

John A. Valldeljuli  
c/o P.O. Box 294  
Keystone Heights, FL 32656-0294

Mr. John Harrell, Agent  
Internal Revenue Service  
6800 Southpoint Parkway  
Suite 500, Harrell/5113  
Jacksonville, FL 32216-6221

May 19, 1994 U.S. Express mail no. EG-035718619US

CONSTRUCTIVE LEGAL NOTICE OF MISAPPLICATION OF IRC 6331, NO  
ASSESSMENT AUTHORITY, SIGNING OF FALSE DOCUMENTS, MAIL FRAUD

Dear Mr. Harrell:

1. This letter will serve as constructive legal notice that your personally signed Notice of Intent to Levy dated 4/25/94, where you cite as your legal evidence of authority of law to lien and levy as Section 6331 of the Internal Revenue Code, is hereby refuted and rebutted thus legal presumption of evidence of law is removed.

"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. Constitution. Accordingly, an appeals representative in his/her conclusions of fact or application of the law, shall hew to the law and the recognized standards of legal construction." 26 CFR 601.106 (1) Rule 1.

Title 26, Internal Revenue Code, of the U.S. Codes has not been enacted as positive law. United States Code Service (1993) 1 USCS 204 page 52 (attached).

Positive law. "Law actually and specifically enacted or adopted by proper authority for the government of an organized jural society." Black's Law Dictionary

Prima facie. "At first sight; on the first appearance; on the face of it; so far as can be judged from the first disclosure; presumably; a fact presumed to be true unless disproved by some evidence to the contrary." Black's Law Dictionary

Official source for United States laws is Statutes at Large and United States Code is only prima facie evidence of such laws. Royer's Inc. v. United States (1959, CA3 Pa) 265 Fd2 615, 59-1 USTC 9371, 3 AFTR 2d 1137.

Statutes at Large are "legal evidence" of laws contained therein and are accepted as proof of those laws in any court of United States. Bear v. United States (1985, DC Neb) 611 F Supp 589, affd (1987, CA8 Neb) 810 F2d 153.

Unless Congress affirmatively enacts title of United States Code into law, title is only "prima facie" evidence of law. Preston v. Heckler (1984, CA9 Alaska) 734 F2d 1359, 34 CCH EPD 34433, later proceeding (1984, DC Alaska) 596 F Supp 1158.

Where title has not been enacted into positive law, title is only prima facie or rebuttable evidence of law, and if construction is necessary, recourse may be had to original statutes themselves. United States v Zuger (1984, DC Conn) 602 F Supp 889, affd without op (1985, CA2 Conn) 755 F2d 915, cert den and app dismd (1985) 474 US 805, 88 L Ed 2d 32, 106 S Ct 38.

Even codification into positive law will not give code precedence where there is conflict between codification and Statutes at Large. Warner v. Goltra (1934) 293 US 155, 79 L Ed 254, 55 S Ct 46; Stephan v. United States (1943) 319 US 423, 87 L Ed 1490, 63 S Ct 1135; United States v. Welden (1964) 377 US 95, 12 L Ed 152, 84 S Ct 1082.

United States Code does not prevail over Statutes at Large when the two are inconsistent. Stephan v. United States (1943) 319 US 423, 87 L Ed 1490, 63 S Ct 1135; Peart v. The Motor Vessel Bering Explorer (1974, DC Alaska) 373 F Supp 927.

Although United States Code establishes prima facie what laws of United States are, to extent that provisions of United States Code are inconsistent with Statutes at Large, Statutes at Large will prevail. Best Food, Inc. v. United States (1956) 37 Cust Ct 1, 147 F Supp 749.

Where there is conflict between codification and Statutes at Large, Statutes at Large must prevail. American Export Lines, Inc. v. United States (1961) 153 Ct Cl 201, 290 F2d 925; Abell v. United States (1975) 207 Ct Cl 207, 518 F2d 1369, cert den (1976) 429 US 817, 50 L Ed 2d 76, 97 S Ct 59.

Internal Revenue Code construction to Statutes at Large must be by individual section and subsection since each section and subsection is derived from their own set of Statutes at Large. pamphlet, Joint Committee on Taxation, "Derivations of Code Sections of the Internal Revenue Codes of 1939 and 1954 (JCS-1-92), January 21, 1992, U.S. Government Printing Office. United States v. Wodtke (1985, ND Iowa) 627 F Supp 1034, 86-2 USTC 9669, 57 AFTR 2d 86-1334, affd (1988, CA8 Iowa) 871 F2d 1092.

Accordingly, 6331(a) was derived from the 1954 code, which was derived from sections 3310, 3660, 3690, 3692 and 3700 of the 1939 code. (Joint Committee on Taxation, Derivations of Code Sections of the 1939 and 1954, 1992, U.S. Government)

Section 3310 is derived from Section 3185 of the Revised Statutes of 1874 (R.S. 1874) and regards timing of returns and does not refer to the type of taxes authorized collected.

Section 3660 Statute at Large was enacted on June 6, 1932. vol. 47 page 287 chapter 209, Act section 1105 and was amended on May 10, 1934, vol. 48, page 758, chap. 277, act sect. 510. and deals with jeopardy assessment and does not refer to the type of taxes authorized collected.

Section 3690 was derived from R.S. Statutes of 1874 section 3187 and is titled "Taxes collectible by distraint". The actual Statute at Large enacted by Congress which reveals conclusive Congressional intent as to taxes authorized to be collected by levy and distraint was enacted on July 13, 1866 and refers only to taxes on cotton and distilled spirits. (See pages 98, & 106 of the Act attached, Chapter 184, Section 9, vol. 14.) There has not been an amending Statute at Large to this date changing the intent of Congress.

Section 3692 was derived from section 3188 of the R.S. of 1874 and is titled "Mode of Levying Distraint" and does not refer to the type of taxes authorized collected.

Section 3700 was derived from section 3196 of R.S. of 1874 and is titled "When real estate may be sold to satisfy taxes" and does not refer to the type of taxes authorized collected.

Section 6331(b) is derived from sections 3690, 3692, and 3700 of the 1939 code which have already been discussed above.

Clearly, the only Statute at Large which identifies the type of taxes which are authorized to be collected by levy and distraint are taxes on cotton and distilled spirits per the Act enacted by Congress in 1866 and referred to in the paragraph above regarding Section 3690 of the 1939 Code. I am not involved in the business of cotton or distilled spirits.

In complete harmony with the fact that taxes on distilled spirits and cotton are the only taxes authorized to be collected by levy and distraint under IRC section 6331 are the implementing code of Federal Regulations, CFR, published by the U.S. Government printing office.

Please refer to page 840 of the CFR index attached. The implementing regulation for IRC section 6331 is 27 Part 70, which is under the Bureau of Alcohol, Tobacco, and Firearms.