a look at those sections and the source of their legislative/substantive regulations that are called out, cross-referenced to or in the "Section Referred to in Other Sections" is in order.

Jurisdiction of Federal Government

Summary of Associated Sections for Title 26 section 7604

By looking at the sections listed under "Cross References" and "Section Referred to in Other Sections", a glimpse of the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force:

Summary of Associated Sections for Title 26 section 7604

Section	Legislative/sub. Regulations
Title 18 section 401 - Power of court	Positive Law
Title 18 section 402 - Contempts constituting crimes	Positive Law
Title 18 section 3691 - Jury trial of criminal contempts	Positive Law
Title 26 section 6038 - Information reporting with respect to certain foreign corporations and partnerships	26 CFR part 1
Title 26 section 6048 - Information with respect to certain foreign trusts	None
Title 26 section 6420 - Gasoline used on farms	None
Title 26 section 6421 - Gasoline used for certain nonhighway purposes, used by local transit systems, or sold for certain exempt purposes	None
Title 26 section 6427 - Fuels not used for taxable purposes	26 CFR part 48
Title 26 section 7210 - Failure to obey summons	None
Title 26 section 7402 - Jurisdiction of district courts	None
Title 26 section 7602 - Examination of books and witnesses	27 CFR part 70
Title 26 section 7609 - Special procedures for third-party summonses	27 CFR part 70
Title 26 section 7612 - Special procedures for summonses for computer software	None

From the above, it is readily apparent that IRC section 7604 applies only to certain excise taxes and to alcohol, tobacco, and firearms related taxable activities.

Title 26 section 7608 Authority of internal revenue enforcement officers

Note that subsection (a) pertains to **Enforcement of subtitle E and other laws pertaining to liquor, tobacco, and firearms**. It should be further noted that only in this subsection are agents given the authority to **carry firearms** (subsection (a)(1). This authority **does not** exist in subsection (b), which covers Enforcement of laws relating to internal revenue **other than subtitle E**. That the IRS is aware of this is evident in their Internal Revenue Manual at 5.10.2.16.4 Armed Escorts where the following is stated in item 1: "**Revenue officers are not authorized to carry or use firearms or secondary weapons, such as mace or pepper spray**, and must be alert to situations that may call for the use of an armed escort. Employee safety is the number one priority. A revenue officer should request an armed escort when there is a fear or concern for personal safety or if circumstances develop where the employee feels threatened."

This section of the IRC is abused at will by IRS agents as they perform searches and seizures **while carrying firearms** as based on unlawful summons signed by venal judges. The only final rule authorities giving legal effect are found in 27 CFR parts 70 (Procedure and administration), and 46 (Miscellaneous regulations relating to tobacco products and cigarette papers and tubes). Concentration will be on 27 CFR part 70, subpart 33 as part 46 applies only to those involved in such activities.

In 70.33, Authority of enforcement officers of the Bureau it gives the following authorities to "Any special agent or other officer of the Bureau by whatever term designated, whom the Director or a special agent in charge charges with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of the laws administered and enforced by the Bureau pertaining to commodities subject to regulation by the Bureau, the enforcement of which such officers are responsible, may perform the following functions

- e) Carry firearms;
- f) Execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under authority of the United States;

- g) In respect to the performance of such duty, make arrests without warrant for any offense against the United States committed in his presence, or for any felony cognizable under the laws of the United States if he has reasonable grounds to believe that the person to be arrested has committed, or is committing, such felony; and
- h) In respect to the performance of such duty, make seizures of property subject to forfeiture to the United States.

The wording “to “Any special agent or other officer of the Bureau” and “enforcing any of the criminal, seizure, or forfeiture provisions of the laws administered and enforced by the Bureau” limit activity to the TTB not the IRS. 27 CFR part 70.33 was entered in the Federal Register at T.D. ATF-6, 38 FR 32445, Nov. 26, 1973 as part 70.28 (refer to page 301). In 1978, it was amended by T.D. ATF-48, 43 FR 13531, Mar. 31, 1978 and redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990.

A look at those sections and the source of their legislative/substantive regulations that are called out, or in the “Section Referred to in Other Sections” is in order.

Summary of Associated Sections for Title 26 section 7608

By looking at the sections listed under “Cross References” and “Section Referred to in Other Sections”, a glimpse of the statutory jurisdiction granted by congress can be determined. These sections and their subject matter are listed in the table shown on the following page, as is the location of any regulations having lawful force:

Summary of Associated Sections for Title 26 section 7608

Section	Legislative/sub. Regulations
5558 - Authority of enforcement officers	None
5604 - Penalties relating to marks, brands, and containers	None

Further, proof that IRC section 7608 is enforceable only through regulations in Title 27 CFR.

Title 26 section 7609 - Special procedures for third-party summonses

In the United States Attorney’s Manual Civil Tax Case Responsibility the following is stated in regards to this section:

6-5.220 Actions or Petitions to Quash or Enjoin IRS Summonses

The general rule is that no action may be brought to quash an IRS summons, or to enjoin the IRS from seeking to enforce such a summons by appropriate court action. See *Reisman v. Caplin*, 375 U.S. 440 (1964).

section 7609, 26 U.S.C., contains a legislative exception to the holding of *Reisman v. Caplin* for summonses issued to specifically enumerated third-party recordkeepers. The person to whom the records relate is given notice that a summons has been issued to a “third-party recordkeeper,” a term defined as including financial institutions, attorneys, and accountants. The notice can stay compliance with a third-party recordkeeper summons by commencing a proceeding to quash in the appropriate **District Court** within 20 days of the date on which notice is given, mailing a copy of the petition to the recordkeeper and to the office of the IRS designated in the notice. The procedural rules pertaining to a petition to quash are

jurisdictional and a motion to dismiss should be filed upon failure to follow these provisions meticulously.

Proceedings to quash may also be instituted with respect to IRS a formal document request under 26 U.S.C. § 982 for foreign-based documents. These proceedings are similar to 26 U.S.C. § 7609 proceedings, except that the taxpayer is allowed 90 days from the date of the request to initiate the proceeding.

subdivision, or passed upon the value, if any, of the property.

"It is unlawful for anyone to make, or cause to be made to any prospective purchaser, any representation contrary to the foregoing or any representations which differ from the Statements in this Property Report. If any such representations are made, please notify the Office of Interstate Land Sales Registration at the following address:

Office of Interstate Land Sales Registration, HUD Building, 451 Seventh Street SW., Washington, D.C. 20410."

The fifth and sixth paragraphs of the disclaimer shall be combined into one paragraph which shall appear as follows:

"Inspect the property and read all documents. Seek professional advice. Unless you received this Property Report prior to or at the time you enter into a contract, you may void the contract by notice to the seller."

The last paragraph of that section is deleted and the following language is inserted in lieu thereof:

IMPORTANT READ CAREFULLY

Name of subdivision:

By signing this receipt you acknowledge that you have received a copy of the Property Report prepared pursuant to the Rules and Regulations of the Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development.

Received by _____
 Street Address _____
 Date _____
 City _____ State _____
 ZIP _____

Notwithstanding your signature by which you acknowledged that you received the Property Report you still have other important rights under the Interstate Land Sales Full Disclosure Act.

The page containing the above disclaimer shall be a separate page and it shall be prepared in the format required by § 1710.110, Part B. 2., 4., 5. and 6." (38 FR 23896).

§ 1710.120 [Amended]

11. In § 1710.120, first line, the word "filing" is changed to read "filing" (38 FR 23896).

12. In § 1710.120, section I, State Filings, the words "set forth in § 1710.105 for Part I." are changed to read "set forth in § 1710.105 for the heading to the format, Part I." (38 FR 23896).

PART 1715—ADVERTISING, SALES PRACTICES, POSTING OF NOTICE OF SUSPENSION

§ 1715.5 [Amended]

1. Section 1715.5 (a) (2) is revised to read "(2) which by such statement or pictorial representation of any kind, or by omission thereof, in this light of applicable circumstances, is misleading or . . ."

2. In § 1715.5(a), the following language is to be deleted: "or (4) which differs materially from the information contained in a statement of reservations, restrictions, taxes, and assessments filed pursuant to §§ 1710.11 and 1710.102 of this chapter." The following additional

words are to be added in lieu thereof: "or in state filings made pursuant to § 1710.25 of this chapter." (38 FR 23897).

§ 1715.10 [Amended]

3. In § 1715.10(a) the last paragraph is revised to read as follows: "Obtain the HUD Property Report from developer and read it before signing anything. HUD neither approves the merits of the offering nor the value, if any, of the property." (38 FR 23978).

4. In § 1715.10(b) the last paragraph is revised to read as follows: "Obtain the HUD Property Report from the developer and read it before signing anything. HUD neither approves the merits of the offering nor the value, if any, of the property." (38 FR 23897).

PART 1720—FORMAL PROCEDURES AND RULES OF PRACTICE

§ 1720.40, 1720.380 and 1720.530 [Amended]

1. In § 1720.40 (b), fifth line, the words "by in" shall be changed to read "by in-" (38 FR 23900).

2. In § 1720.380, third line, the words "wering brief" are changed to read "swearing brief" (38 FR 23907).

3. The effective date provision which follows § 1720.530 of the Regulations beginning with the fourth line on page 23909 is revised to read as follows:

To bring the whole filing or consolidation into compliance with these regulations with the exception that Part II, subparts A. and B., Part IV.E., subparts 1. and 2. and Part V. of the Statement of Record, which may be retained in their original form if the amendments to these parts would only be the result of the new regulations. Consolidations may be updated by including the information required by the new regulations in the last consolidation on which there is an effective Property Report or by filing a new consolidation in accordance with these regulations.

(Section 7(d) of the Department of Housing and Urban Development Act, 79 Stat. 670 (42 U.S.C. 3535(d), 1419), 82 Stat. 598 (15 U.S.C. 1718), Secretary's delegation of authority published at 37 FR 5071.)

Effective date. This correcting amendment is effective December 1, 1973.

Issued at Washington, D.C., November 20, 1973.

GEORGE K. BERNSTEIN,
*Interstate Land
 Sales Administrator.*

[FR Doc. 73-24977 Filed 11-23-73; 8:45 am]

Title 27—Alcohol, Tobacco Products and Firearms

CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

SUBCHAPTER F—PROCEDURES AND PRACTICES [T.D. ATF-6]

PART 70—PROCEDURE AND ADMINISTRATION

The following regulations are hereby prescribed as Part 70 of Title 27 of the Code of Federal Regulations (a portion of the CFR devoted exclusively to alco-

hol, tobacco, firearms, and explosives matters, as administered and enforced by the Bureau of Alcohol, Tobacco and Firearms). These regulations, which were formerly included in 26 CFR Part 301 (a portion of the CFR currently devoted to both Internal Revenue and Bureau of Alcohol, Tobacco and Firearms matters), set forth the procedural and administrative rules of the Bureau relating to: the issuance and enforcement of summonses; examination of books of accounts and witnesses; administration of oaths; entry of premises for examination of taxable objects; granting of rewards for information; canvassing of regions for taxable objects and persons; and the authority of officers of the Bureau. At a later date additional provisions, based on those in 26 CFR Part 301 which still have application to Bureau activities, will be published in 27 CFR Part 70.

1. The regulations in this part supersede that portion of 26 CFR Part 301 under the center headnote of "Discovery of Liability and Enforcement of Title" embracing §§ 301.7601 through 301.7655, to the extent that it applied to laws formerly administered by the Alcohol, Tobacco, and Firearms Division of the Internal Revenue Service and as of July 1, 1972, administered by the Bureau of Alcohol, Tobacco and Firearms, under Treasury Department Order No. 221.

2. These regulations shall not affect any act done or any liability or right accruing, or accrued, or any suit or proceeding had or commenced before the effective date of these regulations.

3. The regulations in this part shall become effective on November 26, 1973.

Subpart A—Scope

Sec.

70.1 General.

Subpart B—Definitions

70.11 Meaning of terms.

Subpart C—Discovery of Liability and Enforcement of Laws

EXAMINATION AND INSPECTION

70.21 Canvass of regions for taxable persons and objects.

70.22 Examination of books and witnesses.

70.23 Service of summonses.

70.24 Enforcement of summonses.

70.25 Time and place of examination.

70.26 Entry of premises for examination of taxable objects.

70.27 Examination of records and objects.

70.28 Authority of enforcement officers of the Bureau.

GENERAL POWERS AND DUTIES

70.35 Authority to administer oaths and certify.

70.36 Rewards for information relating to violations of tax laws administered by the Bureau.

POSSESSIONS

70.41 Shipments to the United States.

70.42 Shipments from the United States.

AUTHORITY: (26 U.S.C. 7805, 18 U.S.C. 926, 847); 68A Stat. 917, 83 Stat. 234, 84 Stat. 959. Statutory provisions interpreted or applied are cited to text in parentheses.

A proceeding to quash is a civil action subject to the normal filing fee and to the provisions of Rule 4 of the Federal Rules of Civil Procedure concerning service of the summons and complaint. The filing of a petition to quash under 26 U.S.C. § 7609 or § 982 stays compliance with the summons or document request. Accordingly, it is generally in the best interest of the Government not to insist that the service of process rules be followed in all technical respects, absent compelling reasons to the contrary.

6-5.221 Direct Referrals

Petitions to quash brought under 26 U.S.C. § 7609 (see Tax Resource Manual at 31) will be directly referred to the United States Attorney for defense by the District Counsel except for cases raising sensitive or novel issues, as described in USAM 6-5.210. Upon receipt of a petition to quash, your office should send a copy to the District Counsel and should send a copy to the Chief of the appropriate Civil Trial section if it is apparent that the petition raises sensitive or novel issues.

Petitions under § 26 U.S.C. 982 to quash foreign document requests will generally be handled by Tax Division attorneys.

With regard to other types of suits to quash or enjoin an IRS summons, the United States Attorney should notify the Tax Division immediately and furnish copies of the pleadings. **If the suit is brought in a state court and the United States or an IRS official is named, the United States Attorney should remove the action to the federal court immediately. In any suit in which neither the United States nor any IRS official is named, the United States Attorney should not become involved in any manner in the action.**

Whenever an action is filed to enjoin the IRS or a summoned witness, or to quash a summons or a document request, the IRS official who issued the summons or document request should be advised immediately so that a determination can be made whether to enforce judicially the summons or to moot a defective summons or document request.

Regarding this section jurisdiction is the key issue. In subsection (d)(2) it states “except in accordance with an order of the **court having jurisdiction** of such proceeding or **with the consent of the person** beginning the proceeding to quash.”. Suspension of statute of limitations. By referring to the Special Note on page 247 for the difference between a **United States district court** and a **district court of the United States** it is shown that neither have jurisdiction within the 50 states, but if you grant consent then either of these two courts can claim jurisdiction. In subsection (f) it states “Jurisdiction of district court; etc.(1) Jurisdiction The **United States district court** for the district within which the person to be summoned resides or is found shall have jurisdiction to hear and determine any proceeding brought under”

Therefore, this section of code does not apply to the average John or Jane Q. Citizen, further reinforced by the fact that the only legislative/substantive regulations backed by the force of a Statute/Act of congress are located in 27 CFR - Alcohol, Tobacco Products and Firearms - part 70 - Procedure and administration. Be fore leaving this section lets take a look at those sections of code as referenced within the text or in the “Section Referred to in Other Sections”

Summary of Associated Sections for Title 26 section 7609

By looking at the sections that are referenced in the text of IRC section 7609 and “Section Referred to in Other Sections” a glimpse of the statutory jurisdiction granted by congress can be further determined. These sections and their subject matter are listed in the table shown below, as is the location of any regulations having lawful force. The page number of any other included information in this publication in regards to the listed section is also shown.

Summary of Associated Sections for Title 26 section 7609

Section	Legislative/sub. Regulations
982 - Admissibility of documentation maintained in foreign countries	None
6420 - Gasoline used on farms	None
6421 - Gasoline used for certain nonhighway purposes, used by local transit systems, or sold for certain exempt purposes	None

Summary of Associated Sections for Title 26 section 7609 (Cont.)

Jurisdiction of Federal Government

Section	Legislative/sub. Regulations
6427 - Fuels not used for taxable purposes	26 CFR part 48
6501 - Limitations on assessment and collection	27 CFR part 70
6531 - Periods of limitation on criminal prosecutions	None
7602 - Examination of books and witnesses	27 CFR part 70
7603 - Service of summons	27 CFR part 70
7604 - Enforcement of summons	27 CFR part 70
7611 - Restrictions on church tax inquiries and examinations	None
7612 - Special procedures for summonses for computer software	None

From above it is readily apparent that this section of code is enforceable only through regulations within Title 27 CFR - Alcohol, Tobacco, and Firearms.

Title 31 section 3717 - Interest and penalty on claims

Here it should be noted that there is but one reference to the IRC, that being in regards to Title 26 section 6103. IRC section 6103 is covered on page 271 and pertains to the disclosure of information. Note also to the reference to Title 5 section 5514, which is covered on page 163

Summary of Jurisdiction

Criminal

From the run-through of the codified sections as given from the various sources it is evident that they apply to those as indicated in the table below.

Summary of Criminal Jurisdiction

Applicability	Title/section
Alcohol, tobacco, and firearms activities	Title 26 section 7212
Bribery of public officials and witnesses	Title 18 section 201
Companies involved in specific retail excise tax activities	Title 26 section 7211 Title 26 section 7261
Conspiracy to commit offense or to defraud United States	Title 18 section 371
Flight to avoid prosecution or giving testimony	Title 18 section 1073
Fraudulent withholding exemption certificate (no regulations)	Title 26 section 7205
Laundering of monetary instruments	Title 18 section 1956
Offenses relating to stamps	Title 26 section 7208 Title 26 section 7209
Perjury generally by government personnel under oath	18 section 1621
Persons as defined in IRC section 7343 (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)	Title 26 section 7201 Title 26 section 7202 Title 26 section 7203 Title 26 section 7204 Title 26 section 7206 Title 26 section 7207 Title 26 section 7210 Title 26 section 7215 Title 26 section 7231 Title 26 section 7232 Title 26 section 7262 Title 26 section 7268 Title 26 section 7270 Title 26 section 7275
Statements or entries by government personnel	Title 18 section 1001

Summary of Criminal Jurisdiction (Cont.)

Jurisdiction of Federal Government

Applicability	Title/section
Those involved in racketeering	Title 18 section 2 Title 18 section 3 Title 18 section 1952
Those involved in wagering	Title 26 section 7262

Note: Title 31 sections not included in table as they pertain to banking activities.

What it also shows, by the exclusion of any relevant section indicating otherwise is that there are no criminal acts in regards to taxation that can be lawfully applied to the normal U.S. citizen, living within the United States and employed in the private sector.

Civil

Basically it can be said that civil jurisdiction, like criminal jurisdiction is extremely limited and involve the same type of offenses. Only those sections of the IRC as referenced in the United States Attorney’s Manual Civil Tax Case Responsibility document, or referenced from it were covered, however the method used can be applied to any section of code.

In the discussion of civil jurisdiction, the IRC sections were located in the following chapters of the IRC:

- Chapter 75 - Crimes, Other Offenses, and Forfeitures (section 72XX and 73XX series)
- Chapter 76 - Judicial Proceedings (section 74XX series)
- Chapter 78 - Discovery of Liability and Enforcement Of Title

In the above, it was learned that the majority of legislative/substantive regulations that are traceable to an enabling Statute of congress for the above series were found in Title 27 CFR, not Title 26 CFR.

In regards to chapter 78 it is interesting to note that only IRC section 7624 - Reimbursement to State and local law enforcement agencies has legislative/substantive regulations in Title 26 CFR, the rest are found in Title 27 CFR. There are three subchapters within this chapter, another having been repealed (subchapter C). These subchapters, with their sections and authorities by Acts (Statutes) of congress are detailed in the following tables:

Subchapter A--Examination and Inspection - IRC sections 7601 - 7613

IRC section:	Title/Subject:	Authorities by Acts of Congress:
7601	Canvass of districts for taxable persons and objects.	27 part 70
7602	Examination of books and witnesses.	27 part 70
7603	Service of summons	27 part 70
7604	Enforcement of summons	27 part 70
7605	Time and place of examination	27 part 70
7606	Entry of premises for examination of taxable objects	27 part 70
7607	Repealed	N/A
7608	Authority of internal revenue enforcement officers	27 part 70
7609	Special procedures for third-party summonses	27 part 70
7610	Fees and costs for witnesses	27 part 70
7611	Restrictions on church tax inquiries and examinations	None
7612	Special procedures for summonses for computer software	None

Subchapter A--Examination and Inspection - IRC sections 7601 – 7613 (Cont.)

Jurisdiction of Federal Government

IRC section:	Title/Subject:	Authorities by Acts of Congress:
7613	Cross references	None
7621	Internal revenue districts	None
7622	Authority to administer oaths and certify	27 part 70
7623	Expenses of detection of underpayments and fraud, etc	27 part 70
7624	Reimbursement to State and local law enforcement agencies	26 part 301

Subchapter B--General Powers and Duties - IRC sections 7621 - 7624

IRC section:	Title/Subject:	Authorities by Acts of Congress:
7621	Internal revenue districts	None
7622	Authority to administer oaths and certify	27 part 70
7623	Expenses of detection of underpayments and fraud, etc	27 part 70
7624	Reimbursement to State and local law enforcement agencies	26 part 301

Subchapter D—Possessions - IRC sections 7651 - 7655

IRC section:	Title/Subject:	Authorities by Acts of Congress:
7651	Administration and collection of taxes in possessions	27 parts 26, 41 40 part 76
7652	Shipments to the United States	27 parts 26, 41 40 part 76
7653	Shipments from the United States	27 part 70
7654	Coordination of United States and certain possession individual income taxes	None
7655	Cross references	None

From the tables shown above, enforcement of Subtitle F--Procedure and Administration, Chapter 78 -- Discovery of Liability and Enforcement of Title are found to be the responsibility of the TTB with limited authority of the IRS.

Importance of Court Decisions

Here only four levels of the federal court system will be considered. These are the Supreme Court, Court of Appeals, District Courts, and the Tax Courts.

Section 4.10.7.2.9.8 of the Internal Revenue Manual sums it up in an easy to understand manner:

4.10.7.2.9.8 (05-14-1999)

Importance of Court Decisions

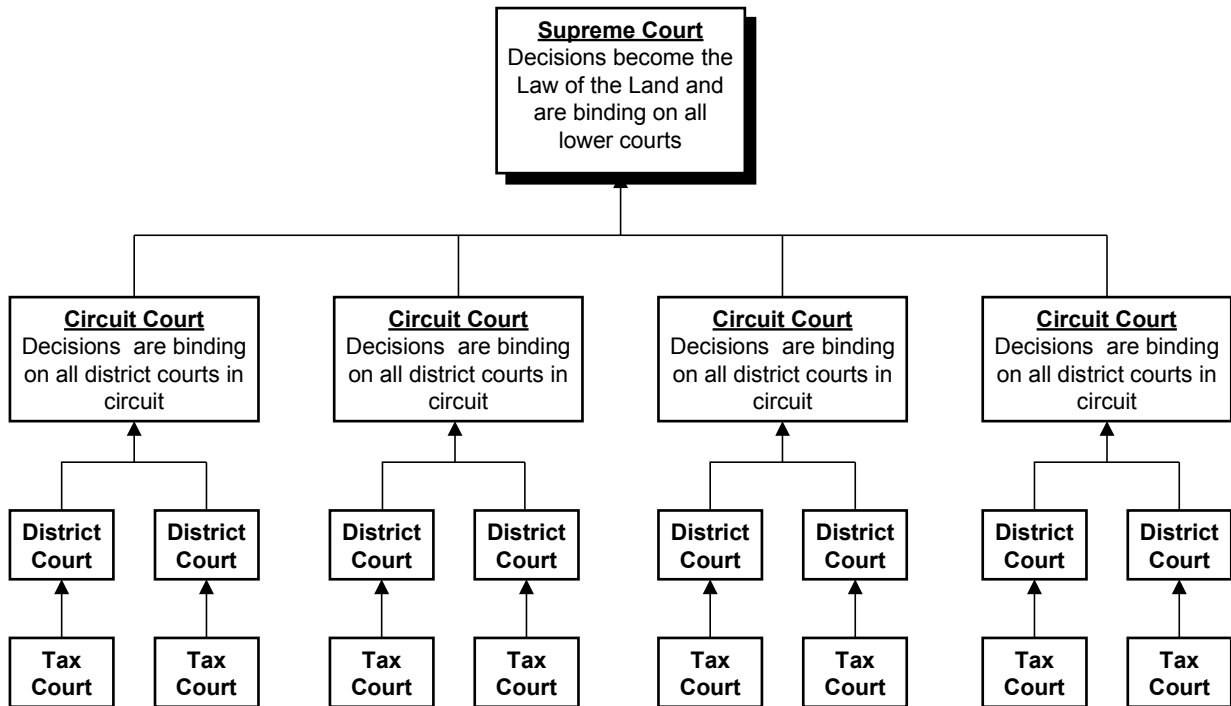
1. Decisions made at various levels of the court system are considered to be interpretations of tax laws and may be used by either examiners or taxpayers to support a position.
2. Certain court cases lend more weight to a position than others. A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions of lower courts. The Internal Revenue Service must follow Supreme Court decisions. For examiners, Supreme Court decisions have the same weight as the Code.
3. 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.

This pertains only to the way that the IRS looks at the decisions of the various courts, but a hierarchy exists between the courts lower than the Supreme Court. The figure on page 307 illustrates the hierarchy between the courts. The method, which the IRS uses to determine which cases to cite against you, is shown in Section 4.10.7.2.9.4 of the Internal Revenue Manual:

4.10.7.2.9.4 (05-14-1999)

Court of Appeals

1. Either the taxpayer or the Government may appeal decisions of the Tax Court and District Courts to the regional Circuit Court of Appeals. There are twelve courts of appeals for eleven circuits and the District of Columbia.
2. District Courts must follow the decision of the Court of Appeals for the circuit in which they are located. For example, the District Court in the Eastern District of Missouri must follow the decision of the Eight Circuit. If the Eighth Circuit has not rendered a decision on the particular issue involved, then the District Court may make its own decision or follow the decision of another circuit which has rendered a decision on the issue.
3. Since one circuit court is not bound by the decision of another circuit, it is important to find a case from the circuit that will hear the case when citing a case supporting the position taken on an issue. If a decision on a particular issue has not been rendered in the examiner's circuit, cite a supporting decision rendered in another circuit.



Notes:

- Arrows indicate paths of appeals.
- There are 11 Circuit Courts. Only four are shown.

Hierarchy of Federal Courts (Simplified)

4. Decisions of the Court of Appeals and U.S. Court of Appeals for the Federal Circuit are published by commercial publishers in the following volumes:
 - A. CCH Incorporated: United States Tax Cases (cited USTC)
 - B. Research Institute of America: American Federal Tax Report (cited AFTR)
 - C. West Publishing Company: Federal Reports, Second Series (cited F. 2d)
5. Citing United States Courts of Appeals decisions:

Jurisdiction of Federal Government

- A. Example: In the case of Graham v. Commissioner, the citation is 6 F.2d 878 (4th Cir. 1964).
- B. If a case has not been reported in Federal Reports, cite an unofficial reporter, as follows: Marwais Steel Co. v. Commissioner, 17 AFTR 2d 11 (9th Cir. 1965), or Marwais Steel Co. v. Commissioner, 66-1 USTC 85, 126 (9TH Cir. 1965).

As Justice is Administered

Unfortunately, federal (and most state) laws are not administered as they are written. The federal courts are operating on the basis of public perception, i.e. they know that almost all Americans are ignorant as to their constitutional rights and how the laws and regulations are made. They do not have the slightest idea as to what the Federal Register is, or what the Administrative Procedures Act is for. Most Americans take it as fact that the U.S. Attorneys and federal judges have integrity and uphold the constitution. A constant bombardment of propoganda via the airwaves and print of a socialist biased mainstream media have helped foster this public perception. Reporters no longer seek the truth, but simply regenerate the government's lies camouflaged as if it was the truth. In regards to taxation, the IRS has taken over the courts as they have taken over the Executive and Legislative bodies of our government. We have none of integrity, courage, or honor within our governments, federal or state.

Notice that in the above I stated "socialist biased mainstream media", this was purposeful for in truth the political terms of "liberal" and "conservative" both correspond to "socialist". To these political brands, the end goal sought is domination over all aspects of the citizen's lives and this requires funding.

The executive and legislative branches love the IRS, for it enables them to extort and steal property from the people to finance their many programs. By their operating under the color of law, they have in effect made the federal government powerful over the state governments, which is not constitutional.

As for the courts, they were effectively brought under the control of the IRS in 1972 when the IRS-CID was tasked to monitor the performance of federal judges and U.S. Attorneys by Treasury/IRS 46.002. Since that time any judge that displeases the IRS will face the ire of congress and of the other judges that have been brought into the IRS's (and federal governments) network of fraud. It is truly a federal Mafia.

Treasury/IRS 46.002 as of December 10, 2001 entered at 66 FR 63783-63875 reads as follows:

Treasury/IRS 46.002

System name:

Criminal Investigation Management Information System (CIMIS)-
Treasury/IRS.

System location:

National Office, Area Offices, Internal Revenue Service Centers,
and Detroit Computing Center. (See IRS appendix A for addresses.)

Categories of individuals covered by the system:

Subjects and potential subjects of Criminal Investigation Division investigations, Special Agents, **U.S. Area Court Judges and U.S. Attorneys.**

Categories of records in the system:

Personal and financial information developed in criminal tax investigations, potential tax investigations and in projects including information from other Federal, state and local agencies.

Authority for maintenance of the system:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

Purpose(s):

To maintain and process sensitive investigative data that identifies patterns of criminal and/or civil noncompliance with federal

income tax laws and to maintain and process sensitive information on agent personnel.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Disclosure of returns and return information may be made only as provided in 26 U.S.C. 6103.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in binders, magnetic media, computer discs, computer printouts.

Retrievability:

By taxpayer's name, case number and social security number, or other unique identifier.

Safeguards:

Access controls will not be less than those provided for by Managers Security Handbook, IRM 1(16)12 and the Automated Information System Security Handbook, IRM 2(10)00.

Retention and disposal:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1.15.2.1 through IRM 1.15.2.31.

System manager(s) and address:

Official prescribing policies and practices--Chief (Criminal Investigation), National Office. Officials maintaining the system--Assistant Commissioner (Criminal Investigation);, Area Directors, Internal Revenue Service Center/Campus Directors, and the Detroit Computing Center Director. (see IRS appendix A for addresses).

Notification procedure:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

Record access procedures:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

Contesting record procedures:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

Record source categories:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

Exemptions claimed for the system:

This system has been designated as exempt from certain provisions of the Privacy Act.

In truth, it can be said that justice in the federal courts no longer exists. Recent events have shown that the federal courts freely violate the rights of the American people, as embodied in the Constitution of the United States in order to attempt to destroy the dissemination of truth.

By this monitoring the IRS-CID introduces the appearance of bias. The Supreme Court has held:

"Moreover, **even if there is no showing of actual bias in the tribunal, this Court has held that due process is denied by circumstances that create the likelihood or the appearance of bias.** This rule was well established long before the right to jury trial was made applicable in state trials and does not depend on it."

As this court said in *In Re Murchison*, 349 U.S. 133 at 136 (1955), '(f)airness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness.'(emphasis added) - ***Peters v. Kiff***, 407 U.S. 493 at 502.

An agency may deny due process if it fails to obey its own regulations." ..U.S. v. Capra, 372 F.Supp. 609 (1974)

Notice that the bias does not actually have to exist, only the appearance. Treasury/IRS 46.002 provides the appearance. Then too, the prosecuting attorneys from the DOJ openly violate an admonishment of the Supreme Court:

"The United States Attorney... is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer... It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." [*Berger v. United States*, 295 U.S. 78 (1935)]

So to those that choose to bravely enter these federal courts of corruption and do battle keep in mind as you enter what Dante seen inscribed on the portal as he approached the Inferno:

"Lasciate Ogni speranze voi chi intrate"

(Abandon hope all ye who enter here)

Meaning

The supposed inscription at the entrance to Hell.

Origin

From Dante's *Divine Comedy*. The translation into English by H.F. Cary is the origin for this English phrase, although he gave it as the less commonly used 'All hope abandon ye who enter here'.

Through me you pass into the city of woe:
Through me you pass into eternal pain:
Through me among the people lost for aye.

Justice the founder of my fabric mov'd:
To rear me was the task of power divine,
Supremest wisdom, and primeval love.

Before me things create were none, save things
Eternal, and eternal I endure.
All hope abandon ye who enter here.

Such characters in colour dim I mark'd
Over a portal's lofty arch inscrib'd:
Whereat I thus: Master, these words import.

Dante Alighieri wrote this allegorical epic poem between 1306 and 1321. Virgil is the guide who takes the reader through the author's examination of the afterlife. It travels through the Inferno (Hell), the Purgatorio (Purgatory), and the Paradiso (Heaven).

Why is this so? The words of José Saramago, a Nobel laureate for literature sums it up best as given in a speech he made in Paris, an extract is given below.

For Whom the Bell Tolls
By José Saramago *

In a village just outside Florence over 400 years ago, the villagers were at home or working in their fields when they heard the church bell. In those pious times the bells rang several times a day, so the sound came as no surprise. But the bell was tolling the death knell and no one knew of anyone dying in the village. The villagers soon assembled in front of the church, waiting to be told who was dead. The bell rang a while longer, then was silent.

Then a peasant came out of the church, not the usual bell-ringer. The villagers asked him where the bell-ringer was and who was dead. The peasant replied: "I rang the bell. I rang the death knell for Justice, because Justice is no more."

Researching Law Citations

Throughout this document you have noted many references made to decisions of the Supreme Court. You have probably heard many of these from other sources. These decisions have been kicked around for years and really gained nothing because of lack of knowledge concerning jurisdiction of the federal courts as covered in a previous chapter.

The point is, these are not the only decisions and chances are you have missed the value of using secondary sources to determine court decisions that have been used in a myriad of cases. In the following paragraphs a look at two of these secondary sources will be briefly covered.

Corpus Juris Secundum (CJS)

The following is a brief description of the Corpus Juris Secundum (CJS) as offered by the publisher, West Publishing:

CJS is viewed by many of our customers as the ultimate case-finding aid - and has proven to be an important time-saver for many legal research tasks. West recently published and shipped a Table of Cases, which provides a quick and efficient way to locate those CJS sections where a particular case is discussed. Once the appropriate sections are located, the researcher will find a comprehensive overview of a particular area of law, including both text discussions and additional on-point citations.

With over 1,000,000 citations, the Table of Cases provides a powerful case-finding tool to facilitate the fast identification of relevant cases and discussions. Finally, CJS is highly populated with references to the West Key Number System and is closely tied to the West National Reporter System. Having been cited more than 90,000 times by the courts, CJS is a recognized authority on legal issues, and an invaluable tool for identifying key points of law quickly and efficiently.

In another description the following is stated:

Corpus Juris Secundum, a legal encyclopedia published by West Publishing, includes both procedural and substantive law organized into 101 volumes. Corpus Juris Secundum covers over 400 broad topics which are subdivided into many sections. Corpus Juris Secundum includes an annual multivolume General Index and annual cumulative pocket supplements. As legal encyclopedias present general propositions of law in narrative form with introductory explanations and citations to case law, statutory law and other resources, these publications are excellent introductions to new areas of law and provide a starting point for research.

As can be seen, it is massive, consisting of 100 or more volumes. It is also expensive, a full set costing in excess of \$5,900.00 when ordered from the publisher. Many law libraries maintain copies, either in print or on microfiche. The best source would be at university libraries where they teach law.

CJS Volumes

The volumes, and their descriptions are listed at the following web address. Those of most importance in reference to this document are Volumes 16, 16A, 16B, Revised 16C, and Revised 16D regarding Constitutional Law; Volumes 16, and 16A regarding Federal Courts; and Volumes 84 and 85 regarding Taxation.

http://west.thomson.com/store/summaryofcontents.aspx?product_id=22023000

Volume prices are listed at the following:

http://west.thomson.com/store/volume.aspx?product_id=22023000

American Jurisprudence, 2d

American Jurisprudence 2d takes a different approach to identifying and analyzing key points of law. It contains authoritative analysis distilled from case law and statutes. Am Jur provides thorough, in-depth discussion using seminal cases for specific points of law. Each legal issue in Am Jur provides analysis of all the issues from all sides of that topic, referencing key or pivotal cases for illustrative purposes. Am Jur also cites heavily to other analytical sources, such as the Am Jur family and American Law Reports (ALR*).

The distinct approaches used in creating these "encyclopedias" reflects the diverse demands and preferences of our customers. CJS and Am Jur serve different purposes; as such, each is valued as an essential resource to legal researchers.

American Jurisprudence Volumes

The American Jurisprudence is even more expensive than the CJS.. Those of most importance in reference to this document are the volumes as listed in the table below, though others may be of relevance to what you are attempting to do:

American Jurisprudence Volumes of Interest

Vol.	Title
3	Agency
3A	Aliens and Citizens (Sec 1-1205)
3B	Aliens and Citizens (Sec 1206-2094)
3C	Aliens and Citizens (Sec 2095-2765)
6	Attachment and Garnishment
16	Constitutional Law (1-165)
16A	Constitutional Law (166-580)
16B	Constitutional Law (581-985)
27	Employment Relationship
32	Federal Courts (1-664)
32A	Federal Courts (665-1781)
32B	Federal Courts (1782-2585)
32B	Federal Employers' Liability and Compensation Acts
33	Federal Taxation (520-3999)
33A	Federal Taxation (4000-15,999)
34	Federal Taxation (16,000-142,999)
34A	Federal Taxation (143,000-145,717)
34B	Federal Taxation (146,001-183,951)
35	Federal Tax Enforcement (1-932)
35A	Federal Tax Enforcement (933-1283)
41	Independent Contractors
42	Inheritance, Estate, and Gift Taxes
46	Judges
46	Judgments (1-462)
47	Judgments (463-855)
47	Judicial Councils and Conferences
47	Judicial Sales
47	Jury
58	Occupations, Trades and Professions
63C	Public Officers and Employees
68	Searches and Seizures
68A	Secured Transactions
70A	Social Security and Medicare (1-803)
70B	Social Security and Medicare (804-2005)

Researching Law Citations

American Jurisprudence Volumes of Interest (Cont.)

Vol.	Title
70C	Social Security and Medicare (2006-2686)
71	State and Local Taxation (1-572)
72	State and Local Taxation (573-1004)
72	States, Territories and Dependencies
74	Taxpayers' Actions
77	United States

In addition the following are included:

- General Index, 2006 Edition, 7 pamphlets
- Table of Laws and Rules, 2006 Edition
- Special Pamphlet on the IRS Reform and Restructuring Act of 1998
- Am Jur New Topic Service Binder contains only the following:
- Americans with Disabilities Act: Analysis and Implications
- Computers and the Internet
- Limited Liability Companies
- Real Estate Time-Sharing
- Terrorism

The volumes, and their descriptions are listed at the following web address

http://west.thomson.com/store/summaryofcontents.aspx?product_id=13504006

Volume prices are listed at the following:

http://west.thomson.com/store/volume.aspx?product_id=13504006

State Legal Encyclopedias

Often overlooked, or never thought about are the state legal encyclopedias. These, if they exist for your state are in many ways of greater importance than federal legal encyclopedias. Remember, the federal Constitution applies to the 50 states also, and for states having a state income tax they are generally based on the federal income tax. Since state courts in determining their decisions make reference to what the federal courts have decided and using those decisions on what their's will be.

Another thing is, if you studied the chapter on federal jurisdiction you should realize that the lower federal courts, i.e. the United States District Courts and the District Courts of the United States do not have jurisdiction within the 50 states. If you are contemplating taking action against an IRS agent or such and you file in a federal court you are committing jurisdictional suicide and agreeing to territorial law. Most states have laws that are constitutionally sound that allow prosecution of anyone, to include federal agents that break state law. One such act would be the filing of fraudulent liens and levies, which by federal law must be filed in accordance with state law. They habitually violate this as stated in the chapter "The State's Contribution to the Fraud" on page 229. As your state so kindly "assists" them in this fraudulent filing the state law also provides punishment for those that fraudulently file a false instrument and those that assist in the act. Consult your state law.

State legal encyclopedias provide background and explanations of state legal topics and provide citations to primary law. Not every state has a legal encyclopedia. Depth of coverage and quality vary. State encyclopedia articles are updated irregularly. Remember to check pocket parts when using them in print. Below are listed some sources that carry these state legal encyclopedias. You can also check your local libraries:

State Encyclopedias on Westlaw

The following list only includes encyclopedias that are comprehensive in scope. For many states, Westlaw offers a practice series that has selective coverage of state law, usually covering a few major topics and information useful to litigators. These can be found by browsing the [Westlaw Directory](#) by State then Forms, Treatises, CLEs, and Other Practice Materials.

[California Jurisprudence 3d](#)
[Summary of California Law](#)
[Florida Jurisprudence 2d](#)
[Georgia Jurisprudence](#)
[Illinois Law and Practice](#)
[Louisiana Civil Law Treatise](#)
[Maryland Law Encyclopedia](#)
[Massachusetts Practice](#)
[New Jersey Practice](#)
[New York Jurisprudence 2d](#)
[Strong's North Carolina Index](#)
[Ohio Jurisprudence 3d](#)
[Summary of Pennsylvania Jurisprudence 2d](#)
[South Carolina Jurisprudence](#)
[Texas Jurisprudence 3d](#)

State Encyclopedias on LexisNexis:

[Witkin Summary of California Law](#)
[Florida Jurisprudence 2d](#)
[Illinois Jurisprudence](#)
[Michigan Law and Practice](#)
[Dunnell Minnesota Digest](#)
[New York Jurisprudence 2d](#)
[Ohio Jurisprudence 3d](#)
[Pennsylvania Law Encyclopedia](#)
[Tennessee Jurisprudence](#)
[Texas Jurisprudence 3d](#)
[Michie's Jurisprudence of Virginia and West Virginia](#)

General Instructions on Using the CJS and Other Legal Encyclopedias

The steps to using the CJS and Other Legal Encyclopedias CJS and Other Legal Encyclopedias are covered in the following paragraphs.

Step One - Search for your terms in the index volumes

Do the following:

- Look up your topic using common words and phrases.
- Once you find the general topic, scan the entries for the more specific topic.
- An entry will give you the text followed by **topic §number**. For example, **zoning §12**.

Step Two - Find the indexed topics & sections

If your topic is abbreviated and you are not sure what the abbreviation means, look in the front of the book at the **table of abbreviations** (AmJur) or **abbreviations of titles** (CJS).

Step Three - Read the encyclopedia entry

Do the following:

- The **analysis** (AmJur) or **outline** (CJS) provides a full outline of the topic.

Researching Law Citations

- The **scope note** (AmJur) or **scope of title** (CJS) discusses what is and what is not covered within the topic.
- American Jurisprudence 2d includes full cross-references to topics treated elsewhere. In addition, the introductory sections for each topic include **research references** to secondary sources such as the American Law Reports and textbooks.
- Corpus Juris Secundum provides **library references** to the West **topic & key number** system for finding case law.
- **Entries** consist of explanatory paragraphs with footnotes citing primary materials (cases, statutes, and regulations) which support the propositions stated in the entry.

Step Four: Update your research

Do the following:

- Both encyclopedias contain **pocket parts**, pamphlets which are inserted in a pocket at the back of the volume.
- Consult the pocket part to find later materials within your topic.
- Occasionally, you will find a **supplementary pamphlet** instead of a pocket part on the shelf next to the main volume.
- Use the same **topic §number** that you searched in the main volume.

Conclusion to researching laws and citations.

These two law encyclopedias will enable you to determine just how the federal courts have ruled regarding specific meanings or issues. They enable you to be better prepared in any court action against you, or any that you are considering taking. If you can find a set at a local library go and get familiar with them. The benefits are tremendous as it could prevent you from making grave mistakes.

Recover by Using the Law

Instead of listening to, and falling victim to the failed schemes of several silver bullet gurus, there is a better way that will save you persecution, and possibly failed court attempts. In short it is a way to get back at filing time what was fraudulently withheld from your earnings throughout the year. In this chapter no detail will be shown as to the actual working as that right belongs to another, a Peter E. Hendrickson who indeed knows the way.

To briefly begin, congress has written into the statutes the means to correct erroneous information. This can be accomplished either by the one that submitted the information, or the one that has been harmed by it. The information I speak of is the reporting of “wages” by private sector companies on the Form 941’s, Form W-2’s, and also on their Forms 1099-MISC. This was previously covered in the chapter on Fraudulent Tax Law Application that begin on page 163. Since it is virtually impossible to convince any private sector employer that they erred and wrongfully reported your compensation it is up to the individual. Information as to how is available in the book “Cracking the Code” that can be ordered at the following web address:

http://www.losthorizons.com/Cracking_the_Code.htm#Cracking%20the%20Code

The point is, you are not asking for a refund of any taxes, whether they were due or not. You are asking in the returns filed IAW Cracking the Code for a return of funds held in escrow for any taxes that may become due but fail to materialize. These returns indicate a lawful request for the return of the amounts withheld in escrow for taxes that were found not to exist. The Supreme Court addressed this issue as follows:

“They are, as it were, payments in escrow. They are set aside, as we have noted, in special suspense accounts established for depositing money received when no assessment is then outstanding against the taxpayer. The receipt by the Government of moneys under such an arrangement carries no more significance than would the giving of a surety bond. Money in these accounts is held not as taxes duly collected are held but as a deposit made in the nature of a cash bond for the payment of taxes thereafter found to be due.” *Rosenman v. United States*, 323 US 658 (1945)

“It reasoned [in the District Court] that in the case of a proper tax return, the return itself defines the obligation, but where a taxpayer make a transfer of money to the collector, the transfer itself does not define the tax obligation. Some further act is necessary.... The Court found its course of reasoning and its conclusion supported by the decision of the Supreme Court in *Rosenman v. United States*... the reasoning compelled conclusion that the taxpayer's obligation became defined when the Commissioner made assessment.... It is the view of the Court that the transfers of money made by the taxpayer in the instant case did not have the status of 'payment' until the tax deficiencies were formally assessed by the Commissioner.” *United States v. Dubuque Packing Co.*, 233 F.2d 453 (8th Cir. 1956)

“We cannot accept the distinction that the Defendant-Appellant would have us draw, that the mailing of 'Plaintiff'-'Appellee's' check in response to the statutory notice of deficiency amounted to a payment and that, therefore, the tax in question was duly collected. On the contrary, we believe that Plaintiff'-'Appellee's' check' served as a deposit to be utilized by the Government in the event a tax obligation were subsequently defined and imposed.

We are persuaded in so holding by the reasoning of the court in *Rosenman v. United States*, 323 U.S. 658, 65 S.Ct. 536, 39 L.Ed. 535 (1945) which recognized that payments prior to assessment are deposits and not payments of taxes duly collected.” *Estate of M. Karl Goetz v. United States*, 286 F. Supp. 128 (W.D.Mo. 1968)

“This much is clear: (l) a remittance is not per se 'payment' of the tax; (') a remittance that does not satisfy: an asserted tax liability should not be treated as the 'payment' of a tax; and (j) an essential factor in 'payment' before assessment is the .satisfaction or discharge of what the taxpayer deems a liability.” *Ameel v. United States*, 426 F.2d 1270 (6th Cir. 1970)

Recover by Using the Law

"[Rosenman Court Chief Justice Felix Frankfurter says] "the tax obligation did not become defined until April 1938," id. 323 U.S. at 662 (emphasis added); that is to sm.~, not until the assessment was made. The key here is that something, other than the mere remittance of money, must happen to define the amount of the obligation. **That could be an official assessment by the IRS, or a tax return or other official document signed by the taxpayer**- which acknowledges the amount of the obligation." Ewing v. United States, 711 F. Supp. 265 (W.D.N.C. 04/19/1989)

This is the basis for IRC section 6401(c), covered below.

Title 26 section 6401

This section reads as follows (abbreviated). Note the bolded and underlined text:

(a) Assessment and collection after limitation period.

The term **"overpayment" includes that part of the amount of the payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation properly applicable thereto.**

(b) Excessive credits

(1) In general

If the amount allowable as credits under subpart C of part IV of subchapter A of chapter 1 (relating to refundable credits) **exceeds the tax imposed by subtitle A (reduced by the credits allowable under subparts A, B, D, and G of such part IV), the amount of such excess shall be considered an overpayment.**

(2) Special rule for credit under section 33

For purposes of paragraph (1), any credit allowed under section 33 (relating to withholding of tax on nonresident aliens and on foreign corporations) for any taxable year shall be treated as a credit allowable under subpart C of part IV of subchapter A of chapter 1 only if an election under subsection (g) or (h) of section 6013 is in effect for such taxable year. The preceding sentence shall not apply to any credit so allowed by reason of section 1446.

(c) **Rule where no tax liability**

An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

Notice the following:

- In subsection (a) it states "overpayment" includes that part of the amount of the **payment of any internal revenue tax** which is assessed or collected after the expiration of **the period of limitation properly applicable thereto**" Therefore it clearly relates to an internal revenue tax and a period of limitation applies.
- In subsection (b) it clearly relates to subtitle A as it states "**exceeds the tax imposed by subtitle A**" Subtitle A involves IRC sections 1 through 1563 only.
- In subsection (b)(2) it relates to **withholding of tax on nonresident aliens and on foreign corporations**.
- In subsection (c) it directly and plainly states **Rule where no tax liability**. By reading this subsection it is stating what the Supreme Court ruled in *Rosenman v. United States*, 323 US 658 (1945) as shown previously. Also note that subsection (c) has no period of limitation.

Therefore, you are asking for a return of the amounts deducted and withheld from your compensation and held in escrow against a liability that did not materialize. Since there is no period of limitation you can request, via proper filing the return of all escrow amounts several years back as long as you have supporting documentation.

The background information concerning subsection (c), on page 106 should be read as it reveals what the law in fact states.

In the following paragraphs a look at the regulations for this section will be made.

Legislative or Substantive Regulations for Title 26 Section 6401

Legislative or substantive regulations for IRC section 6401 exist solely in Title 27 CFR Part 70. More specifically Parts 70.92 and 70.121, covered in the following paragraphs. You may say that these regulations do not apply to you, but you must realize that the IRS does not care. By treating you wrongfully as an "employee" drawing "wages" they apply the interpretive regulations to be covered later. Lawfully, these regulations apply.

Title 27 CFR Part 70.92

Note that this section relates to interest to be paid in the event a tax is overpaid. Since it relates to lawful taxes it means nothing to the average American Citizen. Also note that it is an appropriate TTB officer that enforces.

Title 27 CFR Part 70.121

This regulation is important for what it states in subsection (b) "An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid." This is in agreement with IRC section 6401(c). If they are not overpayments then they are the amounts held in escrow against a liability that did not materialize and a return can be submitted for full recovery.

Interpretive Regulations for Title 26 Section 6401

Although interpretive regulations do not carry the force of law, they are never the less important. If you remember, back when discussing regulations the following cites were shown:

Legislative, or substantive, regulations are "issued by an agency pursuant to statutory authority and which implement the statute, as, for example, the proxy rules issued by the Securities and Exchange Commission.... Such rules have the force and effect of law." U.S. Dept. of Justice, Attorney General's Manual on the Administrative Procedure Act 30 n 3 (1947). See United States v. Mersky, 361 U.S. 431, 437-438, 80 S.Ct. 459, 4 L.Ed.2d 423 (1960); Atchison, T. & S.F.R. Co. v. Scarlett, 300 U.S. 471, 474, 57 S.Ct. 541, 81 L.Ed.2d 748 (1937).

And:

In order for a regulation to have the "force and effect of law," it must have certain substantive characteristics and be the product of certain procedural requisites. The central distinction among agency regulations found in the APA is that between "substantive rules" on the one hand and **"interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice" on the other.** 30 A "substantive [441 U.S. 281, 302] rule" is not defined in the APA, and other authoritative sources essentially offer definitions by negative inference. 31 But in Morton v. Ruiz, 415 U.S. 199 (1974), we noted a characteristic inherent in the concept of a "substantive rule." We described **a substantive rule - or a "legislative-type rule," id., at 236 - as one "affecting individual rights and obligations." Id., at 232. This characteristic is an important touchstone for distinguishing those rules that may be "binding" or have the "force of law." Id., at 235, 236.**

And:

Recover by Using the Law

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

"Treasury regulations can add nothing to income as defined by Congress." - *Blatt Co. v U.S.*, 59 S.Ct. 186.

Also, back when the formation of the BATF was covered it was shown that T.D. ATF-301, 55 FR 47604 (page 111) showed the background of the formation of the BATF. It also transferred the powers, functions, and duties relating to ATF taxable activities to the newly formed BATF. That is the authority for the IRC sections shown for Part 70 on T.D. ATF-301, 55 FR 47605 (page 112). The authority transferred was that created by legislative or substantive regulations, leaving only those of interpretive authority in Title 26 CFR. A favorite trick of the IRS is to apply these interpretive regulations unlawfully on all of the American Citizenry.

With that said a look at the sole interpretive regulation is in order.

Title 26 CFR section 301.6401-1

This regulation reads as follows:

Sec. 301.6401-1 Amounts treated as overpayments.

Procedure in General

(a) The term "overpayment" includes:

(1) Any payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation applicable thereto.

(2) Any amount allowable for a taxable year as credits under sections 31 (relating to tax withheld on wages), 39 (relating to certain uses of gasoline, special fuels, and, lubricating oil), 43 (relating to earned income credit), and 667(b) (relating to taxes paid by certain trusts) which exceeds the tax imposed by subtitle A of the Code (reduced by the credits allowable under subpart A of part IV of subchapter A of chapter 1 of the Code, other than the credits allowable under sections 31, 39, and 43) for such year.

(b) **An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.**

As can be seen, even in the interpretive regulation it states very clearly that they are the amounts held in escrow against a liability that did not materialize and a return can be submitted for full recovery

Title 26 section 6402

Not much to say here. The very beginning of the section clearly shows it has no bearing regarding § 6401(c):

Sec. 6402. – Authority to make credits or refunds

(a) **General rule In the case of' any overpayment**, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c), (d), and (e) [deductions for past due obligations to federal or state agencies] **refund** any balance to such person. (Emphasis added.)

Since it is pertaining to **overpayment of taxes, and therefore not applicable to IRC § 6401(c)** which pertains to amounts paid but not due. Refer to *Rosenman v. United States*, 323 US 658 (1945) on page 317.

Cautions to Remember

Be prepared to Fight

Throughout this document the IRS has proven itself a liar and cannot be trusted. In regards to this they are putting out in IRS Notices and publications a lot of falsehoods and misinformation concerning using the Form 4852 and Corrected Forms 1099-MISC. That is how concerned they are with the number of Americans that are gradually awakening to their theft. However, by analyzing what is within this garbage heap of misinformation the truth shines through – that the procedure is legitimate and that they lie.

Silver Bullets and False Arguments

There are no silver bullets. Many have used the multitude of false arguments that seem to dominate the web and lost out big. By biting into these false arguments, many times even paying for their so-called “sure fire methods” court, fine, and jail are realized. Use the “Cracking the Code” book. It uses, not abuses the laws and gets results. It is not a cost, but an investment. Some arguments to avoid are as follows:

- The 861 argument
- Federal government has no jurisdiction
- I am a nonresident alien in regards to the United States
- I am a National
- 16th Amendment was not properly ratified
- Other silver bullet arguments fostered by some having little real knowledge, but operate on distorted readings.

Use the entries that have been proven to work. For examples of entries go to the web address shown above and hit the links there.

Do Not Disregard Valid Taxes

Another mistake that will do you in is the disregarding of valid, or lawful taxes. The “Cracking the Code” method is based on honest application of the tax laws and so there is no authority to alter forms pertaining to taxes that may actually be owed.

If you look in the instruction books for completing the Form 1040 you will notice that it includes a table under the heading “Where To Report Certain Items From 200X Forms W-2, 1098, and 1099”, or a similar heading. This table lists all variations of these forms, what they are used for, and where on the Form 1040 to report it. Remember, the Form 4852 can only be used to correct Forms W-2, and Form 1099-R. Caution regarding the Form 1099-R. That form is in regards to Distributions from IRAs, Distributions from pensions, annuities, etc., and Capital gain. In most cases these are taxable so changes should be done carefully. If the law allows a tax, it cannot be modified or changed. Any form that you receive, whether it be regarding an interest bearing bank account, gambling winnings, etc. **must be entered and reported**. If you get a copy the issuing firm, bank, etc. provides a copy to the IRS also. The table in the instructions will appear as shown on pages 323 and 324 with the correctable forms in a red rectangle. Correcting a Form 1099-MISC is covered in the following paragraph.

Correcting the Form W-2 Using a Form 4852

The first thing that must be done is to ensure that you are using the latest form. The latest version can be downloaded at <http://www.irs.gov/formspubs/lists/0,,id=97817,00.html> . A correctly filled out Form 4852 is shown on page 325. Fill the form out as follows:

- a) Lines 1-4: Fill out the information as required. Make sure the “Form W-2” box is checked, and the applicable tax year entered.
- b) Lines 5-6: Fill in the Employer’s Name, address, and Employer’s identification number as they appear on the Form W-2.
- c) Lines 7(A) a through e: Enter –0– on these lines. They represent the “correct” figures.

Recover by Using the Law

- d) Lines 7(A) f through j: Enter the figures shown on the Form W-2. On lines g and h do not forget to enter the state and locality.
- e) Line 8: Enter a statement about how the amounts in 7(A) were determined. The statement shown is good.
- f) Line 9: Enter a statement similar to that shown regarding efforts to obtain a correct form.
- g) Sign and date the form.
- h) **Do not** include the Form w-2 in your submittal to the IRS.

Correcting the Form 1099-MISC

In correcting the Form 1099-MISC as used By issuers to report wages, tips, other compensation there are two corrections that need to be made. The first is regarding the figure shown in Block 7, Nonemployee compensation. In the instructions on the form the following is stated:

Box 7. Shows nonemployee compensation. If you are in the trade or business of catching fish, box 7 may show cash you received for the sale of fish. If payments in this box are SE income, report this amount on Schedule C, C-EZ, or F (Form 1040), and complete Schedule SE (Form 1040). You received this form instead of Form W-2 because the payer did not consider you an employee and did not withhold income tax or social security and Medicare taxes. Contact the payer if you believe this form is incorrect or has been issued in error. If you believe you are an employee, report this amount on line 7 of Form 1040 and call the IRS for information on how to report any social security and Medicare taxes.

Notice where it states “You received this form instead of Form W-2 because the payer did not consider you an employee and did not withhold income tax or social security and Medicare taxes”. By the taxing statutes if you are a U.S. Citizen living and working in the United States in an occupation of common right you are not an “employee” and there should be no withholding. The discrepancy arises in that there is an amount shown in Box 7. That is what must be corrected by entering a “-0-“ in the box.

The second correction is that an “X” must be placed in the “Corrected” box to indicate that it is a corrected form.

Form	Item and Box in Which It Should Appear	Where To Report if Filing Form 1040
W-2	Wages, tips, other compensation (box 1) Allocated tips (box 8) Advance EIC payment (box 9) Dependent care benefits (box 10) Adoption benefits (box 12, code T) Employer contributions to an Archer MSA (box 12, code R) Employer contributions to a health savings account (box 12, code W)	Form 1040, line 7 See <i>Tip income</i> on page 22 Form 1040, line 61 Form 2441, line 12 Form 8839, line 22 Form 8853, line 3 Form 8889, line 9
W-2G	Gambling winnings (box 1)	Form 1040, line 21 (Schedule C or C-EZ for professional gamblers)
1098	Mortgage interest (box 1) Points (box 2) Refund of overpaid interest (box 3)	Schedule A, line 10* Form 1040, line 21, but first see the instructions on Form 1098*
1098-C	Contributions of motor vehicles, boats, and airplanes	Schedule A, line 16
1098-E	Student loan interest (box 1)	See the instructions for Form 1040, line 33, on page 33*
1098-T	Qualified tuition and related expenses (box 1)	See the instructions for Form 1040, line 34, on page 34, or line 50, on page 40, but first see the instructions on Form 1098-T*
1099-A	Acquisition or abandonment of secured property	See Pub. 544
1099-B	Stocks, bonds, etc. (box 2) Bartering (box 3) Aggregate profit or (loss) (box 11)	See the instructions on Form 1099-B See Pub. 525 Form 6781, line 1
1099-C	Canceled debt (box 2)	Form 1040, line 21, but first see the instructions on Form 1099-C*
1099-DIV	Total ordinary dividends (box 1a) Qualified dividends (box 1b) Total capital gain distributions (box 2a) Unrecaptured section 1250 gain (box 2b) Section 1202 gain (box 2c) Collectibles (28%) gain (box 2d) Nondividend distributions (box 3) Investment expenses (box 5) Foreign tax paid (box 6)	Form 1040, line 9a See the instructions for Form 1040, line 9b, on page 23 Form 1040, line 13, or, if required, Schedule D, line 13 See the instructions for Schedule D, line 19, that begin on page D-7 See <i>Exclusion of Gain on Qualified Small Business (QSB) Stock</i> in the instructions for Schedule D on page D-4 See the instructions for Schedule D, line 18, on page D-7 See the instructions for Form 1040, line 9a, on page 23 Schedule A, line 22 Form 1040, line 47, or Schedule A, line 8
1099-G	Unemployment compensation (box 1) State or local income tax refunds, credits, or offsets (box 2) ATAA payments (box 5) Taxable grants (box 6) Agriculture payments (box 7)	Form 1040, line 19. But if you repaid any unemployment compensation in 2005, see the instructions for line 19 on page 27. See the instructions for Form 1040, line 10, that begin on page 23* Form 1040, line 21 Form 1040, line 21* See the Instructions for Schedule F or Pub. 225*
1099-H	HCTC advance payments (box 1)	Form 8885, lines 2 and 6

Note: Only correct the Forms W-2 and 1099R with the Form 4852. Correct Form 1099-MISC as shown on page 327.

Processing Tax Forms on the Form 1040 (Sht 1 of 2)

Recover by Using the Law

Form	Item and Box in Which It Should Appear	Where To Report if Filing Form 1040
1099-INT	Interest income (box 1) Early withdrawal penalty (box 2) Interest on U.S. savings bonds and Treasury obligations (box 3) Investment expenses (box 5) Foreign tax paid (box 6)	See the instructions for Form 1040, line 8a, on page 22 Form 1040, line 30 See the instructions for Form 1040, line 8a, on page 22 Schedule A, line 22 Form 1040, line 47, or Schedule A, line 8
1099-LTC	Long-term care and accelerated death benefits	See Pub. 502 and the Instructions for Form 8853
1099-MISC	Rents (box 1) Royalties (box 2) Other income (box 3) Nonemployee compensation (box 7) Excess golden parachute payments (box 13) Other (boxes 5, 6, 8, 9, 10, 14, and 15b)	See the Instructions for Schedule E* Schedule E, line 4 (for timber, coal, and iron ore royalties, see Pub. 544)* Form 1040, line 21* Schedule C, C-EZ, or F. But if you were not self-employed, see the instructions on Form 1099-MISC. See the instructions for Form 1040, line 63, on page 44 See the instructions on Form 1099-MISC
1099-OID	Original issue discount (box 1) Other periodic interest (box 2) Early withdrawal penalty (box 3) Original issue discount on U.S. Treasury obligations (box 6) Investment expenses (box 7)	See the instructions on Form 1099-OID Form 1040, line 30 See the instructions on Form 1099-OID Schedule A, line 22
1099-PATR	Patronage dividends and other distributions from a cooperative (boxes 1, 2, 3, and 5) Domestic production activities deduction (box 6) Credits (boxes 7, 8, and 10) Patron's AMT adjustment (box 9) Deduction for small refiner capital costs (box 10)	Schedule C, C-EZ, or F or Form 4835, but first see the instructions on Form 1099-PATR Form 8903, line 17 Form 3468, 5884, 5884-A, 6478, 8844, 8845, 8861, or 8896 Form 6251, line 26 Schedule C, C-EZ, or F
1099-Q	Qualified education program payments	See the instructions for Form 1040, line 21, on page 29
1099-R	Distributions from IRAs** Distributions from pensions, annuities, etc. Capital gain (box 3)	See the instructions for Form 1040, lines 15a and 15b, on page 25 See the instructions for Form 1040, lines 16a and 16b, that begin on page 25 See the instructions on Form 1099-R
1099-S	Gross proceeds from real estate transactions (box 2) Buyer's part of real estate tax (box 5)	Form 4797, Form 6252, or Schedule D. But if the property was your home, see the Instructions for Schedule D to find out if you must report the sale or exchange. See the instructions for Schedule A, line 6, on page A-5*
1099-SA	Distributions from health savings accounts (HSAs) Distributions from MSAs***	Form 8889, line 12a Form 8853

* If the item relates to an activity for which you are required to file Schedule C, C-EZ, E, or F or Form 4835, report the taxable or deductible amount allocable to the activity on that schedule or form instead.

** This includes distributions from Roth, SEP, and SIMPLE IRAs.

*** This includes distributions from Archer and Medicare Advantage MSAs.

Note: Only correct the Forms W-2 and 1099R with the Form 4852. Correct Form 1099-MISC as shown on page 327

Processing Tax Forms on the Form 1040 (Sht 2 of 2)

Form **4852**
(Rev. January 2007)
Department of the Treasury
Internal Revenue Service

Substitute for Form W-2, Wage and Tax Statement, or Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
▶ Attach to Form 1040, 1040A, 1040-EZ, or 1040X.

OMB No. 1545-0074

1 Type or print your first name and middle initial. John D	Last name Doe	2 Social security number (SSN) 000-00-0000
---	-------------------------	---

3 Address
2330 Nowhere Lane, Never land TX 00000

4 Enter year in space provided and check one box. For the tax year ending December 31, **2006**,
I have been unable to obtain (or have received an incorrect) Form W-2 OR Form 1099-R.

I have notified the IRS of this fact. The amounts shown on line 7 or line 8 are my best estimates for all wages or payments made to me and tax withheld by my employer or payer named on line 5.

5 Employer's or payer's name, address, and ZIP code Joe's Junk Yard, 200 Scatter Land Drive, Never Land TX 00000	6 Employer's or payer's identification number (if known) 00-0000000
---	--

7 Form W-2. Enter wages, tips, other compensation, and taxes withheld.			
a Wages, tips, and other compensation	<u>-0-</u>	g State income tax withheld	<u>-0-</u>
b Social security wages	<u>-0-</u>	(Name of state)	
c Medicare wages and tips	<u>-0-</u>	h Local income tax withheld	<u>-0-</u>
d Advance EIC payment	<u>-0-</u>	(Name of locality)	
e Social security tips	<u>-0-</u>	i Social security tax withheld	<u>4520.20</u>
f Federal income tax withheld	<u>11,000.00</u>	j Medicare tax withheld	<u>1155.00</u>

8 Form 1099-R. Enter distributions from pensions, annuities, retirement/profit-sharing plans, IRAs, insurance contracts, etc.

a Gross distribution	_____	f Federal income tax withheld	_____
b Taxable amount	_____	g State income tax withheld	_____
c Taxable amount not determined	<input type="checkbox"/>	h Local income tax withheld	_____
d Total distribution	<input type="checkbox"/>	i Employee contributions	_____
e Capital gain (included in 8b)	_____	j Distribution codes	_____

9 How did you determine the amounts on lines 7 and 8 above?
Information from company and statutory language behind IRC 3401, 3121, and others

10 Explain your efforts to obtain Form W-2, Form 1099-R, or Form W-2c, Corrected Wage and Tax Statement.
Provided them with statutory language but they refused to correct form. Amounts shown on Form W-2 are correct though.

Sign Here

Under penalties of perjury, I declare that I have examined this statement, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature ▶ John D. Doe Date ▶ 02/20/2007

Purpose of form. Form 4852 serves as a substitute for Forms W-2, W-2c, and 1099-R and is completed by taxpayers or their representatives when (a) their employer or payer does not give them a Form W-2 or Form 1099-R, or (b) when an employer or payer has issued an incorrect Form W-2 or Form 1099-R. Attach this form to your income tax return.

You should always attempt to get Form W-2 or Form 1099-R from your employer or payer before contacting the IRS or filing Form 4852. After February 14, you may call the IRS at 1-800-829-1040 if you still have not received Form W-2 or Form 1099-R. Generally, do not file Form 4852 before April 15.

If you received an incorrect Form W-2 or Form 1099-R, you should always attempt to have your employer or payer issue a corrected form before filing Form 4852.

Note. Retain a copy of Form 4852 for your records. Check your Social Security Statement (received at least a full year after the date shown on line 4) against Form 4852. If the earnings you reported on Form 4852 are not shown in the statement, you should contact the Social Security Administration (SSA) at the telephone number shown on the statement. Alternatively, after

September 30 following the date shown on line 4, you may contact your local SSA office to verify wages reported by your employers.

Will I need to amend my return? If you receive a Form W-2, Form W-2c, or Form 1099-R, after your return is filed with Form 4852, and the information differs from the information reported on your return, you must amend your return by filing Form 1040X, Amended U.S. Individual Income Tax Return.

Penalties. The IRS will challenge the claims of individuals who attempt to avoid or evade their federal tax liability by using Form 4852 in a manner other than as prescribed. Potential penalties for the improper use of Form 4852 include:

- Accuracy-related penalties equal to 20 percent of the amount of taxes that should have been paid,
- Civil fraud penalties equal to 75 percent of the amount of taxes that should have been paid, and
- A \$5,000 civil penalty for filing a frivolous return or submitting a specified frivolous submission as described by section 6702 of the Internal Revenue Code.

Completed Form 4852

Recover by Using the Law
Statement of Reason

Justification for changing a Form 1099-MISC must be stated. A sample statement is shown in the next paragraph.

This corrected Form 1099-MISC is submitted to correct a document known to have been submitted by the party identified as "PAYER" that erroneously alleges a payment to the "Recipient" shown on the form that is "gains, profit, or income" made in the course of a "trade or business". Under penalty of perjury, I declare that I have examined this statement and to the best of my knowledge and belief, it is true, correct, and complete.

Joseph D. Good

Date

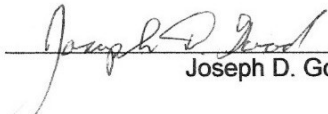
On the following page an example of a corrected Form 1099-MISC is shown.

Do not include the original Form 1099-MISC in your submittal to the IRS.

CORRECTED (if checked)

PAYER'S name, street address, city, state, ZIP code, and telephone no. Acme Auto Overhaul Co. 2495 Wreckage Lane Podunk City, AL 16780 (251) 438-1234		1 Rents \$	OMB No. 1545-0115 2005 Form 1099-MISC	Miscellaneous Income
PAYER'S Federal identification number 36-13267890		2 Royalties \$	4 Federal income tax withheld \$	
RECIPIENT'S identification number 123-45-6789		3 Other income \$	6 Medical and health care payments \$	Copy B For Recipient
RECIPIENT'S name Joseph D. Good		5 Fishing boat proceeds \$	8 Substitute payments in lieu of dividends or interest \$	
Street address (including apt. no.) 123 Sycamore Lane		7 Nonemployee compensation -0- \$	10 Crop insurance proceeds \$	
City, state, and ZIP code Mobile, AL 36610		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	12	This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.
Account number (see instructions)		11	13 Excess golden parachute payments	
			14 Gross proceeds paid to an attorney	

This corrected Form 1099-MISC is submitted to correct a document known to have been submitted by the party identified as "PAYER" that erroneously alleges a payment to the "Recipient" shown on the form that is "gains, Profit, or income" made in the course of a "trade or business". Under penalty of perjury, I declare that I have examined this statement and to the best of my knowledge and belief, it is true, correct, and complete.


Joseph D. Good

02/15/2006
Date

Corrected Form 1099-MISC

Faulted Arguments That Get You in Trouble

The Federal Government is Restricted to Washington D.C.

An argument that does not make any sense at all to anyone having even a rudimentary understanding of the Constitution of the United States. This argument seems to be based on the District of Columbia Organic Act of 1871. Their reasoning again shows their lack of knowledge concerning the Constitution of the United States of America.

The subject Act did just what the Constitution allows congress to do. I refer you to Article 1, section 8, clause 17 of the Constitution of the United States:

17. To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; --And

In other words, congress runs Washington D.C. any way they please. They can fire the whole Washington D.C. government and replace it any way they deem fit. This should be obvious by the fact that it took an Amendment to give the District electoral powers for the Presidential Vote in D.C:

Amendment XXIII

Section 1. The District constituting the seat of government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a state; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

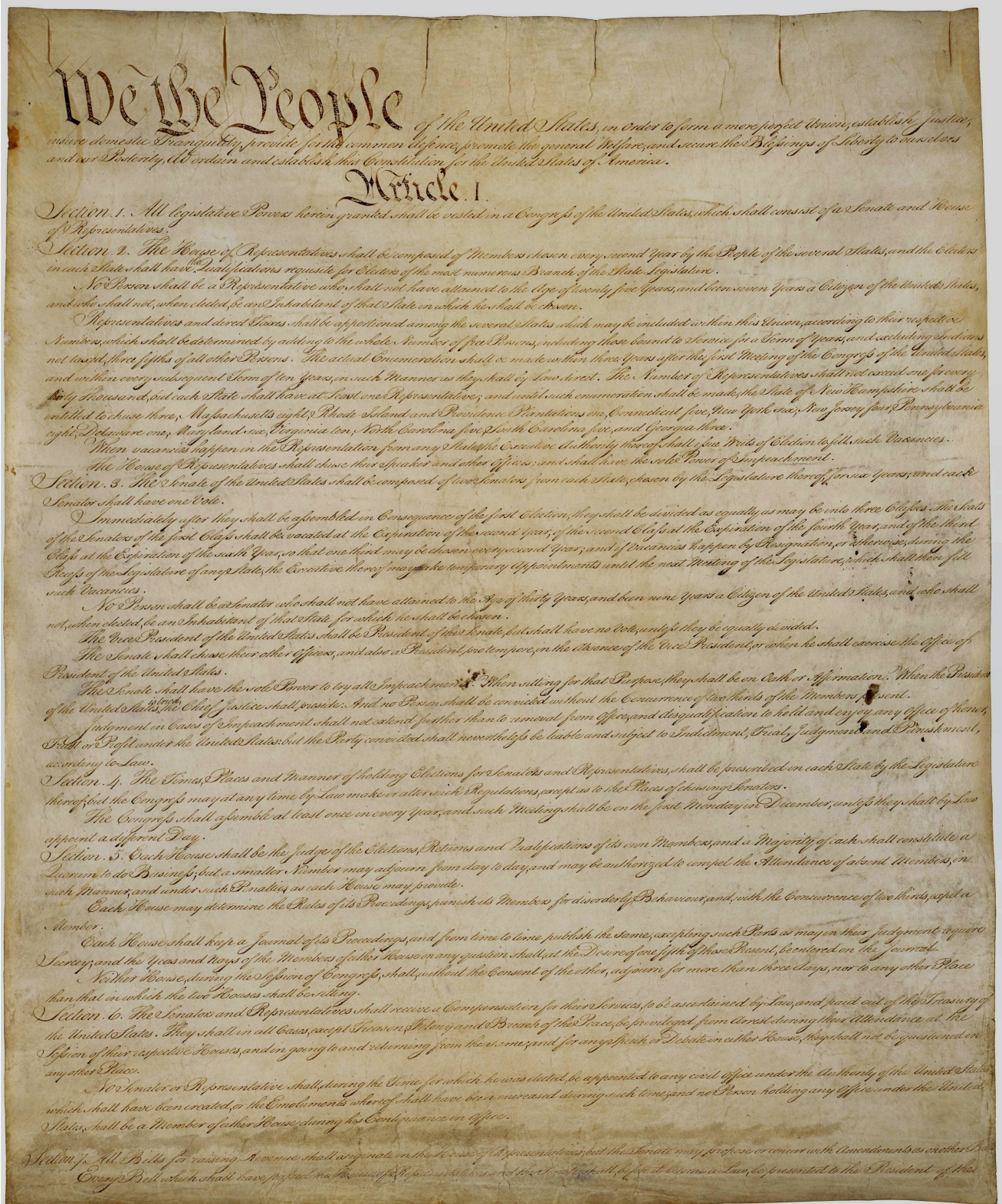
Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Another thing that bothers or irritates the perpetuators of this argument is that it used all-caps in regards to the Constitution and called it the "CONSTITUTION OF THE UNITED STATES OF AMERICA" instead of "CONSTITUTION FOR THE UNITED STATES OF AMERICA". This belief stems not only from the issue of capitalization but also that the Preamble of the Constitution stated "Constitution for the United States of America". This page is shown on page 329.

So what! Look at the first page of the Constitution as shown on page 329 Does it have a title? No, what was done is that in referencing the Constitution a Title was supplied, and yes, it says "CONSTITUTION OF THE UNITED STATES OF AMERICA" with the word "of" instead of "for". The meaning was not changed, I refer you to page 3 of "THE CONSTITUTION of the UNITED STATES OF AMERICA ANALYSIS AND INTERPRETATION" as published by the CONGRESSIONAL RESEARCH SERVICE LIBRARY OF CONGRESS as shown on page 330 For the matter of the all-caps fear I refer you to the paragraph concerning names and titles in all-caps on page 331

The Federal Government Has No Jurisdiction within the 50 States

Proponents for this argument seem to use Title 40 section 255 as proof. Because of the wording of the last sentence "Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted." They jump on this and think look no jurisdiction except within the land they have acquired through annexation. Their thinking is flawed as the constitution grants specific powers to the federal government. Among these are the powers given congress in Article 1 of the constitution and as located in other parts of the constitution, like the establishment of courts. Remember, congress has control over interstate commerce and therefore jurisdiction



Constitution of the United States of America (1st Page)

CONSTITUTION OF THE UNITED STATES

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article. I.

Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

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. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within

3

Faulted Arguments That Get You in Trouble

exists in those manners.. The founding fathers were not stupid. They realized that the then territories, with their limited and hostile to government inhabitants could not on their own support the government through taxation.

The subject of jurisdiction is covered in the chapter “Jurisdiction of the Federal Government. Study it and you will see that this argument is baseless. Some of the leading advocates are now having plenty of time to restudy their thinking in federal prisons, or awaiting sentencing.

The jurisdiction of the federal courts is better explained at the following web site:

http://www.uscourts.gov/understand02/content_4_0.html

There are those that will claim that if you get a statement from the Recorder of Deeds of the District of Columbia stating that they have no deed filed on your property is proof that the federal government has no jurisdiction over you or your property. **DON'T BELIEVE THIS GARBAGE!** They will gladly take your payment for such a statement at a small fee, as it is easy money for them. Look at the office name again “Recorder of Deeds of the **District of Columbia**”. The only deeds that they file is within Washington D.C., as noted in the regulation (not backed by Statute) at 301.6323(f)-1(a)(3):

Sec. 301.6323(f)-1 Place for filing notice; form.

(a) Place for filing. The notice of lien referred to in Sec. 301.6323(a)-1 shall be filed as follows:

(3) With the Recorder of Deeds of the District of Columbia. If the property subject to the lien imposed by section 6321 is deemed situated, under the provisions of paragraph (b) of this section, in the **District of Columbia**, the notice shall be filed in the office of the **Recorder of Deeds of the District of Columbia**.

Or as in the statutory backed regulation at 27CFR part 70.148(a)(3)

Sec. 70.148 Place for filing notice; form.

(a) Place for filing. The notice of lien referred to in Sec. 70.145 of this part shall be filed as follows:

(3) With the Recorder of Deeds of the District of Columbia. If the property subject to the lien imposed by 26 U.S.C. 6321 is deemed situated, under the provision of paragraph (b) of this section, in the **District of Columbia**, the notice shall be filed in the office of the **Recorder of Deeds of the District of Columbia**.

Like I said, they'll be glad to provide you a statement – just don't be stupid enough to attempt to use it in a court.

Names or Titles in All-Capital Letters

A long time favorite argument that when your name appears in all-caps then they have turned you into different legal entities or a different legal status for the entity. As stated in regards to “The Federal Government is Restricted to Washington D.C” argument discussed on page 328 they find fault in the ways words may be capitalized or abbreviated.

In truth, the use of all-caps in some instances for specific purposes is based on custom relating to the necessity of such in the early days to make separation of documents easier before the invention of the paper clip, staples, typewriters, and the computer. Some things we take for granted now, and cannot imagine how it was when the documents had to be written by hand and there was no really efficient way to bind or fasten them together. Much easier to finger through a stack of paper and look for the big all-capitalized words to spot the beginning of a particular document. Here are some dates pertaining to key inventions:

- Stapler: 1866
- Typewriter: 1871

Faulted Arguments That Get You in Trouble

- Paper Clip: 1899
- Computer: 1936

In regards to the computer, the one invented in 1936 in Germany was basically a mechanical type used solely to do fairly complex calculations in regards to aircraft design. During WWII Big Blue (IBM) had perfected the computer based on vacuum tube technology, which had much greater capability than the one invented in 1936. Besides not being “user friendly,” these computers were very large and needed to be installed in large buildings with adequate cooling because of the heat generated by the vacuum tube technology. They were so expensive that even governments could not afford to buy them, leasing them instead. An inexpensive home pc today has much more power and capability than any of these large complex early computers and is available to most people.

Therefore, it can be said that the use of all-caps is based on early necessity and document type preferences. Most believers like to say that the U.S. Government Style Guide gives no guidance on this. They fail to realize that is just what it states **a guide**. It states within:

Its rules cannot be regarded as rigid, for the printed word assumes many shapes and variations in type presentation. An effort has been made to provide complete coverage of those elements that enter into the translation of manuscript into type.

Since the main concern seem to be regarding legal documents a good guide to these documents, in order to standardize them is “The Bluebook: A Uniform System of Citation by the Harvard Law Review Association”. Things like capitalization, type sizes, fonts, are often spelled out in the various specifications or instructions for the preparation of specific types of documents.

Conclusion of Names or Titles in All-Capital Letters

In conclusion it can be said that there is absolutely no legal basis for believing that names or titles in all-capital letters has a hidden meaning. How all-caps is used can be attributed to long standing customs or established procedures.

The 16th Amendment Was Not Properly Ratified

This argument is a bad one to use, even if it may be true. The reasoning for saying this is based on real events and logic, which are better unsaid here. If anyone would care to know the reasoning, they can email me at rwatson@sbcglobal.net. I will require a name and valid email address other than Yahoo, or other such messaging service.

All Revenue Laws Were Repealed

A misconception believed by many caused by misinterpretation of what was stated. Here that faulted argument will be dispensed with. To do so the Derivations of Code sections of the Internal Revenue Codes of 1939 and 1954 that was covered in the chapter “The Documentation System of Federal Law” will be used.

First, let’s look at the date that the IRC of 1939 became law. By looking at the IRC the following is stated “The Internal Revenue Code, approved February 10, 1939, and published in this volume as Public Act No. 1 of the Seventy-sixth Congress, is the first Federal act of its kind since the Revised Statutes of the United States, approved June 22, 1874. “ Additionally, on the first page of Chapter 2 of that IRC section 3 states “.

EFFECTIVE DATE. —Except as otherwise provided herein, this act shall take effect on the day following the date of its enactment.” This makes the effective date February 11, 1939.

From here a look at what is stated in Section 3 of Public Act No. 1 of the Seventy-sixth Congress is in order: SEC. 3. EFFECTIVE DATE. —**Except as otherwise provided herein, this act shall take effect on the day following the date of its enactment.**

Faulted Arguments That Get You in Trouble

Note where it states “Except as otherwise provided herein”, and then goes on to say, “shall take effect on the day following the date of its enactment”. Therefore indicating that there are exceptions to the effective date. Secondly, within the code the following is stated in section 4 of Chapter 2:

SEC. 4. REPEAL AND SAVINGS PROVISIONS. —(a) The Internal Revenue Title, as hereinafter set forth, is intended to include all general laws of the United States and parts of such laws, relating exclusively to internal revenue, in force on the 2d day of January 1939 (1) of a permanent nature and (2) of a temporary nature if embraced in said Internal Revenue Title. In furtherance of that purpose, all such laws and parts of laws codified herein, to the extent they relate exclusively to internal revenue, are repealed, effective, except as provided in section 5, on the day following the date of the enactment of this act.

(b) Such repeal shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal, but all rights and liabilities under said acts shall continue, and may be enforced in the same manner, as if said repeal had not been made; nor shall any office, position, employment, board, or committee, be abolished by such repeal, but the same shall continue under the pertinent provisions of the Internal Revenue Title.

(c) All offenses committed, and all penalties or forfeitures incurred under any statute hereby repealed, may be prosecuted and punished in the same manner and with the same effect as if this act had not been passed.

(d) All acts of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, hereby repealed shall not be affected thereby, but all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising, or acts done or committed, prior to said repeal, may be commenced and prosecuted within the same time as if this act had not been passed. (e) The authority vested in the President of the United States, or in any officer or officers of the Treasury Department, by the law as it existed immediately prior to the enactment of this act, hereafter to give publicity to tax returns required under any internal revenue law in force immediately prior to the enactment of this act or any information therein contained, and to furnish copies thereof and to prescribe the terms and conditions upon which such publicity may be given or such copies furnished, and to make rules and regulations with respect to such publicity, is hereby preserved. And the provisions of law authorizing such publicity and prescribing the terms, conditions, limitations, and restrictions upon such publicity and upon the use of the information gained through such publicity and the provisions of law prescribing penalties for unlawful publicity of such returns and for unlawful use of such information are hereby preserved and continued in full force and effect.

It is subsection (a) which initiates the misunderstanding where it states “The Internal Revenue Title, as hereinafter set forth, is intended to include all general laws of the United States and parts of such laws, relating exclusively to internal revenue, in force on the 2d day of January 1939 (1) of a permanent nature and (2) of a temporary nature if embraced in said Internal Revenue Title. In furtherance of that purpose, **all such laws and parts of laws codified herein, to the extent they relate exclusively to internal revenue, are repealed, effective, except as provided in section 5, on the day following the date of the enactment of this act.** Note the emphasized text. What most fail to take into consideration is the wording “except as provided in section 5, on the day following the date of the enactment of this act”. Section 5 is the Savings Provisions as indicated in the title for section 4. So now, a look at Section 5 is in order. It reads as follows:

SEC. 5. CONTINUANCE OF EXISTING LAW. —**Any provision of law in force on the 2d day of January 1939** corresponding to a provision contained in the Internal Revenue Title **shall remain in force until the corresponding provision under such Title takes effect.** Here note that it states “Any provision of law in force on the 2d day of January 1939” that corresponds to a provision in the Internal Revenue Title (meaning the IRC of 1939) shall remain in force until the corresponding provision under such Title takes effect. It is stating that not all of the provisions in the IRC of 1939 take effect on the day following the date of its enactment, which again would be February 11, 1939. In looking at the IRC of 1939 such a section is found at Section 15, which reads as follows:

SEC. 15. CORPORATE TAXES EFFECTIVE FOR TWO TAXABLE YEARS.

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The taxes imposed by section 13, section 14 (except subsection (e) (2)), Supplement G, or Supplement Q, of this chapter, or by section 13, section 14, or Supplement G of the Revenue Act of 1936, shall not apply to any taxable year beginning after December 31, 1939.

Note that it states that the effective dates for sections 13 and 14 (with qualifications) will not apply until a taxable year after December 31, 1939. Meaning that until such time, the laws (statutes) that IRC sections 13 and 14 were derived from **remain in effect**.

Here a look at a page from Derivations of Code sections of the Internal Revenue Codes of 1939 and 1954 is in order. Page 3, shown on page ? shows that these IRC of 1939 sections were derived from the statutes at Vol. 52, page 455, chapter 289, section 13, and Vol. 52, page 456, chapter 289, section 14 respectively. Therefore, those law sections remain in effect until a taxable year after December 31, 1939. This is the savings. It applies only to those sections of the IRC of 1939 that became effective **after** the effective date of the IRC of 1939. Previous statutes (laws) that are not impacted by a savings were all repealed when the IRC of 1939 became effective. They were **replaced** by the IRC of 1939.

To show that the statutes that the IRC of 1939 was derived from are not confined solely to Vol. 52 of the Statutes at Large let's look at page 23 from the Derivations of Code sections of the Internal Revenue Codes of 1939 and 1954. It is shown on page 332. On it, you can see that it was derived from statutes in volumes 20, 26, 36, 39, 44, 48, and even from the Revised Statutes of the Revenue Act of 1874 (the R.S. entries denote sections from the Revised Statutes of the Revenue Act of 1874).

So, don't believe the faulted argument. Revenue laws have existed without interruption.

The Paperwork Reduction Act/OMB Numbers Argument

This argument will only get you convicted. It grew out of the cases of William Lear and Robert Lawrence. The Lear's won because of the Constructive Notice of Demand for Direct Challenge to Personal Authority that was registered in the County Court House and entered into evidence under Rule 902 (4), (5), (8), (9) and (10) of the Federal Rules of Evidence. **The judge could not stop it from being given to the jury**. This demand consisted of two major sources of evidence, one concerning the Form 1040/ Paperwork Reduction Act argument, and the other the origin and authority of the IRS itself. Everyone jumped and proclaimed "see, the Form 1040 is an unlawful form", simply because it formed the major part of the constructive notice. No one bothered to investigate the submitted evidence dealing with the origin and authority of the IRS, yet it is that which won the case for them. This is covered in the paragraphs concerning the IRS on page 143

In the case of Robert Lawrence, he really lucked out. The majority of his defense and evidence was based on the Form 1040/ Paperwork Reduction Act argument, like the Lear's was. However, in the DOJ's United States' Response to Defendant's Motion for Attorney Fees and Costs. In this response they thoroughly shot down the PRA issue through existing court cases. Then they stated that an IRS error in the calculations that formed the basis of the charges against Lawrence. These errors were of such a magnitude that the charges in the indictment could not stand **and it was this fact that led to the dismissal of charges with prejudice**. With that said, the Form 1040 should be filed even though not required by law by those that earn a living or work in the private sector. That statement is made because of the erroneous reporting of one's earnings as wages is what sets up the actions the commissioner was stating. Refer to page 173. By submitting the Form 1040's with the Form 4852s or corrected Form 1099-MISC as covered in the chapter "Recover by Using the Law" on page 317 you will receive the return of the fraudulently withheld amounts from your pay.

Maritime and/or Admiralty Courts

Some advance the argument that we are under admiralty or maritime jurisdiction. This is nothing but garbage. Those that believe this love to call the flag with gold braid an Admiralty or Maritime Flag, which it is not. It is a military flag and in reality it being shown in our federal courts is common sense. This because when one looks at the jurisdictional limitations of these courts (refer to Jurisdiction of Federal Government on page 241) it will be seen that the jurisdiction extends only to the territories under federal control and those insular possessions outside of the 50 states. These areas are subject to military law and control as modified by any statutes passed by congress.

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Pages 765 through 781 of Constitution of the United States of America with Analysis and Interpretation gives a very detailed analysis of admiralty and maritime jurisdiction. There, through careful reading it can be seen that such jurisdiction does not extend to inland areas. Within those pages is the statement shown below: At the very beginning of government under the Constitution, Congress conferred on the federal district courts exclusive original cognizance “of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation or trade of the United States, where the seizures are made, on waters which are navigable from the sea by vessels of ten or more tons burthen, within their respective districts as well as upon the high seas; saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it; . . .”⁷⁸⁴ This broad legislative interpretation of admiralty and maritime jurisdiction soon won the approval of the federal circuit courts, which ruled that the extent of admiralty and maritime jurisdiction was not to be determined by English law but by the principles of maritime law as respected by maritime courts of all nations and adopted by most, if not by all, of them on the continent of Europe.⁷⁸⁵

The footnote references 784 and 785 are:

⁷⁸⁴ § 9, 1 Stat. 77 (1789), now 28 U.S.C. § 1333 in only slightly changed fashion. For the classic exposition, see Black, *Admiralty Jurisdiction: Critique and Suggestions*, 50 COLUM. L. REV. 259 (1950).

⁷⁸⁵ *E.g.*, DeLovio v. Boit, 7 Fed. Cas. 418 (No. 3776) (C.C.D. Mass. 1815) (Justice Story); The Seneca, 21 Fed. Cas. 1801 (No. 12670) C.C.E.D.Pa. 1829 (Justice Washington). Title 18 section 7 (refer to page 258) should also be referred to.

The Constitution of the United States of America with Analysis and Interpretation can be obtained at the location shown in Appendix A – Sources.

Conclusion

I have addressed only a very few of the ill-conceived false arguments that are being put forth. The best thing to remember is that if it sounds too good to be true it probably isn't. Several are promoting these various false arguments and charging money for information and proof that will make you “bullet proof”. Just remember, when they try out bulletproof vests they normally use dummies to wear the vests. **DON'T BE A DUMMY AND OPERATE IN A STATE OF MENTAL FICTION!**

A good idea is to check the argument you believe in, or planning to use to determine if it has been used previously and what the outcome was. To do this reference the Tax Division's Criminal Tax Protest Case Issues List. Cumulative Supplement of October 2001 can be downloaded by doing a simple internet search. This reference lists the issues right up front as shown in the following:

1. Constitutionality of Tax Laws: General
2. Constitutionality of Income Tax: Income Tax is Excise Tax
3. Constitutionality of Section 7203
4. Section 7205
5. First Amendment: Freedom of Religion/Church
6. First Amendment: Freedom of Speech
7. Fourth Amendment
8. Fifth Amendment: Self-Incrimination
9. Sixth Amendment - Right to Counsel: Reliance on Advice of Counsel
10. Sixth Amendment - Right to Counsel: Effective Assistance of Counsel
11. Sixth Amendment - Right to Counsel: Pro Se Representation; Appointed Counsel of Choice; Representation by Lay Person or Unlicensed Counsel
12. Sixth Amendment - Right to Counsel: Waiver
13. Willfulness
14. Prior and Subsequent Conduct: Evidence of Willfulness (Rule 404(b), F.R.E.)
15. What is a Return?
16. Federal Reserve Notes/Monetary System
17. Tax Protest Against Military or Other Government Spending
18. Selective Prosecution

Faulted Arguments That Get You in Trouble

19. Wages are Income
20. District Court Jurisdiction over Title 26 Offenses
21. Voluntariness of Filing Income Tax Return
22. Violation of Privacy Act
23. No Right to "Jury Nullification" Instruction
24. Court Instructs Jury on Law
25. Probable Cause Hearing
26. Duty of Treasury to Prepare Returns (26 U.S.C. 6020)
27. Condition of Probation/Parole
28. Costs of Prosecution
29. Civil Assessment Irrelevant
30. Ratification of Sixteenth Amendment
31. Spies Evasion: False W-4
32. District Court Jurisdiction: Nontaxpayer
33. Form W-2: Outdated Federal Register regulation
33. Form W-2: Outdated Federal Register regulation
34. Spies-Evasion Indictment Not Duplicitous
35. Hashimoto and 6103(h)(5) Juror Audit Information
36. Paperwork Reduction Act/OMB Numbers
37. Admissibility of IRS Computer Records/Certificate of Assessments and Payments
38. Lack of Publication in Federal Register
39. IRS Agent's Testimony and Witness Sequestration (Rule 615, F.R.E.)
40. Attorney Sanctions
41. Discovery of IRS Individual Master File (IMF)
42. False Form 1099 Scheme
43. Spies Evasion: Statute of Limitations
44. IRS Agents: U.S. Agents and Not Agents of Foreign Principal
45. Indictment: Sufficient Notice of Illegality
46. 7212(a) Omnibus Clause Prosecution
47. 7212(a) Omnibus Clause Sentencing
48. Post-Cheek Willfulness
49. Lack of in personam Jurisdiction
50. Spies Evasion: Attempt to Evade
51. Caldwell and 371 Klein Conspiracy to Defraud
52. Speedy Trial
53. Warehouse Bank
54. Pilot Connection Scheme (TPCS)
55. Sham Business Trust Scheme
56. Fraudulent Certified Money Order Scheme
57. Materiality of False Statement
58. Sentencing: Tax Loss
59. Sentencing: Domestic Terrorism Departure

After this listing the document consists of a listing, by Supreme Court or Circuit Courts of cases that show rulings of any of the 59 listed issues. Once the issue number is determined one should look at the cases listed for the Circuit Court whose jurisdiction they live in that indicate that they address the issue of concern. For example, let's take up the Paperwork Reduction Act/OMB Numbers issue, which is issue 36 and find the appropriate cases for the Seventh Circuit Court. They are shown on the page shown on page 340.

Here you will find two cases covering this issue. They are *United States v. Ryan*, 969 F.2d 238 (7th Cir. 1992), and *Salberg v. United States*, 969 F.2d 379 (7th Cir. 1992). Therefore, by referring to these cases the court's decision concerning the issue can be determined.

In the *Salberg v. United States*, 969 F.2d 379 (7th Cir. 1992) case, the court's ruling in regards to this argument is shown on pages 3 and 4 of the decision. Refer to pages 341 and 342 and read what the court determined. **DO NOT USE THIS FAILED ARGUMENT.**

Faulted Arguments That Get You in Trouble

Another source to reference issues and corresponding court decisions is the DOJ site concerning Tax Protestors at <http://www.usdoj.gov/tax/readingroom/2001ctm/40ctax.htm>. As said, don't be a fool, check before committing yourself to an argument that may be false.

DERIVATIONS OF THE CODE SECTIONS OF THE INTERNAL REVENUE CODES OF 1939 AND 1954

Table I lists in the first column the sections of the Internal Revenue Code of 1939 as enacted, and in the succeeding columns the date of enactment, volume of the Statutes at Large, page, Chapter, and section of the Act from which the 1939 Code sections were derived.

Except for the wording of the headings, this table is the same as Table A in volume 53, Part 1 of the Statutes at Large (1939), at pages v and following; it continues the convention of using "do" for ditto. Sections with a line across are mostly cross references with the exception of a few which are effective dates. The Internal Revenue Code of 1939, 53 Stat. (Part 1), 1, enacted on February 10, 1939, was the first reenactment into positive law of the general and permanent statutes relating to internal revenue since the enactment of the Revised Statutes in 1874. The Revised Statutes (R.S.) were enacted as positive law and therefore, reference to the Statutes at Large is unnecessary.

Table I.—Sources of the 1939 Code

[* = Amending statute. † = Reenacting statute. ‡ = Adding statute.]

1939 I. R. C. section	Date enacted	Statutes at Large—			Act section
		Vol- ume	Page	Chap- ter	
1, page 4.....	1938, May 28.....	52	452	289	1.
2 .....do.....	.....do.....	52	452	289	2.
3 .....do.....	.....do.....	52	452	289	3.
4 .....do.....	.....do.....	52	452	289	4.
11.....	.....do.....	52	452	289	11.
12.....	.....do.....	52	453	289	12.
13.....	.....do.....	52	455	289	13.
14.....	.....do.....	52	456	289	14.
15.....	.....do.....	52	457	289	15.
21.....	.....do.....	52	457	289	21.
22(a)-(i).....	.....do.....	52	457	289	22.
22(j).....	.....do.....	52	457	289	22.
23.....	1938, May 28.....	52	460	289	23.
24.....	.....do.....	52	464	289	24.
25.....	.....do.....	52	466	289	25.
26.....	.....do.....	52	467	289	26.
27.....	.....do.....	52	468	289	27.
28.....	.....do.....	52	470	289	28.
31.....	.....do.....	52	472	289	31.
32.....	.....do.....	52	472	289	32.
33.....	.....do.....	52	473	289	33.
41.....	.....do.....	52	473	289	41.
42.....	.....do.....	52	473	289	42.
43.....	.....do.....	52	473	289	43.
44.....	.....do.....	52	473	289	44.
45.....	.....do.....	52	474	289	45.

Derivations of Code sections of the Internal Revenue Codes of 1939 and 1954, Page 3

Table I.—Sources of the 1939 Code—Continued

[* = Amending statute. † = Reenacting statute. ‡ = Adding statute.]

1939 I. R. C. section	Date enacted	Statutes at Large—			Act section
		Vol- ume	Page	Chap- ter	
1931 .....	.....do	39	476	313	2.
1932 .....	.....do	39	476	313	2.
1933 .....	.....do	39	481	313	19.
1934 .....	.....do	39	480	313	13.
1935 .....	.....do	39	481	313	17.
2000(a).....	.....				R. S. 3368.
					R. S. 3377.
	*1909, Aug. 5.....	36	109	6	31.
	1926, Feb. 26	44	88	27	401(a).
2000(b).....	.....				R. S. 3368.
	*1909, Aug. 5.....	36	109	6	31.
2000(c)(1).....	.....do	36	109	6	31.
	1926, Feb. 26	44	87	27	400 (a), (b).
2000(c)(2).....	.....				R. S. 3402,
					R. S. 3387
	1926, Feb. 26	44	87	27	400(a).
	*1984, May 10	48	768	277	610.
2000(d).....	1926, Feb. 26	44	89	27	402.
2001(a).....	.....do	44	87, 88, 89	27	400(a), 401(a), 402.
2001(b)(1).....	.....				R. S. 3370.
2001(b)(2).....	.....				R. S. 3399, R. S. 3387.
2002(a)(1).....	.....				R. S. 3369.
2002(a)(2).....	.....				R. S. 3368.
	*1909, Aug. 5.....	36	109	6	31.
2002(a)(3).....	.....				R. S. 3395, R. S. 3387.
	1926, Feb. 26	44	88	27	400(d).
2002(b)(1).....	.....				R. S. 3371, R. S. 3387.
	*1879, Mar. 1	20	346	125	14.
	1926, Feb. 26	44	114	27	1109(a).
2002(b)(2).....	.....			
2002(c).....	1926, Feb. 26	44	120	27	1119.
2003 .....	.....			
2010(a)(1).....	1894, Aug. 27.....	28	568	349	69.
2010(a)(2).....	.....do	28	568	349	69.
	.....				R. S. 3387.
2010(b).....	1894, Aug. 27.....	28	569	349	69.
2011	1890, Oct. 1.....	26	618	1244	26.
2012 .....	.....				R. S. 3355.
2013	*1879, Mar. 1	20	344	125	14.

TAX DIVISION'S
CRIMINAL TAX PROTEST CASE ISSUES LIST
October 2001 Cumulative Supplement

SEVENTH CIRCUIT

United States v. Ryan, 969 F.2d 238 (7th Cir. 1992)

- 36. Paperwork Reduction Act/OMB Numbers
- 37. Admissibility of IRS Computer Records/Certificate of Assessments and Payments

Salberg v. United States, 969 F.2d 379 (7th Cir. 1992)

- 13. Willfulness
- 20. District Court Jurisdiction over Title 26 Offenses
- 36. Paperwork Reduction Act/OMB Numbers
- 48. Post-Cheek Willfulness

United States v. Beall, 970 F.2d 343 (7th Cir. 1992)

- 39. IRS Agent's Testimony and Witness Sequestration

United States v. Dack, 987 F.2d 1282 (7th Cir. 1993)

- 8. Fifth Amendment: Self-Incrimination
- 13. Willfulness
- 17. Tax Protest Against Military or Other Government Spending
- 24. Court Instructs Jury on Law
- 48. Post-Cheek Willfulness

969 F.2d 379, *, 1992 U.S. App. LEXIS 16575, **;
92-2 U.S. Tax Cas. (CCH) P50,490; 70 A.F.T.R.2d (RIA) 5345

States v. Phillips, 775 F.2d 262, 264 (10th Cir. 1985); *United States v. Aitken*, 755 F.2d 188, 191 (1st Cir. 1985); *Cooley v. United States*, 501 F.2d 1249, 1253 n.4 (9th Cir. 1974), cert. denied, 419 U.S. 1123, 42 L. Ed. 2d 824, 95 S. Ct. 809 (1975); *Yarborough v. United States*, 230 F.2d 56, 61 (4th Cir.), cert. denied, 351 U.S. 969, 100 L. Ed. 1487, 76 S. Ct. 1034 (1956); *Battjes v. United States*, 172 F.2d 1, 4 (6th Cir. 1949). Thus, because the approach taken by our circuit could hardly be [*9] considered part of a "near unanimous" body of authority, the change in the law represented by *Cheek* does not constitute cause under the second scenario illustrated in *Ross*.

Although the law of this circuit at the time of Salberg's trial and direct appeal was that only an objectively reasonable belief negated wilfulness, Salberg could have raised the issue in his trial and on his direct appeal in order to preserve his claim. Salberg contends that it would have been futile at that time to raise such a claim. However, futility alone has never constituted cause for a procedural default. In *Engle v. Isaac*, 456 U.S. 107, 71 L. Ed. 2d 783, 102 S. Ct. 1558 (1982), the Court rejected just such an argument and held that the defendants had failed to demonstrate adequate cause for their procedural default because "the futility of presenting an objection . . . cannot alone constitute cause for a failure to object at trial." *Id.* at 130. The Court explicitly stated that "where the basis of a constitutional claim is available, and other defense counsel have perceived and litigated the claim," alleged unawareness of the objection will not constitute "cause" for a procedural default. [*10] *Id.* at 134. Five years later, in *Smith v. Murray*, 477 U.S. 527, 91 L. Ed. 2d 434, 106 S. Ct. 2661 [*383] (1986), the Court reaffirmed this principle. In *Smith*, the defendant failed to establish cause because at the time of the default the claim was "available" since various forms of the claim "had been percolating in the lower courts for years at the time" of the defendant's original appeal. *Id.* at 537.

In view of *Ross*, *Engle* and *Smith*, we think it clear that Salberg failed to establish cause for his procedural default. The *Cheek* issue Salberg now raises was hardly novel at the time of his trial. At nearly the same time that Salberg was pursuing his trial and appeal, John Cheek, the tax protestor whose conviction we affirmed under the objectively reasonable standard, raised the same claim and then petitioned for a writ of certiorari in the Supreme Court. *Cheek*, 111 S. Ct. at 608. This was a plausible course of action given that our circuit stood alone in adhering to the "objectively reasonable" standard. In short, Salberg cannot now establish cause based on a claim that was available to him and that "other defense counsel had perceived [*11] and litigated." *Engle*, 456 U.S. at 134.

Next, Salberg argues that his *pro se* status excuses his procedural defaults. We have held in the past that "someone who chose to represent himself may not turn

around and contend that he did not give himself the quality legal advice a lawyer could have supplied." *Prihoda v. McCaughtry*, 910 F.2d 1379, 1386 (7th Cir. 1990). Other circuits have consistently held that this principle applies to *pro se* litigants in federal habeas proceedings. See, e.g., *Harmon v. Barton*, 894 F.2d 1268, 1275 (11th Cir. 1990); *Hughes v. Idaho State Bd. of Corrections*, 800 F.2d 905, 908 (9th Cir. 1986). Accordingly, we find that Salberg's *pro se* status does not excuse his procedural defaults.

Even if Salberg had established cause for his procedural defaults, his claim would still be barred because he failed to explain how he has been prejudiced by his failure to raise it either at trial or on direct appeal. In order to satisfy the prejudice prong, a petitioner must show "not merely that the errors at his trial created a possibility of prejudice, but that they worked to his [*12] actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions." *Frady*, 456 U.S. at 170 (emphasis original). Salberg never indicated that he intended to present a defense of good faith belief that he was not violating the law, nor did he object to the government's motion *in limine*. To the contrary, Salberg's own motion *in limine* preventing the government from introducing evidence as to his alleged beliefs suggests that his decision not to present such a defense was a conscious trial strategy. Even at this point, Salberg has yet to say *what* good faith beliefs he would have presented to negate wilfulness. Thus, Salberg has failed to shoulder his burden of establishing actual prejudice.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 *et seq.* (1988) (the PRA or the Act), was enacted in response to a concern that in its tireless quest for information, the federal bureaucracy was imposing an everincreasing burden on citizens and small businesses. The PRA requires federal agencies to submit all "information requests" to the Office of Management and Budget (the OMB) for [*13] approval. Information requests include "tax forms, medicare forms, financial loan applications, job applications, questionnaires, compliance reports, and tax or business records." *Dole v. United Steelworkers*, 494 U.S. 26, 33, 108 L. Ed. 2d 23, 110 S. Ct. 929 (1990). If the Director of the OMB approves the information request, the Act requires that he assign it a control number. An agency may not attempt to collect information unless it has obtained the Director's approval along with a control number to display on the information request. 44 U.S.C. § 3507. If an agency's information request does not display an OMB number, "no person shall be subject to any penalty for failing to maintain or provide information" to the agency pursuant to the request. 44 U.S.C. § 3512. [*384]

969 F.2d 379, *, 1992 U.S. App. LEXIS 16575, **,
92-2 U.S. Tax Cas. (CCH) P50,490; 70 A.F.T.R.2d (RIA) 5345

Salberg contends that the district court lacked jurisdiction to penalize him because the form 1040 and the corresponding instruction books and regulations do not comport with the requirements of the PRA. Further, Salberg argues that the PRA issue cannot be waived because it is jurisdictional. We seriously doubt that this claim is jurisdictional. The district court certainly had jurisdiction under 18 U.S.C. § 3231 to entertain Salberg's [**14] prosecution for tax evasion and failure to file tax returns. *United States v. Koliboski*, 732 F.2d 1328, 1329 (7th Cir. 1984). Regardless of the PRA claim, "a district court is not divested of jurisdiction it clearly had at the time of conviction to entertain a federal prosecution of an individual accused of a federal crime." *Bateman v. United States*, 875 F.2d 1304, 1306 n.3 (7th Cir. 1989) (per curiam). In any event, the PRA claim fails on its merits. n2

n2 By its terms, the PRA only applies to information requests made after December 31, 1981, thus the Act can have no bearing on Salberg's conviction for failing to file an income tax return in 1980. 44 U.S.C. § 3512.

Salberg contends that although the form 1040 displays an OMB control number, it does not display an expiration date and thus does not comply with the Act. We agree with the district court that the failure to display an expiration date on the form does not violate the Act. Even if the PRA requires an expiration [**15] date, the form was expressly designated a "1981" tax return which is sufficient to satisfy such a requirement. *United States v. Collins*, 920 F.2d 619, 631 (10th Cir. 1990).

Next, Salberg argues that the relevant IRS regulations and the 1040 instruction books do not display OMB

control numbers as required by the PRA. Salberg argues that since the regulations and instruction book, not the 1040 itself, require that the form be filed and they fail to comport with requirements of the PRA, he cannot be penalized for failing to file a tax return. Salberg relies on *United States v. Smith*, 866 F.2d 1092 (9th Cir. 1989), in which the Ninth Circuit held that agency regulations were subject to the requirements of the PRA. *Id.* at 1098-99. The *Smith* court reversed a criminal conviction based on the defendant's failure to file an information request required by an agency regulation because the regulation, not bearing a current control number, failed to comply with the PRA. *Id.* at 1099. However, the defendants in *Smith* were convicted of violating a regulation; Salberg was convicted of violating a statute. It [**16] was a federal statute-- 26 U.S.C. § 7203--not a regulation or an instruction book that required Salberg to file an income tax return. Statutes are not subject to the PRA and, as the government points out in its brief, every court that has considered the argument that the regulations and the instruction books promulgated by the IRS are within the scope of the PRA has rejected it. See *United States v. Kerwin*, 945 F.2d 92, 92 (5th Cir. 1991) (per curiam); *United States v. Wunder*, 919 F.2d 34, 38 (6th Cir. 1990); *Brewer v. United States*, 764 F. Supp. 309, 316 (S.D.N.Y. 1991); *United States v. Karlin*, 762 F. Supp. 911, 912-13 (D. Kan. 1991); *United States v. Crocker*, 753 F. Supp. 1209, 1214-16 (D. Del. 1991). We do the same.

III.

For the foregoing reasons, the judgment of the district court dismissing the petition for habeas corpus is AFFIRMED.

Victories and Humor

This chapter will cover some tactics that have worked in fighting the beast, and finish with a touch of humor.

Victories That Worked

WARNING

Be forewarned that the victories given below cannot be gained if you use a lawyer. This because of the following:

§ 4 ATTORNEY & CLIENT

7 C. J. S.

→ His first duty is to the courts and the public, not to the client,⁵⁵ and wherever the duties to his client conflict with those he owes as an officer of the court in the administration of justice, the former must yield to the latter.⁵⁶

The office of attorney is indispensable to the administration of justice and is intimate and

peculiar in its relation to, and vital to the well-being of, the court.⁵⁷ An attorney has a duty to aid the court in seeing that actions and proceedings in which he is engaged as counsel are conducted in a dignified and orderly manner, free from passion and personal animosities, and that all causes brought to an issue are tried and decided on their merits only;⁵⁸ to aid the court

Constructive Notice and Demand

When the PRA/OMB Number argument was covered on page 334 it was pointed out that **it was not this that got the Lear's freed**. It was that they made use of Rule 902 of the Federal Rules of Evidence and filed such a notice in their County Court House. It contained something besides the foolish PRA/OMB Number argument. It included the proof that the IRS was not created by law. Neither the DOJ, IRS, or judge wanted that information known by the jurists. Rule 902(4), (5), and (8-10) states:

Rule 902. Self-authentication

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(4) Certified copies of public records.—A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any Act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority.

(5) Official publications.—Books, pamphlets, or other publications purporting to be issued by public authority.

(8) Acknowledged documents.—Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) Commercial paper and related documents.—Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) Presumptions under Acts of Congress.—Any signature, document, or other matter declared by Act of Congress to be presumptively or prima facie genuine or authentic.

Victories and Humor

A copy of the Lear's Constructive Notice (ChallengeOfAuthority-9-04.pdf) is available at the site where you found this document. Use it as a guide.

Challenge to Jurisdiction

In the chapter, "Jurisdiction of the Federal Government" challenging jurisdiction was covered in some detail so will not repeat here

No Trespassing Signs

Sound ridiculous? Not so fast. The case U.S. v. Hylton, (1983) 710 F.2d 1106, 1107 (5th Cir.) clearly states the effectiveness of such signs. The case involved a Texas law, Section 30.05 of the Texas Criminal Code that reads as follows:

- Sec. 30.05. CRIMINAL TRESPASS. (a) **A person commits an offense if he enters or remains on property or in a building of another without effective consent and he:**
- (1) had notice that the entry was forbidden; or
 - (2) received notice to depart but failed to do so.
- (b) For purposes of this section:
- (1) "Entry" means the intrusion of the entire body.
 - (2) "Notice" means:
 - (A) **oral or written communication by the owner or someone with apparent authority to act for the owner;**
 - (B) fencing or other enclosure obviously designed to exclude intruders or to contain livestock;
 - (C) **a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden;**
 - (D) *[inserted 9/1/97]* the placement of identifying purple paint marks on trees or posts on the property, provided that the marks are:
 - (i) vertical lines of not less than eight inches in length and not less than one inch in width;
 - (ii) placed so that the bottom of the mark is not less than three feet from the ground or more than five feet from the ground; and
 - (iii) placed at locations that are readily visible to any person approaching the property and no more than:
 - (a) 100 feet apart on forest land; or
 - (b) 1,000 feet apart on land other than forest land; or
 - (E) the visible presence on the property of a crop grown for human consumption that is under cultivation, in the process of being harvested, or marketable if harvested at the time of entry.
 - (3) "Shelter center" has the meaning assigned by Section 51.002(1), Human Resources Code.
 - (4) *[added 9/1/97]* "Forest land" means land on which the trees are potentially valuable for timber products.
- (c) It is a defense to prosecution under this section that the actor at the time of the offense was a fire fighter or emergency medical services personnel, as that term is defined by Section 773.003, Health and Safety Code, acting in the lawful discharge of an official duty under exigent circumstances.
- (d) **An offense under this section is a Class B misdemeanor unless it is committed in a habitation or a shelter center or unless the actor carries a deadly weapon on or about his person during the commission of the offense, in which event it is a Class A misdemeanor.**
- (e) *[added 9/1/97]* A person does not have or receive notice under Subsection (b)(2)(D) unless a sign is placed at each entrance for vehicles to the property that gives notice that the presence of purple paint marks on trees or posts on the property indicates that entry is forbidden. The sign required under this subsection must be not less than two feet by three feet in size with block letters at least two inches in height. This subsection expires September 1, 1998.
- 1997 Act adding (e) provided in Sec. 3(b): In the prosecution of an offense in which it is alleged that the defendant had or received notice as described by Section 30.05(e), Penal Code, as added by this Act, Section 30.05(e) is continued in effect after September 1, 1998, but only if every element of the alleged offense occurred before September 1, 1998.

Hold on before thinking that only applies in Texas. Texas has no magical laws and you will find the same basic law applies in most states, all you have to do is find it.

The issue before the Fifth Circuit Court of Appeals was whether Hylton may be convicted of violating 26 U.S.C. sec. 7212(a) [corruptly endeavoring to intimidate and impede Revenue Agents] for filing a factually accurate, nonfraudulent criminal complaint against federal agents with the appropriate local law enforcement officials.

The Fifth Circuit held that:

Hylton's actions represented a legitimate and protected exercise of her right to petition for redress of grievances. U.S. v. Hylton, (1983) 710 F.2d 1106, 1111 (5th Cir.).

And that the record clearly revealed that Hylton genuinely attempted to protect her rights through the orderly pursuit of justice-the filing of citizen complaints with a reasonable basis.

It is of great importance that the court noted, in foot note 7:

Of course, whether the IRS agents conduct was privileged or immunized as a matter of federal law is an issue to be determined in the criminal trespass proceeding against the IRS agents. However, the fact that the agents may have a valid defense does not vitiate Hylton's right to petition for a redress of grievances in a nonfraudulent complaint.

Translation, if you file a complaint against a federal agent in a state court, as long as the complaint is factually correct (not fraudulent) then the burden of proving the affirmative defense of immunity to the prosecution will be placed upon the agents charged. This means the agents will not only have to prove they are agents of the federal government (IRS) and that they followed an authorized procedure, but, more importantly, they will have to prove they acted within their legitimate venue and jurisdiction with respect to a "person" as defined by the Internal Revenue Code. They could be required to prove that your status was such as to bring you within their regional venue and jurisdiction, which they would have to do in order to prove they were acting within their official capacity as Revenue Agents in order to sustain a defense that their "conduct was privileged or immunized as a matter of federal law."

Moreover, the Supreme Court has held expressly that the first amendment right to petition protects the individuals right to file an action with a "reasonable basis" in a state tribunal. *Bill Johnson's Restaurants, Inc. v. NLRB*, - U.S. -, 103 S.Ct. 2161, 2169, 76 L.Ed.2d 277 (1983). U.S. v. Hylton, (1983) 710 F.2d 1106, 1111 (5th Cir.).

While the footnote (No. 6) goes to the martial rule assertion that the First Article in Amendment may be applied to the States through the Fourteenth Amendment, the point is still well taken that filing of an action is one of the ways that we may redress our grievances against actions taken in the name of the government. And, it is truly said that this right should be protected by the limitations of the First Article in Amendment and equivalent provisions in the Constitutions of the several States.

The complaints must be legitimate in fact and founded upon reasonable legal grounds. As the Hylton court said: "were it demonstrated that Hylton's complaints were frivolous and based upon contrived allegations, a totally different result might follow."

None the less, the Hylton court pointed out: "the courts be precious of the liberties safeguarded by the bill of rights." See *United Mineworkers of America, District 12 v. Illinois State Bar Association*, 389 U.S. 217, 88 S.Ct. 353, 356, 19 L.Ed.2d 426 (1967).

This is probably why the Hylton court held with the 7th Circuit Court opinion that motive for the complaint, even if the complainant took pleasure in tormenting the IRS agents, is irrelevant to the legitimacy of exercising the right to Redress of Grievances.

Victories and Humor

Regardless of your right to redress grievances, it cannot be emphasized enough that you **may not take any physical action against such an agent**. If you so much as touch them to prevent them you will have placed yourself in a very bad position. If your status is correct, you can inform them of their excess of venue and jurisdiction, that they are acting without their official capacities and without legal authority, and you can tell them to immediately remove themselves from your premises. But it would be very unwise to physically eject them. Informing them they must leave and closing the door to them, after informing them of their lack of authority, is all that is necessary or required.

Therefore, pay close attention to the fact situation of the Hylton case and assimilate this to your common-law position. Don't do anything to give the adversary the upper hand while you are exercising your right to redress grievances.

1. The Hylton's had "recorded a declaration with Chambers County that stated that federal agents were not to trespass upon their property.
2. The IRS received notice from the Hyltons informing them that they were not welcome on the Hylton's property. And, the notice was placed in the IRS file concerning the Hyltons and readily accessible to the IRS agents.
3. The Hyltons "had adorned their private property with 'no trespassing' signs."
4. "'Responsible officials' were well aware of the Hylton's desire to exercise their rights to privacy.
5. Special agents of the IRS, without a warrant, disregarded the no trespassing signs and previous notices came to the front door of the Hylton house.
6. The conversation between Jean Hylton and the Special agents was recorded and revealed that Jean Hylton had demanded the agents state the law that gives them jurisdiction, and that she had notified the agents again that they were trespassing on private property.

The sign does not need to be fancy, but plainly state that it applies to all federal agents, and to anyone else you wish to stop pestering you.

Using State Courts to remove Notices of Federal Tax Liens from County Court Records

Again this is based on an actual occurrence in Texas, and again do not think that Texas has any "Magical law". A gentleman named Walden had Notices of Federal Tax Liens removed by proving to the judge that it was a baseless document filed by the IRS with no authority for doing so. He showed that:

1. The IRS violated state law, the Uniform Federal Lien Registration Act, the Federal Debt Collection Procedures Act, the Federal Tax Lien Act of 1966, Public Law 89-719 Stat. 1125, the Uniform Commercial Code: §§ 9.402 and 9.403, and the Internal Revenue Code §§ 7608, 7403, 6323(f), 6331, 6323, and 6321
2. That the state had the jurisdiction to take such action

A copy of his court documents, including the signed order of the judge (Walden.zip) is available at the same location you found this document. With careful editing and research the UCC sections called out can be changed to indicate the UCC sections of another state.

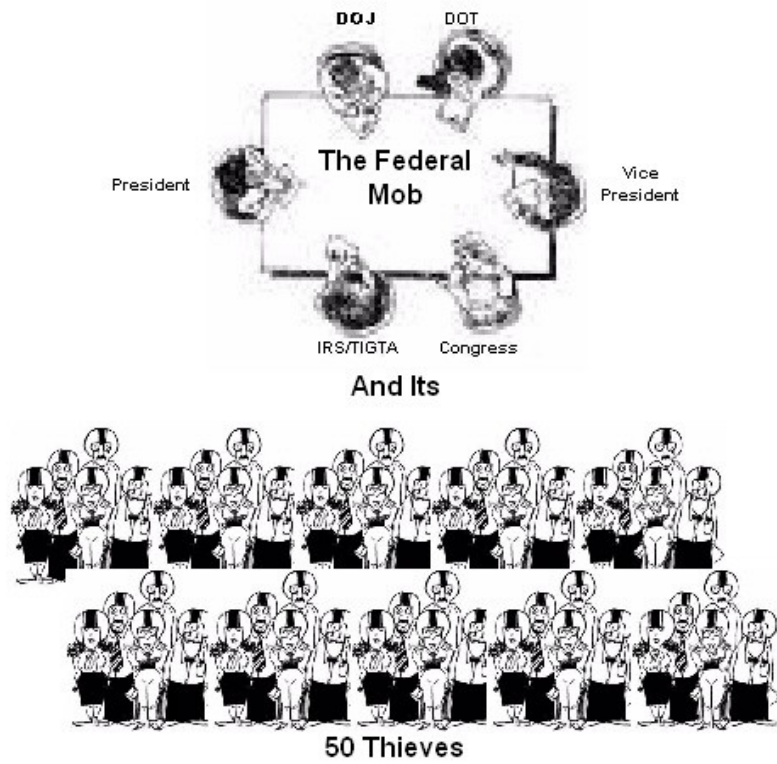
A Touch of Humor

It sometimes helps to put a humorous light on the wrongdoings of our government. Unfortunately, most often it is dry humor for what is depicted is true.

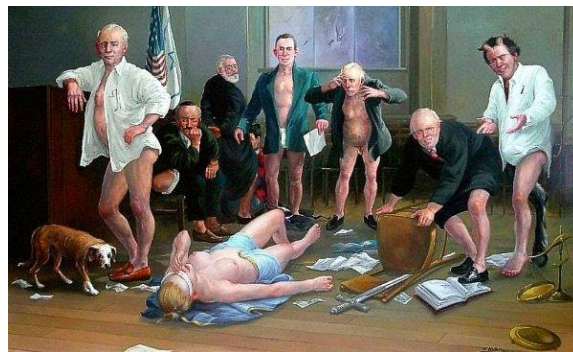
The IRS's Own Church Hymn



The Federal Mob and It's 50 Thieves (the states)



The Rape of Justice



Victories and Humor

AN OLD PREACHER WAS DYING

An old preacher was dying. He sent a message for his IRS agent and his lawyer, both church members, to come to his home. When they arrived, they were ushered up to his bedroom. As they entered the room, the preacher held out his hands and motioned for them to sit on each side of the bed. The preacher grasped their hands, sighed contentedly, smiled and stared at the ceiling. For a time, no one said anything. Both the IRS agent and the attorney were touched and flattered that the old preacher would ask them to be with him during his final moment. They were also puzzled because the preacher had never given any indication that he particularly liked either one of them.

Finally, the lawyer asked, "Preacher, why did you ask the two of us to come?"

The old preacher mustered up some strength, then said weakly, "Jesus died between two thieves, and that's how I want to go, too."

Tax Humor

Commissioner v. Citizen, 100 U.S. 101 (taxpayer's argument that his children could not be attached and sold to pay tax deficiency rejected as "preposterous").

Commissioner v. Law-Abiding Citizens, 324 U.S. 278 (upholding Code Section requiring Secretary's permission before making a firearm as "incidental" restriction on Second Amendment).

Commissioner v. Domestic Tranquility, 202 U.S. 104 (holding that Fourth Amendment does not apply to "fundamental revenue-collecting government functions").

Commissioner v. Innocent Citizen, 312 U.S. 412 (holding that Fifth Amendment presumption of innocence "inapplicable" to tax cases).

Commissioner v. Taxpayer's Home, 354 U.S. 889 (holding that although Fifth Amendment due process clause normally requires notice and a hearing, Service may seize taxpayers' assets without notice when compliance with Fifth Amendment would "hamper revenue-collection").

Commissioner v. Silence, 341 U.S. 831 (holding that government has standing to waive taxpayer's Fifth Amendment rights when in the exercise of its sole discretion assertion of the Fifth would be "bothersome").

Commissioner v. Employee, 304 U.S. 506 (adopting Service's position that the Government has an inchoate lien upon all earned income generated by taxpayer).

Commissioner v. Married Couple, 543 U.S. 322 (upholding Service's argument that taxpayers' marriage should be disregarded under doctrine of substance over form).

Commissioner v. Family, 245 U.S. 432 (holding that couple's decision to have second child was "impermissible tax avoidance scheme"; Court did not reach question of whether Service may seek "equitable remedies" to ensure compliance).

Commissioner v. Entrepreneur, 641 U.S. 441 (holding that taxpayer's decision to open own business constituted probable cause under Fourth Amendment).

Commissioner v. Bottom Dollar, 343 U.S. 123 (holding that taxpayer's custom of engaging in cash transactions justified seizure of bank account).

Commissioner v. Benji, 541 U.S. 673 (holding that Service's levy power extends to seizure and sale of family pets to satisfy tax deficiency).

Commissioner v. Repose, 213 U.S. 123 (holding that willful failure to file is conduct more odious than rape or drug dealing, thus justifying the complete absence of a civil statute of limitations).

Commissioner v. George Washington's Descendants, 414 U.S. 325 (holding that fifth generation descendants bear burden of proving that ancestor paid all appropriate taxes; failure to prove justified jeopardy assessment and confiscation).

Commissioner v. Due Process, 96 T.C. 432 (observing that taxpayer's right to due process was "unaffected" by fact that a majority of the Tax Court judges were former employees of Treasury or IRS).

Commissioner v. Taxpayer, 413 U.S. 742 (holding that Fifteenth Amendment prohibition of involuntary servitude did not extend to taxpayers).

Commissioner v. Retiree, 456 U.S. 321 (interpreting Taxpayer doctrine to allow Service to seek equitable remedies to prevent taxpayer's impermissible tax avoidance scheme euphemistically called "retirement").

Commissioner v. Article I Judge, 431 U.S. 784 (applauding Service's practice of auditing the tax returns of pro-taxpayer judges as "salutary" extension of doctrine of checks and balances).

Commissioner v. Supremacy Clause, 234 U.S. 543 (construing Commissioner's right to nonacquiescence to extend to Supreme Court decisions, Congressional law, and US Constitution).

Commissioner v. Duly Elected Representation, 341 U.S. 985 (upholding Service's decision to promulgate regulations in direct opposition to Internal Revenue Code when Service thought Congressional enactment was "ill-advised").

GOD Denied by Government and Church

Here are words from the Scriptures that state well the transgressions of our governments and the reaction of our religious leaders.

Denials of Government

How do the actions of those in government fare according to the words of the Scriptures? They fail the test completely, as shown below.

1. The Tax Laws are constitutionally written to comply with the meaning of Matthew 17: 25-26”

Matthew 17

²⁵ He saith, Yes. And when he was come into the house, Jesus prevented him, saying, What thinkest thou, Simon? of whom do the kings of the earth take custom or tribute? of their own children, or of strangers?

²⁶ Peter saith unto him, Of strangers. Jesus saith unto him, Then are the children free.

Yet our governments, federal and state conceal and deny this knowledge to the people as stated in Isaiah 5:13:

Isaiah 5

¹³ Therefore my people are gone into captivity, because they have no knowledge: and their honourable men are famished, and their multitude dried up with thirst.

2. Our judges have failed to heed the warning and no longer honor the laws or judge in righteousness as given in Matthew 7: 1-2

Matthew 7

¹ Judge not, that ye be not judged.

² For with what judgment ye judge, ye shall be judged: and with what measure ye mete, it shall be measured to you again.

Even our highest court has recently made sodomy legal, which is contrary to what is written in Leviticus 18: 22-23:

Leviticus 18

²² Thou shalt not lie with mankind, as with womankind: it is abomination.

²³ Neither shalt thou lie with any beast to defile thyself therewith: neither shall any woman stand before a beast to lie down thereto: it is confusion.

3. Has not congress made laws contrary to the limitations given in the Constitution and mislead the people? Have not the courts allowed this to be? This is a disregard for what is written in Isaiah 10: 1-3:

Isaiah 10

¹ Woe unto them that decree unrighteous decrees, and that write grievousness which they have prescribed;

² To turn aside the needy from judgment, and to take away the right from the poor of my people, that widows may be their prey, and that they may rob the fatherless!

³ And what will ye do in the day of visitation, and in the desolation which shall come from far? to whom will ye flee for help? and where will ye leave your glory?

4. Has not our legal profession, which includes many of our elected and appointed scorned what is written in Luke: 52?

Luke 11: 52

⁵² Woe unto you, lawyers! for ye have taken away the key of knowledge: ye entered not in yourselves, and them that were entering in ye hindered.

5. Are not the following disregarded?

Micah 2: 1-2

¹ Woe to them that devise iniquity, and work evil upon their beds! when the morning is light, they practise it, because it is in the power of their hand.

² And they covet fields, and take them by violence; and houses, and take them away: so they oppress a man and his house, even a man and his heritage

James 5: 1-6

¹ Go to now, ye rich men, weep and howl for your miseries that shall come upon you.

² Your riches are corrupted, and your garments are motheaten.

³ Your gold and silver is cankered; and the rust of them shall be a witness against you, and shall eat your flesh as it were fire. Ye have heaped treasure together for the last days.

⁴ Behold, the hire of the labourers who have reaped down your fields, which is of you kept back by fraud, crieth: and the cries of them which have reaped are entered into the ears of the Lord of sabaoth.

⁵ Ye have lived in pleasure on the earth, and been wanton; ye have nourished your hearts, as in a day of slaughter.

⁶ Ye have condemned and killed the just; and he doth not resist you.

In truth, the words given in Isaiah 59: 1-5 apply well to our governments:

Isaiah 59

¹ Behold, the LORD's hand is not shortened, that it cannot save; neither his ear heavy, that it cannot hear:

² But your iniquities have separated between you and your GOD, and your sins have hid his face from you, that he will not hear.

³ For your hands are defiled with blood, and your fingers with iniquity; your lips have spoken lies, your tongue hath muttered perverseness.

⁴ None calleth for justice, nor any pleadeth for truth: they trust in vanity, and speak lies; they conceive mischief, and bring forth iniquity.

⁵ They hatch cockatrice' eggs, and weave the spider's web: he that eateth of their eggs dieth, and that which is crushed breaketh out into a viper.

The Prayer of Our Governments

Should not the prayer of our government be as follows:

O' Mighty Lucifer we adore and idolize thee.
Please forgive us our oath to uphold the free;
We promise that we shall always endeavor,
in our efforts, our acts their freedoms to devour;
We shall through use of trickery and perversion,
ignore the Constitution to effect their conversion;
No longer shall they have God's laws of nature,
in which to enjoy life, liberty, and God's pleasure;
The Republic will no longer stand in freedom,
It will be a democracy type of kingdom,
God's name and words they shall not speak or show,
For our black robed judges bask in your inferno's glow,
We shall use fraud to steal the property of their labor,
till upon us they must beg for help calling us savior;
Thru infiltration of our states' education systems,
we shall unteach them of their inviolable freedoms;

GOD Denied by Government and Church

We shall take over the profession of medicine,
and eliminate their loyalty to the oath of their profession;
In our brief tenure on earth this is what we do
so in eternal hell we can serve with you.

Reaction of our Churches and Synagogues

How have the religious leaders of the denominations and faiths reacted to these unholy transgressions of government? They have turned their back and closed their eyes to it, seeking only to find refuge and comfort within it. They bow first to fraudulent government, and only after do they bow to GOD. The following states the sin of the Churches very plainly;

The IRS and The Church

Please read the disclaimer at the end.

By Pastor Jim Phillips

1. Now the IRS was more subtle than any organization which the Lord God allowed to be established. And it said unto the Church, Yea, hath God said, Ye shall not receive subsidies from every thing which God allowed to be established.
2. And the Church said unto the IRS, We may receive the tithes and offerings of every member of the Church to Meet our needs:
3. But of the 501(c) 3 tax-exempt status which is from the IRS, God hath said, Ye shall not receive subsidies from it, neither shall ye incorporate, lest ye die:
4. And the IRS said unto the Church, Ye shall not surely die:
5. For God doth know that in the day ye receive your Corporate status, that artificial life shall be breathed into your Church by the State, and your Pastors shall be as smart as God knowing "Public Policy" better than the Word of God.
6. And when the Church saw that the IRS was able to subsidize it's pet projects, and that it was the politically correct thing to do, and that it gained a certain amount of respectability from the world, the Church took the subsidies, and gave the benefits also to her Pastor with her; and he did compromise.
7. And the eyes of them both were opened, and they realized that they were powerless spiritually, and they made excuses, and covered up their sin:
8. And they heard the Word of the Lord God convicting them in a real Church: And they tried to hide themselves from the presence of the Lord God amongst the real Churches and men of God in the world.
9. And the Lord God called unto the Pastor, and said unto him, Where art thou?
10. And he said, I heard your Word preached in a real Church, and I was afraid, because I was powerless spiritually; and I hid myself.
11. And he said, Who told thee that thou was powerless spiritually? Hast thou received subsidies from the IRS, whereof I commanded thee that thou shouldst not receive?
12. And the Pastor said, The Church whom thou gavest me to Pastor, she gave me benefits, and I did take them.
13. And the Lord God said unto the Church, What is this that thou hast done? And the Church said, The IRS tempted us, and we voted to receive their subsidies.
14. And the Lord God said unto the IRS, Because thou hast done this, thou art cursed above all institutions, and above every organization in the world; you are lower than a snakes belly, and shall be cursed every day of your existence.
15. And I will put division between thee and the true Church, and between your Corporate Churches and Hers: they shall win in the end, and yours shall persecute Hers until the rapture.
16. Unto the Corporate Church he said, I will greatly multiply thy sorrow and thy future ministries, and thy desire shall be to the Chairman of the Trustee board, and he or she shall rule your Corporate Church with a *Constitution* given to it by the State.
17. And unto the Pastor he said, Because thou hast hearkened unto the voice of the Corporate Church, and have received your Tax Exempt Status from the IRS, of which I commanded thee, saying, Thou shalt not receive subsidies of the IRS: cursed is your Corporate Church because of you; in sorrow shalt thou receive of it's subsidies all the days of thy life;

18. Divisions also and strife shall Corporate Status bring to thee; and you shall submit to the IRS because of the subsidies you receive from it:
19. In the days preceding your business meetings shall thou study thy Constitution, till thou return unto the true Church; for out of it did you come: for it is a Christian you claim to be, and unto my Church only should you return.
20. And the pastor called his Corporation, "First Baptist Church, Inc." because it was the founder of all future Corporate Churches.
21. Unto the pastor also and to his Corporate Church did the Lord God allow to be established the Christian Law Association, to convince Churches that it is better to obey the "Public Policy" that it is to obey the Word of God.
22. And the Lord God said, Behold, the Pastor thinks he is smarter than us, to know what is good for him and what is not: and now, lest he put forth his hand, and take over an unregistered Church, and compromise it, and it remains a Corporation forever:
23. And God sent the Pastor forth from the true Churches, to preside over his Corporate one which he established.
24. So he drove out the Pastor; and he placed at the pulpit of the real Church a man of God, with a King James Bible, to keep Jesus Christ as the Head of His Church.

*Pastor Jim Phillips
Remnant Independent Baptist Church
2934 Bahia Dr.
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Disclaimer notice: The writer of this article in no way supports the changing of God's word as do all of the Modern translators of the Bible today. The sole intent of this article is to take a Scripture passage and apply it to a modern day predicament and to make the scripture relevant to the issue. I do not pretend to speak for God on this issue, but I do not believe that God would allow His Church to be dictated to by IRS or the State as to its manner of Government, or as to the content of the messages that are preached from it's pulpit. The writer of this article is in no way against the paying of any lawful taxes due to the IRS

Conclusion

Where the Nation is On the Path

Our path goes through five different forms of government, these being:

- Republic
- Democracy
- Social Democracy
- Socialism
- National Socialism

Each of these is shown on the illustration on the following page, and explained in the following paragraphs:

Paragraph:	Page:
Republic	354
Democracy	354
Social Democracy	354
Socialism	356
National Socialism	356

Republic

The government as “guaranteed” by our Constitution. Form of government in which a state is ruled by representatives elected by its populace.

The term was originally applied to a form of government in which the leader is periodically appointed under a constitution; it was contrasted with governments in which leadership is hereditary. A **republic** may also be distinguished from direct **democracy**, though modern representative democracies are by and large **republics**.

Democracy

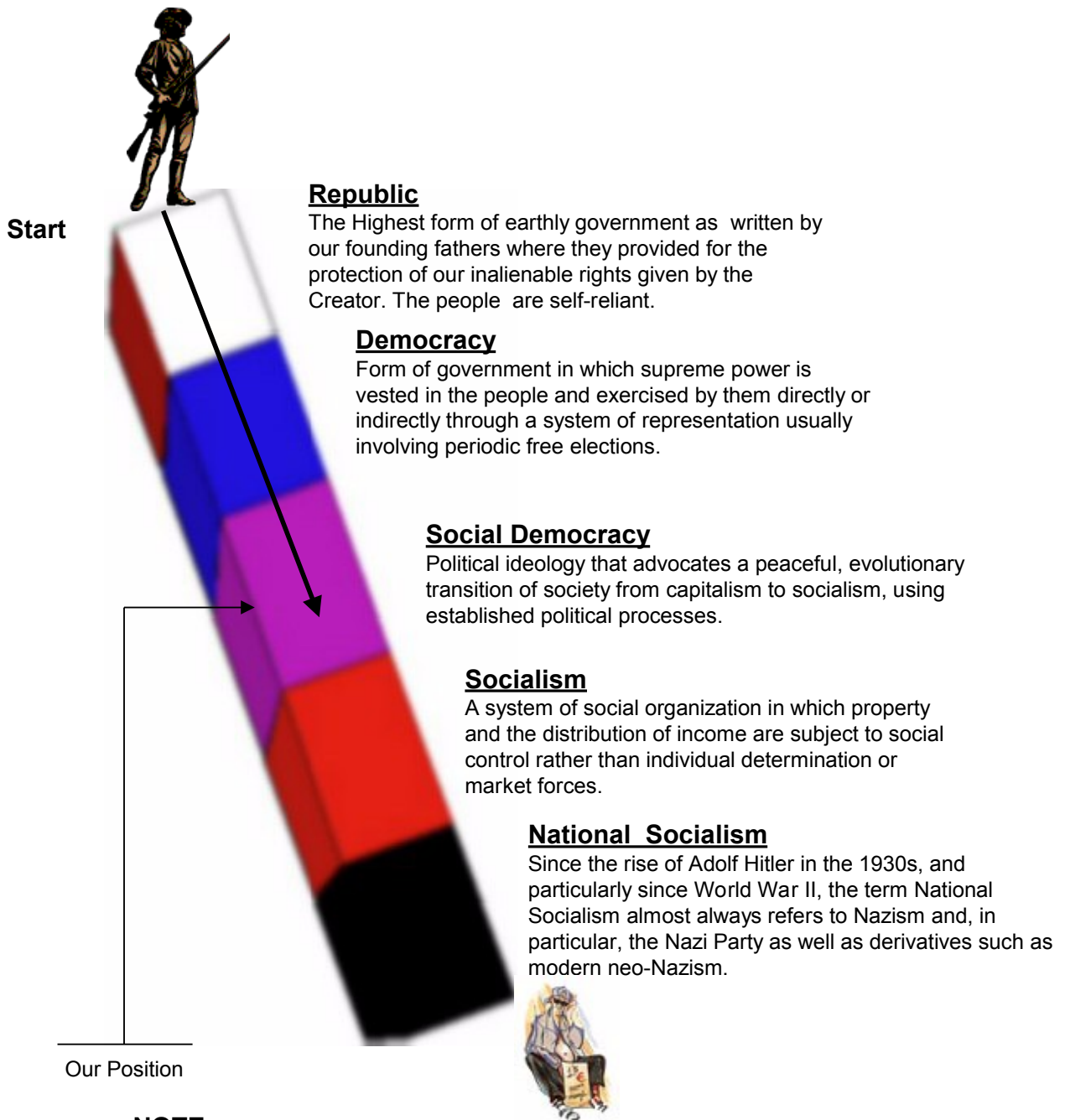
Form of government in which supreme power is vested in the people and exercised by them directly or indirectly through a system of representation usually involving periodic free elections.

In a direct democracy, the public participates in government directly (as in some ancient Greek **city-states**, some New England **town meetings**, and some **cantons** in modern Switzerland). Most democracies today are representative. The concept of representative democracy arose largely from ideas and institutions that developed during the European Middle Ages and the Enlightenment and in the American and French Revolutions. Democracy has come to imply universal suffrage, competition for office, freedom of speech and the press, and the rule of law.

Social Democracy

Political ideology that advocates a peaceful, evolutionary transition of society **from capitalism to socialism**, using established political processes.

It rejects Marxism's advocacy of social revolution. Social democracy began as a political movement in Germany in the 1870s. Eduard Bernstein argued (1899) that capitalism was overcoming many of the weaknesses Karl Marx had seen in it (including unemployment and overproduction) and that **universal suffrage would lead peacefully to a socialist government**. After 1945, social-democratic governments came to power in West Germany (see Social Democratic Party), Sweden, and Britain (under the Labour Party). Social-democratic thought gradually came to regard state regulation (without state ownership) as sufficient to ensure economic growth and a fair distribution of income.



NOTE:

Click on the government type (i.e. Republic, Democracy, etc.) and you will be taken to an extract taken from an encyclopedia definition for that type of government.

Where We Are on Our Path

Conclusion

Socialism

System of social organization in which private property and the distribution of income are subject to social control; also, the political movements aimed at putting that system into practice.

Because “social control” may be interpreted in widely diverging ways, socialism ranges from statist to libertarian, from Marxist to liberal. The term was first used to describe the doctrines of Charles Fourier, Henri de Saint-Simon, and Robert Owen, who emphasized noncoercive communities of people working noncompetitively for the spiritual and physical well-being of all (see utopian socialism). Karl Marx and Friedrich Engels, seeing socialism as a transition state between capitalism and communism, appropriated what they found useful in socialist movements to develop their “scientific socialism.” In the 20th century, the Soviet Union was the principal model of strictly centralized socialism, while Sweden and Denmark were well known for their noncommunist socialism.

National Socialism

Totalitarian movement led by Adolf Hitler as head of Germany's Nazi Party (1920–45).

Its roots lay in the tradition of Prussian militarism and discipline and German Romanticism, which celebrated a mythic past and proclaimed the rights of the exceptional individual over all rules and laws. Its ideology was shaped by Hitler's beliefs in German racial superiority and the dangers of communism. It rejected liberalism, democracy, the rule of law, and human rights, stressing instead the subordination of the individual to the state and the necessity of strict obedience to leaders. It emphasized the inequality of individuals and “races” and the right of the strong to rule the weak. Politically, National Socialism favoured rearmament, reunification of the German areas of Europe, expansion into non-German areas, and the purging of “undesirables,” especially Jews.

According to *Mein Kampf (My Struggle)*, Hitler developed his political theories after carefully observing the policies of the Austro-Hungarian Empire. He was born as a citizen of the Empire, and believed that ethnic and linguistic diversity had weakened it. Further, he saw democracy as a destabilizing force, because it placed power in the hands of ethnic minorities, who he claimed had incentives to further “weaken and destabilize” the Empire.

Spitting in the Face of the Supreme Court and Licking the Butt of the Elected and Appointed

Why “Spitting in the Face of the Supreme Court”? Because this lawless federal mafia either ignores or distorts what the Supreme Court has ruled. Why “Licking the Butt of the Elected and Appointed”? Because why else would they develop and use the trickery of redefining words out of their ordinarily understood meanings. It is what enabled the fraud game used to deprive you of property and rights.

Do not think for a single second that your duly elected and appointed are not aware of the truth, and that the vast majority approve of this robbery visited on the people. Those that do not approve are of no courage and so do not speak out. The fear of the wrath of the vast majority keeps them meek and silent. There is one that dared speak out, and he has suffered for it, victimized by false charges of the IRS (as requested by the rest of congress), kicked out of congress, and now falsely imprisoned. This was the fate of former Representative James Traficant. It has also been used to remove judges from the bench that dared rule according to the law in tax matters.

The vast majority of these duly elected and appointed are traitors, from the President on down pure and simple, seeking nothing but control over you and what is rightfully yours. It will remain this way until there is an awakening of the American people, for they have been hoodwinked into choosing from two evil parties, the republican and democrat.

Realizing that religion has had a history regarding influencing government, they have enlisted our venal federal judiciary to invent a non-existent “separation of church and state”. That it in fact does not, and cannot exist is evident in the very purpose stated in the Declaration of Independence. Establish a religion, no, but by the same token, the freedom of religion cannot be legislated. They then “coerce” the churches in applying for “tax

exemptions" that they don't need. The Constitution and Statutes of Congress are very clear as to what may be taxed and what may not be taxed. But when the head of the Indianapolis Baptist Temple applied the laws as they are written they loosened the wrath of the IRS on the church. First, most of our religious establishments are not in a territory or insular possession of the federal government. They are in Sovereign States. Therefore, they dragged the church into a federal court having absolutely no jurisdiction. The legal defense for the church knew little of tax law, and evidently nothing concerning federal court jurisdiction. The church lost and had everything hurriedly taken from it and auctioned off to pay a tax that did not exist.

As this is written they again have loosened the IRS on another church, the Episcopal All Saints Church in Pasadena, CA regarding a 2004 sermon preached at the church by its former rector. A right and duty every real church has is to warn their flock of the evils existing in government. The use of the IRS as a weapon is common practice in our government.

When they show our elected and appointed dutifully attending church, Bible in hand you can, with almost 100% surety know that it is for the purposes of propaganda and show. True Christians do not govern in ways that conflict with God.

Now, back to the fraud.

In order to install the 12 Planks of the Socialist Manifesto our federal and state governments had to devise a means of circumventing it. The 16th Amendment did not do the trick for them so they used patriotism and downright lies from WWII forward to manipulate the minds of ordinary Americans. Made easier since the general public became too trusting and lethargic. The government even abandoned God and ignored what the Supreme Court had stated:

The Constitutions are not the sources of our personal rights. Our theory of government is that the people [Citizens of the several states], in full possession of inherent, inalienable rights, have formed the government in order to protect these [Natural] rights, and have incorporated them into the organic law as a shield against unwarrantable interference by any department of governments. -- **16 CJS § 199**

Every [state] citizen and freeman is endowed with certain rights and privileges, to enjoy which no written law or statute is required. These are fundamental or natural rights, recognized among all free people. -- **United States v. Morris**, 125 F 322, 325

Here, the government agencies, particularly those within the Departments of the Treasury and Justice disregard the Supreme Court entirely in regards to the following:

"Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required. *Service v. Dulles*, 354 U.S. 363, 388 (1957); *Vitarelli v. Seaton*, 359 U.S. 535, 539 -540 (1959). The BIA, by its Manual, has declared that all directives that "inform the public of privileges and benefits available" and of "eligibility requirements" are among those to be published. The requirement that, in order to receive general assistance, an Indian must reside directly "on" a reservation is clearly an important substantive policy that fits within this class of directives. Before the BIA may extinguish the entitlement of these otherwise eligible beneficiaries, it must comply, at a minimum, with its own internal procedures." - [Morton v. Ruiz, 415 U.S. 199, 94 S.Ct. 1055, 39 L.Ed.2d 270 (1974)]

At the first instance of the IRS failing to follow the regulations due process disappears:

An agency may deny due process if it fails to obey its own regulations." ..U.S. v. Capra, 372 F.Supp. 609 (1974)

In spite of the above, the IRS has effectively incorporated procedures in the IRM whereby they commit fraud and attempt to bypass the Constitution of the United States. However, their IRM does admit to the fact that Supreme Court decisions are the Law of the Land and must be adhered to.

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The internal procedures of the Treasury Financial Service, and the U.S. Attorney's Manual, though written to fully comply with the laws are totally disregarded when requested by the IRS. In this respect, the U.S. Attorneys completely ignore the following from the Supreme Court:

"The United States Attorney... is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer... It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." [**Berger v. United States**, 295 U.S. 78 (1935)]

U.S. v. Young, 470 U.S. 1 (Oct. Term 1984). ... "The U.S. Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. ... A prosecutor has the responsibility of a minister of justice and not simply that of an advocate." (See *Viereck v. U.S.*, 318 U.S. 236, 248 (1943), Cf. ABA Model Rules of Professional Conduct, Rule 3.8 comment (1984) ABA Model Code of Professional Responsibility EC 7-13 (1980) (prosecutor owes a "special duty"); ABA Standard for Criminal Justice 3-5.8, p. 3.88 (2d Ed. 1980). It is clear that an improper remark, conduct on part of opposing counsel should be met with an objection to the court, not by a similarly improper response. "The prosecutor's conduct and utterances, however, are always reviewable on appeal, for he is 'both an administrator of justice and an advocate.'" ABA Standard for Criminal Justice 3-1.1(b) (2d ed. 1980); c.f. *Berger v. U.S.*, 295 U.S. 78, 88 (1935)

Have not the Attorney's violated the Clean Hands Doctrine by attempting to prosecute right as wrong:

*** See doctrine of *U.S. v. Young*, 470 US 1, as relates to the U.S. Attorney as being a minister of justice. How is it possible that he can enter the court with clean hands when he had knowledge of and was aware of the statutory time barrier imposed upon him under IR Code 6531, along with Pacheco. Therefore, he acted without subject matter jurisdiction as relates to Counts 1 and 2 of the indictment, because, neither Pacheco nor the U.S. Attorney had a MINISTERIAL DUTY TO WITHHOLD FROM THE GRAND JURY, BY OMISSION, THE APPLICABLE STATUTORY TIME BARRIER IMPOSED WITHIN WHICH TO PROSECUTE PAULSON.

Spalding v. Vilas, 161 U.S. 483 (1896). ... "the official would NOT BE EXCUSED from liability if he failed to observe obvious statutory or constitutional limitations on his powers or if his conduct was a manifestly erroneous application of the statute."

One must not forget the judges of the lower courts, as they like the U.S. Attorneys have allowed themselves to become servants of the IRS. Never should we forget our elected and appointed that are fully aware of the theft and fraud committed by the IRS. They have to be aware, for former Commissioner Rossotti briefed them on it in sworn testimony.

Has not our federal government unleashed a private armed Gestapo on the people of the several states? A Gestapo that openly carries firearms without any authority (Title 26 Section 7608(a)).

Throughout this document "ABC's of Government Theft" the government's lies and theft of rights and property have been proven. The following is a representative listing, with paths to even deeper proof:

- | <u>Item</u> | <u>Page</u> |
|---|-------------|
| • Brushaber v. Union Pacific R. Co., 240 U.S. 1 (1916) – the Supreme Court decision that stated what the 16 th Amendment accomplished. | 15 |
| • Prepared Testimony of Commissioner of Internal Revenue, Charles O. Rossotti, before The Senate Finance Committee on Promoted Tax Schemes on April 11, 2002 – he outlined the methodology of fraud and theft adopted by the IRS and implemented within their IRM. | 173 |

	Conclusion
<ul style="list-style-type: none"> • Fraudulent SFR-to-Levy Procedure – a two page interactive simplified flow chart detailing the implementation of the plan disclosed by Rossotti. Has links to the proofs of fraud and theft. 	226
<ul style="list-style-type: none"> • Government Accounting office GAO-03-913R Reliability of IRS's Form W-4 Information – shows and admits the IRS ignores laws and regulations in accessing fines without authority. 	238
<ul style="list-style-type: none"> • The Internal Revenue Service – shows that the IRS was not in fact created by law, thereby limiting it's authority. 	143
<ul style="list-style-type: none"> • Treasury/IRS 46.002 Criminal Investigation Management Information System (CIMIS) – covers IRS CID monitoring of U.S. Area Court Judges and U.S. Attorneys, laying the foundation for coercion, bribery, and threats to manipulate the courts and cases. 	308

From all stated and shown throughout this document it should be very obvious that the 12 Planks of the Socialist Manifesto are in place and implemented. The Republic has been murdered, and the Constitution of the United States compromised. Tyranny of the worst sort exists and you are not free. It is a tyranny that has existed almost without change from times before Christ and was recognized by Cicero:

"A Nation can survive its fools, and even the ambitious. But it cannot survive treason from within. An enemy at the gates is less formidable, for he is known and he carries his banners openly. But the traitor moves among those within the gate freely, his sly whispers rustling through all the galleys, heard in the very hall of government itself. For the traitor appears not traitor - he speaks in the accents familiar to his victims, and wears their face and their garments, and he appeals to the baseness that lies deep in the hearts of all men. He rots the soul of a nation-he works secretly and unknown in the night to undermine the pillars of a city-he infects the body politic so that it can no longer resist. A murderer is less to be feared." --Cicero 42 B.C.

"Power and law are not synonymous. In truth they are frequently in opposition and irreconcilable. There is God's Law from which all Equitable laws of man emerge and by which men must live if they are not to die in oppression, chaos and despair. Divorced from God's eternal and immutable Law, established before the founding of the suns, man's power is evil no matter the noble words with which it is employed or the motives urged when enforcing it. Men of good will, mindful therefore of the Law laid down by God, will oppose governments whose rule is by men, and if they wish to survive as a nation they will destroy the government which attempts to adjudicate by the whim of venal judges." - Marcus Tullius Cicero 106-43 B.C

The tyrant is our governments, federal and state that no longer represent the people, but seek power and control over them. They are greedy politicians that have abandoned not only the people, but GOD Himself and no longer recognize our rights as stated in the Declaration of Independence. We fought to rid ourselves from one tyrant, only to allow ourselves to be subjugated by one that is even more vile, for they are from ourselves.

Remember these words?

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

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. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and

Conclusion

organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

We have failed our forefathers and now fight no more as this evil tyrannical government steals our God given rights, works tirelessly to break us away from true worship by forbidding GOD's name and words to be spoken freely, allowing perverted marriage. They themselves are not true believers, but seek only to make the federal government our god, and the state governments their false disciples. They care not about your rights under GOD, they care not about you. They are the traitors from within.

In reality, and in accordance with the Declaration of Independence and The Constitution of the United States of America the following holds true as to who you actually are in regards to the Internal Revenue Service, unless you are an "employee" drawing "wages", a nonresident alien, or engaged in a stamp act taxable activity.:

I am no one and my name is nobody

Conclusion to Where the Nation is On the Path

The era of this Nation as a true Republic are long behind us. Unfortunate in that it was that period that made this Nation great. Neither can it be said that as a nation we are a true democracy, for the rule of law has been abandoned in order to perpetuate fraud and theft.

Where we are standing is as a Social Democracy. The self-reliance of the American people has been destroyed by government trickery and lies. As stated previously, our government is propagating the ideals of socialism within the framework of a parliamentary democracy. Our elected and appointed, both federal and state are no longer men and women of honor. Ethics has been tossed aside and the Constitution and laws cast aside in matters that allow them to steal from the people. The federal government has infiltrated our education system to better dumb down the population as to what their rights are. By the same token, they have infiltrated the fields of medicine and welfare to make the American people dependent on the government. All of these are constitutionally denied the federal government to do. The greatest travesty though is their relentless drive to remove the Creator from our thought and minds, and to protect those perversions that are repugnant, such as gay marriage. They want our false god to be the government itself.

How much further will our government(s) take us down the path? To true socialism without doubt. Will the nation be led into National Socialism? Not quite, but our government has been learning well the tricks Hitler used to gain the peoples support. The fact that the trickery and deception of Adolf Hitler is being used is apparent when one thinks about what our major political parties tout. The party backing a supposed belief in Christianity and morality is using a deceiving message that Hitler stated way back in 1933:

"The National Government will regard it as its first and foremost duty to revive in the nation the spirit of unity and cooperation. It will preserve and defend those basic principles on which our nation has been built. It regards Christianity as the foundation of our national morality, and the family as the basis of national life." – Adolf Hitler in his New World Order, Proclamation to the German Nation at Berlin, February 1, 1933.

Of course, we hear both political parties claim that this-and-that is being done or proposed "for the children". Hitler did the same as shown below:

In fact it was Adolf Hitler who urged that "the state must declare the child to be the most precious treasure of the people" and who explained, in the words of Rabbi Daniel Lapin, that "as long as government is perceived as working for the benefit of children, the people happily will endure almost any curtailment of liberty."

How about gun control, as advocated by the brain dead and those in politics wishing to remove the means of resisting tyranny? This to was done by Hitler and he stated:

"1935 will go down in history! For the first time a civilized nation has full gun registration! Our streets will be safer, our police more efficient, and the world will follow our lead in the future!" -- Adolf Hitler

It was made safer, for his police and Gestapo as they confiscated weapons not only in Germany but in the countries that followed suit after Hitler invaded them. Hitler was right when he stated:

"The victor will never be asked if he told the truth." - Adolf Hitler

"What luck for the rulers that men do not think." - Adolf Hitler

"The great masses of the people... will more easily fall victims to a big lie than to a small one." - Adolf Hitler

Appendix A - Sources

SOURCES

This is a list of sources that can be used in conjunction with this document. These sources are for the most part official federal government web sites:

Item:	Subject/Material	URL
1	16 th Amendment The Purpose of the Sixteenth Amendment: Taxes on Wages and Salaries are Direct: No Taxation Without our Consent: There is no Exemption to the Apportionment Rule:	http://www.vivienkellems.com/Philip_Hart_Part_1.html http://www.vivienkellems.com/Philip_Hart_Part_2.html http://www.vivienkellems.com/Philip_Hart_Part_3.html http://www.vivienkellems.com/Philip_Hart_Part_4.html
2	A Century of Lawmaking for a New Nation - U.S. Congressional Documents and Debates 1774-1873	http://lcweb2.loc.gov/ammem/amlaw/lawhome.html
3	Code of Federal Regulations (all Titles)	http://www.gpoaccess.gov/cfr/index.html
4	Constitution of the United States of America with Analysis and Interpretation	http://www.gpoaccess.gov/constitution/index.html
5	Cornell Law school	http://www.law.cornell.edu/
6	Cornell Law School Court opinions (Supreme Court)	http://supct.law.cornell.edu/supct/
7	Federal Register	http://www.gpoaccess.gov/fr/index.html
8	How Our Laws Are Made	http://thomas.loc.gov/home/lawsmade.bysec/publication.html
9	Internal Revenue Manual (intentionally incomplete)	http://www.irs.gov/irm/index.html
10	International Monetary Fund Tax Law Drafting Samples	http://www.imf.org/external/np/leg/tlaw/2000/eng/preface.htm
11	Introduction to Basic Legal Citation	http://www.law.cornell.edu/citation/
12	IRS Bulletins	http://unclefed.com/Tax-Bulls/index.html
13	Joint Committee on Taxation	http://www.house.gov/jct/pubs92.html
14	National Archives and Records Administration The Federal Register Tutorial	http://www.archives.gov/federal-register/tutorial/
15	National Archives and Records Administration Document Drafting Handbook	http://www.archives.gov/federal-register/write/handbook/
16	National Archives and Records Administration Drafting Legal Documents	http://www.archives.gov/federal-register/write/legal-docs/
17	National Partnership for Reinventing Government's "Writing User-Friendly Documents."	http://www.blm.gov/nhp/NPR/pe_toc.html
18	Parallel Table of Authorities and Rules	http://www.gpoaccess.gov/cfr/about.html
19	The Federal Register: What it Is and How to Use It	http://www.archives.gov/federal_register/tutorial/download.html
20	The Federalist Papers	http://lcweb2.loc.gov/const/fedquery.html
21	The United States Government Printing Office Style Manual 2000	http://www.gpoaccess.gov/stylemanual/browse.html

Appendix A - Sources

Item:	Subject/Material	URL
22	Treasury Financial Manual	http://www.fms.treas.gov/tfm/
23	U.S. Attorney's Manual	http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/
24	United States Code (all Titles)	http://www.gpoaccess.gov/uscode/index.html

Appendix B – Other Supreme Court Cites

From the Corpus Juris Secundum (CJS)

Refer to the chapter Researching Law Citations on page 312 in the use of this secondary source.

Miscellaneous Cites

These cites do not appear elsewhere in this document but are very important in what they state.

“ ... if the doctrine of stare decisis has any meaning at all, it **requires that people in their everyday affairs be able to rely on our decisions** and not be needlessly penalized for such reliance ..” (-U.S. Supreme Court); *United States v. Mason*, 412 U.S. 399, 400 (1973)

“ In our complex tax system, uncertainty often arises even among taxpayers who earnestly wish to follow the law ... The requirement of an offense committed "willfully" is not met, therefore, if a taxpayer has *relied in good faith on a prior decision of this Court.*” (-U.S. Supreme Court); *United States v. Bishop*, 412 U.S. 346, 360, 361 (1973)

“ ... under the Federal Income Tax Act of October 3, 1913 ... under the Corporation Excise Tax Act of 1909 ... Certainly the term 'income' has no broader meaning in the 1913 act than in that of 1909 ... there is no difference in its meaning as used in the two acts ... ” - *Southern Pac. Co. v. Lowe*, 247 U.S. 330, 331, 334, 335 (1918)

[the Spreckels case was pivotal in legislation for the 16th Amendment; notice it does not concern working people]: **“the income tax imposed by the internal revenue act of June 30th, 1864 .. was not a direct tax, but an excise duty or tax within the meaning of the Constitution ... did not, in the sense of the Constitution, impose a direct tax ... not, in the constitutional sense ... but in effect ‘a duty or excise law upon the privilege ... for the transaction of the business ...”** - *Spreckels Sugar Refining Co. v. McClain*, 192 U.S. 397, 411, 412 (1904)

“ ... the 1921 Revenue Act ... interpreting the Corporation Tax Law of 1909 ... imposed an excise tax on corporations, measured by their income ... ‘income,’ as used in the revenue acts taxing income, adopted since the Sixteenth Amendment, has the same meaning that it had in the act of 1909. ” - *Burnet v. Harmel*, 287 U.S. 103, 107-8 (1932)

“... [1909 Excise Tax] the legislative purpose was ... to tax the conduct of the business of corporations organized for profit by a measure based upon the gainful returns from their business operations and property ... an act for taxing the doing of business in corporate form upon the basis of the income received 'from all sources' ... ” - *Doyle v. Mitchell Bros. Co.*, 247 U.S. 179, 183 (1918)

“ **'From whatever source derived,'** as it is written in the Sixteenth Amendment, ***does not mean from whatever source derived.***” - *Wright v. United States*, 302 U.S. 583, 607 (1938)

“Income is the thing which may be taxed – income from any source ... the settled doctrine here is that the Sixteenth Amendment confers no power upon Congress to define and tax as income .. something which theretofore could not have been properly regarded as income. Also, this court has declared: “Income may be defined as the gain derived from capital, from labor, or from both combined, ‘provided it be understood to include profit gained through a sale or conversion of capital assets’ ... ” - *Taft v. Bowers*, 278 U.S. 470, 481-2 (1929)

“Moreover, even if there is no showing of actual bias in the tribunal, this Court has held that due process is denied by circumstances that create the likelihood or the appearance of bias. This rule was well established long before the right to jury trial was made applicable in state trials and does not depend on it.”

As this court said in *In Re Murchison*, 349 U.S. 133 at 136 (1955), '(f)airness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness.'

Fifth Amendment and Taxation

The court has held that the Fifth Amendment applies regarding taxation:

Miranda v. Arizona, 384 U.S. 436, 467 (1966; U.S. Supreme Court): “.. there can be no doubt that the Fifth Amendment privilege is available outside of criminal court proceedings and serves to protect persons in all settings .. from being compelled to incriminate themselves.”

Kastigar v. United States, 406 U.S. 441, 444-5 (1972; U.S. Supreme Court): “The Fifth Amendment privilege against compulsory self-incrimination .. can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory; and it protects *against any disclosures that the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used.*”

Blau v. United States, 340 U.S. 159, 161 (1950; U.S. Supreme Court): “Answers to the questions asked by the grand jury would have furnished a link in the chain of evidence needed in a prosecution of petitioner .. *the Constitution gives a witness the privilege of remaining silent.*”

Miranda v. Arizona, 384 U.S. 436, 476 (1966; U.S. Supreme Court): “The privilege against self-incrimination protects the individual from being compelled to incriminate himself in any manner; it does not distinguish degrees of incrimination.”

United States v. Sharp, 920 F.2d 1167 (U.S. Court of Appeals - 4th Circuit): “ ..the fifth amendment .. may apply in the context of an IRS investigation into *civil tax liability*, given the recognized potential that such investigations have for leading to criminal prosecutions.”

U.S. v. Troescher, No. 95-55609 (1996; U.S. Court of Appeals - 9th Circuit): “ ..the Fifth Amendment *may be validly invoked* when the taxpayer fears prosecution *for tax crimes.*” “ .. there is no “Tax-Crime Exception” to the Fifth Amendment, .. [Footnote 3:] We need not consider how or in what manner *the Fifth Amendment* may be invoked as a defense to a prosecution for failure to file tax returns.”

U.S.A. v. Bodwell, No. 95-15987 (1995; U.S. 9th Circuit Court of Appeals): “A reasonable belief that information concerning income or assets .. might be used to establish criminal failure to file a tax return can support a claim of Fifth Amendment privilege.”

The Supreme Court says the filing of a tax return is compelled like the appearing of a witness. This 'witness - return' you wrote testifies against yourself. Also, the Court speaks of 'unprivileged information' on returns, which means some is privileged, qualifying for 5th Am. silence:

Garner v. United States, 424 U.S. 648, 650, 652-3 (1976; U.S. Supreme Court): “ ..the privilege could be claimed against specific disclosures sought on a return .. The Government compels the filing of a return much as it compels, for example, the appearance of a 'witness' before a grand jury .. Prosecutions and the summons procedure also induces taxpayers to disclose unprivileged information on their returns .. under compulsion to make disclosures as a witness who revealed information instead of claiming the privilege, lost the benefit of the privilege.”

The Supreme Court says you can assert the 5th Amendment on your tax return. Is there a Miranda Warning on your tax return? Garner was denied the 5th Amendment with no warning on the 1040 that he could be silent - an obvious Miranda violation ignored by courts ...

Appendix B - Other Supreme Court Cites

Miranda v. Arizona, 384 U.S. 436, 471 (1966; U.S. Supreme Court): “..the *warnings* of the right to remain silent and that anything stated can be used in evidence against him, this warning is an absolute prerequisite ...”

Garner v. United States, 424 U.S. 648, 649-50 (1976; U.S. Supreme Court): “This case involves a nontax criminal prosecution in which the Government introduced petitioner's income tax returns to prove the offense against him ... introduced, over Garner's Fifth Amendment objection, .. The prosecution relied on .. his returns .. Garner appealed to the Court of Appeals for the Ninth Circuit, contending that the privilege against compulsory self-incrimination entitled him to exclude the tax returns .. the Court of Appeals held that Garner's failure to assert the privilege on his returns defeated his Fifth Amendment claim .. We agree.”

United States v. Sullivan, 274 U.S. 259, 263 (1927; U.S. Supreme Court): “If the form of return provided called *for* answers that the defendant was privileged from making, he could have raised the objection in the return, but could not on that account refuse to make a return at all.”

Garner v. United States, 424 U.S. 648, 656, 661 (1976; U.S. Supreme Court): “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' .. Since Garner disclosed information on his returns instead of objecting, his Fifth Amendment claim would be defeated ..” “Garner notes that a taxpayer who claims the privilege on his return faces the possibility of a criminal prosecution under 7203 *for* failure to make a return. He argues that the possibility of prosecution .. compels a taxpayer to make incriminating disclosures rather than to claim the privilege. This contention is not entirely without force, but we find it unpersuasive.”

”Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions; not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the **nonmoving** is to be believed, **and** all justifiable inferences are to be drawn **in** his **favor**. Adicks, 398 U.S., at 158-159. Neither do we suggest that the trial courts should act other than with caution in granting summary judgment or that the trial court may not deny summary judgment in a case where there is reason to believe that the better course would be to proceed to a full trial. Kennedy v. Silas Mason Co., 334 U.S. 241 (1948)” Anderson v. Liberty Lobby, INC., 477 U.S. 242 (1986) (Emphasis added.)

”[I]n ruling on a motion for summary judgment, the nonmoving party's evidence ”is to be believed, and all justifiable inferences are to be drawn in /that party's J favor.” Anderson, supra, at 255” Hunt v. Cromartie, 526 U.S. 541 (1999)

”A central tenet of our republic – a characteristic that separates us from totalitarian regimes throughout the world – is that the government and private citizens resolve disputes on an equal playing field in the courts. When citizens face the government in the federal courts, the job of the judge is to apply the law, not to bolster the government's case. ” Beaty v. United States, 937 F.2d 288 (6th Cir. 1991).

