# TAX RESISTER FAQ

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This page is our attempt to rebut only the false or incomplete or deceptive portions of some of the more common propaganda about taxes you are likely to hear from both the government and the legal profession. Much of what Mr. Evans writes in his article we agree with. Our main beef with his writings is what he, like most in the tax profession, doesn't tell you the WHOLE truth, and that portion he deliberately omits is what hurts you the most. These issues focus on the following facts:

1. That you can't trust what most tax attorneys tell you, because most of them, along with most of the payroll and accounting and financial planning community, would be out of a job if they told you the complete truth about taxes.
2. That the I.R.C. Subtitle A is an indirect excise tax upon a "trade or business". In the case of I.R.C. Subtitle A, the tax is upon a federal business trust, the Social Security Trust, which a person with an SSN becomes the "trustee" and "public officer" over in the context of all earnings subject to W-4 withholding. It is "indirect" because the tax is upon the trust and not upon the "trustee" as a private person. This business trust is a wholly owned subsidiary of the "United States", which is a federal corporation, as indicated in 28 U.S.C. §3002(15)(A). In fact, the "United States" is the Beneficiary of this trust, and the Trustee is simply an "employee" or agent of the trust whose deferred compensation is the Socialist INsecurity payments he or she will receive in old age. Therefore, officers of this trust such as those with SSN's, become "officers of a corporation". Since the domicile of the corporation is the District of Columbia, then the effective "domicile" or "residence" of all those persons representing the corporation also becomes the District of Columbia, pursuant to Federal Rule of Civil Procedure 17(b), 26 U.S.C. §7701(a)(39), and 26 U.S.C. §7408(d ), 26 U.S.C. §7701(a)(9) and (a)(10). See the following for exhaustive proof of this fact:
   *Resignation of Compelled Social Security Trustee*
   http://famguardian.org/TaxFreedom/Forms/Emancipation/SSTrustIndenture.pdf
3. That all excise taxes are avoidable by avoiding the taxed activity and employment or contracts with the artificial entity being taxed, which in this case is the Social Security Trust created when the SS-5 form is signed and submitted.
4. That a "trade or business" is a "public office" in the U.S. government.
5. That those exercising "public office" are basically treated as federal contractors, or "employees", or agents. The W-4, in fact, is described in the regulations at 26 C.F.R. §31.3401(a)-3(a) and in 26 U.S.C. §3402(p) as an "agreement", which means it is a private contract between you and Uncle Sam to procure "social insurance". Since you can't lawfully receive tax money back from the government without being a federal instrumentality or contractor performing official government functions, then you have to become a "public officer" in order to collect federal benefits. Click here for an article on this scam.
6. That a "trade or business" is a voluntary activity, that anyone may choose *not* to engage in.
7. That engaging in it requires your consent and signature in some form, through:
   7.1 Signing and submitting either a W-4 form
   7.2 Signing and submitting a 1040, which identifies your earnings as "trade or business" under penalty of perjury, even if they in fact are not.
   7.3 Singing and submitting an SS-5 form, which makes you into "federal personnel" as defined in 5 U.S.C. §552a(a)(13). See the article below for exhaustive details:
   *Resignation of Compelled Social Security Trustee*
   http://famguardian.org/TaxFreedom/Forms/Emancipation/SSTrustIndenture.pdf
   7.2 Failing to rebut false information returns filed against you that connect you to a "trade or business", pursuant to 26 U.S.C. §6041. Most people who are "nontaxpayers" and are not engaged in a "trade or business" can involuntarily become connected to it if a third party files a false information return against them.
8. That the Social Security Trust is a federal "franchise", and as such, it is property of the United States subject to federal jurisdiction under Article 4, Section 3, Clause 2 of the Constitution. Pursuant to the Separation of Powers Doctrine, it is a "federal question" that must be litigated in federal court, even though the "trustees" with Slave Surveillance Numbers are situated outside of federal territorial jurisdiction and domiciled in a state of the Union. This was confirmed by the U.S. Supreme Court in *Alden v. Maine*, 527 U.S. 706 (1999). It is also confirmed by the following:

> *American Jurisprudence, 2d*
> *United States*
> *§ 42 Interest on claim [77 Am Jur 2d UNITED STATES]*
>
> ***The interest to be recovered as damages for the delayed payment of a contractual obligation to the United States is not controlled by state statute or local common law. In the absence of an applicable federal statute, the federal courts must determine according to their own criteria the appropriate measure of damages.*** *State law may, however, be adopted as the federal law of decision in some instances.*
> *[American Jurisprudence, 2d, United States, Section 42: Interest on Claim]*

9. That Socialist Security is only available to statutory "U.S. persons" as defined in 26 U.S.C. §7701(a)(30), and those domiciled within states of the Union are not statutory "U.S. Persons", but rather "nonresident aliens". However, the federal government has been more than willing to deceive these people into fraudulently declaring that they are statutory "U.S. persons" with a domicile in the District of Columbia by filling out the right forms incorrectly, or worst yet filling out the wrong forms. The feds have violated the law by allowing those states of the Union to join Socialist Security, even though they are not qualified, and when they do this, they effectively must elect to change their status from "non-resident non-person" and CONSTITUTIONAL but not STATUTORY citizens under federal law into "residents", who are aliens with a legal domicile or "residence" in the District of Columbia under 26 U.S.C. §7701(b)(1)(A). See:
   *Why You Aren't Eligible for Social Security, Form #06.001.*
   http://sedm.org/Forms/06-AvoidingFranch/SSNotEligible.pdf
10. That everything that goes on IRS form 1040 is "trade or business" income and that all "U.S. persons" domiciled or residing in the "United States" earn "trade or business" income under 26 U.S.C. §864(c)(3).
11. That the term "United States" has multiple meanings, depending on the context, and that the Internal Revenue Code does not define the meaning of "United States" as used in the phrase "sources within the United States". 26 U.S.C. §7701(a)(9) and (a)(10) and 4 U.S.C. §110(d) only define "United States" in a geographical sense, but there are other senses and this definition does not rule out those other sense. Another sense is The GOVERNMENT sense. In fact, this "United States" means the federal corporation defined in 28 U.S.C. §3002(15)(A). The U.S. Supreme Court also agrees that the U.S. government is a corporation, when it said:

    > *"Corporations are also of all grades, and made for varied objects; **all governments are corporations, created by usage and common consent, or grants and charters which create a body politic for prescribed purposes; but whether they are private, local or general, in their objects, for the enjoyment of property, or the exercise of power, they are all governed by the same rules of law, as to the construction and the obligation of the instrument by which the incorporation is made. One universal rule of law protects persons and property**. It is a fundamental principle of the common law of England, that the term freemen of the kingdom, includes 'all persons,' ecclesiastical and temporal, incorporate, politique or natural; it is a part of their magna charta (2 Inst. 4), and is incorporated into our institutions. The persons of the members of corporations are on the same footing of protection as other persons, and their corporate property secured by the same laws which protect that of individuals. 2 Inst. 46-7. 'No man shall be taken,' 'no man shall be disseised,' without due process of law, is a principle taken from magna charta, infused into all our state constitutions, and is made inviolable by the federal government, by the amendments to the constitution."*
    > *[Proprietors of Charles River Bridge v. Proprietors of, 36 U.S. 420 (1837)]*

12. That most of what the IRS prints and says on its website and tells you on the telephone is effectively LIES, because they are not held accountable for anything they say. See the following article for details:
    http://famguardian.org/Subjects/Taxes/Articles/IRSNotResponsible.htm
13. That Subtitle A of the I.R.C. describes what amounts essentially to a federal contractor kickback program, where the W-4 and the Information Return and the Taxpayer Identification Number (TIN) constitute constructive or "prima facie" consent to the contract and consent to act as "public officials". This is further described in the enlightening article below:

    *Why Your Government is either a Thief or You Are a "Public Official" for Income Tax Purposes, Form #05.008*
    DIRECT LINK: http://sedm.org/Forms/05-MemLaw/WhyThiefOrEmployee.pdf

The original title of this article was "Tax Protester FAQ". Since the term "Tax Protester" has been outlawed by the IRS Restructuring and Reform Act of 1998, we renamed it "Tax Resister FAQ" and replaced all occurrences of "tax protester" with "tax resister" that were not part of court cites. The original and latest version of Mr. Evans version of this document may be found at:

http://evans-legal.com/dan/tpfaq.html

We have attempted to privately debate Mr. Evans, but he refused. Silence is agreement pursuant to Federal Rule of Civil Procedure 8(b)(6). Therefore, we must conclude that Mr. Evans agrees with everything we say here and is equitably estopped from further challenging it. Nevertheless, we welcome his and everyone else's rebuttals and we have not seen any credible source that rebuts our comments within this article after six years of research and countless reviews by third parties. Our responses and rebuttal to the arguments made appear in yellow boxes with brown type below each comment. Like the original work below, the response to the assertions made by Mr. Evans is also a work in progress and is by no means complete. We should also emphasize that there are many statements of Mr. Evans that we agree with. This article should in no way be construed as a disapproval of EVERYTHING that either he or the courts have said on the subjects he covers.

If you are a freedom advocate and someone presents you with the Tax Resister FAQ below and tells you that you are wrong, we suggest:

1. Handing them the rebutted version appearing below and asking them to rebut the rebuttals contained in it.

2. Asking them to answer the admissions contained in the pamphlet below:
   *Admissions relating to Alleged Liability*, Form #03.003
   http://sedm.org/Forms/FormIndex.htm (OFFSITE LINK)
3. Demanding that they stay focused on what the law says, instead of the credibility of any particular person who might have shared an opinion about what it says. This will prevent those who might be attacking your beliefs from "politicizing" the discussion and thereby making you into a victim.

We also emphasize that we do not resist or protest "taxes". There is no such thing as a lawful income "tax" in the case of a "nonresident alien" not engaged in a "trade or business" who has no income from the "United States", as described in 26 U.S.C. §7701(a)(31) and 26 C.F.R. §1.872-2(f). Instead, we protest extortion, which is the illegal enforcement of the Internal Revenue Code against persons who are not subject to it and who are "nontaxpayers". The I.R.S. and the government would like you to believe that such persons don't even exist, but they DO in fact exist, and they are mentioned in the code itself. All you have to do is read it and you just might learn that you are one of these. The IRS even has a publication to describe these people. It's called "Your Rights as a Nontaxpayer" and it is available at:

*http://sedm.org/LibertyU/NontaxpayerBOR.pdf (OFFSITE LINK)*

For further study, refer to the following, which provide rebuttals to many of the assertions made here by Mr. Evans:

1. Flawed Tax Arguments to Avoid-most frequently updated.
2. Rebutted Version of the IRS pamphlet "The Truth About Frivolous Tax Arguments"
3. Rebutted Version of Congressional Research Service Report 97-59A: "Frequently Asked Questions Concerning the Federal Income Tax"

Lastly, we emphasize that the comments added here represent the beliefs of both the authors and other readers of this website. They are not facts, but beliefs, just like EVERYTHING the IRS publishes per their own admission. The only way to make them into facts is confirm every one of them with your own independent research of the law for yourself. This is confirmed by the free pamphlet below:

*Reasonable Belief About Tax Liability, Form #05.007 (OFFSITE LINKS)*
*DIRECT LINK: http://sedm.org/Forms/05-MemLaw/ReasonableBelief.pdf*
*FORMS PAGE: http://sedm.org/Forms/FormIndex.htm*

*Like most things on the Internet, this is a work in progress. Not all citations and quotations have been confirmed, and several sections are incomplete. The full text of other court decisions against tax resisters can be found at the tax resister Hall of Fame.*]

# THE TAX RESISTER FAQ

*Created by Daniel B. Evans*

[*Last updated: 4/10/2001*]

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11. The income tax cannot apply to citizens outside of the District of Columbia, the territories of the United States, and the forts and military bases of the United States, because the federal government has no jurisdiction outside of those "federal areas."
12. The income tax cannot apply to natural-born "sovereign state citizens" because they are not "citizens" within the meaning of the 14th Amendment.
13. The federal income tax cannot apply to wages, because forcing people to share the fruits of their labors would be the same as slavery or "involuntary servitude" prohibited by the Thirteenth Amendment.
14. The federal income tax amounts to a deprivation of property without due process and without just compensation, which is contrary to the 5th Amendment to the constitution.
15. Withholding of income tax from wages, and the assessment and collection of income taxes without any court order, is a deprivation of property without due process contrary to the 5th Amendment to the Constitution.
16. You cannot be required to file an income tax return because a tax return is a form of testimony and the 5th Amendment guarantees that you cannot be compelled to testify against yourself.
17. The IRS cannot require anyone to file an income tax return because that would be a violation of our 4th Amendment rights against unreasonable searches and seizures.
18. Receipt of Federal Reserve Notes is not "income" because Federal Reserve Notes are not lawful money ("coins in gold or silver") within the meaning of the Constitution.
19. The establishment of a "Pure Trust" can protect income and earnings from income tax, because a trust is a form of contract and is therefore protected from impairment by the contract clause to the Constitution.

### 3. Statutory Fallacies

1. The Internal Revenue Code does not define "income."
2. The Internal Revenue Code cannot define "income" because it is a term used in the Constitution and Congress cannot modify the Constitution by statute.
3. Wages are not income.
4. Wages are not "income" because wages represent an equal exchange of labor (a form of "property") for money (another form of property), so there is no gain and no income.
5. Wages are not income, but only a "source" of income (Section 61 of the Internal Revenue Code lists only sources of income), so wages are not taxable.
6. Wages paid within the United States are not a "source" of income defined by section 861 of the Internal Revenue Code, and so are not taxable.
7. The income tax does not apply to citizens outside of the District of Columbia and territories of the United States because the way "United States" is defined in the Internal Revenue Code does not include the states of the United States.
8. Nothing in the Internal Revenue Code makes an ordinary citizen liable for the income tax.
9. Nothing in the Internal Revenue Code requires an ordinary citizen to file a return.
10. The income tax is voluntary.
11. The income tax applies only to people exercising "privileges" or engaged in "revenue taxable activities" such as the sale of alcohol, tobacco, and firearms.
12. The income tax applies only to corporations.
13. The income tax applies only to government employees.

### 4. Procedural Fallacies

1. The Internal Revenue Service has never adopted any regulations imposing any income tax. Furthermore, failing to file a tax return is not a crime because the relevant provisions of the Internal Revenue Code have never been implemented by regulations.
2. The Internal Revenue Code is not a law.
3. The Office of Management and Budget does not require any form for the income tax imposed by section 1 of the Internal Revenue Code, and identifies section 1 of the Code as applying only to nonresident aliens.
4. The Internal Revenue Code does not require any payment of tax by individuals, and the Internal Revenue Service has admitted this by failing to include any reference to section 1 or section 6012 in the Privacy Act Statement included in Form 1040.
5. The Internal Revenue Service is not an agency of the federal government, but a private corporation incorporated in Delaware (or, alternatively, an agency of the government of Puerto Rico).
6. The tax laws only apply to "taxpayers" and you are not required to file returns or pay taxes if you are not a "taxpayer."
7. I have revoked my consent to be a taxpayer.
8. I have a letter from the IRS saying that I am not required to file an income tax return.
9. I am not required to file a tax return because I wrote a letter to the IRS demanding to know where in the Internal Revenue Code it says I am required to file and the IRS has failed to respond.
10. The tax laws cannot be enforced against citizens in federal courts, because federal courts are "admiralty" or "maritime" courts.

### 5. Paranoid Delusions

1. There are lots of tax resisters who have won cases against the IRS, such as John Cheek, Lloyd Long, and Gail Sanocki.
2. There are many lawyers and well-educated people who believe that tax resister positions are valid and have been successful in arguing tax resister cases. People like Lowell H. Becraft, Irwin Schiff, etc.
3. There are lots of court decisions favorable to tax resisters, but the judges always seal the transcripts, suppress the opinions, or issue "gag orders" against the parties so that the opinions are never published.

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# The Tax Resister FAQ

## 1. Introduction

### 1.1 What is the purpose of this FAQ?

The purpose of this FAQ is to provide concise, authoritative rebuttals to nonsense about the U.S. tax system that is frequently posted in misc.taxes, and on web sites scattered throughout the Internet, by a variety of fanatics, idiots, and dupes, frequently referred to by the courts as "tax resisters".

This "FAQ" is therefore not a collection of frequently asked *questions*, but a collection of frequently made *assertions*, together with an explanation of why each assertion is false.

And the assertions addressed in this FAQ are not merely false, but completely ridiculous, requiring not just ignorance of law and history, but a suspension of logic and reason.

In this FAQ, you will read many decisions of judges who refer to the views of tax resisters as "frivolous," "ridiculous," "absurd," "preposterous," or "gibberish." If you don't read a lot of judicial opinions, you may not understand the full weight of what it means when a judge calls an argument "frivolous" or "ridiculous." Perhaps an analogy will help the attitude of judges.

Imagine a group of professional scientists who have met to discuss important issues of physics and chemistry, and then someone comes into their meeting and challenges them to prove that the earth revolves around the sun. At first, they might be unable to believe that the challenger is serious. Eventually, they might be polite enough to explain the observations and calculations which lead inevitably to the conclusion that the earth does indeed revolve around the sun. Suppose the challenger is not convinced, but insists that there is actually no evidence that the earth revolves around the sun, and that all of the calculations of the scientists are deliberately misleading. At that point, they will be jaw-droppingly astounded, and will no longer be polite, but will evict the challenger/lunatic from their meeting because he is wasting their time. That is the way judges view tax resisters. At first, they try to be civil and treat the claims as seriously as they can. However, after dismissing case after case with the same insane claims, sometimes by the same litigant, judges start pulling out the dictionary to see how many synonyms they can find for "absurd."

The frustration of judges is well described in the following opinion of the Fifth Circuit Court of Appeals, responding to an appeal raising some of the ridiculous constitutional claims described in this FAQ:

> *"We are sensitive to the need for the courts to remain open to all who seek in good faith to invoke the protection of law. An appeal that lacks merit is not always--or often--frivolous. However we are not obliged to suffer in silence the filing of baseless, insupportable appeals presenting no colorable claims of error and designed only to delay, obstruct, or incapacitate the operations of the courts or any other governmental authority. Crain's present appeal is of this sort. It is a hodgepodge of unsupported assertions, irrelevant platitudes, and legalistic gibberish. The government should not have been put to the trouble of responding to such spurious arguments, nor this court to the trouble of 'adjudicating' this meritless appeal." Crain v. Commissioner, 737 F.2d 1417, 1418 (5th Cir. 1984).*

The court not only ruled against Crain, but imposed a damage award against him (essentially a fine) of $2,000 for bringing a frivolous appeal. Id at 1418.

So, when a judge calls an argument "ridiculous" or "frivolous," it is absolutely the worst thing the judge could say. It means that the person arguing the case has absolutely no idea of what he is doing, and has completely wasted everyone's time. It doesn't mean that the case wasn't well argued, or that judge simply decided for the other side, it means that there *was no other side.*. The argument was ***absolutely, positively, incompetent***. The judge is not telling you that you that you were "wrong." The judge is telling you that you are out of your mind.

This FAQ addresses only assertions that are frivolous, and only questions of law, not politics or economics. It is not the purpose of this FAQ to criticize any opinion, or stifle any debate, about the proper scope or operation of the federal tax system. For example, claims that the federal income tax is unfair, morally equivalent to theft, or bad economic policy are all matters of opinion, not law, and are outside the scope of this FAQ. However, a claim that the federal income tax is unconstitutional, unenforceable, or inapplicable is an assertion of law and is within the scope of this FAQ.

Finally, it should be noted that this FAQ does not include all of the decisions of all the federal courts that have been forced to deal with tax resisters and tax resister arguments, but includes mainly published decisions of the United States Supreme Court and Circuit Courts of Appeal that have most clearly refuted these tax resister claims. A few District Court and Tax Court decisions have been included to fill some gaps, as well as a few unpublished Circuit Court of Appeals decisions, but hundreds of published decisions of the Tax Court and District Courts have not been included, as well as many published and unpublished decisions of the Courts of Appeals.

An additional purpose of this FAQ is to perpetuate the following false myths by not addressing the true nature of the income tax described by Subtitle A of the Internal Revenue Code.

1. That the I.R.C. Subtitle A describes a direct, unapportioned tax.
2. That the Internal Revenue Code, all 9,500 pages of it, is completely unfathomable and unknowable for the average person, and that its best to believe what an "expert", such as Mr. Evans, who probably charges $400 per hour for his services, tells you about what it says you are supposed to do. Incidentally, our former Treasury Secretary Paul O'Neill, described the I.R.C. as:

   *"9,500 pages of gibberish."*
   *[Click here to read his musings for yourself]*

3. That it is not voluntary for "nontaxpayers".
4. That nontaxpayers, which are persons not subject to the I.R.C., do not exist.
5. That there is no Separation of Powers Doctrine and that the U.S. government is one, big national government that has superior jurisdiction over states of the Union, and that there is not such thing as state sovereignty, like most of the other corrupted nations of the world. Instead, all of the states of the Union are "territories" of the national government. Based on the way they are acting now, this is true, but this de facto behavior is not the system ordained by our Constitution.

The above false myths are propagated by the following means:

1. Quoting irrelevant case law. The Internal Revenue Manual, Section 4.10.7.2.9.8, says that the IRS is not obligated to change its position for any ruling below the U.S. Supreme Court.

   *Internal Revenue Manual*
   *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.*

   That means that we, as the sovereigns who it works for, are equally entitled to not have to regard any rulings below the U.S. Supreme Court as a basis to change our belief about what the law obligates us to do. Anyone who quotes cases to a "nontaxpayer" that only relate to "taxpayers" is practicing the equivalent of political propaganda by abusing case law for their own benefit. Examples of such abuse of case law as political propaganda include the following cites from Mr. Evans:
   1.1 "T.C. Memo": Tax Court case rulings. Tax Court is an Article 1, legislative arbitration board, not a court. It may not affect the rights of persons domiciled in the states without their consent.
   1.2 "F.2d" and "F.3d": These are district court rulings. District courts may only rule on issues relating to federal territory, property, and contracts.
2. Not describing what the definition is for the words he uses.
3. Trying to expand the definition of words beyond what the law clearly says. This is covered in the pamphlet *Legal Deception, Propaganda, and Fraud, Form #05.014*
4. Not respecting the separation of powers between the states of the Union and the federal government. The foundation of this

separation is found at 4 U.S.C. §72, which states that all "public offices", including those associated with a "trade or business", shall be exercised in the District of Columbia and nowhere else except as expressly authorized by law. You will note that the only law that extends public offices outside the District of Columbia for the purposes of enforcing the Internal Revenue Code is found in 48 U.S.C. §1612. There is no law which "expressly extends" public offices to any other state of the Union to enforce the I.R.C., which means that it is unenforceable there. This is also consistent with 26 U.S.C. §7621, which authorizes the president to establish internal revenue districts. He delegated that authority to the Secretary of the Treasury under Executive Order 10289. The Secretary then issued Treasury Order 150-02, in which the only remaining internal revenue district is in the District of Columbia. You will also note that 26 U.S.C. §7601 authorizes the Internal Revenue Service to canvass only these "districts" for persons liable for tax. No state of the Union or part of any state of the Union is within any current district.

5. By refusing to acknowledge what activity the tax is imposed upon, which is a "trade or business". This deceives the reader into thinking that the tax is on all earnings, rather than just upon those earnings connected with a "trade or business", which is defined as "the functions of public office" in 26 U.S.C. §7701(a)(26). See our article *The "Trade or Business" Scam*, for details.
6. By quoting irrelevant sources or sources that are not authoritative. This is covered in the free pamphlet below:

> *Reasonable Belief About Tax Liability, Form #05.007*
> *DIRECT LINK: http://sedm.org/Forms/05-MemLaw/ReasonableBelief.pdf*
> *FORMS PAGE: http://sedm.org/Forms/FormIndex.htm*

Based on the above pamphlet, the only reasonable basis for belief about liability for a person domiciled in a state of the Union and not in the District of Columbia or the "United States" are the following three sources, and notice the list EXCLUDES the Internal Revenue Code:

1. The rulings of the U.S. Supreme Court.
2. The United States Constitution.
3. The Statutes at Large after January 2, 1939.

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## 2. Constitutional Fallacies

### 2.1 The federal income tax is unconstitutional because it is a "direct tax" that must be apportioned among the states in accordance with the census.

False. The 16th Amendment to the Constitution, ratified in 1913, clearly states that "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

Before the adoption of the 16th Amendment, the constitutionality of an income tax was determined under Article I, Section 9, Clause 4 of the Constitution, which states that "No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken." Exactly what the framers of the Constitution meant by "Capitation, or other direct, Tax" is a little unclear. The concern seems to have been about a form of "capitation" (or "per person") tax imposed in England before the Revolution under which taxes were imposed on each citizen based on the value of the land owned by the citizen. The wealthy southern states of the new United States, with large plantations owned by relatively few people, may have been concerned about the imposition of a tax on the value of land and so sought an assurance that all "capitation" taxes would be allocated among the states in proportionate to their populations, not their wealth.

The U.S. Supreme Court adopted this narrow view of "Capitation, or other direct, Tax," when it decided the case of *Hylton v. United States*, 3 U.S. 171 (1796). Four separate opinions were written by the justices who heard the case (separate opinions were the common practice of that day), and all four justices agreed that "direct tax" was limited to a tax on the value of land (and slaves, who were considered to be part of the land).

The precise question of whether an *income tax* was a "direct tax" within the meaning of the Constitution did not arise until the Union enacted an income tax during the Civil War. The Supreme Court followed the opinions from the Hylton decision and ruled unanimously that an income tax was an "excise," and not a "direct tax," and did not need to be apportioned among the states. *Springer v. United States*, 102 U.S. 586 (1880).

Evans is correct that all income taxes are excise taxes. He tries to avoid calling them "indirect" by not calling them that outright, even though they are. Instead, he says what they AREN"T, not what they ARE to avoid stating the WHOLE truth. All indirect excise taxes are imposed upon activities and are therefore voluntary by avoiding the activity that is the subject of the tax. By choosing to engage the activity subject to tax, one consents to the tax. Anything that is the product of consent, in turn, cannot form the basis for an injury. Evans avoids this issue because he doesn't want to help you "unvolunteer", as a person who derives all of his professional earnings, his dignity, and his status from the enforcement of this voluntary donation program for the District of Columbia.

> *Volunti non fit injuria.*

*He who consents cannot receive an injury. 2 Bouv. Inst. n. 2279, 2327; 4 T. R. 657 ; Shelf. on mar. & Div. 449.*

*Consensus tollit errorem.*
*Consent removes or obviates a mistake. Co. Litt. 126.*

*Melius est omnia mala pati quam malo concentire.*
*It is better to suffer every wrong or ill, than to consent to it. 3 Co. Inst. 23.*

*Nemo videtur fraudare eos qui sciunt, et consentiunt.*
*One cannot complain of having been deceived when he knew the fact and gave his consent. Dig. 50, 17, 145.*

*Quod meum est sine me auferri non potest.*
*What is mine cannot be taken away without my consent. Jenk. Cent. 251. Sed vide Eminent Domain.*

*Id quod nostrum est, sine facto nostro ad alium transferi non potest.*
*What belongs to us cannot be transferred to another without our consent. Dig. 50, 17, 11. But this must be understood with this qualification, that the government may take property for public use, paying the owner its value. The title to property may also be acquired, with the consent of the owner, by a judgment of a competent tribunal.*
*[Bouvier's Maxims of Law, 1856;*
*SOURCE: http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviersMaxims.htm]*

We think it is just plain STUPID to trust or give any credibility to those whose only source of livelihood comes from perpetuating the unlawful enforcement of the Internal Revenue Code. They simply can't be objective. If you wouldn't ask a barber whether you need a haircut or a grocer whether you need food, then you shouldn't be asking either the government or an officer of the government and of the court who is licensed to practice law whether you should be paying them money. You are a damn fool if you would trust Evans with ANYTHING having to do with NOT giving him or the government money. He's a licensed attorney who gets his welfare check from the government, because if he doesn't tow the line, he starves after his license is pulled. We earn NOTHING by telling you this, and so you can trust it.

*" It is good for nothing," cries the buyer; But when he has gone his way, then he boasts."*
*[ Proverbs 20:13-15, Bible, NKJV]*

*"In the general course of human nature, A POWER OVER A MAN's SUBSISTENCE AMOUNTS TO A POWER OVER HIS WILL."*
*[Alexander Hamilton, Federalist Paper No. 79]*

*"For the time will come when they will not endure sound doctrine, but according to their own desires, because they [the judges who run the court by their own power and NOT according to law] have itching ears, they will heap up for themselves teachers [and court-appointed "experts" who are "deacons" of a state sponsored civil religion called "socialism"]; and they will turn their ears away from the truth, and be turned aside to fables [and that which is not "law" for the defendant because not a franchisee]. But you be watchful in all things, endure afflictions, do the work of an evangelist, fulfill your ministry."*
*[2 Tim. 4:3-5, Bible, NKJV]*

In the case of the Internal Revenue Code Subtitles A and C, the activity subject to tax is a "trade or business", which is defined in 26 U.S.C. §7701(a)(26) as "the functions of a public office", which office can ONLY be in the federal and not state governments because of the separation of powers doctrine that is the heart of the Constitution. Furthermore, it is a tax upon public conduct engaged in as part of a federal franchise. All franchises may only be imposed upon public offices within the government, because the ability to regulate private conduct is "repugnant to the constitution", as held repeatedly by the U.S. Supreme Court. These public offices are instrumentalities of the government, which is a federal corporation. Therefore, all such public officers are "officers of a corporation" and therefore "persons" as legally defined in 26 U.S.C. §7343 and 26 U.S.C. §6671(b). For details, see:

1. *Why Your Government is Either A Thief or You are a "Public Officer" for Income Tax Purposes*, Form #05.008 http://sedm.org/Forms/FormIndex.htm (OFFSITE LINK)
2. "Public" v. "Private" Employment: You Will be ILLEGALLY Treated as a Public Officer if You Apply for or Receive Government Benefits.

*Hylton* and *Springer* were limited (or "distinguished") in 1894, when the Supreme Court decided to re-examine the question of whether an income tax was a "direct tax." In the first *Pollock* decision, a narrow majority of the court (5 of the 9 justices) began with the premise that a tax on the income from property is the same as a tax on the value of the property itself, a premise completely inconsistent with every other Supreme Court decision before or since. The Court then concluded that a tax on rents received from real property was a "direct tax" and unconstitutional unless apportioned. *Pollock v. Farmers' Loan and Trust Co.*, 157 U.S. 429 (1894). On rehearing, the same five justices decided that a tax on dividends, interest, and other income from *personal* property (property other than land) was also a "direct tax" and so unconstitutional unless apportioned. *Pollock v. Farmers Bank and Trust Co.*, 158 U.S. 601 (1895)

The Pollock court was very clear that it was only a tax on the incomes from *property* that was a "direct tax," and other forms of income could be taxed without apportionment. This was confirmed by the court in *Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1 (1916). (See below for a more detailed discussion of the taxation of the income from labor.)

After the *Pollock* decisions, and before the ratification of the 16th Amendment, the Supreme Court also held that a corporate income tax was constitutional if it was based on the income from the manufacture and sale of goods, even though real and personal property were used to manufacture the goods. *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911)

Because of the *Pollock* decisions, Congress was limited in its ability to impose a tax on incomes, because it was necessary to determine the source of the income. Wages, salaries, and other earned incomes could be taxed, and income from manufacturing and other business activities could be taxed, but rents, interest, dividends, and other incomes from property could not be taxed without apportionment (a very awkward process). The 16th Amendment was therefore proposed by Congress, and ratified by the states, so that Congress could tax incomes "from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

The term "from whatever source derived", according to the U.S. Supreme Court, does NOT mean that Congress can tax ANYTHING, but only "income", which per the Internal Revenue Code Subtitles A and C means earnings connected with a public office in the U.S. government and does NOT include earnings from PRIVATE activity protected by the Constitution and the Bill of Rights.

> ***'From whatever source derived,' as it is written in the Sixteenth Amendment, does not mean from whatever source derived. Evans v. Gore, 253 U.S. 245 , 40 S.Ct. 550, 11 A.L.R. 519. See, also, Robertson v. Baldwin, 165 U.S. 275, 281 , 282 S., 17 S.Ct. 326; Gompers v. United States, 233 U.S. 604, 610 , 34 S.Ct. 693, Ann.Cas.1915D, 1044; Bain Peanut Co. v. Pinson, 282 U.S. 499, 501 , 51 S.Ct. 228, 229; United States v. Lefkowitz, 285 U.S. 452, 467 , 52 S.Ct. 420, 424, 82 A.L.R. 775.***
> *[Wright v. U.S., 302 U.S. 583 (1938)]*

Those lawfully engaged in the public office/"trade or business" franchise are not protected by the Constitution and the earnings derived from the exercise of said office are the ONLY type of "income" covered by either the Sixteenth Amendment or the Internal Revenue Code Subtitles A and C. The ONLY place that such offices may lawfully be exercised, per both the Constitution Article 1, Section 8, Clause 17 and 4 U.S.C. §72 is the District of Columbia and NOT within any state of the Union.

In claiming that Congress cannot tax incomes, tax resisters ignore both the plain language of the 16th Amendment and the fact that Congress could tax wages and other income from employment even before the adoption of 16th Amendment, based on the unanimous ruling of the Supreme Court in *Springer* and both the majority and dissenting opinions in *Pollock*.

We don't claim that Congress can't tax "incomes" as legally defined and NOT commonly understood. Rather, we claim that we don't earn "income" as legally defined and that the IRS should stick to the ONLY statutory definition of "income" found in 26 U.S.C. §643(b), which means the earnings of a trust or estate. That trust or estate, in turn, is an instrumentality of the government and not a human being or private entity, because the ability to tax or regulate private conduct is repugnant to the Constitution, as held by the U.S. Supreme Court.

We also think that judges and the IRS should strictly observe the rules of statutory construction, which FORBID adding anything to the definition of statutory terms that does not EXPRESSLY appear, because this is a violation of due process and THEFT.

> *"**Expressio unius est exclusio alterius**.A maxim of statutory interpretation meaning that **the expression of one thing is the exclusion of another.**Burgin v. Forbes, 293 Ky. 456, 169 S.W.2d 321, 325; Newblock v. Bowles, 170 Okl. 487, 40 P.2d 1097, 1100.Mention of one thing implies exclusion of another.**When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred.**Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded."*
> *[Black's Law Dictionary, Sixth Edition, p. 581]*

> *"**When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning.** Meese v. Keene, 481 U.S. 465, 484-485 (1987) ("It is axiomatic that the statutory definition of the term excludes unstated meanings of that term"); Colautti v. Franklin, 439 U.S. at 392-393, n. 10 ("As a rule, `a definition which declares what a term "means" . . . excludes any meaning that is not stated'"); Western Union Telegraph Co. v. Lenroot, 323 U.S. 490, 502 (1945); Fox v. Standard Oil Co. of N.J., 294 U.S. 87, 95-96 (1935) (Cardozo, J.); see also 2A N. Singer, Sutherland on Statutes and Statutory Construction § 47.07, p. 152, and n. 10 (5th ed. 1992) (collecting cases). That is to say, the statute, read "as a whole," post at 998 [530 U.S. 943] (THOMAS, J., dissenting), leads the reader to a definition. That definition does not include the Attorney General's restriction -- "the child up to the head." Its words, "substantial portion," indicate the contrary."*
> *[Stenberg v. Carhart, 530 U.S. 914 (2000)]*

The deliberate, willful, malicious, and avaricious abuse of "words of art" by judges, government prosecutors, and IRS employees in order

to deceive, vilify, kidnap the identity of, and STEAL from Americans whom the Constitution charges them with PROTECTING is exhaustively described in the following documents:

1. Legal Deception, Propaganda, and Fraud, Form #05.014
   http://sedm.org/Forms/05-MemLaw/LegalDecPropFraud.pdf
2. *Rules of Presumption and Statutory Interpretation*, Litigation Tool #01.006
   http://sedm.org/Litigation/01-General/RulesStatConstInterp.pdf

As the cited cases, as well as many others, have made abundantly clear, the following arguments alluded to by the Lonsdales are completely lacking in legal merit and patently frivolous: (1) individuals ("free born, white, preamble, sovereign, natural, individual common law `de jure' citizens of a state, etc.") are not "persons" subject to taxation under the Internal Revenue code; (2) the authority of the United States is confined to the District of Columbia; (3) the income tax is a direct tax which is invalid absent apportionment, and Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 15 S.Ct. 673, 39 L.Ed. 759, modified, 158 U.S. 601, 15 S.Ct. 912, 39 L.Ed. 1108 (1895), is authority for that and other arguments against the government's power to impose income taxes on individuals; (4) the Sixteenth Amendment to the Constitution is either invalid or applies only to corporations; (5) wages are not income; (6) the income tax is voluntary; (7) no statutory authority exists for imposing an income tax on individuals; (8) the term "income" as used in the tax statutes is unconstitutionally vague and indefinite; (9) individuals are not required to file tax returns fully reporting their income; and (10) the Anti-Injunction Act is invalid." *Lonsdale v. United States*, 919 F.2d 1440, 1448 (10th Cir. 1990).

In summary, this claim of Mr. Evans and the courts is absolutely correct, based on our own research. The entire Internal Revenue Code is completely constitutional. He just avoids telling you the WHOLE truth about the fact that it is VOLUNTARY to become a statutory "taxpayer" and once you become a "taxpayer" by signing up for government franchises, "benefits", and public offices, payment of the tax beyond that point is no longer voluntary. For more details on how you volunteered, see:

Why Domicile and Becoming a "taxpayer" Require Your Consent

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## 2.2 The income tax cannot apply to individual citizens, because that would be a "direct tax" prohibited by the Constitution.

False. Although the meaning of "direct tax" is a little unclear, it was always understood that taxes imposed by Congress could apply to, and be collected from, individual citizens.

In *Hylton v. United States*, 3 U.S. 171 (1796), the Supreme Court was unanimous in its opinion that Congress could impose a tax on a citizen of Virginia for carriages held for personal use. Of the four justices who heard the case, three were members of the Constitutional Convention that drafted the Constitution, and presumably knew what it meant.

Since the *Hylton* decision, no judge in the United States has ever suggested that the federal government cannot impose a tax on individual citizens.

> *"It is generally agreed that Article I of the Constitution authorizes Congress to tax the income of individuals, and that the Sixteenth Amendment eliminated the requirement that such taxes be apportioned among the states." In re: Michael Fleming, 86 AFTR2d ¶2000-5138; No. 97-6342-8G3 (U.S.Bank.Ct. M.D.Fl. 8/9/2000).*
>
> *"Congress may impose taxes on individuals in the states without apportionment among the several States, and 'without regard to any census or enumeration,' and 'on incomes, from whatever source derived.'" Secora v. United States, 1997 WL 460162, at 6 (U.S.D.C. Neb.).*

As recently as 1991, the Supreme Court referred to arguments that the federal income tax was unconstitutional as "surely frivolous." *Cheek v. United States*, 498 U.S. 192 (1991).

We agree with the U.S. Supreme Court above on this point.

The mistake made by tax resisters is in assuming that the phrase "Capitation, or other direct, Tax" in the Constitution is a reference to any tax that is collected directly from the person on whom it is imposed, while "indirect" taxes such as "Duties, Imposts and Excises" are collected on goods during manufacture, or in transit, and the ultimate burden is passed along to someone else (usually the consumer). However, this is *not* the meaning of "direct" and "indirect" that has been applied by the U.S. Supreme Court.

The Supreme Court has consistently held that the Constitution divides all taxes into two groups. One is any "Capitation, or other direct, Tax" (usually referred to as "direct taxes") and the other is "Duties, Imposts and Excises" (usually referred to as "indirect taxes"). The difference between the two is that "direct taxes" must be apportioned among the states based on the census of the population, while "indirect taxes" need only be uniform throughout the U.S.

In *Hylton v. United States*, 3 U.S. 171 (1796), all four Supreme Court justices who heard the case agreed that the meaning of "direct tax" was limited to a tax on the value of land (and slaves, who were considered to be part of the land).

This principle was expanded by the Supreme Court in *Pollock v. Farmers' Loan and Trust Co.*, 157 U.S. 429 (1894), to apply to taxes on the value of personal property (property other than land) as well as taxes on the value of land, but the Supreme Court has been consistent in holding that any tax on a transfer or other transaction, whether a sale, gift, or inheritance, is an "indirect tax," even though the tax is measured by the value of the property transferred (or the amount of the income). See, for example, *Springer v. United States*, 102 U.S. 586 (1880); *Knowlton v. Moore*, 178 U. S. 41 (1900); and *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911).

So, a "direct" tax is a tax on the ownership of property, while an "indirect" tax is a tax on a transaction or transfer of money or property.

And these interpretations are consistent with the meaning of "direct taxes" in the Federalist Papers, which show that "direct taxes" were taxes on wealth (i.e., the value of property), while "indirect taxes" were taxes on commerce.

For example, in Federalist #12, Alexander Hamilton wrote:

> *"It is evident from the state of the country, from the habits of the people, from the experience we have had on the point itself, that it is impracticable to raise any very considerable sums by direct taxation. . . .*
>
> *"No person acquainted with what happens in other countries will be surprised at this circumstance. In so opulent a nation as that of Britain, where direct taxes from superior wealth must be much more tolerable, and, from the vigor of the government, much more practicable, than in America, far the greatest part of the national revenue is derived from taxes of the indirect kind, from imposts, and from excises. Duties on imported articles form a large branch of this latter description."*

And, in Federalist #21, Alexander Hamilton wrote:

> *"Impositions of this kind [taxes on articles of consumption] usually fall under the denomination of indirect taxes, and must for a long time constitute the chief part of the revenue raised in this country. Those of the direct kind, which principally relate to land and buildings, may admit of a rule of apportionment."*

And, in Federalist #54, Hamilton or Madison wrote:

> *" It is not contended that the number of people in each State ought not to be the standard for regulating the proportion of those who are to represent the people of each State. The establishment of the same rule for the appointment of taxes, will probably be as little contested; though the rule itself in this case, is by no means founded on the same principle. In the former case, the rule is understood to refer to the personal rights of the people, with which it has a natural and universal connection. In the latter, it has reference to the proportion of wealth, of which it is in no case a precise measure, and in ordinary cases a very unfit one. But notwithstanding the imperfection of the rule as applied to the relative wealth and contributions of the States, it is evidently the least objectionable among the practicable rules, and had too recently obtained the general sanction of America, not to have found a ready preference with the convention. All this is admitted, it will perhaps be said; but does it follow, from an admission of numbers for the measure of representation, or of slaves combined with free citizens as a ratio of taxation, that slaves ought to be included in the numerical rule of representation? Slaves are considered as property, not as persons. They ought therefore to be comprehended in estimates of taxation which are founded on property, and to be excluded from representation which is regulated by a census of persons. This is the objection, as I understand it, stated in its full force. ..." (Emphasis added.)*

Each of these quotations is consistent in their understanding that a "direct tax" is a tax on wealth (primarily land), while taxes on consumption, trade, or commerce are "indirect taxes." This is consistent with the opinions of the Supreme Court in *Hylton*, *Springer*, and even *Pollock*.

Unfortunately, the majority opinion in one of the Pollock decisions introduced some confusion about the meaning of "direct tax" and "indirect tax" through the following statement:

> *"The first question to be considered is whether a tax on the rents or income of real estate is a direct tax within the meaning of the constitution. Ordinarily, all taxes paid primarily by persons who can shift the burden upon some one else, or who are under no legal compulsion to pay them, are considered indirect taxes; but a tax upon property holders in respect of their estates, whether real or personal, or of the income yielded by such estates, and the payment of which cannot be avoided, are direct taxes. Nevertheless, it may be admitted that, although this definition of direct taxes is prima facie correct, and to be applied in the consideration of the question before us, yet the constitution may bear a different meaning, and that such different meaning must be recognized." Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 558 (1895).*

There are several problems with the meaning of "indirect taxes" as "all taxes paid primarily by persons who can shift the burden upon some one else" and "direct taxes" as taxes "the payment of which cannot be avoided":

- There is no support for those meanings in the words of the Constitution, the Federalist Papers, or any writings of the authors of the Constitution. As noted above, both the Federalist Papers and the opinions of the justices in the *Hylton* decision who were members of the Constitutional Convention support the conclusion that a "direct tax" is a tax on the value of property.
- There is no support for those definitions in any previous (or later) decision of the Supreme Court.
- The court admits, in the very next sentence, that "the constitution may bear a different meaning." As explained previously, the Supreme Court has consistently held that a tax on incomes is *not* a "direct tax" within the meaning of the Constitution. The Pollock court itself held that a tax on incomes from "professions, trades, employments, or vocations," is *not* a "direct tax" without ever discussing whether the tax was one "the payment of which cannot be avoided." (158 U.S. at 637.) The above definition of "direct tax" is therefore inconsistent with the decisions of the justices who wrote the definition.

The meaning of "direct tax" urged by many tax resisters (and a few mistaken legal commentators) as a "tax imposed directly on someone who cannot shift the burden to someone else" would trivialize the Constitution, because it reduces the constitutional definition of "direct tax" to a mere question of how the tax is collected. So, if the U.S. were to impose a tax on employees for the wages they receive, that would be a "direct tax" according to the tax resister definition, but if the U.S. were to impose a tax on *employers* for wages *paid* (or tax on banks for the payment of interest, or on corporations for the payment of dividends), that would be an "indirect tax" and constitutional, even though the net effect would be exactly the same (i.e., the employees or depositors or shareholders would bear the burden of the tax). The meaning of "direct tax" that has been consistently applied by the Supreme Court is much more sensible (as well as consistent with the intent of the framers of the Constitution), because it focuses on what is being taxed (the value of property, but not transfers of property) rather than how the tax is collected.

We don't define a tax on "wages" under I.R.C. Subtitle A as a "direct tax". The tax is upon income derived from an indirect excise taxable activity called a "trade or business", which is defined in 26 U.S.C. §7701(a)(26) as "the functions of a public office". This is an avoidable activity, and therefore, all taxes based upon it are avoidable by avoiding "public offices". The term "wages" as Evans uses it here is the ***legal***, not common, definition, which means earnings of an "employee", which is defined in 26 U.S.C. §3401(c ) and 26 C.F.R. §31.3401(c)-1 as a federal "employee" and not a private worker or Constitutional state employee.

In any event, this is all academic, because the 16th Amendment plainly states that Congress can impose taxes on incomes *without apportionment*, so it is constitutional to require individuals to pay a tax directly on their incomes, regardless of what the Constitution previously said.

All taxes under the Sixteenth Amendment are "indirect taxes", according to the U.S. Supreme Court in *Stanton v. Baltic Mining Co.*, 240 U.S. 103 (1916):

> *"But, aside from the obvious error of the proposition, intrinsically considered, 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, but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged, and being placed [240 U.S. 103, 113] in the category of direct taxation subject to apportionment*** *by a consideration of the sources from which the income was derived,-that is, by testing the tax not by what it was, a tax on income, but by a mistaken theory deduced from the origin or source of the income taxed."*

Since "indirect excise taxes" may be avoided by avoiding the taxed activity, they don't need to be apportioned and the income tax still remains entirely voluntary.

And the federal courts have consistently refuted the argument that an income tax is a "direct tax" because it is collected directly from taxpayers:

> *"[Becraft's] position can fairly be reduced to one elemental proposition: The Sixteenth Amendment does not authorize a direct non-apportioned income tax on resident United States citizens and thus such citizens are not subject to the federal income tax laws. ... We hardly need comment on the patent absurdity and frivolity of such a proposition. For over 75 years, the Supreme Court and the lower federal courts have both implicitly and explicitly recognized the Sixteenth Amendment's authorization of a non-apportioned direct income tax on United States citizens residing in the United States and thus the validity of the federal income tax laws as applied to such citizens." In re Becraft, 885 F.2d 547 (9th Cir., 1989).*
>
> *"[W]e have rejected, on numerous occasions, the tax-protester argument that the federal income tax is an unconstitutional direct tax that must be apportioned. See, e.g., Lively v. Commissioner, 705 F.2d 1017, 1018 (8th Cir.1983) (per curiam)" United States v. Gerads, 999 F.2d 1255 (8th Cir. 1993).*
>
> *"As the cited cases, as well as many others, have made abundantly clear, the following arguments alluded to by the Lonsdales are completely lacking in legal merit and patently frivolous: .. .. (3) the income tax is a direct tax which is invalid absent apportionment, and Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 15 S.Ct. 673, 39 L.Ed. 759, modified, 158 U.S. 601, 15 S.Ct. 912, 39 L.Ed. 1108 (1895), is authority for that and other arguments against the government's power to impose income taxes on individuals.. .." Lonsdale v. United States, 919 F.2d*

*1440, 1448 (10th Cir. 1990).*

The federal courts are absolutely correct on this issue. Subtitle A of the I.R.C. describes an "indirect excise tax", not a direct tax, within the meaning of the Constitution. The privilege that is being taxed is a "trade or business", which is an activity defined in 26 U.S.C. §7701(a)(26) as "the functions of a public office" and which is no where expanded upon in the I.R.C. to include anything else. Hence PRIVATE earnings or earnings NOT connected with a "public office" are PURPOSEFULLY EXCLUDED per the rules of statutory construction and interpretation.

A final note:

That some courts refer to the income tax as a "non-apportioned direct tax," is unfortunate, because it suggests that the income tax is a "Capitation, or other direct, Tax" that does not need to be apportioned, a suggestion that was explicitly rejected by the U.S. Supreme Court in *Brushaber*. As explained above, a "direct tax" must be apportioned, while an "indirect tax" must be uniform. The question was raised in *Brushaber* as to whether the 16th Amendment created a type of tax that need be neither apportioned nor uniform, and the court rejected that possibility, stating (in a rather convoluted sentence):

> *"[T]hat 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 since the command of the Amendment that all income taxes shall not be subject to apportionment by a consideration of the sources from which the taxed income may be derived 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." Brushaber v. Union Pacific Railroad Co., 240 U.S. 1 (1916).*

The court then went on to hold that the income tax satisfied the requirement of geographical uniformity imposed by the Constitution, even though the rate of tax was not uniform on all incomes.

Did the court in *Becraft*, quoted above, mean to say that the income tax is a "non-apportioned direct tax" that need not be uniform? No, because the question of uniformity was not raised with the court. This is merely confusion in terminology, the court using the word "direct" to describe a tax that is collected directly.

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### 2.3 The income tax cannot apply to wages, because that would be a "direct tax" that must be apportioned in accordance with the Constitution.

False. There is nothing in the Constitution that says that wages or income from labor cannot be taxed, or that a tax on wages or income from labor is a "direct" tax. And it has been the consistent opinion of the Supreme Court beginning with *Hylton v. United States*, 3 U.S. 171 (1796), and continuing with *Springer v. United States*, 102 U.S. 586 (1880), *Pollock v. Farmers' Loan & Trust Co.*, 158 U.S. 601 (1895), and *Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1 (1916), that the phrase "direct tax" only applies to a tax on the value of property.

The majority opinion in the *Pollock* decision states that, if only the tax on interest, rents, dividends, and other income from property were ruled unconstitutional, "this would leave the burden of the tax to be borne by professions, trades, employments, or vocations; and in that way a tax on capital would remain in substance a tax on occupations and labor." 158 U.S. at 637. The majority opinion therefore held that the entire tax act was unconstitutional, even though Congress had the right to impose a non-apportioned tax on the income from employment. (The minority opinion in Pollock believed that the entire tax was constitutional, and so did not need to distinguish between income from property and income from employment.)

That a tax on wages and other compensation for labor would have been constitutional even before the adoption of the 16th Amendment was confirmed by the unanimous decision of the Supreme Court in *Brushaber*, in which the court stated:

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

As recently as 1991, the Supreme Court referred to arguments that the Sixteenth Amendment did not authorize a tax on wages and salaries, and that the federal income tax was unconstitutional, as "surely frivolous." *Cheek v. United States*, 498 U.S. 192 (1991).

In the history of the United States, not a single judge has ever expressed an opinion suggesting that a tax on income from employment was a "direct tax" that must be apportioned. Not one. Never.

And even if a tax on wages might have once been considered to be a "direct tax" that must be apportioned, the 16th Amendment plainly

states that Congress can tax incomes, and wages are a form of income.

Evans is trying to cloud the issue, because he never defines which "wages" he is talking about: 1. The common or dictionary definition and excluding the legal definition; 2. The legal definition of "wages" found in 26 U.S.C. §3401(a). He obviously means the legal definition, but he doesn't convey this to the reader because he doesn't want people to know the truth on this issue.

Assuming he means the legal definition, his comments are absolutely correct, but they are incorrect if he means the common definition. 26 C.F.R. §31.3401(a)-3(a) proves that a person who voluntarily signs and submits a W-4 earns "wages" as legally defined:

> *26 C.F.R. §31.3401(a)-3 Amounts deemed wages under voluntary withholding agreements*
>
> *(a) In general.*
>
> ***Notwithstanding the exceptions to the definition of wages specified in section 3401(a) and the regulations thereunder, the term "wages" includes the amounts described in paragraph (b)(1) of this section with respect to which there is a voluntary withholding agreement in effect under section 3402(p).*** *References in this chapter to the definition of wages contained in section 3401(a) shall be deemed to refer also to this section (§31.3401(a)–3.*

It is "wages", as legally defined, that are therefore taxed under the I.R.C. The W-2 form, which is an "information return", reports receipt of "wages" as legally defined. The W-2 is filed by employers pursuant to 26 U.S.C. §6041, which says that payment of amounts of $600 or more that are connected with a "trade or business", must be reported on information returns. Therefore, all "wages" as defined in the I.R.C. constitute "trade or business" earnings that indeed are taxable under the I.R.C.

The problem is that Evans is hiding the true nature of the income tax by knowingly refusing to point out the following critical facts:

1. Few people in fact and in deed are lawfully engaged in a "trade or business", which is defined in 26 U.S.C. §7701(a)(26) as "the functions of a public office".
2. Those who are not federal statutory "employees" per 5 U.S.C. §2105(a), public officers, or engaged in a "trade or business" as legally defined and who refuse to submit a W-4 do not earn "wages" as legally defined.
3. Those who don't earn "wages" cannot lawfully have anything reported by private employers on an information return, such as a W-2 and if the private employer disregards this requirement, he becomes liable under 26 U.S.C. §7434 for damages plus up to $5,000 in penalties.
4. Those who have had incorrect information returns filed on them and who did not sign a W-4 and are not engaged in a "trade or business" can lawfully rebut these false reports and zero out their liability. For details on how to do this, see: *Correcting Erroneous IRS Form W-2*, Form #04.006; http://sedm.org/Forms/04-Tax/0-CorrErrInfoRtns/FormW2/CorrectingIRSFormW2.htm (OFFSITE LINK)

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### 2.4 Wages cannot be taxed because our labor is our property, and so a tax on labor would be a tax on property and a "direct tax" within the meaning of the Constitution.

It is difficult to understand how you can claim a property right in something you haven't done yet. If your labor were "property" like other property, you could sell it and then sit back and do nothing. However, if you "sell" your labor and are paid for it, you still have to work to earn it.

Even if the major premise is correct, and labor is a form of property, the conclusion is still wrong because the Internal Revenue Code does not tax labor itself, but the *compensation* received for labor (i.e., the income from labor).

If you go into your back yard and work for a week taking clay and making pots, there is no income and no tax. However, if you sell your pots, you have income because you have more money at the end of the week than you had at the beginning of the week. Similarly, if you "sell your labor" by agreeing to work in someone else's factory (or farm) for a week, you have sold your labor and the compensation you realize is taxable.

The subject of the taxability of compensation for labor is exhaustively analyzed in the *Federal and State Tax Withholding Options for Private Employers*, Section 3. Labor, in fact, is property. The U.S. Supreme Court said so in Butcher's Union:

> *"Among these unalienable rights, as proclaimed in that great document [the Declaration of Independence] is the right of men to pursue their happiness, by which is meant, the right any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give them their highest enjoyment...It has been well said that,* ***THE PROPERTY WHICH EVERY MAN HAS IN HIS OWN LABOR, AS IT IS THE ORIGINAL FOUNDATION OF ALL OTHER PROPERTY SO IT IS THE MOST SACRED AND INVIOLABLE...*** *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."***"**
*[Butcher's Union Co. v. Crescent City Co., 111 U.S. 746 (1884), Concurring opinion of Justice Field]*

Anyone who withholds on earnings from labor that are not connected with a voluntary, excise taxable activity is effecting slavery, because they are literally STEALING property. This is confirmed by examining the withholding regulations at 26 C.F.R. §1.1441-2 , which say that withholding may not be effected on the sale of "property":

*Title 26: Internal Revenue*
*PART 1—INCOME TAXES*
*Withholding of Tax on Nonresident Aliens and Foreign Corporations and Tax-Free Covenant Bonds*
*§ 1.1441-2 Amounts subject to withholding.*

*(b) Fixed or determinable annual or periodical income—*

*(1) In general—*

*(i) Definition. For purposes of chapter 3 of the Internal Revenue Code and the regulations thereunder, fixed or determinable annual or periodical income includes all income included in gross income under section 61 (including original issue discount) except for the items specified in paragraph (b)(2) of this section. Items of income that are excluded from gross income under a provision of law without regard to the U.S. or foreign status of the owner of the income, such as interest excluded from gross income under section 103(a) or qualified scholarship income under section 117, shall not be treated as fixed or determinable annual or periodical income under chapter 3 of the Internal Revenue Code . Income excluded from gross income under section 892 (income of foreign governments) or section 115 (income of a U.S. possession) is fixed or determinable annual or periodical income since the exclusion from gross income under those sections is dependent on the foreign status of the owner of the income. See §1.306–3(h) for treating income from the disposition of section 306 stock as fixed or determinable annual or periodical income.*

*[. . .]*

*(2) Exceptions.*

*For purposes of chapter 3 of the Code and the regulations thereunder, the items of income described in this paragraph (b)(2) are not fixed or determinable annual or periodical income—*

*(i)* ***Gains derived from the sale of property (including market discount and option premiums), except for gains described in paragraph (b)(3) or (c) of this section; and***

*(ii) Any other income that the Internal Revenue Service (IRS) may determine, in published guidance (see §601.601(d)(2) of this chapter), is not fixed or determinable annual or periodical income.*

Note that withholding is not authorized on gains derived from any kind of property other than that listed above, and since labor isn't included in the list, then there can be no withholding on "labor". Next, we examine I.R.C. Section 61 to determine whether "labor" is included in the definition of "gross income". We have highlighted and boldfaced and underlined the only portion of that section that relates to "labor" of a human being:

*TITLE 26* > *Subtitle A* > *CHAPTER 1* > *Subchapter B* > *PART I* > *§ 61*
*§ 61. Gross income defined (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:*

*(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;*
***(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.*

The above definition uses several tricky "words of art" to deceive the reader about withholding on "labor", such as "compensation", "services", etc. These "words of art" are then defined in the Classification Act of 1923, 42 Stat. 1988 as follows:

1. "department": "the term 'department' means an executive department of the United States Government, a governmental establishment in the executive branch of the United States Government which is not a part of an executive department , the municipal government of the District of Columbia, the Botanic garden, Library of Congress , Library Building and Grounds, Government Printing Office, and the Smithsonian Institution."
2. "position": "means a specific civilian office or employment, whether occupied or vacant, in a department other than the following: Offices or employments in the Postal Service; teachers, librarians, school attendance officers, and employees of the community center department under the Board of Education of the District of Columbia; officers and members of the Metropolitan police, the fire department of the District of Columbia, and the United States park police; and the commissioned personnel of the Coast Guard, the public Health Service, and the Coast and Geodetic Survey."
3. "employee": "means any person temporarily or permanently in a position."
4. "service": "means the broadest division of related offices and employments."
5. "compensation": "means any salary, wage, fee, allowance, or other emolument paid to an employee for service in a position."

What the above definitions show, is that "labor", in the context of Subtitle A of the I.R.C , is not the commodity being taxed. Rather, "compensation" for "services" performed in the conduct of a "trade or business", which is defined in 26 U.S.C. §7701(a)(26) as "the functions of a public office" is the voluntary, excise taxable activity that is being taxed. Remember, Subtitle A of the Internal Revenue Code is an indirect excise tax upon privileged, excise taxable activities, according to the U.S. Supreme Court . The "activity" is a "trade or business", which is basically privileged employment OR public office within the federal government by either elected or appointed officials, federal but not state corporations, and federal instrumentalities:

> *"..by the previous ruling it was settled that* ***the provisions of the Sixteenth Amendment conferred no new power of taxation but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect [excise] taxation to which it inherently belonged and being placed in the category of direct taxation*** *subject to apportionment by a consideration of the sources from which the income was derived, that is by testing the tax not by what it was -- a tax on income, but by a mistaken theory deduced from the origin or source of the income taxed. "*
> *[Stanton v. Baltic Mining Co., 240 U.S. 103 (1916)]*

As a general proposition, it is correct that Congress cannot tax the value of property directly, but can only tax *exchanges* or *transfers* of property. For example, the federal estate tax is clearly a tax on the value of property, and yet it has been held to be constitutional as an excise tax on the *transfer* of the property at death. *Knowlton v. Moore*. Similarly, Congress cannot tax the value of real property, but can tax sales or transfers of real property. So the income tax is a tax on the receipt of income, and the sale of labor is a transaction that allows the constitutional imposition of a tax.

Of course, every court that has been forced to rule on this issue has ruled against the tax resister raising it.

> *"Finally, the taxpayer argues that because wages are property, a tax on them is a property tax, and because the tax the Commissioner is attempting to collect is not apportioned, it is unconstitutional. However, as we and innumerable other courts have repeatedly explained, wages are income, and income taxes do not need to be apportioned." Connor v. Commissioner, 770 F.2d 17, 20 (2nd Cir. 1985), (the court not only ruled against the taxpayer, but also imposed sanctions of $2,000 against the taxpayer).*
>
> *"It is clear beyond peradventure that the income tax on wages is constitutional." Stelly v. Commissioner, 761 F.2d 1113, 1115 (5th Cir. 1985), cert. den. 106 S.Ct. 149 (1985).*

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### 2.5 Wages cannot be taxed because the exercise of a fundamental right cannot be taxed and the right to work is a fundamental right reserved to the citizens of the United States by the 10th Amendment to the Constitution.

This is wrong on every count, and has been expressly refuted by the Supreme Court:

> *"But natural rights, so called, are as much subject to taxation as rights of lesser importance. An excise is not limited to vocations or activities that may be prohibited altogether. It is not limited to those that are the outcome of a franchise. It extends to vocations or activities pursued as of common right." Charles C. Stewart Machine Co. v. Davis, 301 U.S. 548 (1937).*

Evans is correct on this issue, but ONLY if the definition of the term "wages" he uses implies the legal sense and excludes the common sense. He is deliberately trying to confuse the legal definition of "wages" with the common definition in order to deceive you. Click here

for the legal definition of "wages".

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### 2.6 Income cannot be taxed unless the source of the income is first determined.

This argument turns the 16th Amendment on its head, making the determination of sources of income a requirement instead of an irrelevancy, and also twists and distorts the meaning of "whatever source."

The 16th Amendment was proposed and ratified in order to eliminate the distinction between income from property and income from labor that had been created by the decisions in *Pollock*. As the Supreme Court noted in the Brushaber decision:

> *"[T]he command of the Amendment [is] that all income taxes shall not be subject to apportionment by a consideration of the sources from which the taxed income may be derived ...." Brushaber v. Union Pacific R.R. Co., 240 U.S. 1 (1916).*

Demanding that the source of the income be identified before the income can be taxed is therefore contrary to the whole purpose of the 16th Amendment. And, although the issue before the court was statutory, and not constitutional, it is still noteworthy that the Supreme Court approved the imposition of the income tax on "undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion," with no restriction as to "source," in *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955).

The argument that the constitution requires that all taxable income have a "source" also ignores the word "whatever" in the phrase "from whatever source derived" which appears in both the 16th Amendment and section 61 of the Internal Revenue Code. The word "whatever" has been defined as meaning "of any number or kind" or "of any kind at all." If income can be taxed from "any kind of" source, then there is no need to identify the source before taxing the income.

Only a few court decisions have been found that mention this exact argument:

> *"According to Buras, income must be derived from some source. ... [T]he Sixteenth Amendment is broad enough to grant Congress the power to collect an income tax regardless of the source of the taxpayer's income." United States v. Buras, 633 F.2d 1356, 1361 (9th Cir. 1980).*

> *"[A]ppellant suggests that before an 'item' of income may be considered, the particular 'source' of the 'item' must be identified. ... He is wrong. By the terms of both the Sixteenth Amendment and section 61(a), 'source' is not to be a limitation on taxable income. Rather, income is to be taxed regardless of its source." Angstadt v. Internal Revenue Service, 84 AFTR2d ¸99-5455, 1999 WL 820866, at 2 (U.S.D.C. E.D.Pa. 1999).*

It is also well established that the Internal Revenue Service can assess an income tax deficiency against a taxpayer on the basis of an increase in net worth, the increase in net worth being evidence of income received by the taxpayer. In many cases it may be impossible for the IRS to ascertain the source of the unreported income, but the determination of the source is not always necessary. When the IRS uses the net worth method to determine whether a taxpayer has underreported income, the IRS must either (1) establish a likely source of unreported taxable income or (2) conduct a reasonable investigation of leads negating possible sources of nontaxable income. *United States v. Massei*, 355 U.S. 595 (1958); *Mazoli v. Commissioner*, 904 F.2d 101 (1st Cir. 1990), *aff'g* T.C. Memo 1989-94 and T.C. Memo. 1988-299; *DiLeo v. Commissioner*, 959 F.2d 16 (2d Cir. 1992), *aff'g* 96 T.C. 858 (1991); *Goe v. Commissioner*, 198 F.2d 851 (3rd Cir. 1952), *cert. den.* 344 U.S. 897 (1952); *Armes v. Commissioner,* 448 F.2d 972 (5th Cir. 1971), *aff'g* in part and rev'g in part T.C. Memo. 1969-181; *Smith v. Commissioner,* 91 T.C. 1049 (1988) *aff'd* 926 F.2d 1470 (6th Cir. 1991); *Kramer v. Commissioner,* 389 F.2d 236 (7th Cir. 1968), *aff'g* T.C. Memo. 1966-234. It has therefore been held that deposits in a taxpayer's bank account are prima facie evidence of income, and the taxpayer bears the burden of showing that the deposits were not taxable income. See *Calhoun v. United States*, 591 F.2d 1243, 1245 (9th Cir. 1978); and *Welch v. Commissioner*, 204 F.3d 1228, 2000 U.S. App. LEXIS 2961, 2000-1 U.S. Tax Cas. Par. 50,258, 85 AFTR2d Par. 2000-497 (9th Cir. 3/1/2000), *aff'g* T.C. Memo 1998-121.

Evans is correct on this issue. The source of the statutory "income" is in fact irrelevant. However, the "income" must be connected to a "trade or business" or originate from the U.S. GOVERNMENT, , or it is not taxable under I.R.C. Subtitle A.. "sources within the United States", in fact, means payments FROM the government and not payments from private parties. Instrumentalities of the government, such as public officers, also count as "sources within the United States" for the purposes of 26 U.S.C. §861. Incidentally, EVERYTHING that goes on an IRS Form 1040 is "trade or business" income. The only form that allows you to report earnings not connected with a "trade or business" is the 1040NR. This is confirmed by:

- Our article entitled "The Trade or Business Scam".
- 26 U.S.C. §871
- IRS form 1040NR
- The article entitled "About IRS Form W-8BEN".

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## 2.7 The 16th Amendment is ineffective because it does not expressly repeal any provision of Article I of the Constitution.

There is nothing in the Constitution that says that an amendment must specifically repeal another provision of the Constitution. In fact, there are 27 amendments to the Constitution, and only one of the specifically repeals an earlier provision. (The 21st Amendment, when ended Prohibition, specifically repeals the 18th Amendment, which started Prohibition.)

If this argument were correct, then the losing presidential candidate would be the vice-president of the United States, because the 12th Amendment did not expressly repeal Article II, Section 1, clause 3 of the Constitution.

The claim that the 16th Amendment should have been worded differently, to redefine what was meant by "direct tax," was actually addressed by the Supreme Court in *Brushaber*, and the court concluded that the way the 16th Amendment was written was absolutely right.

Evans is correct on this issue.

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## 2.8 The 16th Amendment gave Congress no new power to tax.

This statement is taken from language in the opinions of the United States Supreme Court in the *Brushaber* and *Stanton* decisions and, unlike most other tax resister nonsense, it is actually true. The problem is not that the statement is false, but that it doesn't mean what tax resisters think it means and it doesn't lead to the conclusion that tax resisters want to reach.

Tax resisters believe that, before the adoption of the 16th Amendment, a tax on incomes was unconstitutional and therefore outside the power of Congress. This is not correct because, as explained above, it was clear even before the 16th Amendment that Congress could tax wages and earnings from employment, as well as income from business operations. By incorrectly asserting that a tax on incomes was unconstitutional before the 16th Amendment, and then asserting that the 16th Amendment gave Congress no new power to tax, tax resisters can conclude that a tax on incomes must be unconstitutional even after the adoption of the 16th Amendment, which is ridiculous.

It is ridiculous because it means that the 16th Amendment does not mean what it says. The amendment plainly states that "The Congress shall have the power to tax incomes" and tax resisters nevertheless try to claim that Congress does *not* have the power to tax incomes.

It is also ridiculous because it would mean that Congress proposed a constitutional amendment, and the states ratified a constitutional amendment, that changed nothing and has no meaning.

To understand the statement of the Supreme Court when it said that the 16th Amendment created "no new power," you have to understand the context in which it was made. One of the claims made by the taxpayer in the *Brushaber* case was that the 16th Amendment was "repugnant to the constitution" because it created a form of tax that was neither apportioned (as required for "direct" taxes by Article I, Section 9) nor uniform (as required for "excises" by Article I, Section 8, Clause 1). The court referred to the conclusion "that the 16th 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," as an "erroneous assumption."

> *"[T]hat 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 since the command of the Amendment that all income taxes shall not be subject to apportionment by a consideration of the sources from which the taxed income may be derived 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."*
> *[Brushaber v. Union Pacific R.R. Co., 240 U.S. 1 (1916)]*

This statement was confirmed and explained by the Supreme Court in *Stanton v. Baltic Mining Co.*, 240 U.S. 103 (1916), in which the court stated that "by the previous ruling [in Brushaber] it was settled that the provisions of the 16th Amendment conferred no new power of taxation, but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of INDIRECT taxation to which it inherently belonged, and being placed in the category of direct taxation...."

Therefore, the power to tax incomes without apportionment is not a new kind of power, but just a different classification of the "previous complete and plenary power of income taxation," taking it out of the category of *direct* taxation and placing it back in the category of *indirect* taxation "to which it inherently belonged."

(As noted above, some circuit courts refer to the income tax as a "direct non-apportioned tax" despite the explanations in the *Brushaber* and *Stanton* decisions. Regardless of the confusion in terminology, the courts are unanimous that the income tax is constitutional under the 16th Amendment.)

Evans is correct on this issue. However, he should have explained why and how Subtitle A of the I.R.C. is in fact an "indirect excise tax" upon "trade or business" earnings, wherever earned. The only way it can be an "indirect excise tax" is if it taxes income earned in connection with an avoidable, privileged activity conducted by a federal business entity such as a corporation or partnership and not a private individual. That privileged activity is a "trade or business" as defined in 26 U.S.C. §7701(a)(26). Few people in practice are engaged in this activity but are compelled by financial institutions and private employers to engage in it because false information returns are illegally and fraudulently filed on them pursuant to 26 U.S.C. §6041. Because the victims of this fraud do not correct the erroneous reports, courts treat them as though all earnings reported on these fraudulent or false information returns is taxable. To rebut these false reports, see:

1. The "Trade or business" Scam
2. Correcting Erroneous IRS form W-2's
3. Correcting Erroneous IRS Form 1042's
4. Correcting Erroneous IRS Form 1098's
5. Correcting Erroneous Form 1099's

Those who refuse or neglect to correct these fraudulent or fraudulent information returns in effect have "volunteered" to become "taxpayers" subject to the I.R.C. What you don't know can definitely hurt you.

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### 2.9 The 16th Amendment was not properly ratified.

Although the Constitution describes how to ratify amendments, it doesn't say how we know when an amendment has been ratified. After some confusion about the status of some amendments (including the infamous "Titles of Nobility" amendment that fell at least one state short of ratification, but appeared in numerous copies of the Constitution in the early and middle 1800s), Congress decided that the Secretary of State should certify what amendments have been ratified.

The argument that the 16th Amendment was not ratified is best explained (and refuted) by this quotation from *U.S. v. Thomas*, 788 F.2d 1250 (7th Cir. 1986), cert. den. 107 S.Ct. 187 (1986):

> *"Thomas is a tax protester, and one of his arguments is that he did not need to file tax returns because the sixteenth amendment is not part of the constitution. It was not properly ratified, Thomas insists, repeating the argument of W. Benson & M. Beckman, The Law That Never Was (1985). Benson and Beckman review the documents concerning the states' ratification of the sixteenth amendment and conclude that only four states ratified the sixteenth amendment; they insist that the official promulgation of that amendment by Secretary of State Knox in 1913 is therefore void.*
>
> *"Benson and Beckman did not discover anything; they rediscovered something that Secretary Knox considered in 1913. Thirty-eight states ratified the sixteenth amendment, and thirty-seven sent formal instruments of ratification to the Secretary of State. (Minnesota notified the Secretary orally, and additional states ratified later; we consider only those Secretary Knox considered.) Only four instruments repeat the language of the sixteenth amendment exactly as Congress approved it. The others contain errors of diction, capitalization, punctuation, and spelling. The text Congress transmitted to the states was: "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." Many of the instruments neglected to capitalize "States," and some capitalized other words instead. The instrument from Illinois had "remuneration" in place of "enumeration"; the instrument from Missouri substituted "levy" for "lay"; the instrument from Washington had "income" not "incomes"; others made similar blunders.*
>
> *"Thomas insists that because the states did not approve exactly the same text, the amendment did not go into effect. Secretary Knox considered this argument. The Solicitor of the Department of State drew up a list of the errors in the instruments and--taking into account both the triviality of the deviations and the treatment of earlier amendments that had experienced more substantial problems--advised the Secretary that he was authorized to declare the amendment adopted. The Secretary did so.*
>
> *"Although Thomas urges us to take the view of several state courts that only agreement on the literal text may make a legal document effective, the Supreme Court follows the "enrolled bill rule." If a legislative document is authenticated in regular form by the appropriate officials, the court treats that document as properly adopted. Field v. Clark, 143 U.S. 649, 36 L.Ed. 294, 12 S.Ct. 495 (1892). The principle is equally applicable to constitutional amendments. See Leser v. Garnett, 258 U.S. 130, 66 L.Ed. 505, 42 S.Ct. 217 (1922), which treats as conclusive the declaration of the Secretary of State that the nineteenth amendment had been adopted. In United States v. Foster, 789 F.2d. 457, 462-463, n.6 (7th Cir. 1986), we relied on Leser, as well as the inconsequential nature of the objections in the face of the 73-year acceptance of the effectiveness of the sixteenth amendment, to reject a claim similar to Thomas's. See also Coleman v. Miller, 307 U.S. 433, 83 L. Ed.*

> *1385, 59 S. Ct. 972 (1939) (questions about ratification of amendments may be nonjusticiable). Secretary Knox declared that enough states had ratified the sixteenth amendment. The Secretary's decision is not transparently defective. We need not decide when, if ever, such a decision may be reviewed in order to know that Secretary Knox's decision is now beyond review."*

It has also been claimed that the votes of Georgia legislature were recorded incorrectly and that Georgia actually rejected the amendment, contrary to Knox's report. However, no Congressman or other official from Georgia has ever complained about the "error" and, even if there was an error and Georgia did not ratify the amendment, there would still have been thirty-seven ratifications, one more than the thirty-six required. (Article V of the Constitution requires that amendments to the Constitution be approved by the legislatures of three fourths of the states, and there were forty-eight states in 1913.)

Another claim is that the ratification of the 16th Amendment by several states was several states was invalid because the constitutions of those states prohibited an income tax. A similar argument as to the 19th Amendment was flatly rejected by the U.S. Supreme Court in *Leser v. Garnett*, 258 U.S. 130 (1922):

> *"The second contention is that in the Constitutions of several of the 36 states named in the proclamation of the Secretary of State there are provisions which render inoperative the alleged ratifications by their Legislatures. The argument is that by reason of these specific provisions the Legislatures were without power to ratify. But the function of a state Legislature in ratifying a proposed amendment to the federal Constitution, like the function of Congress in proposing the amendment, is a federal function derived from the federal Constitution; and it transcends any limitations sought to be imposed by the people of a state." 258 U.S. at 136-137.*

Still another claim made by tax resisters is that the ratification of the 16th Amendment by Ohio was invalid because Ohio did not become a state until 1953(!). This strange claim is based on a strange action that Congress took in 1953 to confirm that Ohio was indeed a state. Briefly:

- By an act of April 30, 1802 (2 Stat. 173), section 1, Congress provided that "the inhabitants of the eastern division of the territory northwest of the river Ohio, be, and they are hereby authorized to form for themselves a constitution and state government, and to assume such name as they shall deem proper, and the said state, when formed, shall be admitted into the Union, upon the same footing with the original states, in all respects whatsoever." (This was consistent with the Northwest Territory Ordinance of 1787, which provided that there should be formed from the territory at least three but not less than five states. )
- A convention met in Ohio on November 1, 1802, and adopted a constitution on November 29, 1802.
- On January 19, 1803, and special committee of Congress reported that "the said Constitution and government so formed is republican, and in conformity to the principles contained in the articles of the ordinance made on the 13th day of July 1787, for the Government of the said Territory: and that it is now necessary to establish a district court within the said Sate, to carry into complete effect the laws of the United States within the same." Annals of Congress, 7th Cong., 2d sess., p. 21.
- Congress then enacted legislation to declare that all of the laws of the United States shall be in force within the state of Ohio and to establish a federal district court in Ohio, stating in the preamble that "the said state has become one of the United States of America." Act of February 19, 1803 (2 Stat. 201).
- Ohio began sending Representatives and Senators to Congress, began voting in Presidential elections, and has been considered to be a state ever since.

So what's the problem? When Ohio was preparing for the 150th anniversary of its statehood, researchers discovered that they couldn't establish the exact date that Ohio became a state, and that there was some confusion on the issue. For example, the Senate Manual (S. Doc. 5, 82d Cong., p. 570) gave the date as March 3, 1803, while the Congressional Biographical Directory (H. Doc. 607, 81st Cong., p. 76, note 9) gave the date as November 29, 1802. Further research showed that Ohio was unique because Congress declared that Ohio would become a state upon fulfilling certain conditions but had never formally declared that the conditions had been met. In admitting other states, Congress either declared that the state would be admitted as of a certain date, or passed an enabling act and then later declared that the state was admitted. In the case of Ohio, Congress passed an enabling act but never formally declared that the conditions of the enabling act had been met, either due to an oversight or due to a belief that a formal declaration was not intended and not needed. In a 1953 report to Congress, the Legislative Reference Service of the Library of Congress stated that the lack of a formal resolution "may be considered unessential." (1953 U.S.C.C.A.N. 2126, 2128.) However, Ohio asked for a formal declaration, sending a new petition for statehood to Washington by horseback (yes, in 1953), and Congress complied (with a certain number of snide jokes), passing a joint resolution that declared Ohio to one of the United States of America *as of March 1, 1803.* P.L. 82-204, 67 Stat. 407. The Senate Report to the resolution states that the purpose was "to make formal, legal declaration of the de facto situation with respect to the admission of Ohio as a State of the United States." Senate Report No. 720, 1953 U.S.C.C.A.N. 2124.

As noted by the 7th Circuit in *Thomas*, the argument that the 16th Amendment is invalid is not only factually deficient, but it is an argument that federal courts are reluctant to consider. The federal courts have always recognized limits upon their powers, and one of those limits is that the courts should not get involved in issues that the Constitution has entrusted to other branches of the government. The Constitution says that Congress may propose amendments, and the states may ratify them. Whether an amendment has been properly ratified is considered to be a "political question" to be resolved by Congress and the states, and not in court. In a challenge to the validity of the 19th Amendment, the Supreme Court ruled that official notices of the state legislatures to the Secretary of State were "binding upon him, and, being certified by his proclamation, is conclusive upon the courts." *Leser v. Garnett*, 258 U.S. 130, 137 (1922).

For other decisions upholding the validity of the 16th Amendment, see *United States v. Foster*, 789 F.2d 457 (7th Cir. 1986), cert. den. 107 S.Ct. 273; *Pollard v. Commissioner*, 816 F.2d 603 (11th Cir. 1987); *United States v. Benson*, 941 F.2d 598 (7th Cir. 1991); *Sochia v.*

*Commissioner*, 23 F.3d 941 (5th Cir. 1994), reh. den. 1994 U.S. App. LEXIS 22014; *United States v. Stahl*, 792 F.2d 1438 (9th Cir. 1986), cert. den. 107 S.Ct. 888; *United State v. Sitka*, 845 F.2d 43 (2nd Cir. 1988); *Miller v. United States*, 868 F.2d 236, 239-41 (7th Cir. 1989); *Biermann v. Commissioner*, 769 F.2d 707 (11th Cir. 1985); *United States v. Buckner*, 830 F.2d 102 (1987); *United States v. Dube*, 820 F.2d 886, 891 (7th Cir. 1986); *Coleman v. Commissioner*, 791 F.2d 68, 70-71 (7th Cir. 1986); *United States v. Moore*, 627 F.2d 830, 833 (7th Cir. 1980); *Knoblauch v. Commissioner*, 749 F.2d 200 (1984), cert. den. 474 U.S. 830 (1985); *United States v. Matheson*, (9th Cir. 1986); *Lysiak v. Commissioner*, 816 F.2d 311, 312 (7th Cir. 1987); *Quijano v. United States*, 93 F.3d 26, 30 (1st Cir. 1996); *United States v. Mundt*, 29 F.3d 233, 237 (6th Cir. 1994).

> *"Despite plaintiff's and numerous other tax protesters' contention that the Sixteenth Amendment was never ratified, courts have long recognized the Sixteenth Amendment's ratification and validity." Betz v. United States, 40 Fed.Cl. 286, 295 (1998).*
>
> *"As the cited cases, as well as many others, have made abundantly clear, the following arguments alluded to by the Lonsdales are completely lacking in legal merit and patently frivolous: .. .. (4) the Sixteenth Amendment to the Constitution is either invalid or applies only to corporations . . . ." Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990).*

Evans is correct on this issue. Whether the Sixteenth Amendment was properly ratified is immaterial, because the U.S. Supreme Court in Stanton ruled that it conferred no new taxing power. It did not authorize unapportioned direct taxes, but indirect excise taxes which are avoidable and therefore voluntary.

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## 2.10 The 16th Amendment is ineffective because the word "income" is not defined.

It is true that "income" is not defined by the Constitution, but the Constitution defines very few words. "Freedom of speech," "due process" and "equal protection" are all undefined in the Constitution, and yet those provisions are enforced by the courts. Similarly, the courts determine what is meant by "income" within the 16th Amendment, and have held that "income" has its usual meaning.

> *"For the present purpose we require only a clear definition of the term 'income,' as used in common speech, in order to determine its meaning in the amendment...." Eisner v. Macomber, 252 U.S. 189, 206-7 (1935), (holding that "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." 252 U.S. at 207).*

(As an aside, one of the hallmarks of tax resister arguments is that they are "ad hoc" arguments, selectively and inconsistently applied. A tax resister will argue that "incomes" is not defined by the 16th Amendment, which is therefore ineffective, but no tax resister has ever argued that "direct tax" is not defined, and so all taxes are constitutional whether or not they are apportioned.)

> *"As the cited cases, as well as many others, have made abundantly clear, the following arguments alluded to by the Lonsdales are completely lacking in legal merit and patently frivolous: ... (8) the term "income" as used in the tax statutes is unconstitutionally vague and indefinite...."*
> *[Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990)]*

Evans is correct on this issue. However, he should have provided a clear definition of "income" as he means it here to lessen the confusion. Income is, in fact, defined in the Internal Revenue Code at 26 U.S.C. §643(b). For further cites on its meaning, click here.

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## 2.11 The income tax cannot apply to citizens outside of the District of Columbia, the territories of the United States, and the forts and military bases of the United States, because the federal government has no jurisdiction outside of those "federal areas."

This represents a complete misunderstanding of the language of the Constitution, and also a complete misunderstanding of our entire federal system of government.

Paragraph 17 of Section 8 of Article I of the Constitution gives Congress "exclusive Legislation" over the District of Columbia and other places purchased with the consent of the state legislature for "Forts, Magazines, Arsenals, dock-Yards and other needful Buildings." Tax resisters believe that this clause is not an additional power, but limits and restricts the powers given to Congress by the other 16 paragraphs of Section 8, which is ridiculous.

The framers of the Constitution created a "federal" system of government, in which the powers that needed to uniform throughout the nation were entrusted to Congress, while all other powers were retained by the states. The powers of Congress were therefore limited to certain "enumerated" powers, such as the power to establish a national currency and punish counterfeiters, establish post offices, maintain a national system for bankruptcies and naturalizations, regulate interstate commerce, create a national system for patents, copyrights, and trademarks, etc. To carry out these powers, Congress must of necessity have power over the citizens residing within states. For example, Congress can hardly punish counterfeiting if the federal government cannot act to arrest, try, and imprison counterfeiters who reside within

the states. Similarly, Congress can hardly regulate interstate commerce if it has no power to enforce its regulations against the citizens and residents of states.

So the power of the federal government is *not* limited to the District of Columbia and other "federal areas," but extends into the states. As explained by the Supreme Court:

> *"The people of the United States resident within any State are subject to two governments: one State, and the other National. ..." United States v. Cruikshank, 92 U.S. 542 (1876).*

On the subject of taxation, the authors of the Federalist Papers expressly recognized that the Congressional power to tax would be concurrent with the taxing powers of the states, and that both the federal government and the state governments might be taxing the same subjects:

> *"[The power of imposing taxes on all articles other than exports and imports], I contend, is manifestly a concurrent and coequal authority in the United States and in the individual States." (Emphasis added.)*
>
> *And:*
>
> *"As to a supposition of repugnancy between the power of taxation in the States and in the Union, it cannot be supported in that sense which would be requisite to work an exclusion of the States. It is, indeed, possible that a tax might be laid on a particular article by a State which might render it INEXPEDIENT that thus a further tax should be laid on the same article by the Union; but it would not imply a constitutional inability to impose a further tax." (Emphasis in original.)*
> *[Alexander Hamilton, Federalist #32]*

Which is why President Washington could send federal troops into Pennsylvania in 1794 to enforce the federal taxes on distilling during the "Whiskey Rebellion."

The one exception to the principle of concurrent power is the District of Columbia and forts and other areas described in clause 17 of Article I, section 8. In those areas, Congress can exercise "exclusive Legislation," meaning that the states are excluded from any legislative powers, and Congress can enact general civil and criminal laws of the type usually enacted only by the states.

And see what the courts have said about the claim that the federal government has no power to tax within a state:

> *"Moreover, the tax code imposes a "direct nonapportioned [income] tax upon United States citizens throughout the nation, not just in federal enclaves," such as postal offices and Indian reservations. United States v. Collins, 920 F.2d 619, 629 (10th Cir. 1990), cert. denied, ___ U.S. ___, 111 S.Ct. 2022, 114 L.Ed.2d 108 (1991) (citing Brushaber v. Union Pacific R.R., 240 U.S. 1, 12-19, 36 S.Ct. 236, 239-42, 60 L.Ed. 493 (1916)). Mr. Sloan's proposition that he is not subject to the jurisdiction of the laws of the United States is simply wrong."*
> *[United States v. Sloan, 939 F.2d 499, 501 (7th Cir. 1991), cert. den. 112 S.Ct. 940 (1992)]*

The above cite is positively false in the context of states of the Union but is true only for the federal zone and those "persons" domiciled in the federal zone WHEREVER situated. It is denounced in *Flawed Tax Arguments to Avoid*, section 9.6.

Subtitle A of the I.R.C., once again, describes an "indirect excise tax" upon a privileged activity called a "trade or business", not a "direct tax", within the meaning of the Constitution. The "citizens" it is upon are those domiciled in the District of Columbia or representing business entities domiciled there, as described in 26 C.F.R. §1.1-1. See 28 U.S.C. §3002(15)(A) defines the "United States" as a federal corporation. The legal encyclopedia shows that corporations are citizens in the jurisdiction in which they are created.

> *"A corporation is a citizen, resident, or inhabitant of the state or country by or under the laws of which it was created, and of that state or country only."*
> *[19 Corpus Juris Secundum, Corporations, §886]*

Those engaged in a "trade or business", which is defined as a "public office" in 26 U.S.C. §7701(a)(26), are acting as "officers of a corporation". Federal Rule of Civil Procedure 17(b) says that those representing a federal corporation are subject to the laws where it was incorporated and take on the same character as the corporation when on official duty. Therefore, those engaged in a "trade or business" are subject to the laws of the District of Columbia, wherever they are found, including in a federal district court. Since the "U.S. Inc." corporation they are representing as an officer of that corporation is a statutory "U.S. citizen" under 8 U.S.C. §1401 and a "citizen" of the District of Columbia (but NOT a "citizen of the United States" within the meaning of the Fourteenth Amendment), then they too must be treated as such in the context of their tax liability. This is confirmed by the content of the following statutes, which make the "effective domicile" of those engaging in a "trade or business" into the District of Columbia. In effect, their identity is kidnapped and transported to the District of Columbia. Since kidnapping is illegal pursuant to 18 U.S.C. §1201, then they must have engaged in the taxable activity voluntarily and can't be compelled to do so:

- 26 U.S.C. §7701(a)(39)
- 26 U.S.C. §7408(d)

The above concept is no different than private contracts between individuals. Many private contracts include a clause identifying the laws

and the place where it must be litigated. The I.R.C. Subtitle A is such a private contract, in which those who engaged in the privileged indirect excise taxable activity called a "trade or business":

1. Implicitly consent to pay for the privilege through income taxation.
2. Agree to litigate all their disputes in a federal district court as a "resident", which means an "alien" with a domicile in the District of Columbia as defined in 26 U.S.C. §7701(b)(1)(A).
3. Agree to abide by Internal Revenue Code as their "employment contract" or the contract governing their "public office", which is a business partnership between them and the federal government. Their consideration for participation is "social insurance" and other federal privileges, along with "employment compensation" coming in the form of reduced tax liability under 26 U.S.C. §§1, 32, and 162.

The legal encyclopedia American Jurisprudence confirms that all private contract claims between individuals and the U.S. government must be litigated in federal court, regardless of where they reside, including a state of the Union. This requirement arises from the Separation of Powers Doctrine:

> *American Jurisprudence, 2d*
> *United States*
> *§ 42 Interest on claim [77 Am Jur 2d UNITED STATES]*
>
> *The interest to be recovered as damages for the delayed payment of a contractual obligation to the United States is not controlled by state statute or local common law. In the absence of an applicable federal statute, **the federal [and not state] courts must determine according to their own criteria the appropriate measure of damages**. State law may, however, be adopted as the federal law of decision in some instances.*
> *[American Jurisprudence, 2d, United States, Section 42: Interest on Claim]*

If you would like more supporting material that documents why Subtitle A of the Internal Revenue Code is private contract law that only obligates those who consent, see:

> *Requirement for Consent, Form #05.003 (OFFSITE LINK)*
> *DIRECT LINK: http://sedm.org/Forms/05-MemLaw/Consent.pdf*
> *FORMS PAGE: http://sedm.org/Forms/FormIndex.htm*

*"On the merits, defendant argues that the District Court lacked jurisdiction over him because he is solely a resident of the state of Michigan and not a resident of any 'federal zone' and is therefore not subject to federal income tax laws. This argument is completely without merit and patently frivolous." United States v. Mundt, 29 F.3d 233, 237 (6th Cir. 1994).*

*"Dickstein's motion to dismiss advanced the hackneyed tax protester refrain that federal criminal jurisdiction only extends to the District of Columbia, United States territorial possessions and ceded territories. Dickstein's memorandum blithely ignored 18 U.S.C. § 3231 which explicitly vests federal district courts with jurisdiction over 'all offenses against the laws of the United States.' Dickstein also conveniently ignored article I, section 8 of the United States Constitution which empowers Congress to create, define and punish crimes, irrespective of where they are committed. [Citations omitted.] Article I, section 8 and the sixteenth amendment also empowers Congress to create and provide for the administration of an income tax; the statute under which defendant was charged and convicted, 26 U.S.C. § 7201, plainly falls within that authority. Efforts to argue that federal jurisdiction does not encompass prosecutions for federal tax evasion have been rejected as either 'silly' or 'frivolous' by a myriad of courts throughout the nation. [Citations omitted.] In the face of this uniform authority, it defines credulity to argue that the district court lacked jurisdiction to adjudicate the government's case against defendant." United States v. Collins, 920 F.2d 619 (10th Cir. 1990).*

*"As the cited cases, as well as many others, have made abundantly clear, the following arguments alluded to by the Lonsdales are completely lacking in legal merit and patently frivolous: ... (2) the authority of the United States is confined to the District of Columbia ...." Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990).*

*"Caniff's claim that he is a non-resident alien is preposterous on its face. He acknowledges that he lives in Indiana. The tax power applies fully to each and every of the fifty United States, not just the District of Columbia." Caniff v. Commissioner, 52 F.3d 328 (7th Cir. 1995), (unpublished opinion).*

*"This is but another 'of the many suits, prosecuted by disgruntled taxpayers, that neither advances the law nor serves any purpose save to clog the court's dockets, waste judicial time and cause protracted delays to worthy litigation.' Cook v. Spillman, 806 F.2d 948 (9th Cir. 1986). Lovett's claim that he is not a taxpayer subject to the authority of the United States or the IRS is patently frivolous." Lovett v. Gillen, 39 F3d 1187 (9th Cir. 1995), (the court imposed a $1,000 sanction for filing a frivolous appeal).*

*"Much of Becraft's reply is also devoted to a discussion of the limitations of federal jurisdiction to United States territories and the District of Columbia and thus the inapplicability of the federal income tax laws to a resident of*

*one of the states...this claim also has no semblance of merit." In re Lowell H. Becraft (United States v. Nelson), 885 F.2d 547 (9th Cir. 1989), (Mr. Becraft, attorney for Mr. Nelson, was fined $2,500 for filing a petition that the court found to be so lacking in merit as to be "frivolous").*

*"Defendant's first motion is styled 'motion to dismiss for lack of exclusive legislative jurisdiction.' This motion is premised on Article I, Section 8, Clause 17 of the United States Constitution, which provides: [The Congress shall have the power] [t]o 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. Defendants argue that Clause 17 limits the legislative power of Congress such that only the geographical areas over which Congress may legislate, or may exercise its power of taxation, are those areas described in Clause 17. This position is contrary to both the natural reading the Constitution and the case law. Clause 17 limits not the power of Congress, but the power of the states. '[T]he word "exclusive" was employed to eliminate any possibility that the legislative power of Congress over the District [of Columbia] was to be concurrent with that of the ceding states.' District of Columbia v. John R. Thompson Co., 346 U.S. 100, 109, 73 S.Ct. 1007, 1012, 97 L.Ed. 1480 (1953)." United States v. Sato, 704 F.Supp. 816 (N.D.Ill. 1989).*

*"Along with his claim that he is not a United States citizen, plaintiff further claims that federal laws, including the I.R.C., do not apply to citizens of the state of Washington, a 'compact state.' Article I, section 8 of the United States Constitution grants Congress the power to 'lay and collect Taxes.' U.S. Const., Art. I, section 8. ... The Sixteenth Amendment provides that '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.' ... Pursuant to the authority vested in Congress under the Sixteenth Amendment to impose a direct income tax on citizens and residents of the United States comprised of the 50 states and the District of Columbia, Congress enacted Title 26 of the United States Code, the Internal Revenue Code." Betz v. United States, 40 Fed.Cl. 286, 295 (1998)*

A somewhat related claim that is sometimes made is that there are two different entities known as the "United States of America."

*"Beresford insists that the United States is not a proper defendant and that attorneys from the Department of Justice and United States Attorney may not represent defendant. He also contends that there are two different legal entities named the United States of America.*

*"The United States is the only proper defendant in a suit to recover a tax refund. It is to be substituted for other named defendants. 26 U.S.C. section 7422(f). His contention about different legal entities and which attorneys may represent the defendant are frivolous." Steven M. Beresford v. IRS, et al., 86 AFTR2d Par. 2000-5200, No. 00-293-KI (U.S.D.C. Dist. Ore. 7/13/2000), aff'd 2001 U.S. App. LEXIS 3187 (9th Cir. 2/23/2001).*

We agree with Evans on this issue, but some of his cites are positively incorrect when applied to states of the Union. They are correct if the "United States" means the GOVERNMENT ONLY, but not if they are applied to states of the Union. This subject is covered in the following references:

- *Flawed Tax Arguments to Avoid*,, Section 9.5
- *Great IRS Hoax*, sections 5.2.1 and 5.6.16

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### 2.12 The income tax cannot apply to natural-born "sovereign state citizens" because they are not "citizens" within the meaning of the 14th Amendment.

There are actually a number of problems with the concept of "citizens" of the states of the United States who are not "citizens" within the meaning of the 14th Amendment. If this tax resister claim were true, then:

1. The words "citizen of the United States" must have a meaning in the 14th Amendment which is different than the meaning given those same words in other parts of the Constitution.
2. The words "United States" must have a meaning in the first sentence of the 14th Amendment which is different than the meaning given those words in other parts of the Constitution.
3. The word "jurisdiction" must have a meaning in the first sentence of the 14th Amendment which is different than the meaning given that word in other parts of the Constitution.
4. The 14th Amendment must extend the power of Congress to legislate for "federal citizens" without regard to the limits on Congressional power found in other parts of the Constitution.
5. The 14th Amendment created a new kind of citizenship, and did not merely extend the existing definition of "citizen" to include former slaves as well as whites.
6. The 14th Amendment does not mean what it says, and does not apply to "all persons."

7. The power of Congress to tax is limited by citizenship, and Congress cannot tax immigrants or foreigners who are within the United States but not citizens of the United States.

All of the above statements are wrong, but for the purpose of this FAQ the last fallacy is the most important, because there is nothing in the Constitution that limits the power of Congress to tax only citizens, however defined. The power to tax which is given to Congress by Article I, Section 8, of the Constitution, and by the 16th Amendment, is not limited to the taxation of citizens, whether "sovereign state citizens," "14th Amendment citizens," or any other type of citizen. The power to tax applies to all residents of the United States whether or not they are citizens, as well as to all income earned within the United States whether or not the income is earned by residents or non-residents. (The income tax also applies to citizens of the United States living in other countries, but that is another issue.) Therefore, *even if the claim of two types of citizenship were correct (which is a big "if"), the claim is still irrelevant* to the federal income tax because Congress can tax noncitizens as well as citizens.

Evans is correct in the above analysis, but we don't think he understands WHY he is correct. The U.S. Supreme Court said that the power to tax originates from the domicile of the person subject to tax.

> *"**Thus, the Court has frequently held that domicile or residence, more substantial than mere presence in transit or sojourn, is an adequate basis for taxation, including income, property, and death taxes**. Since the Fourteenth Amendment makes one a citizen of the state wherein he resides, **the fact of residence creates universally reciprocal duties of protection by the state and of allegiance and support by the citizen. The latter obviously includes a duty to pay taxes, and their nature and measure is largely a political matter.** Of course, the situs of property may tax it regardless of the citizenship, domicile, or residence of the owner, the most obvious illustration being a tax on realty laid by the state in which the realty is located."*
> *[Miller Brothers Co. v. Maryland, 347 U.S. 340 (1954)]*
>
> *"**This right to protect persons having a domicile, though not native-born or naturalized citizens, rests on the firm foundation of justice, and the claim to be protected is earned by considerations which the protecting power is not at liberty to disregard. Such domiciled citizen pays the same price for his protection as native-born or naturalized citizens pay for theirs. He is under the bonds of allegiance to the country of his residence, and, if he breaks them, incurs the same penalties. He owes the same obedience to the civil laws. His property is, in the same way and to the same extent as theirs, liable to contribute to the support of the Government. In nearly all respects, his and their condition as to the duties and burdens of Government are undistinguishable.**"*
> *[Fong Yu Ting v. United States, 149 U.S. 698 (1893)]*

The "citizens" and "residents" he mentions above have in common a legal "domicile" within the "United States", which is defined in 26 U.S.C. §7701(a)(9) and (a)(10) and 4 U.S.C. §110(d) and nowhere expanded within I.R.C. Subtitle A to include any other place. This is further described in the article below:

> *Why "domicile" and income taxes are voluntary*
> *http://famguardian.org/Subjects/Taxes/Articles/DomicileBasisForTaxation.htm*

As explained above, tax resisters often have trouble with the concept of the concurrent sovereignty of the federal government with the states. For that reason, tax resisters often fail to understand that our Constitution recognizes state and federal citizenship as two different relationships, with the rights and obligations of state citizenship being separate from the rights and obligations of federal citizenship. However, the Supreme Court has clearly recognized the reality of concurrent citizenship.

> *"It is a natural consequence of a citizenship which owes allegiance to two sovereigns, and claims the protection of both." United States v. Cruikshank, 92 U.S. 542, 549 (1876).*

Likewise, Evans doesn't understand the full effect of the Separation of Powers Doctrine and the fundamental nature of the Constitution as a delegation of authority and a contract/compact between the people in the states of the Union and their newly formed federal government. The U.S. Supreme Court has ruled that the term "United States" as used in the Constitution means the states of the Union and EXCLUDES all property under the plenary power or exclusive jurisdiction of the federal government.

> *"The earliest case is that of Hepburn v. Ellzey, 2 Cranch, 445, 2 L. ed. 332, in which this court held that, under that clause of the Constitution limiting the jurisdiction of the courts of the United States to controversies between citizens of different states, a citizen of the District of Columbia could not maintain an action in the circuit court of the United States. It was argued that the word 'state.' in that connection, was used simply to denote a distinct political society. 'But,' said the Chief Justice, 'as the act of Congress obviously used the word 'state' in reference to that term as used in the Constitution, it becomes necessary to inquire whether Columbia is a state in the sense of that instrument. **The result of that examination is a conviction that the members of the American confederacy only are the states contemplated in the Constitution , . . . and excludes from the term the signification attached to it by writers on the law of nations.' This case was followed in Barney v. Baltimore, 6 Wall. 280, 18 L. ed. 825, and quite recently in Hooe v. Jamieson, 166 U.S. 395 , 41 L. ed.***

> ***1049, 17 Sup. Ct. Rep. 596. The same rule was applied to citizens of territories in New Orleans v. Winter, 1 Wheat. 91, 4 L. ed. 44, in which an attempt was made to distinguish a territory from the District of Columbia. But it was said that 'neither of them is a state in the sense in which that term is used in the Constitution.'*** *In Scott v. Jones, 5 How. 343, 12 L. ed. 181, and in Miners' Bank v. Iowa ex rel. District Prosecuting Attorney, 12 How. 1, 13 L. ed. 867, it was held that under the judiciary act, permitting writs of error to the supreme court of a state in cases where the validity of a state statute is drawn in question, an act of a territorial legislature was not within the contemplation of Congress."*
> *[Downes v. Bidwell, 182 U.S. 244 (1901)]*

The result of the above is that the meaning of the words "State" and "United States" have a different meaning depending on their context. In the Constitution, they mean a state of the Union and the Union of states respectively. In the context of federal legislation or acts of Congress, the meanings are completely different because the subject matter is different. The Constitution delegates authority to the United States to manage "community property" of the Union, consisting of the territories and possessions of the United States and federal areas within the states. The Constitution does not, however, turn states of the Union into territories or "community property" subject to the legislative power of the Congress.

> *"§1. Definitions, Nature, and Distinctions*
>
> ***"The word 'territory,' when used to designate a political organization has a distinctive, fixed, and legal meaning under the political institutions of the United States, and does not necessarily include all the territorial possessions of the United States, but may include only the portions thereof which are organized and exercise governmental functions under act of congress."***
>
> *"While the term 'territory' is often loosely used, and has even been construed to include municipal subdivisions of a territory, and 'territories of the' United States is sometimes used to refer to the entire domain over which the United States exercises dominion, the word 'territory,' when used to designate a political organization, has a distinctive, fixed, and legal meaning under the political institutions of the United States, and the term 'territory' or 'territories' does not necessarily include only a portion or the portions thereof which are organized and exercise government functions under acts of congress. The term 'territories' has been defined to be political subdivisions of the outlying dominion of the United States, and in this sense the term 'territory' is not a description of a definite area of land but of a political unit governing and being governed as such. The question whether a particular subdivision or entity is a territory is not determined by the particular form of government with which it is, more or less temporarily, invested.*
>
> ***"Territories' or 'territory' as including 'state' or 'states." While the term 'territories of the' United States may, under certain circumstances, include the states of the Union, as used in the federal Constitution and in ordinary acts of congress "territory" does not include a foreign state.***
>
> ***"As used in this title, the term 'territories' generally refers to the political subdivisions created by congress, and not within the boundaries of any of the several states."***
> *[86 C.J.S. (Corpus, Juris, Secundum, Legal Encyclopedia), Territories, §1]*

Note that the legal encyclopedia describes states of the Union as "foreign states". That means they are not subject to the legislative jurisdiction except in very limited circumstances. The reason why a legislatively but not constitutionally "foreign state" is not subject is analyzed in the article below:

> *"Sovereign="Foreign"*
> *http://famguardian.org/Subjects/Freedom/Sovereignty/Sovereign=Foreign.htm*

Because the states of the Union are sovereign and legislatively but not constitutionally "foreign" with respect to each other and with respect to the national government in most subject matters, then the Constitution does not empower Congress cannot write legislation that would affect them ***internally***, except in the following very limited subject matters, all of which relate to foreign and interstate commerce:

1. "Counterfeiting pursuant to Article 1, Section 8, Clause 5 of the United States Constitution.
2. "Postal matters pursuant to Article 1, Section 8, Clause 7 of the United States Constitution.
3. "Foreign commerce pursuant to Article 1, Section 8, Clause 3 of the United States Constitution.
4. Treason pursuant to Article 4, Section 2, Clause 2 of the United States Constitution.
5. Federal contracts, franchises, and property pursuant to Article 4, Section 3, Clause 2 of the United States Constitution. These are the MAIN source of jurisdiction to regulate most subject matters in the states because all franchises are, in effect, loans of government property.

It is important to note that even IF one assumes the Sixteenth Amendment was properly ratified, which it wasn't, it didn't add to the above powers a power of collecting revenue in states of the Union against anyone OTHER than public officers on official business, and that according to *Stanton v. Baltic Mining Co.*, 240 U.S. 103 (1916), "the 16th Amendment conferred no new power of taxation" and therefore did not ADD to the above list. If anything, the Sixteenth Amendment falls under item 5 in the above, which is franchises, because the income tax itself is a public officer franchise tax. Furthermore, the U.S. Supreme Court held in the License Tax Cases that Congress

cannot authorize such franchises within Constitutional states. It therefore must limit their enforcement to those domiciled within federal territories, wherever physically situated. Domicile is the basis for all income taxation, according to District of Columbia v. Murphy, 314 U.S. 441 (1941), as is proven in the following:

> *Why Domicile and Becoming a "Taxpayer" Require Your Consent*, Form #05.002, Section 11.7
> DIRECT LINK: https://sedm.org/Forms/05-MemLaw/Domicile.pdf
> FORMS PAGE: https://sedm.org/Forms/FormIndex.htm

Evans is correct that there is a "concurrent sovereignty" within the states of the Union, but ONLY on the above subject matters. We describe this concurrent sovereignty within the *Great IRS Hoax*, section 5.1.4 and prove that his analysis of concurrent sovereignty is WRONG. For all other subject matters, states of the Union and the people within them are legislatively "foreign" and not subject to the legislative jurisdiction of any "Act of Congress". Those domiciled in Constitutional "States" are statutory but not Constitutional "aliens" in relation to federal legislative jurisdiction. The U.S. Supreme Court admitted the conclusions above when it held:

> *"**It is no longer open to question that the general government, unlike the states, Hammer v. Dagenhart, 247 U.S. 251, 275 , 38 S.Ct. 529, 3 A.L.R. 649, Ann.Cas.1918E 724, possesses no inherent power in respect of the internal affairs of the states; and emphatically not with regard to legislation.**"*
> *[Carter v. Carter Coal Co., 298 U.S. 238, 56 S.Ct. 855 (1936)]*

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> *"The difficulties arising out of our dual form of government and the opportunities for differing opinions concerning the relative rights of state and national governments are many; **but for a very long time this court has steadfastly adhered to the doctrine that the taxing power of Congress does not extend to the states or their political subdivisions**. The same basic reasoning which leads to that conclusion, we think, requires like limitation upon the power which springs from the bankruptcy clause. United States v. Butler, supra."*
> *[Ashton v. Cameron County Water Improvement District No. 1, 298 U.S. 513; 56 S.Ct. 892 (1936)]*

The reason Evans doesn't know this or take it into consideration in his comments is that law schools don't teach about the Separation of Powers Doctrine (Form #05.023) anymore. They do this in spite of the fact that it's main purpose is to protect rights, according to the U.S. Supreme Court

> *We start with first principles. The Constitution creates a Federal Government of enumerated powers. See U.S. Const., Art. I, 8. As James Madison wrote, "[t]he powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." The Federalist No. 45, pp. 292-293 (C. Rossiter ed. 1961). **This constitutionally mandated division of authority "was adopted by the Framers to ensure protection of our fundamental liberties." Gregory v. Ashcroft, 501 U.S. 452, 458 (1991) (internal quotation marks omitted). "Just as the separation and independence of the coordinate branches of the Federal Government serves to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.**" Ibid. "*
> *[U.S. v. Lopez, 514 U.S. 549 (1995)]*

Consequently, you could say that the law schools and the governments who subsidize and regulate them, because they don't teach about the Separation of Powers Doctrine (Form #05.023), are involved in a conspiracy to destroy your rights. It is supremely hypocritical and treasonous to establish government for the SOLE purpose of protecting PRIVATE rights, and to avoid or evade their protection by playing word games and replacing constitutional courts with franchise courts. The separation of powers are described in the following two articles:

1. The Separation Of Powers Doctrine.
2. How Scoundrels Corrupted our Republican Form of Government.
3. Government Conspiracy to Destroy the Separation of Powers, Form #05.023

The practical implications of the Separation of Powers Doctrine are that certain "words of art", including the term "United States" as used in the Fourteenth Amendment, have entirely different meanings depending on their context. The Table below summarizes those differences:

| **Law** | **Federal constitution** | **Federal statutes** | **Federal regulations** | **State constitutions** | **State statutes** | **State regulations** |
|---|---|---|---|---|---|---|
| **Author** | **Union States/ "We The People"** | **Federal Government** | | **"We The People"** | **State Government** | |
| **"state"** | Foreign country | Union state or foreign country | Union state or foreign country | Other Union state or federal government | Other Union state or federal government | Other Union state or federal government |

| | | | | | | |
|---|---|---|---|---|---|---|
| **"State"** | Union state | Federal state | Federal state | Union state | Union state | Union state |
| **"in this State" or "in the State"[1]** | NA | NA | NA | NA | Federal enclave within state | Federal enclave within state |
| **"State"[2] (State Revenue and taxation code only)** | NA | NA | NA | NA | Federal enclave within state | Federal enclave within state |
| **"several States"** | Union states collectively[3] | Federal "States" collectively | Federal "States" collectively | Federal "States" collectively | Federal "States" collectively | Federal "States" collectively |
| **"United States"** | states of the Union collectively | Federal United States** | Federal United States** | United States* the country | Federal United States** | Federal United States** |

[1] See California Revenue and Taxation Code, section 6017

[2] See California Revenue and Taxation Code, section 17018

[3] See, for instance, U.S. Constitution Article IV, Section 2.

Before the 14th Amendment, it was not clear how citizenship was determined. This culminated in the infamous Dred Scott decision, *Dred Scott v. Sandford*, 60 U.S. 393 (1856), in which it was held that a slave (or former slave) who was not a citizen (or even a person) under state law could not be a citizen (or even a person) under federal law. Following the Civil War, this was reversed by the adoption of the 14th Amendment. As explained by the U.S. Supreme Court:

> *"The first section of the fourteenth article, to which our attention is more specially invited, opens with a definition of citizenship--not only citizenship of the United States, but citizenship of the States.*
>
> > *"'All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside.'*
>
> *"The first observation we have to make of this clause is, that it puts at rest both the questions which we state to have been the subject of differences of opinions. It declares that persons may be citizens of the United States without regard to their citizenship of a particular States, and it overturns the Dred Scott decision by making all persons born within the United States and subject to its jurisdiction citizens of the United States." The Slaughterhouse Cases, 83 U.S. 36, 72-73 (1873), (emphasis in original).*

Following the plain words of the 14th Amendment, and the decision in the *Slaughterhouse Cases,* the federal courts have consistently ruled that all persons born within the United States are citizens of the United States, and state citizenship follows from federal citizenship. For example, the Supreme Court has held that a state cannot deny rights of state citizenship to a citizen of the United States who resides within that state. *Dunn v. Blumstein*, 405 U.S. 330 (1972); *Evans v. Cornman*, 398 U.S. 419 (1970).

This was more recently confirmed in *Saenz v. Roe*, 526 U.S. 489 (1999), http://www.law.cornell.edu/supct/html/98-97.ZS.html, aff'g 134 F.3d 1400.

> *"Citizens of the United States, whether rich or poor, have the right to choose to be citizens 'of the States wherein they reside.' U.S. Const., Amdt. 14, section 1. The States, however, do not have any right to select their citizens." Id.*

One Circuit Court of Appeals has put it this way:

> *"Relying on this Supreme Court authority, circuit and district courts have treated the question before us today as one long decided: '[I]n order to be a citizen of a state, it is elementary law that one must first be a citizen of the United States.'" Kantor v. Wellesley Galleries, Ltd., 704 F.2d 1088, 1090-1091 (9th Cir. 1983), (citations omitted).*

Tax resisters (and white supremacists) argue that the phrase "all persons" does not mean *all* persons, but only refers to former slaves (i.e., blacks), because the purpose of the amendment was to grant rights of citizenship to blacks and whites were already citizens. Even assuming that it is possible to conclude that the amendment does not mean what it says, it cannot be concluded that the amendment only applies to blacks if the effect would be to treat blacks differently than whites. The purpose of the amendment was to give blacks the *same* rights of citizenship as whites. That purpose would be defeated if blacks were to enjoy a form of citizenship that is somehow different than the citizenship enjoyed by whites.

Tax resisters (and white supremacists) also argue that the phrase "subject to the jurisdiction thereof" excludes those born within the states of the United States because only those born in the District of Columbia and the territories of the United States are "subject to the jurisdiction" of the federal government. This is completely wrong, on several grounds:

- The Supreme Court has plainly stated that "The phrase 'subject to its jurisdiction' was intended to exclude from its operation ministers, consuls, and citizens or subjects of foreign States born within the United States." *The Slaughterhouse Cases*, 83 U.S. 36, 73 (1873).
- Those born within the states of the United States are within the "jurisdiction" of the United States as that word is used within other clauses of the Constitution, including the reach of the judicial power of the United States in Article III. As explained above, the laws of the United States enacted by Congress under the Constitution of the United States are the "Supreme Law of the Land" and so all of the residents of all of the states of the United States are within the "jurisdiction" of the United States.
- If the 14th Amendment did not apply to those born within the states, it would not apply to most former slaves (born in the Southern states), which would defeat the entire admitted purpose of the amendment.

In addition to failing to recognize the two CONTEXTS for the meaning of "United States" between the Constitution and "Acts of Congress", Evans adds to the confusion above, by failing to recognize that there are TWO, not ONE type of jurisdiction talked about in the Constitution: 1. Legislative jurisdiction; 2. Political jurisdiction. The U.S. Supreme Court admitted that in the context of the Fourteenth Amendment, the term "subject to the jurisdiction" means ONLY the political jurisdiction and excludes the "legislative jurisdiction" by implication:

> *"This section contemplates two sources of citizenship, and two sources only,-birth and naturalization. The persons declared to be citizens are 'all persons born or naturalized in the United States, and **subject to the jurisdiction thereof.**' The evident meaning of these last words is, not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to their **political jurisdiction**, and owing them direct and immediate allegiance. And the words relate to the time of birth in the one case, as they do [169 U.S. 649, 725] to the time of naturalization in the other. Persons not thus subject to the jurisdiction of the United States at the time of birth cannot become so afterwards, except by being naturalized, either individually, as by proceedings under the naturalization acts, or collectively, as by the force of a treaty by which foreign territory is acquired."*
> *[U.S. v. Wong Kim Ark, 169 U.S. 649, 18 S.Ct. 456; 42 L.Ed. 890 (1898)]*

Evans is confusing political jurisdiction with "legislative jurisdiction" and they are NOT the same thing. "Political jurisdiction" was defined by the Supreme Court in Minor v. Happersett:

> *"There cannot be a nation without a people. The very idea of a political community, such as a nation is, implies an [88 U.S. 162, 166] association of persons for the promotion of their general welfare. Each one of the persons associated becomes a member of the nation formed by the association. **He owes it allegiance and is entitled to its protection. Allegiance and protection are, in this connection, reciprocal obligations. The one is a compensation for the other; allegiance for protection and protection for allegiance.***
>
> *"For convenience it has been found necessary to give a name to this membership. The object is to designate by a title the person and the relation he bears to the nation. For this purpose the words 'subject,' 'inhabitant,' and 'citizen' have been used, and the choice between them is sometimes made to depend upon the form of the government. **Citizen is now more commonly employed, however, and as it has been considered better suited to the description of one living under a republican government, it was adopted by nearly all of the States upon their separation from Great Britain, and was afterwards adopted in the Articles of Confederation and in the Constitution of the United States. When used in this sense it [the word "citizen"] is understood as conveying the idea of membership of a nation, and nothing more.**"*
>
> *"**To determine, then, who were citizens of the United States before the adoption of the amendment it is necessary to ascertain what persons originally associated themselves together to form the nation, and what were afterwards admitted to membership.**"*
> *[Minor v. Happersett, 88 U.S. 162 (1874)]*

Notice how the Supreme court used the phrase "and nothing more", as if to emphasize that citizenship doesn't imply legislative jurisdiction, but simply political membership. We described in detail the two political jurisdictions within our country earlier in section 4.7. "Political jurisdiction" implies only the following:

1. "Membership in a political community" (see Minor v. Happersett, 88 U.S. 162 (1874))
2. "Right to vote."
3. "Right to serve on jury duty."

Political jurisdiction is exhaustively analyzed in the following document:

> Political Jurisdiction, Form #05.004
> DIRECT LINK: https://sedm.org/Forms/05-MemLaw/PoliticalJurisdiction.pdf

FORMS PAGE: http://sedm.org/Forms/FormIndex.htm

"Legislative jurisdiction", on the other hand, implies being "completely subject" and subservient to federal laws and all "Acts of Congress", which only people in the District of Columbia and the territories and possessions of the United States can be. You can be "completely subject to the political jurisdiction" of the United States without being subject in any degree to a specific "Act of Congress" or the Internal Revenue Code, for instance. The final nail is put in the coffin on the subject of what "subject to **the** jurisdiction" means in the Fourteenth Amendment, when the Supreme Court further said in the above case:

> *"**It is impossible** to construe the words 'subject to the jurisdiction thereof,' in the opening sentence, as less comprehensive than the words 'within its jurisdiction,' in the concluding sentence of the same section; or **to hold that persons 'within the jurisdiction' of one of the states of the Union are not 'subject to the jurisdiction of the United States**.'"*
> *[U.S. v. Wong Kim Ark, 169 U.S. 649, 18 S.Ct. 456; 42 L.Ed. 890 (1898), emphasis added]*

So "subject to the jurisdiction" means "subject to the [political] jurisdiction" of the United States, and the Fourteenth Amendment definitely includes people born in states of the Union. Another very interesting conclusion reveals itself from reading the following excerpt from the above case:

> *"And Mr. Justice Miller, delivering the opinion of the court [legislating from the bench, in this case], in analyzing the first clause, observed that "the phrase 'subject to the jurisdiction thereof' was intended to exclude from its operation children of ministers, consuls, and **citizens or subjects of foreign states**, born within the United States."*
> *[U.S. v. Wong Kim Ark, 169 U.S. 649, 18 S.Ct. 456; 42 L.Ed. 890 (1898)]*

The above conclusions are exhaustively analyzed and proven in:

1. Federal Jurisdiction, Form #05.018
   DIRECT LINK: https://sedm.org/Forms/05-MemLaw/FederalJurisdiction.pdf
2. Great IRS Hoax, section 4.11.7.1.
   http://famguardian.org/Publications/GreatIRSHoax/GreatIRSHoax.htm
3. Why you are a "national", "state national", and Constitutional but not Statutory Citizen"
   http://famguardian.org/Publications/WhyANational/WhyANational.pdf

So what have the federal courts said about the claim that a person born in a state of the United States is not a "citizen of the United States" and is not subject to the federal income tax?

> *"Also basic to Mr. Sloan's "freedom from income tax theory" is his contention that he is not a citizen of the United States, but rather, that he is a freeborn, natural individual, a citizen of the State of Indiana, and a & "master"--not "servant"--of his government. As a result, he claims that he is not subject to the jurisdiction of the laws of the United States. This strange argument has been previously rejected as well. "All individuals, natural or unnatural, must pay federal income tax on their wages," regardless of whether they requested, obtained or exercised any privilege from the federal government. Lovell [v. United States], 755 F.2d [517] at 519 [7th Cir. 1984]; cf. [United States v.] Studley, 783 F.2d [934] at 937 [9th Cir. 1986] (Studley's argument that "she is not a 'taxpayer' because she is an absolute, freeborn and natural individual ... is frivolous. An individual is a 'person' under the Internal Revenue Code."). Moreover, the tax code imposes a "direct nonapportioned [income] tax upon United States citizens throughout the nation, not just in federal enclaves," such as postal offices and Indian reservations. United States v. Collins, 920 F.2d 619, 629 (10th Cir. 1990), cert. denied, ___ U.S. ___, 111 S.Ct. 2022, 114 L.Ed.2d 108 (1991) (citing Brushaber v. Union Pacific R.R., 240 U.S. 1, 12-19, 36 S.Ct. 236, 239-42, 60 L.Ed. 493 (1916)). Mr. Sloan's proposition that he is not subject to the jurisdiction of the laws of the United States is simply wrong." United States v. Sloan, 939 F.2d 499, 501 (7th Cir. 1991), cert. den. 112 S.Ct. 940 (1992).*

> *"And, finally, we reject appellants' contention that they are not citizens of the United States, but rather "Free Citizens of the Republic of Minnesota" and, consequently, not subject to taxation. See United States v. Kruger, 923 F.2d 587, 587-88 (8th Cir.1991) (rejecting similar argument as "absurd")." United States v. Gerads, 999 F.2d 1255 (8th Cir. 1993).*

> *"Appellant challenges the district court's jurisdiction by contending that because he is a state citizen, the United States government lacks the constitutional authority both to subject him to federal tax laws and to prosecute him for failing to comply with those laws. Citing to Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1856), appellant argues that as a white, natural born, state citizen, he is not subject to the taxing power of Congress. This argument is completely without merit. As this court has made clear in the past, claims that a particular person is 'not a [federal] taxpayer because [he or] she is an absolute, free-born and natural individual' constitutionally immune to federal laws is frivolous and, in civil cases, can serve as the basis for sanctions. United States v. Studley, 783 F.2d 934, 937, n. 3 (9th Cir. 1986)." United States v. McDonald, 919 F.2d 146 (9th Cir. 1990).*

> *To the extent the Monforton's contend that as 'Sovereign State Citizens of Washington States' they are not*

> *subject to federal income tax, this contention is frivolous." Monforton v. United States, No. CV-94-00058-FVS, KTC 1995-354, n. 2, No. CV-94-00058-FVS, (9th Cir. 1995), (unpublished).*
>
> *United States v. Nelson (In re Becraft), 885 F.2d 548 (9th Cir. 1989).*
>
> *"The Epperlys next argue that since they are 'American Inhabitants' who possess sovereign powers and immunities, they are properly classified under the tax code as 'nonresident aliens' and are not subject to taxation by the federal government. Such an argument is frivolous." Epperly v. United States, 1992 U.S. App. LEXIS 32286 (9th Cir. 1992), (unpublished).*
>
> *United States v. Steiner, 963 F.2d 381 (9th Cir. 1992).*
>
> *"As the cited cases, as well as many others, have made abundantly clear, the following arguments alluded to by the Lonsdales are completely lacking in legal merit and patently frivolous: (1) individuals ("free born, white, preamble, sovereign, natural, individual common law `de jure' citizens of a state, etc.") are not "persons" subject to taxation under the Internal Revenue code; .. .." Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990).*
>
> *"Plaintiff claims that he is a nonresident alien or 'foreign individual of America' in relation to the United States, and that his residence and citizenship rest solely with the States of Washington, 'a free, independent, sovereign, territory' with 'coequal authority with the other compact states of America.' ... Despite plaintiff's creative argument, the court takes judicial notice of the fact that the state of Washington is one of the fifty states that comprise the United States of America, entering the Union in 1889 as the forty-second state. [Citations omitted.] The Fourteenth Amendment states that '[a]ll persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.' U.S. Const., Amend. XIV, section 1. Plaintiff, therefore, along with being a citizen of the state of Washington, is a United States citizen because he was born in Washington State to parents who were United States citizens. ... As a United States citizen, plaintiff is required to pay federal income tax." Betz v. United States, 40 Fed.Cl. 286, 294-296 (1998)*

See also, *United States v. Mundt*, 29 F.3d 233, 237 (6th Cir. 1994).

So where do tax resisters get the idea that the 14th Amendment created some different kind of citizenship, or that there is a difference between citizenship under the 14th Amendment and "citizenship" as it existed before (or even after?) the 14th Amendment? From a collection of obscure, discredited, and misunderstood decisions.

> *"No white person born within the limits of the United States and subject to their jurisdiction ... or born without those limits, and subsequently naturalized under their laws, owes his status of citizenship to the recent amendments to the Federal Constitution. The purpose of the 14th Amendment .. was to confer the status of citizenship upon a numerous class of persons domiciled with the limits of the United States who could not be brought within operation of the naturalization laws because native born, and whose birth, though native, at the same time left them without citizenship. Such persons were not white persons but in the main were of African blood, who had been held in slavery in this country..." Van Valkenburg v. Brown, 43 Cal. 43, 47 (1872).*

Evans is wrong in the above. They don't get it from old or discredited decisions. They get it from the definitions of terms themselves as used in both the Constitution and "Acts of Congress". Where, pray tell, are states of the Union included in the definition of "United States" below?

> *TITLE 26 > Subtitle F > CHAPTER 79 > Sec. 7701. [Internal Revenue Code]*
> *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.*

The Rules of Statutory Construction state that unless what is included appears SOMEWHERE in the written law, then it is excluded by implication. This is no accident, but proof that the terms "State" and "United States" have a different meaning in the Constitution than they do in "Acts of Congress", which simply proves that:

1. The Separation of Powers Doctrine governs.
2. The Congress has a finite stewardship only over "community property" of the Union and can manage ONLY that property.

3. The Creation, which is the federal government, cannot be greater than its Creator, the states of the Union.
4. That the parties to the Constitution are states of the Union, while the "States" mentioned in "Acts of Congress" are limited to the territories of the United States:

> *CHAPTER 4 - THE STATES*
> *TITLE 4 - FLAG AND SEAL, SEAT OF GOVERNMENT, AND THE STATES*
> *Sec. 110. Same; definitions*
>
> ***(d) The term "State" includes any Territory or possession of the United States.***

People like Mr. Evans will try to tap dance around this observation by abusing the rules of statutory construction by trying to play vain games with the word "includes". All of the these games are exposed for the FRAUD that they are in the following pamphlet:

> *Legal Deception, Propaganda, and Fraud, Form #05.014*
> *DIRECT LINK: http://sedm.org/Forms/05-MemLaw/LegalDecPropFraud.pdf*
> *FORMS PAGE: http://sedm.org/Forms/FormIndex.htm*

All that the above definitions and analysis prove is the Mr. Evans is NOT reading his history books or his law books and is NOT doing his MAIN job as a lawyer, which is:

1. Obeying and furthering the goals of the Constitution.
2. Protecting your rights by emphasizing the consequences of the Separation of Powers Doctrine.
3. Exposing and prosecuting any and all attempts by his colleagues in the legal profession and sitting on the federal bench to destroy the Separation of Powers.
4. Keeping the government at "arms length" and in check so it doesn't grow out of control, like it is now, and become essentially a FALSE, PAGAN, SATANIC GOD with unlimited power.

Instead, Mr. Evans is cow-towing to the sedition, I mean "conventional wisdom" of contemporary law schools, which are intent on elevating the law profession to the level of a priesthood, and judges to the level of priests in the "Civil Religion of Socialism" described in the book below. :

> *Socialism: The New American Civil Religion, Form #05.016 (OFFSITE LINKS)*
> *DIRECT LINK: http://sedm.org/Forms/05-MemLaw/SocialismCivilReligion.pdf*
> *FORMS PAGE: http://sedm.org/Forms/FormIndex.htm*

Our current law profession is trying to destroy the Separation of Powers and thereby devolve us into one single, national domain of the federal government, like the rest of the corrupted nations around the world. He is a COMMUNIST because of that:

> *TITLE 50 > CHAPTER 23 > SUBCHAPTER IV > Sec. 841.*
> *Sec. 841. - Findings and declarations of fact*
>
> *The Congress finds and declares that the Communist Party of the United States [**consisting of the IRS, DOJ, and a corrupted federal judiciary**], although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the [de jure] Government of the United States [**and replace it with a de facto government ruled by a the judiciary**]. It constitutes an **authoritarian dictatorship [IRS, DOJ, and corrupted federal judiciary in collusion]** within a [constitutional] republic, demanding for itself the rights and privileges [including immunity from prosecution for their wrongdoing in violation of Article 1, Section 9, Clause 8 of the Constitution] accorded to political parties, but **denying to all others the liberties [Bill of Rights] guaranteed by the Constitution.** Unlike political parties, which evolve their policies and programs through public means, by the reconciliation of a wide variety of individual views, and submit those policies and programs to the electorate at large for approval or disapproval, the policies and programs of the Communist Party are secretly [**by corrupt judges and the IRS in complete disregard of the tax laws**] prescribed for it by the foreign leaders of the world Communist movement [**the IRS and Federal Reserve**]. Its members [**the Congress, which was terrorized to do IRS bidding recently by the framing of Congressman Traficant**] have no part in determining its goals, and are not permitted to voice dissent to party objectives. Unlike members of political parties, members of the Communist Party are recruited for indoctrination [in the public schools by homosexuals, liberals, and socialists] with respect to its objectives and methods, and are organized, instructed, and disciplined [by the IRS and a corrupted judiciary] to carry into action slavishly the assignments given them by their hierarchical chieftains. **Unlike political parties, the Communist Party [thanks to a corrupted federal judiciary] acknowledges no constitutional or statutory limitations upon its conduct or upon that of its members.** The Communist Party is relatively small numerically, and gives scant indication of capacity ever to attain its ends by lawful political means. **The peril inherent in its operation arises not from its numbers, but from its failure to acknowledge any limitation as to the nature of its activities, and its dedication to the proposition that the present constitutional Government of the United States ultimately must be brought to ruin by any available means, including resort to force and violence [or using income taxes]. Holding that doctrine, its role as the agency of a hostile foreign power [the Federal Reserve and the American Bar Association (ABA)] renders its existence a clear present and continuing danger to the security of the United States.** It*

> *is the means whereby individuals are seduced into the service of the world Communist movement, trained to do its bidding, and directed and controlled in the conspiratorial performance of their revolutionary services. Therefore, the Communist Party should be outlawed*

The Van Valkenburg decision is frequently quoted for the proposition that white citizens do not owe their citizenship to the 14th Amendment. However, the decision was a state court decision, not a federal decision, and it is inconsistent with the decision of the U.S. Supreme Court in the *Slaughterhouse Cases*, decided the following year, in 1873. (See the quotation above from the Slaughterhouse Cases, in which the court emphasized that, under the 14th Amendment, *all persons* born in the United States are citizens.)

The other problem with the Van Valkenburg decision is that, although the California court stated that there was a difference between *how* the plaintiff (a white woman) became a citizen, the court nevertheless concluded that she *was* a citizen of the United States within the meaning of the 14th Amendment.

> *"[B]y whatever means the plaintiff became a citizen of the United States, her privileges and immunities cannot be abridged by State laws; and this is true. The purpose and effect of the amendment, in this respect, is to place the privileges and immunities of citizens of the United States beyond the operation of States legislation." Van Valkenburg v. Brown, 43 Cal. 43, 47 (1872).*

So although an old, discredited decision from California may distinguish between white citizens and black citizens, it is a distinction without a difference.

> *"By metaphysical refinement, in examining our form of government, it might be correctly said that there is no such thing as a citizen of the United States. ... A citizen of any one of the States of the Union, is held to be, and called a citizen of the United States, although technically and abstractly there is no such thing. To conceive a citizen of the United States who is not a citizen of some one of the states, is total foreign to the idea, and inconsistent with the proper construction and common understanding of the expression used in the constitution, which must be deduced from its various other provisions. The object then to be obtained, but the exercise of the power of naturalization, was to make citizens of the respective states." Ex parte Knowles, 5 Ca. 300, 302 (1855).*

Notice the date? This decision was rendered 13 years before the 14th Amendment was ratified. Even if this opinion of the California Supreme Court (not a federal court) was correct in 1855, it was not correct once the 14th Amendment was ratified. See *Levin v. United States,* 128 F. 826, 282 (8th Cir. 1904); *Harris v. Sacramento County,* 196 P. 895, 897 (Calif. Dist. App. Ct. 1921).

> *"The 14th Amendment creates and defines citizenship of the United States. It had long been contended, and had been held by many learned authorities, and had never been judicially decided to the contrary, that there was no such thing as a citizen of the United States, except by becoming a citizen of some state." United States v. Anthony, 24 Fed.Cas. 829, 830 (N.D.N.Y. 1873).*

The major problem with this quotation is that it is incomplete, and misleading when taken out of context. See what the court said next:

> *"No mode existed, it was said, of obtaining a citizenship of the United States, except by first becoming a citizen of some state. This question is now at rest. The fourteenth amendment defines and declares who shall be citizens of the United States, to wit, 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof.' The latter qualification was intended to exclude the children of foreign representatives and the like. With this qualification, every person born in the United States or naturalized is declared to be a citizen of the United States and of the state wherein he resides." United States v. Anthony, 24 Fed.Cas. at 830.*

Reading the whole quotation, it is clear that the court was saying what every other court had said, which is that there was some question before the adoption of the 14th Amendment about what "citizen of the United States" meant and how one became a citizen, but the 14th Amendment settled the question by declaring that every person born within the United States was a citizen of the United States.

> *"... the 14th Amendment is throughout affirmative and declaratory, intended to ally doubts and to settle controversies which had arisen, and not to impose any new restriction upon citizenship." United States v. Wong Kim Ark, 169 U.S. 649, 687-688, (emphasis added).*

Why tax resisters cite the *Wong Kim Ark* decision is a bit of a mystery, because in that case the U.S. Supreme Court held that a child born to Chinese nationals living in California was a citizen of the United States and could not be deported. The court's ruling was not limited to blacks, Chinese, or any other race or nationality, the court declaring:

> *"The fourteenth amendment affirms the ancient and fundamental rule of citizenship by birth.... The amendment, in clear words and in manifest intent includes the children born within the territory of the United States of all other persons, of whatever race or color, domiciled within the United States." United States v. Wong Kim Ark, 169 U.S. 649, 687-688, (emphasis added).*

Because the child in question was born in California, and state of the United States, and not the District of Columbia or other "federal area," a necessary implication of the holding in the case is that California is "in the United States and subject to the jurisdiction thereof."

Despite the clear language of the 14th Amendment, and the clear court decisions declaring that *all persons* born in the United States are citizens of the United States, many tax resisters continue to claim that there are two types of citizenship, one for whites and one for blacks. This racist argument is more than a little disturbing. Nevertheless, although tax resisters squirm and twist and hem and haw, the fact remains that no court in the history of the United States has ever stated that there were two different types of U.S. citizenship, with different rights or obligations, and no court in the history of the United States has ever held that any resident of the United States can be exempt from federal income tax by reason of a different kind of citizenship.

Mr. Evans has missed the point because he missed the differences in meaning of the term "United States" between the Constitution and "Acts of Congress". In the Constitution, "United States" means or includes the states of the Union and excludes federal territories and possessions. In "Acts of Congress", the meaning is the opposite, and "United States", in most cases, means the territories and possessions of the [federal] United States and federal areas within the states and excludes states of the Union, with rare exceptions explained above. Because there are two definitions or contexts in which the term "United States" is used, then there are TWO types of "citizens of the United States". In the Constitution, a "citizen of the United States" mentioned in the Fourteenth Amendment is a person born within a state and excludes persons born in the federal zone. We call these people CONSTITUTIONAL but not STATUTORY citizens and statutory "non-resident non-persons" and they are statutorily described in 8 U.S.C. §1101(a)(21). In "Acts of Congress", the term "citizen of the United States" as statutorily defined in 8 U.S.C. §1401 means a person born within the federal zone and excludes persons born within states of the Union. Because Congress has no legislative authority over the internal affairs of states of the Union (with VERY few exceptions indicated above), it cannot and does not define the citizenship status of persons born in states of the Union, who are outside of its ***legislative*** but not ***political*** jurisdiction. This is exhaustively explained in the following free references, which we encourage you to not only read, but rebut:

1. Why You are a "national", "state national", and Constitutional but not Statutory
   http://famguardian.org/Publications/WhyANational/WhyANational.pdf
2. Great IRS Hoax, sections 4.11 through 4.11.13.
   http://famguardian.org/Publications/GreatIRSHoax/GreatIRSHoax.htm
3. Two Political Jurisdictions: National government v. Federal government
   http://famguardian.org/Subjects/Taxes/Articles/USvUSA.htm

The other point the Mr. Evans misses is that because people born in states of the Union are "nationals but not citizens" under federal law, they are also "nonresident aliens". A "nonresident alien" is defined in 26 U.S.C. §7701(b)(1)(B) as a person who is neither a "citizen" or a "resident". "citizens" and "residents" have in common a legal "domicile" within the "United States", which means the federal zone, and they are collectively called "U.S. persons" and defined in 26 U.S.C. §7701(a)(30). A "nonresident alien" is therefore someone who does not have a legal domicile anywhere in the federal zone, because, for instance, he was born within and lives within a state of the Union, which is a "foreign state" with respect to federal jurisdiction. At the same time, a "nonresident alien" can "elect" to become a "resident" (alien) by filling out a federal form. For instance, if a nonresident alien fills out and submits any federal form, including a tax form, containing information protected by the Privacy Act, 5 U.S.C. §552a, then he becomes a "resident". This is so because the Privacy Act protects "individuals", which are defined in 5 U.S.C. §552a(a)(2)(a)(2) to mean ONLY citizens and permanent residents of the federal zone. Notice "nonresident aliens" are neither of these, and so they aren't protected. Therefore, when they submit a federal form, they have to become "residents" in order to be protected by this act and have therefore made an election to have a domicile within the federal zone. That legal domicile then makes them into "taxpayers". This is further described in the article below:

> *Why "Domicile" and Becoming a "Taxpayer" Require Your Consent, Form #05.002 (OFFSITE LINKS)*
> *DIRECT LINK: http://sedm.org/Forms/05-MemLaw/Domicile.pdf*
> *FORMS PAGE: http://sedm.org/Forms/FormIndex.htm*

This same process of transforming "nonresident aliens" into "residents" is used with the IRS Form 1040, which IRS Document 7130 says is only for use by "citizens and residents" of the "United States". These types of deception are the heart of how the federal government manufactures "taxpayers" out of "nontaxpayers". This deception of turning "nonresident aliens" into "residents" is explained in the pamphlet below, in section 7:

> *Non-Resident Non-Person Position, Form #05.020*
> *DIRECT LINK: http://sedm.org/Forms/05-MemLaw/NonresidentNonPersonPosition.pdf*
> *FORMS PAGE: http://sedm.org/Forms/FormIndex.htm*

The court cites that Mr. Evans provides are consistent with what the law says and this explanation, but deceptive because they don't explain the all the facts revealed here. They don't explain the facts we reveal here because then people would realize that the income tax is in deed and in fact voluntary, and that you can unvolunteer by changing government records describing your domicile and being more careful about how you fill out government forms, and more importantly, filling out the CORRECT ones.

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### 2.13 The federal income tax cannot apply to wages, because forcing people to share the fruits of their labors would be the same as slavery or "involuntary servitude" prohibited by the Thirteenth Amendment..

The Thirteen Amendment to the U.S. Constitution, ratified after the Civil War, states in Section 1:

> *"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."*

It is an insult to every person of African descent to compare the income tax, paid by citizens who are free to work (or not work) for whomever they please and for whatever compensation they are able to negotiate, to the slavery that was imposed on the Africans that were kidnapped and brought to this country in chains, and who (and whose descendants, for more than 100 years) were bought and sold, forced to work back-breaking labor, whipped or beaten, and occasionally murdered.

And the courts have recognized that taxation is not the same as slavery.

> *"If the requirements of the tax laws were to be classed as servitude, they would not be the kind of involuntary servitude referred to in the Thirteenth Amendment." Porth v. Brodrick, 214 F.2d 925, 926 (10th Cir. 1954).*
> *See also, Abney v. Campbell, 206 F.2d 836 841 (5th Cir. 1953, cert. den. 346 U.S. 924 (1954); Peeples v. Commissioner, T.C. Memo. 1986-584, aff'd 829 F.2d 1120 (4th Cir. 1987); Beltran v. Cohen, 303 F.Supp. 889, 893 (N.D.Calif. 1969).*

A taxpayer who fails to comply with the tax laws claiming that the Internal Revenue Code violates the Thirteenth Amendment may be assessed a 20 percent penalty under section 6662 for "negligence or disregard of rules or regulations." *David Anthony Avery v. Commissioner*, T.C. Memo. 1999-418 (1999).

There is no question that "wages" as legally defined but not as defined in ordinary speech, are taxable under the I.R.C., are connected with a "trade or business", and must be reported on a W-2. The issue that Evans avoids is that those who are not in fact and in deed engaged in a "public office":

1. Cannot earn "wages" as legally defined unless they volunteer pursuant to 26 C.F.R. §31.3401(a)-3(a) and 26 U.S.C. §3402(p) by completing and submitting a W-4.
2. Cannot be compelled to complete the W-4 and if they are, they are being subject to involuntary servitude in violation of the Thirteenth Amendment.
3. Private employers who attempt to coerce private employees to sign or submit a W-4 are therefore liable for extortion, money laundering, and slavery if they :
   3.1 Try to compel private employees to complete and submit the W-4.
   3.2 Deduct and withhold against private employees against their wishes, if they are not in fact engaged in a "trade or business" or a "public office".
   3.3 Report any "wages" in block 1 of the W-2 unless they employee either completed a W-4 or is in fact connected with a "trade or business", pursuant to 26 U.S.C. §6041.

There is no question that a "taxpayer" as legally defined, who fails to comply with the I.R.C. may be penalized. The problem is that:

1. Those persons in states of the Union who made an informed decision to connect their earnings to a "trade or business" in order to procure "social insurance" and other federal benefits cannot be classified as slaves, but simply consumers of federal services.
2. Pursuant to 26 U.S.C. §871, only those with earnings from the District of Columbia or which are connected with a "trade or business" are "taxpayers".
3. Those who have been compelled to become taxpayers because information returns have been filed against them, such as W-2, 1098, and 1099 that are either false or fraudulent are in fact being subjected to involuntary servitude, because they never consented to be victimized by such fraud and deceit.

Evans doesn't tell you that, because his livelihood probably depends on perpetuating myths among the American populace who are the consumers of his legal services. Confusion and ignorance about law perpetuate slavery and servitude to the legal profession, which we call a "priesthood". The object of that "priesthood" is to make the government the god and him into either a priest or a deacon for the chief priest, who is the judge. What else would you expect from a "federal welfare recipient" called a licensed attorney? If you want to know more about this "deification" of government and this unconstitutional state-sponsored "political religion", we encourage you to read and rebut the following free book:

> *Socialism: The New American Civil Religion, Form #05.016 (OFFSITE LINKS)*
> *DIRECT LINK: http://sedm.org/Forms/05-MemLaw/SocialismCivilReligion.pdf*
> *FORMS PAGE: http://sedm.org/Forms/FormIndex.htm*

On this subject, the U.S. Supreme Court said:

> *"The "establishment of religion" clause of the First Amendment means at least this: **neither a state nor the Federal Government can set up a church**. Neither can pass laws which aid one [state-sponsored political] religion, aid all religions, or prefer one religion over another. Neither can force or influence a person to go to or to remain away from church against his will, or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. **No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa.**"*
> *[Everson v. Bd. of Ed., 330 U.S. 1, 15 (1947)]*

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*"**[T]he Establishment Clause is infringed when the government makes adherence to religion relevant to a person's standing in the political community.** Direct government action endorsing religion or a particular religious practice is invalid under this approach, because it sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community".*
*[Wallace v. Jaffree, 472 U.S. 69 (1985)]*

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### 2.14 The federal income tax amounts to a deprivation of property without due process and without just compensation, which is contrary to the 5th Amendment to the constitution.

This is just plain silly. Taxes are expressly authorized by the Constitution, and all taxes are a taking of property. As the Supreme Court explained in 1916:

> *"So far as the due process clause of the 5th Amendment is relied upon, it suffices to say that there is no basis for such reliance, since it is equally well settled that such clause is not a limitation upon the taxing power conferred upon Congress by the Constitution; in other words, that the Constitution does not conflict with itself by conferring, upon the one hand, a taxing power, and taking the same power away, on the other, by the limitations of the due process clause. Treat v. White, 181 U. S. 264, 45 L. Ed. 853, 21 Sup. Ct. Rep. 611; Patton v. Brady, 184 U. S. 608, 46 L. ed. 713, 22 Sup. Ct. Rep. 493; McCray v. United States, 195 U. S. 27, 61, 49 L. ed. 78, 97, 24 Sup. Ct. Rep. 769, 1 Ann. Cas. 561; Flint v. Stone Tracy Co., 220 U. S. 107, 158, 55 L. ed. 389, 416, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912B, 1312; Billings v. United States, 232 U. S. 261, 282, 58 L. Ed. 596, 605, 34 Sup. Ct. Rep. 421." Brushaber v. Union Pacific R.R., 240 U.S. 1, 24 (1916).*

We agree with the above conclusions in the context of "taxpayers", who are persons subject to the I.R.C. However, it is a violation of due process if collection is instituted against "nontaxpayers", who:

1. Are not subject to the I.R.C. or any internal revenue tax.
2. Who have had false or fraudulent information returns filed against them, such as W-2, 1042-S, 1098, or 1099's in violation of 26 U.S.C. §7434 and who have rebutted them but the IRS refuses to correct their records and instead institutes unlawful collection actions without the authority of law.

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### 2.15 Withholding of income tax from wages, and the assessment and collection of income taxes without any court order, is a deprivation of property without due process contrary to the 5th Amendment to the constitution.

> *"It is well-settled that withholding income tax from wages does not violate the constitution. See Edgar v. Inland Steel Co., 744 F.2d 1276 (7th Cir. 1984); Robinson v. A & M Electric, Inc., 713 F.2d 608 (10th Cir. 1983); Stonecipher v. Bray, 653 F.2d 398 (9th Cir. 1981), cert. den. 454 U.S. 1145 (1982)." Beerbower v. Commissioner of Internal Revenue, 787 F.2d 588 (6th Cir. 1986).*

The Beerbower cite above doesn't exist. We agree with Evans on this issue, if the legal definition of "wages" is implied, but not the common definition.

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### 2.16 You cannot be required to file an income tax return because a tax return is a form of testimony and the 5th Amendment guarantees that you cannot be compelled to testify against yourself.

The 5th Amendment applies to criminal proceedings, not civil proceedings, and collecting taxes is a civil proceeding, not a criminal proceeding. You cannot refuse to file an income tax return because of the 5th Amendment.

The 5th Amendment states (in part) that "No person ... shall be compelled in any criminal case to be a witness against himself...." However, you *can* be compelled to testify against yourself in a civil case. For example, O.J. Simpson could not be compelled to testify in a criminal case, so he never took the witness stand during his murder trial. But in the *civil action* brought against him by the Goldman family for the same murders, he was called to the stand by the Goldman family, required to testify, and found financially liable for the killings.

Because the 5th Amendment does not apply to civil liabilities, the courts have consistently ruled that you cannot refuse to file an income

tax return by reason of the 5th Amendment.

In *Sullivan v. United States*, 274 U.S. 259 (1927), rev'g 15 F.2d 809, the defendant had earned illegal profits from the sale of alcohol (during Prohibition), failed to file an income tax return reporting the illegal profits, and was convicted of willfully failing to file an income tax return. The Circuit Court of Appeals held that to require a return on illegally earned income would be a violation of the 5th Amendment, but the Supreme Court reversed, holding that illegally earned income is still taxable, and that:

> *"As the defendant's income was taxed, the statute of course required a return. [Citation omitted.] In the decision [by the lower court] that this was contrary to the Constitution we are of opinion that the protection of the Fifth Amendment was pressed too far. 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 any return at all. We are not called on to decide what, if anything, he might have withheld. Most of the items warranted no complaint. It would be an extreme if not an extravagant application of the Fifth Amendment to say that it authorized a man to refuse to state the amount of his income because it had been made in crime. But if the defendant desired to test that or any other point he should have tested it in the return so that it could be passed upon. He could not draw a conjurer's circle around the whole matter by his own declaration that to write any word upon the government blank would bring him into danger of the law." 274 U.S. at 263-264.*

Federal courts have since followed the *Sullivan* decision in holding that the 5th Amendment does not allow a taxpayer to refuse to file a return:

> *"The statutory requirement to file an income tax return does not violate a taxpayer's right against self-incrimination." United States v. MacLeod, 436 F.2d 947, 951 (8th Cir. 1971), cert. den. 402 U.S. 907 (1971).*
>
> *"Plaintiff next argues the filing of a return violates his Fifth Amendment right against self-incrimination. [Footnote omitted.] He relies on Garner v. United States, 424 U.S. 649 (1976). There, the Court held one may invoke the Fifth Amendment as to tax returns that would incriminate one for specific non-tax crimes, provided the privilege was claimed on the return. It does not stand for the proposition that the Fifth Amendment provides general protection against filing tax returns. Indeed, the Court reiterated the long-standing principle that the Fifth Amendment is not a defense to filing a return at all. Id. at 650, citing, United States v. Sullivan, 274 U.S. 259 (1927). In Brennan v. Commissioner of Internal Revenue, 752 F.2d 187, 189 (6th Cir. 1985), the Sixth Circuit held the blanket assertion of the Fifth Amendment privilege as to tax returns is a "frivolous position"" Tornichio v. United States, 81 AFTR2d Par. 98-582, KTC 1998-71 (N.D.Ohio 1998), (suit for refund of frivolous return penalties dismissed and sanctions imposed for filing a frivolous refund suit), aff'd 1999 U.S. App. LEXIS 5248, 99-1 U.S. Tax Cas. (CCH) Par. 50,394, 83 AFTR2d Par. 99-579, KTC 1999-147 (6th Cir. 1999), (with sanctions imposed for filing a frivolous appeal).*
>
> *"Plaintiffs provided no information on the numbered lines of their 1982 Form 1040 and provided wage and tax statements for 1980 instead of those for 1982. They claim that the government compelling them to provide the information requested on the form violates their right against self-incrimination guaranteed by the fifth amendment. This claim likewise is without merit. ... "The Supreme Court has held that the fifth amendment privilege against self-incrimination can be invoked only where an individual 'is confronted by substantial and "real," and not merely trifling or imaginary, hazards of incrimination.' Marchetti v. United States, 390 U.S. 39, 53, 88 S. Ct. 697, 19 L. Ed. 2d 889 (1968). See also United States v. Apfelbaum, 445 U.S. 115, 128, 63 L. Ed. 2d 250, 100 S. Ct. 948 (1980). The Eighth Circuit has also specifically held that the privilege does not excuse a taxpayer's blanket refusal to answer any questions on his tax return relating to income without some reasonable showing as to how such disclosure could possibly incriminate him. United States v. Daly, 481 F.2d 28 (8th Cir.), cert. denied, 414 U.S. 1064, 38 L. Ed. 2d 469, 94 S. Ct. 571 (1973). Plaintiffs' purely hypothetical claim does not meet this standard and thus has no basis in law. As such, it is not a valid fifth amendment claim at all and is among those positions taken by tax protestors that have long been labeled 'frivolous' by the courts." House v. United States, 593 F. Supp. 139, 1984 U.S. Dist. LEXIS 24565, 84-2 U.S. Tax Cas. Par. 9745, 54 AFTR2d 5903 (D.C. W.D.Mich. 1984).*

See also, *United States v. Neff*, 615 F.2d 1235, 1239 (9th Cir. 1980), cert. den. 447 U.S. 925; *Parker v. Commissioner*, 724 F.2d 469 (5th Cir. 1984); *United States v. Daly*, 481 F.2d 28 (8th Cir. 1973), cert. den. 414 U.S. 164 (1973); *Ueckert v. Commissioner,* 721 F.2d 248, 250 (8th Cir. 1983); *United States v. Porth*, 426 F.2d 519 (10th Cir. 1970), cert. den. 400 U.S. 824; *Betz v. United States*, 753 F.2d 834 (10th Cir. 1985); *Boomer v. United States*, 755 R2d 696, 697 (8th Cir. 1985).

In enacting a new assessable penalty for "frivolous income tax returns," I.R.C. section 6702, Congress specifically identified 5th Amendment arguments as "frivolous" arguments, and courts have upheld fines against tax resisters who have failed to file income tax returns on 5th Amendment grounds.

Having said all that, there are at least two ways in which the 5th Amendment can be relevant to tax returns.

As the Supreme Court recognized in *Sullivan*, you cannot be compelled to disclose criminal activity on a tax return. For example, if you are sell heroin or cocaine, you are required to report your income from your illegal sales, but you are not required to describe your illegal activities, or provide any other information that might incriminate you. (You could describe your income simply as "income from sales"

without describing what you are selling.) If you choose to identify your occupation or the nature of your sales, that information can be used against you. (In *Garner v. United States*, 424 U.S. 648 (1976), the defendant identified himself as a "gambler" on his tax return, and that information was ruled to be admissible against him in a criminal trial for illegal gambling activities.)

If you fail to file a return, or file a fraudulent return, the government cannot compel you to testify or provide information that could be used against you in the criminal tax case arising out of the failure to file or the fraudulent return. In other words, the 5th Amendment does not prevent the government from requiring you to file a return or from prosecuting you if you fail to file, but it does prevent the government from compelling you to provide information to help with your own conviction after you have failed to file.

The government can compel you to provide tax records (or testimony) that may be needed to determine your correct tax liability. In order properly to assert a 5th Amendment privilege when asked for tax records or tax information, a taxpayer must show that the requested testimony would "support a conviction under a federal criminal statute" or "furnish a link in the chain of evidence needed to prosecute the claimant for a federal crime." *United States v. Rendahl,* 746 F.2d 553, 555 (9th Cir. 1984) (quoting *Hoffman v. United States,* 341 U.S. 479, 486 (1951). Indeed, it is enough if the responses would merely "provide a lead or clue" to evidence having a tendency to incriminate. *United States v. Neff,* 615 F.2d 1235, 1239 (9th Cir.)(quoting *Hashagen v. United States,* 283 F.2d 345, 348 (9th Cir. 1960)), cert. denied, 447 U.S. 925 (1980). However, the privilege is validly invoked only where there are "substantial hazards of self-incrimination" that are "real and appreciable," not merely "imaginary and unsubstantial." *United States v. Rendahl,* 746 F.2d 553, 555 (9th Cir. 1984) (quoting *United States v. Neff,* 615 F.2d 1235, 1239 (9th Cir.). See *United States v. Troescher,* KTC 1996-523 (9th Cir. 1996), for an example of a court applying these principles to a refusal to respond to an IRS summons.

The rule in a criminal case is that, if a defendant asserts the 5th Amendment and refuses to testify, that refusal cannot be used against the defendant. The same rule does *not* apply in tax cases or other civil litigation. If you challenge a tax assessment by the Internal Revenue Service and then refuse to testify on 5th Amendment grounds, the court may assume that your testimony would have been adverse to your position and may make inferences from your refusal to testify, provided that there is some independent evidence in addition to the mere invocation of the privilege upon which to base the negative inference. *Baxter v. Palmigiano*, 425 U.S. 308 (1976).

Evans is correct on these issues, but only in the case of "taxpayers", who are persons who:

1. Are either engaged in a "trade or business" or are domiciled in the District of Columbia. See 26 U.S.C. §871.
2. If they are domiciled in a state of the Union, have made a voluntary election to be treated as though they are engaged in a "trade or business" by completing and submitting a W-4 to their private employer.

If they were coerced to sign the W-4, then they are "nontaxpayers" under duress, and are being subjected to involuntary servitude in violation of the Thirteenth Amendment.

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### 2.17 The IRS cannot require anyone to file an income tax return because that would be a violation of our 4th Amendment rights against unreasonable searches and seizures.

The 4th Amendment prohibits unreasonable searches and seizures, and requires that search warrants be supported by probable cause.

The Supreme Court has held that the requirement for filing ordinary and reasonable returns does not violate a taxpayer's protection against unreasonable search and seizure under the Fourth Amendment.

> *"It is urged in a number of the cases that in a certain feature of the statute there is a violation of the 4th Amendment of the Constitution, protecting against unreasonable searches and seizures. ... Certainly the amendment was not intended to prevent the ordinary procedure in use in many, perhaps most, of the states, of requiring tax returns to be made, often under oath." Flint v. Stone Tracy Co., 220 U.S. 107, 175 (1911).*

And the lower courts have followed the Supreme Court:

> *"Boozer says that he was not required to file a tax return until the Government obtained a court order requiring him to file. This argument hinges on the assumption that 26 U.S.C. section 6012's directive to 'make' a tax return is not a requirement to 'file' a tax return. Boozer maintains that the Tax Court's rejection of this assumption and holding that he was required to file a tax return despite the absence of a court order directing him to file contravened the Fourth Amendment.*
>
> *"Boozer's argument lacks merit. We have construed section 6012's requirement to 'make' a tax return as a requirement to 'file' a tax return. See Moore v. CIR, 722 F.2d 193, 196 (5th Cir. 1984) (observing that the taxpayer has an 'obligation to file established by 26 U.S.C. section 6012'); Steinbrecher v. CIR, 712 F.2d 195, 198 (5th Cir. 1983) (per curiam) ('Section 6012(a) . . . provides that individuals meeting certain requirements shall file income tax returns.' (emphasis deleted)); see also In re Ripley, 991 F.2d 440, 444 n. 15 (5th Cir. 1991) (indicating that section 6651(a) is a sanction for failing to comply with section 6012(a)). Additionally, we have rejected as 'without merit' the contention that requiring the filing of a tax return violates the Fourth Amendment. Hallowell v. CIR, 744 F.2d. 406,408 (5th Cir. 1984). '[T]he amendment was not intended to prevent the ordinary*

> *procedure . . . of requiring tax returns to be made, often under oath.' Flint v. Stone Tracy Co., 220 U.S. 107, 175, 31 S. Ct. 342, 358, 55 L. Ed. 389, ____ (1911); see also White v. CIR, 72 T.C. 1126, 1130 (1979) ('It is further established that the requirement for filing ordinary and reasonable returns and respondent's inspection thereof, does not violate a taxpayer's protection against unreasonable search and seizure under the Fourth Amendment.')." Boozer v. Commissioner, 1999 U.S. App. LEXIS 22301, 99-2 U.S. Tax Cas. Par. 50,836, 84 A.F.T.R.2d 6008, KTC 1999-546 (5th Cir. 1999), (imposition of additions to tax for failing to file tax returns affirmed).*

Evans is correct on these issues, but only in the case of "taxpayers", who are persons who:

1. Are either engaged in a "trade or business" or are domiciled in the District of Columbia. See 26 U.S.C. §871.
2. If they are domiciled in a state of the Union, have made a voluntary election to be treated as though they are engaged in a "trade or business" by completing and submitting a W-4 to their private employer.
3. Are "nontaxpayers" but have had false information returns filed against them connecting them to a "trade or business" that they didn't rebut.

If they were coerced to sign the W-4 or if they had false information returns filed against them, then they are "nontaxpayers" under duress, and are being subjected to involuntary servitude in violation of the Thirteenth Amendment.

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## 2.18 Receipt of Federal Reserve Notes is not "income" because Federal Reserve Notes are not lawful money ("coins in gold or silver") within the meaning of the constitution.

Although tax resisters and other critics of modern banking like to claim only gold and silver can be "money," there is no such limitation in the Constitution. Article I, Section 10 of the Constitution states that "No State shall ... coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts ...," but Article I, Section 8, Clause 5 states that Congress shall have the power "To coin Money, regulate the Value thereof, and of foreign Coin," with no mention of any restriction to gold or silver. This difference has been clearly recognized by the U.S. Supreme Court:

> *"The constitutional authority of Congress to provide a currency for the whole country is now firmly established ... By the constitution of the United States, the several states are prohibited from coining money, emitting bills of credit, or making anything but gold or silver a tender of payment of debts. But no intention can be inferred from these to deny to Congress either of these powers.... Under the power to borrow money on the credit of the United States, and to issue circulating notes for the money borrowed, its powers to define the quality and force of those notes as currency is as broad as the like power over a metallic currency under the power to coin money and to regulate the value thereof. Under the two powers, taken together, Congress is authorized to established a national currency, either in coin or in paper and to make the currency lawful money for all purposes, as regards the national government or private individuals." Juilliard v. Greenman, 110 U.S. 421, 446 (1884).*

How do courts respond when taxpayers claim that the receipt of federal reserve notes is not "income"?

> *"Plaintiffs further seek an injunction against the Internal Revenue Service ('IRS') to prevent tax collection activities on federal reserve notes, contending that federal reserve notes are not lawful money of the United States 'as defined and intended by the spirit of the Constitution' and that Congress has violated the separation of powers doctrine by issuing federal reserve notes which are not redeemable in coin, thereby rendering federal reserve notes 'counterfeit securities.' ... Plaintiffs are incorrect.*
>
> *"The contention that paper money is illegal has been consistently rejected. [Citations omitted.]*
>
> *"Congress has exercised this power [to establish a national currency] by delegation to the federal reserve system. 12 U.S.C. section 411. Federal reserve notes are legal tender for all debts, including taxes. 31 U.S.C. section 392; Milam v. U.S. 524 F.2d 629 (9th Cir. 1974). The United States Constitution, art. 1, section 10, 'prohibits the states from declaring legal tender anything other than gold or silver, but does not limit Congress' power to declare what shall be legal tender for all debts.' U.S. v. Rifen, 577 F.2d 1111,1112 (8th Cir. 1978). Since Congress has done so, there can be no valid challenge to the legality of federal reserve notes. United States v. Anderson, 584 F.2d 369, 374 (10th Cir. 1978)." Wilson v. United States of America, 81 AFTR2d ¶98-785 (D.Col. 1998).*

See also, *Guaranty Trust Co. v. Henwood,* 307 U.S. 247 (1939); *Norman v. Baltimore & Ohio R. Co.,* 294 U.S. 240 (1935); *United States v. Kelley*, 539 F.2d 1199 (9th Cir. 1976), cert. den. 429 U.S. 963 (1976); *United States v. Wangrud*, 533 F.2d 495 (9th Cir. 1976), cert. den. 429 U.S. 818; *United States v. Daly*, 481 F.2d 28 (8th Cir. 1937), cert den. 414 U.S. 1064 (1973); *Cupp v. Commissioner*, 65 T.C. 68 (1975), aff'd 559 F.2d 1207 (3rd Cir. 1975); *United State v. Porth*, 426 F.2d 519 (10th Cir. 1970), cert. den. 400 U.S. 824 (1970).

For more information on the federal reserve system, see "Debunking the Federal Reserve Conspiracy Theories (and other financial

myths)" by Edward Flaherty.

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**2.19 The establishment of a "Pure Trust" can protect income and earnings from income tax, because a trust is a form of contract and is therefore protected from impairment by the contract clause of the Constitution.**

There are all sorts of problems with this particular piece of nonsense.

The argument is based on Article I, Section 10, clause 1 of the Constitution, which states that "No State shall ... pass any ... Law impairing the Obligation of Contracts...."

An immediate problem is the clause refers to the states, and the United States government "is not within the constitutional prohibition which prevents states from passing laws impairing the obligations of contracts...." *Sinking Fund Cases*, 99 U.S. 700, 718 (1878). See also, *New York v. United States*, 257 U.S. 591, 601 (1922); *Legal Tender Cases*, 79 U.S. 457, 549-551 (1870).

Another problem is that the imposition of a tax is usually not considered to be an "impairment" of a contract.

> *"Authorities from numerous sources are cited by the plaintiffs, but none of them show that a lawful tax on a new subject, or an increased tax on an old one, interferes with a contract or impairs its obligation, within the meaning of the Constitution, even though such taxation may affect particular contracts, as it may increase the debt of one person and lessen the security of another, or may impose additional burdens upon one class and release the burdens of another, still the tax must be paid unless prohibited by the Constitution, nor can it be said that it impairs the obligation of any existing contract in its true legal sense." North Missouri Railroad v. Maguire, 87 U.S. (Wall) 46, 61 (1873).*

(Although a tax may be an impairment of a contract if the state itself is under a contractual obligation not to impose the tax. See, e.g., *North Missouri Railroad v. Maguire*, supra.)

And, even if a tax on trust income could be considered an "impairment" of the trust contract, it could only be an impairment of an *existing* contract. Trusts that have been created *after* the enactment of the income tax on trusts could still be taxed because the tax was in place before the trust was created.

And tax resisters are not just wrong about the constitutionality of the income tax as applied to trusts, but also ignore (or attempt to evade) an number of other issues.

In many cases, tax resisters have attempted to assign their own wages or salaries to trusts, claiming that the income is the income of the trust and not the wage earner's. This violates a fundamental principle of taxation, which is that earned income (wages, salaries, and other compensation for services) is always taxable to the person that earned the income, and any attempt to assign income before it is earned will be ineffective for income tax purposes even though valid under state law. *Lucas v. Earl*, 281 U.S. 111 (1930); *United States v. Bayse*, 410 U.S. 441 (1937).

There are also specific statutory rules in the Internal Revenue Code that require the grantor of a trust to report and pay taxes on the income of trusts created by the grantor for his or her own benefit, or if the grantor continues to control the income of the trust. So, for example, section 677 of the Internal Revenue Code states that the grantor shall be considered to be the owner of any trust for federal income tax purposes (meaning that the trust is disregarded) if the grantor continues to receive the income from the trust, or the income is accumulated for possible distribution to or for the benefit of the grantor (or the grantor's spouse).

But most tax resisters do not lose in court because they are wrong about the Constitution or the Internal Revenue Code. Most lose because the courts will simply not recognize a trust that has no economic existence. The courts have held that a trust will be considered a "sham" and disregarded for federal income tax purposes if the creation of the trust has no real economic effect and alters no economic relationships, and that this rule applies even if the trust is recognized under state law. See, for example, *Zmuda v. Commissioner*, 73 T.C. 1235, 1241 (1982), *aff'd* 731 F.2d 1417 (9th Cir. 1984).

The typical "pure" or "constitutional" trust claims to transfer title to the income and property from the grantor to the trust, but as a practical matter the grantor continues to use the property and spend his income, making it very easy to find that the trust is a "sham" and "without real economic effect" and to disregard the existence of the trust.

Of course, if a trust were effective for income tax purposes, the trust would be taxable either as a trust under Subchapter J of the Internal Revenue Code, or as an "association" (taxable as a corporation).

Because of all of these problems, the courts are very tired of tax resister claims of relating to "common law trusts." In *Dahlstrom v. United States*, T.C. Memo. 1991-264, the Tax Court not only imposed tax deficiencies upon the taxpayers (who also promoted and sold seminars and tax shelters advocating the use of trusts to avoid income taxes) for all of the income for all of their trusts, but also affirmed the imposition of a penalty for civil fraud.

The Internal Revenue Service has issued a notice to taxpayers warning them of these kinds of "abusive trust arrangements" (Notice 1997-

24), and has announced increasing the enforcement staff assigned to detect and prosecute these kinds of fraud. As a result of these increased efforts, the IRS reported 28 convictions for trust-related tax frauds during the first 11 months of fiscal 2000. Tax Analysts Doc. No. 2000-25174 (9/29/2000).

Subtitle A of the I.R.C. is a tax on the excise taxable activity called a "trade or business" or upon those domiciled in the District of Columbia. Those persons in states of the Union who engage in a "trade or business" or who are domiciled in the District of Columbia are "taxpayers", regardless of whether the legal person is a "pure trust" or a natural person. See:

*The "Trade or Business" Scam*
*http://famguardian.org/Subjects/Taxes/Articles/TradeOrBusinessScam.htm*

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## 3. Statutory Fallacies

### 3.1 The Internal Revenue Code does not define "income."

Technically correct, but irrelevant. Section 61 of the Internal Revenue Code defines "gross income," from which taxable income is calculated, "income from all sources" and gives a number of examples of the types of income included in "gross income" in section 61, including compensation for services (i.e., wages, salaries, and other forms of earned income).

Part of the above statement by Evans is incorrect. The Internal Revenue Code, section 643(b) does, in fact, define "income".

It is actually fairly common for statutes to omit fundamental definitions of legal concepts, and for taxing statutes to omit fundamental definitions of what is being taxed. For example, property taxes rarely define what is meant by "property." The Internal Revenue Code includes a gift tax and an estate tax as well as an income tax, and both taxes are imposed on the value of property, and yet there is no statutory definition of "gift," "value," or "property."

Courts have therefore not been impressed with arguments about a statutory definition of "income."

> *"Upon review of May's amended petition, we find no allegations of fact which could give rise to a valid claim; rather, the complaint merely contains conclusory assertions attacking the constitutionality of the Internal Revenue Code and its application to the taxpayer.[Footnote omitted.] Tax protest cases like this one raise no genuine controversy; the underlying legal issues have long been settled. See, e.g., Abrams, 82 T.C. at 406-07 (citing cases rejecting similar arguments). Because May's petition raised no justiciable claims, the Tax Court properly dismissed the petition for failure to state a claim." May v. C.I.R., 752 F.2d 1301, 1302 (8th Cir. 1985), (among other things, May's amended complaint alleged that "The Respondent has totally erred in its determination of 'income' when no definition of 'income' appears in the Internal Revenue Code. No basis exists for this improper determination of 'income' by the Respondent." 752 F.2d at 1304, note 3).*
>
> *"Plaintiff argues he is entitled to relief because the Code does not define income. The United States, however, is correct that "income" is afforded its every day usage as any gain derived from capital, labor, or both combined. See United States v. Richards, 723 F.2d 646, 648 (6th Cir. 1983). In addition, the Code explicitly defines "gross income", from which taxable income is computed, as including compensation for services, i.e., wages." Tornichio v. United States, 81 AFTR2D PAR. 98-582, KTC 1998-71 (N.D.Ohio 1998), (suit for refund of frivolous return penalties dismissed and sanctions imposed for filing a frivolous refund suit), aff'd 1999 U.S. App. LEXIS 5248, 99-1 U.S. Tax Cas. (CCH) Par. 50,394, 83 AFTR2d Par. 99-579, KTC 1999-147 (6th Cir. 1999), (with sanctions imposed for filing a frivolous appeal).*
>
> *"In April of 1995, Dr. Ahee filed two form 1040 federal individual income tax returns for the years 1990 and 1991. Each of these returns were filed with all entries completed '0,' except the 1990 return demanded the $6,440 refund (presumably for taxes paid in 1989). Attached to these returns was a two paged typed addendum in which Dr. Ahee stated that he was not required to pay taxes. Dr. Ahee claimed that he decided to file these 'zero' returns after attending a tax seminar in early April 1995. [...] "Appellant avers that since the Code does not define income, he did not know that monies he received were income, so he violated the Code, if at all, in good faith. While it is true that the 'general term income is not defined in the Internal Revenue Code,' all of the monies received by Dr. Ahee clearly meet the definitions found in IRC section 61. [United State v.] Ballard, [535 F.2d 400 (8th Cir. 1976)] 535 F.2d, at 404. The money he received as compensation for patient services falls squarely within IRC section 61(a)(1): 'Compensation for services, including fees, commissions, fringe benefits, and similar items.'" United States v. Ahee, 2001 U.S. App. LEXIS 2706, 87 AFTR2d Par. 2001-523, No. 99-1991 (6th Cir. 2/15/2001), (criminal conviction for willfully filing false returns affirmed).*

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### 3.2 The Internal Revenue Code cannot define "income" because it is a term used in the Constitution and Congress cannot modify the Constitution by statute.

There is some truth to this and, as explained above, the Internal Revenue Code does not define "income." "Gross income" (which is the beginning point to determine what is "taxable income") is defined as "income from whatever source derived," but "income" itself is not defined.

Part of the above statement by Evans is incorrect. The Internal Revenue Code, section 643(b) does, in fact, define "income". In addition, the U.S. Supreme Court itself said in *Eisner* that Congress CANNOT define the word "income" statutorily within states of the Union:

> *"In order, therefore, that the [apportionment] clauses cited from article I [§2, cl. 3 and §9, cl. 4] of the Constitution may have proper force and effect …[I]t becomes essential to distinguish between what is an what is not 'income,'…according to truth and substance, without regard to form.* ***Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution, from which alone, it derives its power to legislate, and within those limitations alone that power can be lawfully exercised****… [pg. 207]…After examining dictionaries in common use we find little to add to the succinct definition adopted in two cases arising under the Corporation Tax Act of 1909, Stratton's Independence v. Howbert, 231 U.S. 399, 415, 34 S.Sup.Ct. 136, 140 [58 L.Ed. 285] and Doyle v. Mitchell Bros. Co., 247 U.S. 179, 185, 38 S.Sup.Ct. 467, 469, 62 L.Ed. 1054…"*
> *[Eisner v. Macomber, 252 U.S. 189, 207, 40 S.Ct. 189, 9 A.L.R. 1570 (1920)]*

Consequently, the word "income" can only be defined within the federal zone, the federal government, and to "public officials" abroad pursuant to 26 U.S.C. §911, because these areas are not protected by the Constitutional prohibitions above.

The U.S. Supreme Court has held that Congress intended to tax everything within the Constitutional meaning of "income," and so the Internal Revenue Code taxes everything that could be called "income." See, *Commissioner v. Glenshaw Glass Co.,* 348 U.S. 426, 431 (1955).

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### 3.3 Wages are not income.

As unbelievable as it might sound, some tax resisters simply think that the income tax doesn't apply to wages.

Section 61(a) of the Internal Revenue Code says that "gross income" (which is the starting point for determining "taxable income") means "gross income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services, including fees, commissions, fringe benefits, and similar items...."

Sometimes the claim is that "compensation for services" is not the same as "wages." Sometimes the claim is that "wages" are not the same as "gain" or "profit." (See the discussion below on the claim that wages represent an equal, nontaxable exchange of labor for money.) Sometimes the claim is something else. Regardless of the rationale, the result is always the same: Wages are income.

> *"In our view, petitioner's wages are taxable as gross income..." Beard v. Commissioner, 793 F.2d 139, 140 (6th Cir. 1986), aff'g 82 T.C. 766 (1984);*
>
> *"Wages are taxable income." Perkins v. Commissioner of Internal Revenue, 746 F. 2d 1187, 1188 (6th Cir. 1984); Beerbower v. Commissioner of Internal Revenue, 787 F.2d 588 (6th Cir. 1986).*
>
> *"Wages are income, and the tax on wages is constitutional." Coleman v. Commissioner, 791 F.2d 68 (7th Cir. 1986), citing United States v. Thomas, 788 F.2d 1250 (7th Cir. 1986); Lovell v. United States, 755 F.2d 517 (7th Cir. 1984); Granzow v. Commissioner, 739 F.2d 265, 267 (7th Cir. 1984);*
>
> *"Although not raised in his brief on appeal, the defendant's entire case at trial rested on his claim that he in good faith believed that wages are not income for taxation purposes. Whatever his mental state, he, of course, was wrong, as all of us are already aware. Nonetheless, the defendant still insists that no case holds that wages are income. Let us now put that to rest: WAGES ARE INCOME. Any reading of tax cases by would-be tax protesters now should preclude a claim of good-faith belief that wages--or salaries--are not taxable." United States v. Koliboski, 732 F.2d 1328, 1329 n.1 (7th Cir. 1984), (emphasis in original; convictions for criminal failures to file affirmed).*
>
> *"[W]e have [repeatedly] held that wages are within the definition of income under the Internal Revenue Code and the Sixteenth Amendment, and are subject to taxation. Denison v. Commissioner, 751 F.2d 241, 242 (8th Cir.1984) (per curiam), cert. denied, 471 U.S. 1069, 105 S.Ct. 2149, 85 L.Ed.2d 505 (1985)." United States v. Gerads, 999 F.2d 1255 (8th Cir. 1993).*
>
> *"[T]he earnings of the human brain and hand when unaided by capital ... are commonly dealt with as income in*

> *legislation." Stratton's Independence, Ltd. v. Howbert, 231 U.S. 399, 415 (1913).*
>
> *"Section 61 of the Internal Revenue Code imposes a tax on income, and under the Tax Code, wages are income." Grimes v. Commissioner, 806 F.2d 1451, 1453 (9th Cir. 1986).*
>
> *"Compensation for labor or services, paid in the form of wages or salary, has been universally held by the courts of this republic to be income, subject to the income tax laws currently applicable." United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1981).*
>
> *"Irrefutably, wages earned in compensation for services are "income" pursuant to the federal tax laws." Boubel v. United States, 86 AFTR2d ¸2000-5123, No. 1:99-cv-380 (U.S.D.C. E.D.Tenn. 6/22/2000).*
>
> *"[I]f anything in our tax law is clear, it is that: 'WAGES ARE INCOME.' ... [A]ny contention to the contrary is patently frivolous...."" Hill v. United States, 599 F. Supp. 118, 120-22 (M.D. Tenn. 1984), (emphasis in original), (quoting United States v. Koliboski, 732 F.2d 1328, 1329 n.1 (7th Cir. 1984)).*
>
> *"As the cited cases, as well as many others, have made abundantly clear, the following arguments alluded to by the Lonsdales are completely lacking in legal merit and patently frivolous: ... (5) wages are not income...." Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990).*

See also, *Wilson v. United States*, 412 F.2d 694, 695 (1st Cir. 1969); *Schiff v. Commissioner*, 751 F.2d 116, 117 (2d Cir. 1984); *Commissioner v. Mendel*, 351 F.2d 580, 582 (4th Cir. 1965); *Simmons v. United States*, 308 F.2d (4th Cir. 1962); *Lonsdale v. Commissioner*, 661 F.2d 71, 72 (5th Cir. 1981); *United States v. Burton*, 737 F.2d 439 (5th Cir. 1984); *Capps v. Eggers*, 782 F.2d 1341 (5th Cir. 1986); *Funk v. Commissioner*, 687 F.2d 264, 265 (8th Cir. 1982); *United States v. Ware*, 608 F.2d 400 (10th Cir. 1979); *United States v. Woodall*, 255 F.2d 370, 372 (10th Cir. 1958), cert. den. 358 U.S. 824 (1958); *Simanonok v. Commissioner*, 731 F.2d 743, 744 (11th Cir. 1984).

So where do tax resisters get the idea that wages might not be income? From a series of incomplete and misleading quotations from irrelevant cases.

> *"There is a clear distinction between 'profit' and 'wages' or compensation for labor. 'Compensation for labor' can not be regarded as profit within the meaning of the law. The word 'profit' as ordinarily used, means the gain made upon any business or investment--a different thing altogether from mere compensation for labor." Oliver v. Halstead, 196 Va. 992, 86 S.E.2d 859 (1955).*

This is not a federal decision, but a decision of the Virginia Supreme Court. It is also not a tax decision, but a decision interpreting Virginia's nonprofit corporation law. Specifically, the issue before the court was whether compensation paid to an employee of the corporation was a private "profit" prohibited by the nonprofit corporation law. The court held that a payment of compensation for labor is not the same as a "profit" from the corporation. This is completely irrelevant to whether the payment is taxable income to the employee. (Another decision sometimes cited by tax resisters is *Lauderdale Cemetery Assoc. v. Mathews*, 345 Pa. 239 (1946), which is a similar decision under Pennsylvania's nonprofit corporation laws.)

> *"One does not 'derive' income by rendering services and charging for them." Edwards v. Keith, 231 F. 110, 113 (C.C.A. 2).*

The quotation is deceptive, because it omits a critical sentence appearing earlier in the same paragraph:

> *"But no instructions of the Treasury Department can enlarge the scope of this statute so as to impose the income tax upon unpaid charges for services rendered and which, for aught any one can tell, may never be paid."*

Notice the word "unpaid"? The taxpayer had not yet received any payment for the services rendered. The issue before the court was *not* whether payment for services rendered was income, but whether the IRS could impose a tax on income that had not yet been received (which it couldn't under the tax law as it then existed).

> *"Congress has taxed income, not compensation." Connor v. United States, 803 F.Supp. 1187, 1191 (S.D. Tex. 1969), aff'd on this issue, 439 F.2d 974 (5th Cir. 1971).*

The above "quotation" is a fabrication, because the court never wrote those words. And the issue in that case was whether insurance proceeds received by the taxpayer after the destruction of his home should be considered taxable income. That case has nothing to do with wages or compensation for labor.

Evans is correct in the above analysis. However, he does nothing to clarify the issue and remove the confusion that created the question to begin with. The tax is upon the "indirect excise" taxable activity, which is a "trade or business". "Wages", as legally defined, are a code word for compensation for services connected with a "trade or business" and therefore reportable as "gross income" under 26 U.S.C. §6041.

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### 3.4 Wages are not "income" because wages represent an equal exchange of labor (a form of "property") for money (another form of property), so there is no gain and no income.

The fundamental premises are all wrong.

As explained above, it is difficult to describe "labor" as a form of property when labor is, by definition, something that has not yet been done.

More importantly, "gain" is not the difference in the *values* of what is exchanged, it is the difference between the *cost* of what is given up and the *value* of what is received. For example, suppose I buy stock for $10 per share on the New York Stock Exchange. The stock is freely traded and, based on the other trades that day, I can show that the stock was worth $10 per share when I bought it. Some time goes by, and the stock is now trading at $50 per share. If I sell the stock at fair market value, do I have taxable gain? Of course I do, and the gain is $40, which is the difference between what I paid for the stock and what I sold it for.

Any other result would mean that almost nothing would be taxable income, because almost all transactions (other than gifts, mistakes, or frauds) are based on fair market value.

To illustrate, suppose I lend the federal government $95 in exchange for its promise to pay $100 in six months' time. This promise is usually called a "Treasury bill." I can show that similar Treasury bills were selling that day for $95, so the Treasury bill I got was worth the same $95 I paid for it. After six months, similar Treasury bills are trading for $100 and I return (or sell) the Treasury bill and get $100. Do I have income? Of course. The extra $5 I received is interest income even though when I returned the Treasury bill it was worth $100.

The Supreme Court has therefore stated that the income tax applies to all "undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion." *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955)). (The requirement that accessions to wealth be "realized" means that increases in the value of assets are not taxed to the owner as capital gains until the asset is sold.)

So, if I sell my own labor for $100, I must calculate the gain based on the difference between what I *paid* for my own labor (not what it is *worth*) and what I receive for it. Because I paid nothing for my own labor, everything I receive is income.

Looking at it another way, if I start the week with no money, am paid $100 for my labor, and end the week with $100, I am $100 richer than I was at the beginning of the month. That $100 gain is an "undeniable accession to wealth" (in the words of the Supreme Court), and therefore income.

Consider what the federal courts have had to say on this issue:

> *"The taxpayer next argues that wages are not income but an exchange of property. As money is property and labor is property, so his argument goes, his work for wages is a non-taxable exchange of property. Wrong again. Wages are income. See, e.g., Schiff v. Commissioner, 751 F.2d 116, 117 (2d Cir. 1984). The argument that they are not has been rejected so frequently that the very raising of it justifies the imposition of sanctions."* Connor v. Commissioner, 770 F.2d 17, 20 (2nd Cir. 1985)*, (the court not only ruled against the taxpayer, but also imposed sanctions of $2,000 against the taxpayer).*
>
> *"One's gain, ergo his 'income,' from the sale of his labor is the entire amount received therefor without any reduction for what he spends to satisfy his human needs." Reading v. Commissioner, 70 T.C. 730, 734 (1978), affd. 614 F.2d 159 (8th Cir. 1980).*
>
> *"According to Buras, income must be derived from some source. Wages cannot be taxed because the wage earner enjoys no gain from that source. Since the wage earner exchanges his labor and personal time for its equivalent in money, he derives no gain and therefore cannot be taxed. ... Appellant's argument is refuted by one of the cases he cites. In Stratton's Independence, Ltd. v. Howbert,* 231 U.S. 399*, 415, 34 S.Ct. 136, 140, 58 L.Ed. 285 (1913), the Court did define income as gain derived from labor. The Court went on to explain, however, that 'the earnings of the human brain and hand when unaided by capital' are commonly treated as income." United States v. Buras, 633 F.2d 1356, 1361 (9th Cir. 1980).*
>
> *"Furthermore, Olson's attempt to escape tax by deducting his wages as 'cost of labor' and by claiming that he had obtained no privilege from a governmental agency illustrate the frivolous nature of his position. This court has repeatedly rejected the argument that wages are not income as frivolous, [citations omitted] and has also rejected the idea that a person is liable for tax only if he benefits from a governmental privilege."* Olson v. United States, 760 F.2d 1003, 1005 (9th Cir. 1985)*.*
>
> *"DeMoss contends that the compensation he received from his employers is not taxable because his basis in his labor is equal to the amount of compensation he received. The tax court properly rejected this frivolous contention. See Carter v. Commissioner, 784 F2d 1006, 1009 (9th Cir. 1986);* Olson v. United States, 760 F.2d 1003, 1005 (9th Cir. 1985)*." DeMoss v. Commissioner, 1995 U.S. App. LEXIS 2672, 75 A.F.T.R.2d 841 (9th Cir. 1995), (unpublished; sanctions imposed for filing a frivolous appeal).*

*"Appellant's contention that the amounts he received from his employers constituted an equal, nontaxable exchanges of property rather than taxable income is clearly without merit. This court specifically rejected this argument in United States v. Lawson, 670 F.2d 923, 925 (10th Cir. 1982), as did the Tax Court in Rowlee v. Commissioner, 80 T.C. 1111, 1119-22 (1983)." Casper v. Commissioner, 805 F.2d 902 (10th Cir. 1986).*

*"Appellant's second argument is that his compensation in exchange for labor is property, not income. ... Again, he is wrong. The Third Circuit unequivocally has stated that 'wages are income within the meaning of the Sixteenth Amendment.' United States v. Connor, 898 F.2d 942,944 (3rd Cir. 1990). The Third Circuit then warned that '[u]nless subsequent Supreme Court decisions throw any doubt on this conclusion, we will view arguments to the contrary as frivolous, which may subject the party asserting them to appropriate sanctions.' Id. Such authority is neither cited nor found, and appellant's arguments will be dismissed as frivolous. Wages are income." Angstadt v. Internal Revenue Service, 84 AFTR2d ¸99-5455, 1999 WL 820866, at 2 (U.S.D.C. E.D.Pa. 1999).*

*"[Peth]states that the income taxes are directed to taxable gain. Because he receives a paycheck for his labor, and because the paycheck is equal to the fair market value of his labor, he argues there is no gain. No court has ever accepted this argument for the purpose of determining taxable income. Indeed, it has always been rejected. For once and for all, wages are taxable income. Granzow v. Commissioner of Internal Revenue, 739 F.2d 265, 267 (7th Cir. 1984)." Peth v. Breitzmann, 611 F. Supp. 50 (E.D.Wis. 1985), 1985 U.S. Dist. LEXIS 21509, 85-1 U.S.T.C. ¶9321, 55 AFTR2d 1280.*

*"Even if wages are, in effect, an exchange of equal value for value, they are nevertheless taxable income. Rowlee v. Commissioner, 80 T.C. 1111, 1121-1122 (1983); Rice v. Commissioner, T.C. Memo. 1982-129. And even if we apply section 1001 to determine petitioner's gain, his basis is defined under sections 1011 and 1012 as his cost, not fair market value. Since he paid nothing for his labor, his cost and thus his basis are zero. Rice v. Commissioner, supra. Consequently, even under section 1001, his taxable income from his labor is his total gain reduced by nothing, i.e., his wages. ... Petitioner's argument fails for the same reason that other protesters' arguments fail; the worker's cost for his services--and thus his basis--is zero, not their fair market value." Talmage v. Commissioner, T.C. Memo. 1996-114, aff'd 101 F.3d 695 (4th Cir. 1996).*

What is taxable under I.R.C. Subtitle A is income derived from a "trade or business". The U.S. Supreme Court defined "income" to mean profit.

*"... the definition of income approved by the Court is:*

*`The gain derived from capital, from labor, or from both combined, provided it be understood to include profits gained through sale or conversion of capital assets.'"*
*[Eisner v. Macomber, 252 U.S. 189, 207, 40 S.Ct. 189, 9 A.L.R. 1570 (1920)]*

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*"...* `income*' as used in the statute should be given a meaning so as not to include everything that comes in, the true function of the words* `gains*' and* `profits*' is to limit the meaning of the word* `income*'"*
*[So. Pacific v. Lowe, 238 F. 847; (U.S. Dist. Ct. S.D. N.Y. 1917); 247 U.S. 30 (1918)]*

The conversion they are talking about is the conversion of "labor" and "capital" into finished goods. The code reflects the requirement for "profit" in 26 U.S.C. §83, which says that profit in the context of labor is any amount collected in excess of the value of the labor collected. Below is an enumerated analysis of how this works:

1. The U.S. Supreme Court defined "labor" as property"

   *"Among these unalienable rights, as proclaimed in that great document [the Declaration of Independence] is the right of men to pursue their happiness, by which is meant, the right any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give them their highest enjoyment...It has been well said that,* ***THE PROPERTY WHICH EVERY MAN HAS IN HIS OWN LABOR, AS IT IS THE ORIGINAL FOUNDATION OF ALL OTHER PROPERTY SO IT IS THE MOST SACRED AND INVIOLABLE...*** *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.'"*
   *[Butcher's Union Co. v. Crescent City Co., 111 U.S. 746 (1884), Concurring opinion of Justice Field]*

2. Because labor is property and has a basis of its own that is deductible from the cost of procuring it, then it is a violation of 26 U.S.C. §§ 83 , 212, 1001 , 1011, and 1012 when reporting compensation for services as "gross income".

3. The plain language of 26 U.S.C. § 83 states that when compensation is received in [exchange] for services rendered, ONLY the "excess" of the "property" [compensation] over the "amount paid" [labor] in costs is to be included in gross income:

   *§ 83. Property transferred in connection with performance of services*

   *(a) General rule*

> *If, **in connection with the performance of services** [labor], **property is transferred** [compensation] to **any person** [employee] other than the person for whom such services are performed [employer], **the excess of**—*
>
> *(1) **the fair market value of such property** [compensation] (determined without regard to any restriction other than a restriction which by its terms will never lapse) at the first time the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, **over***
>
> *(2) **the amount** (if any) **paid** [labor] **for such property** [compensation], **shall be included in the gross income of the person who performed such services** [employee] in the first taxable year in which the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable. The preceding sentence shall not apply if such person sells or otherwise disposes of such property in an arm's length transaction before his rights in such property become transferable or not subject to a substantial risk of forfeiture.*

4. Here is the formula for 26 U.S.C. § 83:
   4.1. "Gross Income" = "Excess"; and
   4.2. "Excess" = ("property" or compensation)—(the "amount paid" or value of labor).
5. The "amount paid" is defined in 26 C.F.R. § 1.83-3(g) as: definition of cost:

> *(g) Amount paid.*
>
> ***For purposes of section 83** and the regulations thereunder, **the term "amount paid" refers to the value of any money or property** [labor is property.] **paid for the transfer of property** [compensation] **to which section 83 applies**...*

6. The value of the "amount paid" [labor] is determined by what the employer paid for the services [labor] rendered. 26 C.F.R. § 1.83-3(g) is all inclusive and includes "any money or property."
7. To confirm that this understanding is correct, we can come to the same conclusion by reviewing other sections of the IRC and the regulations thereunder.
8. To properly calculate what constitutes "Gross Income", pursuant to 26 U.S.C. § 83, one needs to know "the amount paid" (cost of labor) so it can be deducted from the "property" (compensation) in order to calculate the "excess" [profit] which is to be included in the "Gross Income". To determine these factors, one must turn to the regulations:

> *"If property [compensation] to which 1.83-1 applies is transferred [from employer to employee] at an arm's length [Blacks law pg. 109), the basis [cost of labor] of the property [compensation] in the hands of the transferee [recipient or employee] **shall** be determined under section 1012 and the regulations thereunder" 26 C.F.R. § 1.83-4(b)(2)*

9. Before one can determine the "excess", one must identify the "amount paid."
10. As property, labor has a value with regard to the related compensation transaction and 26 U.S.C. § 1012 will either include or exclude said cost for labor.

> *§ 1012. Basis of property—cost*
>
> ***The basis of property** [labor] **shall** be **the cost** [compensation] **of such property**...*

11. The regulations confirm the basis of property:

> *26 C.F.R. § 1.1012 -1 Basis of property.*
>
> *(a) General rule.*
>
> *In general, the basis of property [compensation] is the cost thereof. **The cost is the amount paid** [labor] **for such property** [compensation] **in cash or other property** [labor]**...***

12. Congress has cited what it considers to be a "cost". The "amount paid for such property in cash or other property". The Secretary will take note that nothing is excluded from that which is considered by Congress to be a cost. If Congress intended to exclude labor from that which is a cost, 26 U.S.C. § 1012 would reflect such an exclusion. Since it is not excluded, it is to be considered as a cost in the calculation of the "excess" which is included in "Gross Income" and in the determination as to whether one has enough "gross income" to make it necessary to even file a return.
13. The "amount paid" [labor] is the value of the cost [labor] and is also known as the "adjusted basis". Regulations require that this amount be "withdrawn" from the amount realized in the [payment for services] transaction and that it be "restored to the taxpayer."

> ***26 C.F.R. § 1.1011-1** Adjusted basis.*

> ***The adjusted basis*** *for determining the gain or loss from the sale or other disposition of property* ***is the cost or other basis prescribed in section 1012*** *or other applicable provisions of subtitle A of the code, adjusted to the extent provided in sections 1016, 1017, and 1018 or as otherwise specifically provided for under applicable provisions of internal revenue laws.*
>
> ***26 C.F.R. § 1.1001-1(a)***
>
> *(a) ...**from the amount realized upon the sale or exchange there shall be withdrawn a sum sufficient to restore the adjusted basis prescribed by section 1011 and the regulations thereunder**...**The amount which remains** [excess] **after the adjusted basis** [cost of labor] **has been restored to the taxpayer constitutes the realized gain** [profit].*

14. After determining the value of property (labor) that is a cost, as defined by United States law (see 26 C.F.R. § 1.1012-1(a) , and 26 C.F.R. § 1.1001-1(a), the value of the "amount paid," or the "adjusted basis" (labor), must be subtracted from the amount realized (compensation) BEFORE including ONLY the "excess" balance which remains (if any) in "Gross Income". The Federal 1040 type returns do not accommodate § 83 in any way and therefore it is not possible for any Citizen to complete a 1040 return and claim the right as articulated by Congress in § 83.
15. Again, the conclusion reached by reviewing additional sections of the IRC and the regulations thereunder, as cited above, is the same conclusion articulated by Congress in 26 C.F.R. § 1.83-3(g) where the "amount paid" is defined as "any money or property" (labor is not excluded):

> *(g) Amount paid.*
>
> ***For purposes of section 83** and the regulations thereunder, **the term "amount paid"** [labor] **refers to the value of any money or property** [labor] **paid for the transfer of property** [compensation] **to which section 83 applies**...*

16. The sections of the IRC which embraces intangible personal property as a cost (see 26 U.S.C. § 1012) is calculated as one's cost when having only sold one's labor, and 26 C.F.R. § 1.83-3(g) does the same. In fact, in order to impose amounts which are not to be included in "Gross Income" upon those who may be "taxpayers", the Secretary must deny even "taxpayers" their rights as identified by Congress in 26 U.S.C. §§ 83, 1011, and 1012.
17. The law does not exclude any property for which there is no basis from cost. The cost equals the value of any and all property (labor) disposed to obtain other property (compensation), unless it is expressly excluded under 26 U.S.C. § 1012.
18. The difference between cost and income is further articulated by Congress in 26 U.S.C. § 212 as follows:

> *§ 212. Expenses for production of income*
>
> *In the case of an individual, **there shall be allowed as a deduction all the ordinary and necessary expenses** [cost] **paid or incurred during the taxable year**—*
>
> *(1) for the production or collection of income;*
>
> *(2) for the management, conservation, or maintenance of property held for the production of income; or*
>
> *(3) in connection with the determination, collection, or refund of any tax.*

19. The Secretary has a duty to notice that a deduction is mandated ("**shall**") but it is not specified from where or what the expenses are to be deducted. Based on 26 U.S.C. § 83, the deduction (labor) is to be taken from "such property" (compensation) to create the "excess" which then is included in "Gross Income".
20. As used in the cited statutes and regulations, the terms "any" or "any property" are to be construed as all inclusive until Congress "expressly" provides an exception to support the notion that such terms are not all inclusive.
21. There is ample case law to support the principle of statutory construction which makes the term "any property" all inclusive; meaning that nothing is to be excluded by the word "any". This is confirmed by the following cases where the United States contends successfully that "any property" is all inclusive and means all property (see *US. v. Monsanto*, 491 U.S. 600, 607-611 and (syllabus) (1989)**;** United States v. Alvarez-Sanchez, 511 U.S. 350, 357 (1994); *US. v. Gonzales*, 520 U.S. 1, 4-6 (1997); *Department of Housing and Urban Renewal v. Rucker*, X35 U.S. 125, 130-31 (2002) citing Gonzalez and Monsanto). Monsanto is quoted below:

> *"Heroin manufacturer Monsanto argues that he should be allowed to keep enough money for attorney's fees, but the DOJ argues successfully that "**any property**" is all inclusive and therefore means the U.S. can seize **any** and **all property** unless Monsanto can point to a specific exclusion of attorney's fees under the law. DOJ can seize everything owned by defendant." U.S. v Monsanto, 491 U.S. 600, 607-611*

22. Since the 1989 Monsanto decision regarding "any property," three very recent decisions *supra* deal directly with the same question as to how to interpret the term "any"; is it all inclusive or subject to derogation.
23. Moreover, the law and the regulations govern what the Secretary or his alleged Delegates can do with regard to the calculation of

"Gross Income" as previously cited in 26 U.S.C. §§ 83, 212 , 1001, 1011, and 1012 above.

> *"The regulations...now govern, and will continue to govern, the abbreviated application process. See Fort Stewart Schools v. FLRA, 495 U.S. 641, 654, 110 S.Ct. 2043, 2051, 109 L.Ed.2d 659 (1990).* ***No matter what an agency said in the past, or what it did not say, after an agency issues regulations it must abide*** *by* ***them.****" Schering Corp. v. Shalala, 995 F.2d 1103 (D.C.Cir. 1993)*

24. The Secretary is hereby put on notice that to deny the rights of Sovereign Americans simply for the purpose of converting them into a "taxpayer" status or to exact amounts from them in excess of that which is provided by law is criminal conversion and United States law mandates filing of a criminal complaint, pursuant to 18 U.S.C. § 4, against the Secretary and his subordinates pursuant for any violation of United States law or denial of rights.

If you run into either a public servant or a judge who tries to argue with you about whether there is a cost to produce labor that the laborer should be compensated for, indirectly, they:

1. Are admitting that their labor is worth nothing.
2. Are asking for a pay cut and are admitting they are paid too much.

Therefore, tell them there labor isn't worth anything and that the government pays them too much. After all, if it isn't an equal exchange of value, any amount of money accepted for it amounts to STEALING. The above conclusions are much more exhaustively described in the following free memorandum of law:

> *How the Government Defrauds You Out of Legitimate Deductions for the Market Value of Your Labor, Form #, Form #05.026 (OFFSITE LINKS)*
> *DIRECT LINK: http://sedm.org/Forms/05-MemLaw/DefraudLabor.pdf*
> *FORMS PAGE: http://sedm.org/Forms/FormIndex.htm*

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### 3.5 Wages are not income, but only a source of income (Section 61 of the Internal Revenue Code lists only sources of income), so wages cannot be taxable.

As explained above, the argument that the 16th Amendment requires the determination of a "source" before income can be taxed turns the 16th Amendment on its head and is totally inconsistent with the words of the amendment, the history of the amendment, and the court decisions interpreting the amendment.

The argument is equally bizarre when applied to the meaning of the Internal Revenue Code.

Section 61(a) of the Code states that "gross income" (the beginning of the determination of "taxable income") means "all income from whatever source derived .. .."

As explained above in connection with the same phrase ("from whatever source derived") in the 16th Amendment, the word "whatever" is usually defined as meaning "of any number or kind," or "of any kind at all." If income is taxable from any kind of source, then there is no need to identify the source before taxing the income. (What about income that has no source? I will leave it to more imaginative minds than mine to try to visualize an income that springs out of thin air, with no source at all.)

In interpreting similar provisions of the Internal Revenue Code of 1929, the Supreme Court expressly disregard the idea that the "source" of income was significant:

> *"Congress applied no limitations as to the source of taxable receipts, nor restrictive labels as to their nature. And the Court has given a liberal construction to this broad phraseology in recognition of the intention of Congress to tax all gains except those specifically exempted." Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 429-30 (1955).*

The regulations under the Internal Revenue Code also confirm that the geographical source of the income of a citizen or resident of the United States is usually not relevant:

> *"In general, all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States." Treas. Reg. § 1.1-1(b).*

Tax resisters claim that the reference in section 61 to "the following items" is to not to a list of items of *income,* but to a list of "items of sources," which makes no sense, either grammatically or as a matter of common English usage. And, like many tax resister arguments, it also claims too much, and collapses of its own weight.

If the list of "items" is section 61 is a list of *sources,* and not *income,* and "sources" are not taxable, then nothing is taxable, because the items listed in section 61(a) include every type of income imaginable:

*(1) Compensation for services, include 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;*
*(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.*

If none of those things are income, and none of them is taxable, then *nothing* is income, and nothing is taxable, an absurd result which Congress could not possibly have intended. (Students of logic may recognize this as a *reductio ad absurdum,* or proof that something is false by showing that, if it were true, it would lead to absurd results. Unfortunately, tax resisters know nothing of logic.)

Evans is correct in the above analysis.

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### 3.6 Wages paid within the United States are not a "source" of income defined by section 861 of the Internal Revenue Code and so are not taxable.

The claim is that the Internal Revenue Code does not apply to most of the income of citizens of the United States because the only definitions of "sources of income" apply only to nonresident aliens and foreign corporations. (See I.R.C. section 861 and its regulations.) This argument is completely contrary to the express language of the Internal Revenue Code and its regulations.

Section 61(a) of the Internal Revenue Code states the general rule that "gross income" (which is the starting point for the calculation of taxable income " "means all income from whatever source derived...."

The regulations confirm that U.S. citizens (and residents) are taxed on all of their income, regardless of where the source is located, and so the source of income is irrelevant to U.S. citizens and residents.

> *"In general, all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States." Treas. Reg. § 1.1-1(b).*

The general rule, therefore, is that all income is included in gross income, and the taxpayer must demonstrate that the income is not taxable.

Even if it were necessary to establish a "source" for income in section 861, there are specific provisions in section 861 that specifically state that the income of most citizens is from sources within the United States.

For example, section 861(a) states that "The following items of gross income shall be treated as income from sources within the United States: ... (3) Compensation for labor or personal services performed in the United States;" (subject to certain exceptions not relevant here).

And the regulations state that "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;" (subject to the exceptions stated in the statute, which are still not relevant here). Treas. Reg. § 1.861-4(a)(1).

Nonresident aliens and foreign corporations are taxed only on income from sources within the United States, so it is necessary to identify the sources of income (and deductions) for them, which is why there are regulations for them.

Needless to say, the courts have had no problem with the argument that a citizen and resident of the United States is not taxed on income earned within the United States:

> *"Petitioner also contends that no Federal statute imposes a tax on the income of citizens or residents of the United States that is derived from sources within the United States. Instead, petitioner asserts that Federal income taxes are excise taxes imposed only on the privilege of nonresident aliens and foreign corporations to receive income from sources within the United States. Petitioner's argument is unclear. Apparently, petitioner*

*believes that the only sources of income for purposes of section 61 are listed in section 861, that income from sources within the United States is taxed only to nonresident aliens and foreign corporations pursuant to sections 871, 881, and 882, and that section 1461 is the only section of the Internal Revenue Code that makes anyone liable for the taxes imposed by sections 1 and 11.*

*"Section 61(a) defines gross income generally as 'all income from whatever source derived,' including, but not limited to, compensation for services and interest. Sec. 61(a)(1), (4). Section 63 defines and explains the computation of section 'taxable income'. Section 1 imposes an income tax on the taxable income of every individual who is a citizen or resident of the United States. Sec. 1.1-1(a)(1), Income Tax Regs.; see Habersham-Bey v. Commissioner, 78 T.C. 304, 309 (1982).*

*"Under section 61(a)(1) and (4), petitioner clearly is required to include his wages, tokes, and interest in gross income." Aiello v. Commissioner, T.C. Memo. 1995-40.*

*"The arguments in Kaetz's appellate briefs, which he shrouds in hyperbole and platitudes, do not further his position. Through linguistic gymnastics, Kaetz contorts the relevant sections of the Internal Revenue Code and the Treasury Regulations to deduce that he does not have taxable income for the years 1991-1997. He premises his argument, inter alia, on the belief that United States citizens only earn taxable 'gross income' when living and working outside the United States, and that the 'Foreign Earned Income Form 2555 is the only form required to be filed[ ] by U.S. Citizens.' Appellant's Brief at 16-17, 18. He concludes his intricate deductive argument quite bluntly: 'Goodbye Income Taxes on Citizens with domestic income.' Id. at 18. The problem with his deduction is that it is based on false premises. Income earned in the United States, including salary, is taxable, see I.R.C. section 63, and 'Gross Income' can be quantified." Kaetz v. Internal Revenue Service, 225 F.3d 649, 2000 U.S. App. LEXIS 17068, 2000-2 U.S. Tax Cas. Par. 50,544, 85 A.F.T.R.2d 2183, KTC 2000-312, Docket #99-3346 (3d Cir. 6/7/2000), (unpublished opinion), aff'g 1999 U.S. Dist. LEXIS 8309, 99-1 U.S. Tax Cas. Par. 50,505, 83 A.F.T.R.2d 2536 (M.D.Pa. 1999).*

*"Plaintiff argues further that his remuneration is exempt from taxation under 26 U.S.C. § 861(a)(3)(C)(ii), and thus excludable under 26 U.S.C. § 61 and, by reference, excludable under Wisconsin law. Suffice it to say that if plaintiff wished to avail himself of § 861( a)(3)(C)(ii), he would have to show that his work was done for a foreign office, or an office in a United States possession, of a domestic business entity. He has not alleged this, and it is clear from the record that he performed his work in the State of Wisconsin for Wisconsin employers." Peth v. Breitzmann, 611 F. Supp. 50 (E.D.Wis. 1985), 1985 U.S. Dist. LEXIS 21509, 85-1 U.S.T.C. ¶9321, 55 AFTR2d 1280.*

*"At the hearing on respondent's Motion For Summary Judgment, petitioner also claimed that 'all of my gross income was received without the United States as defined in Subchapter N of 26 C.F.R. 1.861-1', and 'I am not a citizen of the federal U.S. I make a living in the state of Illinois as a right, and I am not subject to the jurisdiction of the federal United States.' "We find no support for petitioner's position in the authorities he cites. ... "[P]etitioner's position is not bolstered by the regulations under section 861. To the contrary, section 861(a)(1) and (3) provides that interest from the United States and compensation for labor or personal services performed in the United States (with exceptions not applicable here) are items of gross income which shall be treated as income from sources within the United States." Solomon v. Commissioner, T.C. Memo 1993-509.*

*"As a citizen of the United States during the years at issue, petitioner is subject to United States Federal income tax on his worldwide income. Sec. 1; Cook v. Tait, 265 U.S. 47 (1924); sec 1.1-1(a)(1) and (c), Income Tax Regs. It is unnecessary to determine whether that income was from sources within or without the United States since petitioner is not a nonresident alien. See sec. 861." Norman F. Dacey, T.C. Memo 1992-187.*

*"[Defendant's] argument in favor of vacating judgment is almost incomprehensible, and, to the extent it is understandable, is meritless....*

*"Defendant on unnumbered pages five and six [of Defendant's Memorandum in Support of his Motion to Vacate Judgment] analyzes several tax regulations, after which he contends: 'Nonresident aliens and foreign corporations are liable for income tax from sources within the United States, where Citizens and residents of the several States are liable only for gross income from foreign sources and insular possessions of the United States.' (Id. at 5.) ....*

*"Defendant's arguments appear to boil down to the following: the judgment against Defendant is void because (1) the federal government has no power to impose income tax on him; and (2) the federal government did not comply with certain requirements found in the tax regulations when it acted against him to secure payment from him for unpaid taxes. Neither contention has merit. The first is tax protester rhetoric that contradicts over fifty years of tax law in this country. Plaintiff must pay income taxes; the federal government has the right to pursue him for unpaid taxes." United States v. Bell, 86 AFTR2d ¶2000-5209; CIV F 95-5346 OWW SMS (U.S.D.C. E.D.Ca. 7/24/2000).*

*On September 26, 2000, George and Dorothy Henderson, of Roseville, California, were convicted in the U.S.*

> *District Court for the Eastern District of California of conspiring to defraud the IRS, aiding in the presentation of false tax returns, and other charges arising out of their sale of bogus trust schemes to generate false deductions for clients, as well as helping clients to hide income by routing monies through a variety of domestic and foreign accounts. According to an article in the New York Times, Mr. and Mrs. Henderson decided to argue at their sentencing that "they were exempt from tax under Section 861 of the Internal Revenue Code, contending that the statute excludes most Americans from income taxes." Mrs. Henderson's lawyer, Donald Dorfman, tried to discourage his client, but said that "She insisted on speaking and telling the judge about the 861 position and how as a sovereign citizen of California the federal courts had no jurisdiction and all sorts of gibberish." After listening to their arguments, Judge Garland E. Burell Jr. added five months to Mrs. Henderson's prison sentence and added eight months to Mr. Henderson's prison sentence. See, "California Couple Sentenced for Helping Clients Evade Taxes," by David Cay Johnston, New York Times (2/23/2001).*

The "section 861" argument is specifically addressed by the IRS in Fact Sheet FS-2001-06.

Evans is correct in the above analysis.

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### 3.7 The income tax does not apply to citizens outside of the District of Columbia and territories of the United States because the way "United States" is defined in the Internal Revenue Code does not include the states of the United States.

This argument is the result of functional illiteracy.

Section 7701(a)(9) of the Internal Revenue Code states that "The term 'United States' when used in a geographical sense includes only the States and the District of Columbia."

Well, that contradicts the tax resisters, because it says that "United States" includes "the States." But the tax resisters then turn to the definition of "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." I.R.C. section 7701(a)(10).*

According to tax resisters, this definition *excludes* the states of the United States from the definition of "State," and "State" means only the District of Columbia. There are several things wrong with this "argument":

- The word "includes" is also defined by the Internal Revenue Code. According to section 7701(c), "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." The states of the United States are within the normal meaning of the word "State," and so a definition that says that "State" shall be construed to *include* the District of Columbia does not *exclude* the states of the United States from the meaning of "State."
- A definition of "State" that equates "State" with "District of Columbia" turns the definition of "United States" into gibberish, because the definition then becomes a statement that "United States" "includes only the District of Columbia and the District of Columbia."
- The definition of "State" includes the District of Columbia "where such construction is necessary to carry out the provisions of this title." What happens if the construction is not necessary? If "State" does *not* include the District of Columbia, then references to "states" in the Internal Revenue Code would apply to nothing at all. Which is absurd.

What have the courts said about the claim that the United States does not include the states of the United States?

> *"In an affidavit attached to his amended petition, petitioner sets forth numerous, tax-protester type legal arguments, including, in petitioner's words, the following propositions:*
>
> *"That the Republic of Illinois is 'without the United States';*
> *"...*
> *"The Congress excluded the 50 States from the definition of 'United States,' ...*
>
> *"Petitioner attempts to argue an absurd proposition, essentially that the States of Illinois is not part of the United States. His hope is that he will find some semantic technicality which will render him exempt from Federal income tax, which applies generally to all U.S. citizens and residents. Suffice it to say, we find no support in any of the authorities petitioner cites for his position that he is not subject to Federal income tax on income he earned in Illinois. ... Petitioner's arguments are no more than stale tax protester contentions long dismissed summarily by this Court and all other courts which have heard such contentions." Nieman v. Commissioner, T.C. Memo 1993-533.*
>
> *"Ward reaches this twisted conclusion [that the Internal Revenue Code only applies to individuals located within Washington, D.C., the federal enclaves within the states, and the territories and possessions of the United*

*States] by misinterpreting a portion of the Income Tax Code. The 1913 Act defined the words 'state' or 'United States" to 'include' United States territories and the District of Columbia; Ward asks this court to interpret the word 'include' as a term of limitation, rather than of definition. ... We find each of appellant's contentions to be utterly without merit." United States of America v. Ward, 833 F.2d 1538 (11th Cir. 1987) (conviction of tax evasion affirmed, despite arguments of Lowell H. Becraft Jr.).*

*"Steiner also argued that the word 'includes,' which appears throughout the tax laws, limits the court's jurisdiction under the tax laws. This argument has been specifically rejected in United States v. Condo, 741 F.2d 239, 239 (9th Cir. 1984), cert. denied, 469 U.S. 1164 (1985), in which this court held that the word 'includes' is one of expansion, not limitation." United States v. Steiner, 963 F.2d 381 (9th Cir. 1992).*

The cites in the above paragraph were searched for in Versuslaw and None could be located. They don't exist.

The term "the States" is defined in 4 U.S.C. §110(d) as follows:

*TITLE 4 - FLAG AND SEAL, SEAT OF GOVERNMENT, AND **THE STATES***
*CHAPTER 4 - **THE STATES***
*Sec. 110. Same; definitions*

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

Because of the separation of powers doctrine, it is ONLY these statutory and not Constitutional "States" that Congress may legislate for. Constitutional states are sovereign and legislatively foreign for the purposes of both civil and criminal jurisdiction because of the separation of powers. Even in the case of these territorial "States", the people in them are "aliens" as declared in the IRS' own Publication 519. People in states of the Union are similarly statutory but not Constitutional "aliens" because of the separation of powers doctrine. These concepts are exhaustively analyzed in:

*Non-Resident Non-Person Position*, Form #05.020 (OFFSITE LINKS)
DIRECT LINK: http://sedm.org/Forms/05-MemLaw/NonresidentNonPersonPosition.pdf
FORMS PAGE: http://sedm.org/Forms/FormIndex.htm

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### 3.8 Nothing in the Internal Revenue Code makes an ordinary citizen liable for the income tax.

More semantic games from people desperate to evade taxes.

Tax resisters claim that, before anyone can be liable for a tax, there must be a statute that specifically says that the person is *liable* for the tax (and must use the word "liable"). However, that is not what the law requires.

In its various subsections, section 1 of the Internal Revenue Code says that "There is hereby imposed on the taxable income of every [married individual, surviving spouse, head of a household, unmarried individual, or married individual filing a separate return] a tax determined in accordance with the following table.. .."

As explained in the regulations:

*"Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States ...." Treas. Reg. § 1.1-1(a)(1).*

The word "impose" means "to establish or apply as compulsory; levy." So how can a tax be "imposed" if no one is compelled to pay it? The answer is that it can't. If a tax is imposed on a person's income, then that person is liable for the tax as a matter of law.

So what have the courts said about the claim that there is no one is liable for the tax imposed on their incomes?

*"The payment of income taxes is not optional ... and the average citizen knows that payment of income taxes is legally required." Schiff v. United States, 919 F.2d 830, 834 (2nd Cir. 1990).*

*"Purportedly in support of his claim, plaintiff submitted a statement along with the Form 1040, in which he argues that no provision of the IRC establishes an income tax 'liability.' The plain language of the IRC, however, belies this assertion, stating in section 1 that a tax is 'hereby IMPOSED on the taxable income of every individual' (emphasis added). Although plaintiff attempts to distinguish between 'imposing' a tax and creating a 'liability' for a tax, there is no difference. Every individual has an affirmative duty to pay taxes. Gabelman v. Commissioner, 86 F.3d 609, 611 (6th Cir. 1996)." Porcaro v. United States, 84 AFTR2d Par. 99-5547, No. 99-CV-60406-AA (U.S.D.C. E.D. Mich. October 25, 1999).*

*"Sasscer makes the puzzling argument that section 1461 is the only provision in the Internal Revenue Code that*

> *imposes liability for payment of a tax on 'income.' Without belaboring the issue, the Court notes that 26 U.S.C. section 1 could hardly be more clear in imposing a tax on 'income.' See generally United States v. Melton, 86 F.3d 1153, 1996 WL 271468 *2-3 (4th Cir. May 22, 1996) (unpublished opinion)." United States v. Sasscer, 86 AFTR2d Par. 2000-5317, n. 3, No. Y-97-3026 (D.C. Md. 9/25/2000).*
>
> *"Plaintiff's arguments are no less frivolous here. [Footnote omitted.] First, Plaintiff argues the Code does not impose a tax "liability". The plain language of the Code belies this, stating the tax is "imposed". See 96 [sic] U.S.C. section 1. He attempts to distinguish between "imposing" a tax and creating a "liability" for tax. The Court fails to see a difference. Individuals have an affirmative duty to pay taxes. Gabelman v. Commissioner of Internal Revenue, 86 F.3d 609, 611 (6th Cir. 1996)." Tornichio v. United States, 81 AFTR2D PAR. 98-582, KTC 1998-71 (N.D.Ohio 1998), (suit for refund of frivolous return penalties dismissed and sanctions imposed for filing a frivolous refund suit), aff'd 1999 U.S. App. LEXIS 5248, 99-1 U.S. Tax Cas. (CCH) Par. 50,394, 83 AFTR2d Par. 99-579, KTC 1999-147 (6th Cir. 1999), (with sanctions imposed for filing a frivolous appeal).*
>
> *See also, United States v. Moore, 692 F.2d 95 (10th Cir. 1979); United States v. Slater, 545 F.Supp. 179 (Del. 1982).*
>
> *"As the cited cases, as well as many others, have made abundantly clear, the following arguments alluded to by the Lonsdales are completely lacking in legal merit and patently frivolous: ... (7) no statutory authority exists for imposing an income tax on individuals...." Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990).*

An attorney named Thomas J. Carley argued before the United States Circuit Court of Appeals for the Second Circuit that "[n]owhere in any of the Statutes of the United States is there any section of law making any individual liable to pay a tax or excise on 'taxable income.'" The Second Circuit responded that "Section 1 of the Internal Revenue Code of 1954 (26 U.S.C.) (hereinafter the Code) provides in plain, clear and precise language that '[t]here is hereby imposed the taxable income of every individual ... a tax determined in accordance with' tables set-out later in the statute. ... Despite the appellant's attempted contorted construction of the statutory scheme, we find that it coherently and forthrightly imposed upon the appellant tax upon his income for the year 1980." *Ficalora v. Commissioner of Internal Revenue,* 751 F.2d 85, 88 (2d Cir. 1984), cert. den. 105 S.Ct. 1869 (1985).

Oddly enough, the same attorney raised nearly the identical argument before the Eighth Circuit, arguing that there was "no law imposing an income tax" on his clients. The Eighth Circuit held that the appeal was "frivolous" and imposed a penalty on the appellants of double the Commissioner's costs of the appeal. *Lively v. Commissioner of Internal Revenue,* 705 F.2d 1017, 1018 (8th Cir. 1983).

Even more incredibly, only a year after losing the *Lively appeal,* and six month after losing the *Ficalora* appeal, the same attorney, Thomas J. Carley, raises the same idiot issue with the 10th Circuit, questioning "Whether there is any law or statute imposing an income tax on appellants for the year 1977 and, if such a law or statute is claimed to exist, what is the precise citation of such law or statute?" The 10th Circuit quoted from both the *Ficalora* and *Lively* opinions, and then spent the rest of the opinion explaining why it was going to impose sanctions on Mr. Carley personally (not his clients). "It is obvious that despite having full knowledge of the learned opinions of two different Article III courts and the accurate reasoning of the Tax Court in *Manley* [v. Commissioner of Internal Revenue, 46 T.C.M. 1359 (1983), another case lost by Mr. Carley)] concerning his arguments, Carley has failed to learn that he has no right to occupy the time of such courts with frivolous, unreasonable and vexatious proceedings, and that if he does so, he exposes not only his clients but also himself personally to sanctions." *Charczuk v. Commissioner of Internal Revenue,* 771 F.2d 471, 474 (10th Cir. 1985). The court also referred to Mr. Carley's arguments as "meritless," "preposterous," "nearly silly," and "that thoroughly defy common sense."

The trouble with the above analysis, like most of his writings, is that Evans doesn't provide a statutory definition of what he means by "ordinary citizen". In fact, that definition is provided in 8 U.S.C. §1401, and it includes only persons born in and domiciled within federal territories, possessions, and areas and excludes persons born in the exclusive jurisdiction of a state of the Union. We call such a person a "statutory U.S. citizen". The "citizen" mentioned in the United States Constitution EXCLUDES such a citizen. If that is the "citizen" he is referring to, then he is correct. He is correct because:

1. 26 U.S.C. §864(c)(3), which says that nearly all earnings from within the "United States", which is defined as the "District of Columbia" in 26 U.S.C. §7701(a)(9) and (a)(10) and not expanded anywhere else in I.R.C. Subtitle A to add any other place, are to be treated as though they are connected with the excise taxable activity called a "trade or business". That, in fact, is why everything that goes on an IRS form 1040 is "trade or business" income.
2. 26 U.S.C. §1461 makes withholding agents on "nonresident aliens" liable to pay the I.R.C. Subtitle A income taxes they collect or have a responsibility to pay over. Persons born within and domiciled within states of the Union are CONSTITUTIONAL but not STATUTORY "citizens" and statutory "non-resident non-persons" pursuant to 8 U.S.C. §1101(a)(21). If they ALSO serve in a public office, they are statutory "nonresident aliens" within the I.R.C. Therefore, if they are engaged in a "trade or business", then they become their own withholding agent and must turn over amounts that must be deducted from their pay. This makes them liable. On the other hand, if they are not engaged in a "trade or business", then they aren't liable. Whether they are or aren't engaged in a "trade or business" depends on whether they had any information returns filed against them. If they had W-2, 1042-S, 1098, or 1099 information returns filed against them, then the IRS will treat them as prima facie taxpayers subject to the I.R.C. and engaged in a "trade or business". The reason is because the only parties that such information returns can lawfully be filed against are those engaged in a "trade or business" pursuant to 26 U.S.C. §6041.

HOWEVER, those persons born in and domiciled within states of the Union are not "ordinary citizens" within the meaning of the Internal Revenue Code. See our article entitled *Why you are a "national", "state national", and Constitutional but not Statutory Citizen*. There are

TWO types of "citizens of the United States", and these distinctions are a natural consequence of the Separation of Powers Doctrine that is the heart and soul of the Constitution:

1. Statutory "citizens of the United States" defined in 8 U.S.C. §1401.
2. Constitutional "citizens of the United States" as referred to in the Fourteenth Amendment. This "United States" includes the states of the Union and excludes the District of Columbia, the territories and possessions of the United States, and federal areas.

> *"The 1st section of the 14th article, to which our attention is more specifically invited, opens with a definition of citizenship—not only citizenship of the United States[***], but citizenship of the states.* ***No such definition was previously found in the Constitution, nor had any attempt been made to define it by act of Congress. It had been the occasion of much discussion in the courts, by the executive departments and in the public journals. It had been said by eminent judges that no man was a citizen of the United States[***] except as he was a citizen of one of the state comprising the Union. Those, therefore, who had been born and resided always in the District of Columbia or in the territories, though within the United States[***], were not citizens."***
> *[Slaughter-House Cases, 83 U.S. (16 Wall.) 36; 21 L.Ed. 394 (1873)]*

IRS likes to encourage confusion of the above two types of citizens by indiscriminately using the word "State" and omitting the phrase "of the Union" and by not referring to which "State" they are referring to. The "State" they are referring to is that defined in 4 U.S.C. §110(d), which is part of the Buck Act, and which is the definition upon which all state income taxes rely. That definition describes a federal territory and NOT a state of the Union. It is a violation of the separation of powers doctrine for a state of the Union to act like a federal territory outside of federal areas within the exterior limits of the state, or to impose federal law upon those not domiciled upon federal property. This is exhaustively described in the following article:

> *Government Conspiracy to Destroy the Separation of Powers, Form #05.023 (OFFSITE LINKS)*
> *DIRECT LINK: http://sedm.org/Forms/05-MemLaw/SeparationOfPowers.pdf*
> *FORMS PAGE: http://sedm.org/Forms/FormIndex.htm*

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### 3.9 Nothing in the Internal Revenue Code requires an ordinary citizen to file a return.

This is a ridiculous claim. Section 6012(a) of the Internal Revenue Code plainly states that "Returns with respect to income taxes under Subtitle A shall be made by the following: (1)(A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount...."

> *"As the cited cases, as well as many others, have made abundantly clear, the following arguments alluded to by the Lonsdales are completely lacking in legal merit and patently frivolous: ... (9) individuals are not required to file tax returns fully reporting their income...." Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990).*
>
> *The statutes themselves require the payment of the tax and the filing of a return. 26 U.S.C. § 6012. ... [The] duty to pay those taxes is manifest on the face of the statutes, without any resort to IRS rules, forms or regulations." United States v. Bowers, 920 F.2d 220, 222 (4th Cir. 1990).*
>
> *"Upon review of May's amended petition, we find no allegations of fact which could give rise to a valid claim; rather, the complaint merely contains conclusory assertions attacking the constitutionality of the Internal Revenue Code and its application to the taxpayer. [Footnote omitted.] Tax protest cases like this one raise no genuine controversy; the underlying legal issues have long been settled. See, e.g., Abrams, 82 T.C. at 406-07 (citing cases rejecting similar arguments). Because May's petition raised no justiciable claims, the Tax Court properly dismissed the petition for failure to state a claim." May v. C.I.R., 752 F.2d 1301, 1302 (8th Cir. 1985), (among other things, May's amended complaint alleged that "The Respondent has added penalties for Petitioner not filing a return (1040) when in fact there is NO SECTION of the Internal Revenue Code that 'REQUIRES' anyone to file." 752 F.2d at 1304, note 3).*
>
> *"The assertion that the filing of an income tax return is voluntary is, likewise, frivolous. Title 26, United States Code, Section 6012(a)(1)(A), 'requires that every individual who earns a threshold level of income must file a tax return.' United States v. Pottorf, 769 F.Supp. 1176, 1183 (D.Kan. 1991). Failure to file an income tax return subjects an individual to criminal penalty. Id., (citing 26 U.S.C. § 7203)." United States v. Hartman, 915 F.Supp. 1227 (M.D.Fla. 1996).*

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### 3.10 The income tax is voluntary.

This is a corruption of statements made by the IRS, the courts, and Congress to encourage taxpayer compliance with the tax laws, without

the need for legal action against taxpayers.

A quotation frequently taken out of context by tax resisters is the following by the U.S. Supreme Court:

> *"Our tax system is based upon voluntary assessment and payment and not upon distraint." Flora v. United States, 362 U.S. 145, 175.*

This quotation is out of context, because the court first noted that the government could collect the tax by exercising its power of distraint, "but we cannot believe that completing resort to this extraordinary procedure is either wise or in accord with congressional intent." 362 U.S. at 175. In other words, Congress can collect taxes by force, but the court believed that Congress intended to give taxpayers an opportunity to comply before exercising that force.

This is better explained in *Helvering v. Mitchell*, 303 U.S. 391, 399 (1938), (which was cited in the Flora decision), as follows:

> *"In assessing income taxes, the Government relies primarily upon the disclosure by the taxpayer of the relevant facts. This disclosure it requires him to make in his annual return. To ensure full and honest disclosure, to discourage fraudulent attempts to evade the tax, Congress imposes sanctions. Such sanctions may confessedly be either criminal or civil."*

See also, *Ginter v. Southern*, 611 F.2d 1226, 1229 & n.2 (8th Cir. 1979), cert. den., 446 U.S. 967 (1980); *Funk v. Commissioner*, 687 F.2d 264, 265 (8th Cir. 1982). When confronted by claims that income taxes are "voluntary," courts readily explain that the payment of income tax is mandatory, not optional:

> *"Appellants' claim that payment of federal income tax is voluntary clearly lacks substance. See Newman v. Schiff, 778 F.2d 460, 467 (8th Cir. 1985)." United States v. Gerads, 999 F.2d 1255 (8th Cir. 1993).*
>
> *"The payment of income taxes is not optional ... and the average citizen knows that payment of income taxes is legally required." Schiff v. United States, 919 F.2d 830, 834 (2nd Cir. 1990).*
>
> *"As the cited cases, as well as many others, have made abundantly clear, the following arguments alluded to by the Lonsdales are completely lacking in legal merit and patently frivolous: ... (6) the income tax is voluntary... " Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990).*
>
> *"Any assertion that the payment of income taxes is voluntary is without merit. It is without question that the payment of income taxes is not voluntary. United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993), (per curiam); Wilcox v. Commissioner of Internal Revenue, 848 F.2d 1007, 1008 (9th Cir. 1988). The assertion that the filing of an income tax return is voluntary is, likewise, frivolous. Title 26, United States Code, Section 6012(a)(1)(A), 'requires that every individual who earns a threshold level of income must file a tax return.' United States v. Pottorf, 769 F.Supp. 1176, 1183 (D.Kan. 1991). Failure to file an income tax return subjects an individual to criminal penalty. Id., (citing 26 U.S.C. § 7203)." United States v. Hartman, 915 F.Supp. 1227 (M.D.Fla. 1996).*
>
> *"Based on his belief that the income tax system is based on voluntary compliance, Beresford wrote the IRS to explain that he had voluntarily chosen not to comply and would not be paying overdue income taxes for 1987, 1988, and 1989. The IRS issued a federal tax lien against him, which it satisfied by withholding $14,609.97 from the sale of Beresford's house in October 1999. Beresford seeks to recover that sum plus interest and costs. He also seeks a permanent injunction 'forbidding defendant from contacting him against his wishes and from directly or indirectly interfering in any other aspect of his life.' Complaint at 11. ... Beresford's primary contention, however, that the federal income tax system is based on voluntary compliance, has been held to be 'completely lacking in legal merit and patently frivolous.' Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990); Wilcox v. Commissioner of the Internal Revenue, 848 F.2d 1007, 1008 (9th Cir. 1988)." Steven M. Beresford v. IRS, et al., 86 AFTR2d Par. 2000-5200, No. 00-293-KI (July 13, 2000).*
>
> *"The federal income tax is not voluntary, and a person may not elect to opt out of the federal tax laws by a unilateral act of revocation and recission. See, e.g., Lesoon v. Commissioner of Internal Revenue, 141 F.3d 1185, 1998 WL 166114 (10th Cir. 1998); United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993); Damron v. Yellow Freight System, Inc., 18 F. Supp. 2d 812, 819-20 (E.D. Tenn. 1998), aff'd, 188 F.3d 506 (6th Cir. 1999)." United States v. John L. Sasscer, 86 AFTR2d Par. 2000-5317, No. Y-97-3026 (D.C. Md. 9/25/2000), (footnote omitted).*

Evan's analysis, as usual, misses the main point and ignores the critical distinctions between "taxpayers" and "nontaxpayers". This distinction is explained in our article entitled *Taxpayer or Nontaxpayer: Which One are You?* The remarks of every one of the above courts relate ONLY to "taxpayers" who became subject to the I.R.C., usually by any one or more of the following actions:

1. Signing and submitting an SS-5 and joining Social Security. Pursuant to 5 U.S.C. §552a(a)(12), this made them "federal personnel" or federal "employees" able to participate in the federal retirement program for federal employees called Social Security.
2. Voluntarily filling out and submitting an IRS form W-4, and thereby electing to become: 1. An "employee" as defined in the I.R.C., who has earnings connected with a "trade or business", and therefore is subject to tax.

3. Opening a financial account with a Social Security Number. This turned deposits in the bank into property devoted to a public use. The number is public property of the United States government, per 20 C.F.R. §422.103(d). You cannot use public property for a private use and doing so constitutes embezzlement. Therefore, the bank account constitute private property donated to a public use, in which case the public has the right to control that use. This is thoroughly explained in our free *Resignation of Compelled Social Security Trustee* document. The way to open a financial account without a Social Security Number is using the IRS Form W-8BEN. Click here for an article on how to do this.
4. Voluntarily signing and submitting an IRS form W-4 to their private employer. The W-4 is a private contracts between you and the government are enforceable anywhere, including outside the territorial jurisdiction of the government. It doesn't say that on the form, but the regulations clearly state it. This is a deception, of course, because it means that your consent to the contract was not fully informed, and therefore was procured under the influence of constructive fraud.

> *"Waivers of Constitutional rights not only must be voluntary, but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences."*
> *[Brady v. U.S., 397 U.S. 742 (1970)]*

The Constitution in Article 1, Section 10, also prohibits the states of the Union from interfering with the enforcement of this contract.

> *§ 31.3402(p)-1 Voluntary withholding agreements.*
>
> *(a) In general.*
>
> *An employee and his employer may enter into an agreement under section 3402(b) to provide for the withholding of income tax upon payments of amounts described in paragraph (b)(1) of §31.3401(a)–3, made after December 31, 1970.* ***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.*** *The amount to be withheld pursuant to an agreement under section 3402(p) shall be determined under the rules contained in section 3402 and the regulations thereunder. See §31.3405(c)–1, Q&A–3 concerning agreements to have more than 20-percent Federal income tax withheld from eligible rollover distributions within the meaning of section 402.*

If you would like to learn more about this withholding scam, see our free pamphlet entitled *Federal and State Withholding Options for Private Employers*.

5. Having someone file any kind of information return against you, such as W-2, 1098, 1042-S, or 1099, even though you are not in fact engaged in a "trade or business" as required under 26 U.S.C. §6041, and then neglect to correct the erroneous report. That omission constitutes a constructive consent to become a "taxpayer" subject to the I.R.C. who is the proper and lawful target for IRS enforcement actions.
6. Completing and signing an IRS form 1040 voluntarily and assessing yourself with a liability, even though you do not, in fact, have any earnings from a "public office", which is what a "trade or business" is defined as in 26 U.S.C. §7701(a)(26). Everything that goes on the IRS form 1040 is "trade or business" income, pursuant to 26 U.S.C. §864(c)(3). IRS Document 7130 also states that the IRS 1040 form is only for use by "citizens and residents [aliens] of the United States". These two groups have in common is a domicile in the "United States", which is defined in 26 U.S.C. §7701(a)(9) and (a)(10) to mean the District of Columbia and nowhere is expanded to include states of the Union. Persons with a domicile in the District of Columbia collectively are called "U.S. persons", which are then defined in 26 U.S.C. §7701(a)(30).

Those who engaged in any of the above activities have created a prima facie presumption that they are engaged in an excise taxable, privileged activity called a "trade or business", which is the main subject of taxation under I.R.C. Subtitle A. *For these people, the income tax is NOT voluntary, but enforceable*. If they eliminate or rescind or correct the evidence of consent generated in the activities above by, for instance, re-filing with the correct status and undoing everything they did, then they become "nontaxpayers", in which case:

1. They are not subject to the I.R.C. or any internal revenue tax.
2. The I.R.C. is "foreign" with respect to them.
3. Participation in the income tax is "voluntary".
4. They may not be a lawful target of IRS enforcement.

Not until all the "evidence of consent" is destroyed or rebutted can a person claim to be a "nontaxpayer" who is not required to participate but can "volunteer" by the methods above to rejoin the system.

A similar claim is that a federal income tax return is a form of contract, and is therefore voluntary, or invalid if entered into under duress. This claim is also uniformly rejected:

> *"The notion that the federal income tax is contractual or otherwise consensual in nature is not only utterly without foundation by, despite McLaughlin's protestations to the contrary, has been repeatedly rejected by the courts." McLaughlin v. United States, 832 F2d 986 (7th Cir. 1987).*

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> *"Drefke argues that taxes are debts which can only be imposed voluntarily when individuals contract with the government for services and that those who choose to enter such contracts do so by signing 1040 and W-4 forms. By refusing to sign those forms, Drefke argues that he is 'immune' from the Internal Revenue Service's jurisdiction as a 'nontaxpayer.'*
>
> *"This is an imaginative argument, but totally without arguable merit. 26 U.S.C. § 1 imposes upon 'every' individual a certain rate of income tax depending on their amount of taxable income. 26 U.S.C. § 6012 states that unmarried individuals having a gross income in excess of $4,300, and married individuals entitled to make joint returns having a gross income in excess of $5,400 'shall' file tax returns for the taxable year. Considering Drefke's gross income for 1979 and 1980, he was clearly required to file tax returns for those years.*
>
> *"26 U.S.C. § 6151 states that when a tax return is required to be filed, the person so required 'shall' pay such taxes to the internal revenue officer with whom the return is filed at the fixed time and place. The sections of the Internal Revenue Code imposed a duty on Drefke to file tax returns and pay the appropriate rate of income tax, a duty which he chose to ignore." United States v. Drefke, 707 F.2d 978, 981 (8th Cir. 1983), cert. den., sub nom., Jameson v. United States, 464 U.S. 942 (1983).*

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> *"Upon review of May's amended petition, we find no allegations of fact which could give rise to a valid claim; rather, the complaint merely contains conclusory assertions attacking the constitutionality of the Internal Revenue Code and its application to the taxpayer.[Footnote omitted.] Tax protest cases like this one raise no genuine controversy; the underlying legal issues have long been settled. See, e.g., Abrams, 82 T.C. at 406-07 (citing cases rejecting similar arguments). Because May's petition raised no justiciable claims, the Tax Court properly dismissed the petition for failure to state a claim." May v. C.I.R., 752 F.2d 1301, 1302 (8th Cir. 1985), (among other things, May's amended complaint alleged that "The filing of an 'imcome' [sic] tax return is 'VOLUNTARY' and penalties can not be instituted against a voluntary act since to do so would make the act 'mandatory.'" 752 F.2d at 1304, note 3).*

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### 3.11 The income tax applies only to corporations.

This claim appears to be based on a strange chain of "logic."

As noted above, Congress enacted taxes on the incomes of corporations from manufacturing and other industries after the Supreme Court held in *Pollock* that an income tax on incomes from property was unconstitutional unless apportioned, and the Supreme Court held that those corporate excise taxes were constitutional. See, for example, *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911).

The cases that arose under those corporate tax cases necessarily developed a definition of "income" and, after the adoption of the 16th Amendment and the enactment of general income taxes on both individuals and corporations, courts continued to refer to those definitions of "income" under the corporate excise tax acts. This leads tax resisters to claim that "income" means only "corporate income," which is ridiculous.

> *"As the cited cases, as well as many others, have made abundantly clear, the following arguments alluded to by the Lonsdales are completely lacking in legal merit and patently frivolous: ... (4) the Sixteenth Amendment to the Constitution is either invalid or applies only to corporations...." Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990).*
>
> *"Plaintiff appears to argue that according to the Sixteenth Amendment, federal income tax is not a direct tax on wages or salaries of individuals, but that it is an excise tax on the privilege of engaging in some privileged or regulated activity. Therefore, according to plaintiff, this 'indirect excise tax' can only be imposed on the income of corporations and the dividend income of stockholders. Despite plaintiff's many case citations allegedly supporting his argument, the Sixteenth Amendment, valid as described above, clearly authorizes Congress to levy a direct income tax upon individuals who are United States citizens." Betz v. United States, 40 Fed.Cl. 286, 296 (1998)*
>
> *"Plaintiff argues "income" should be interpreted as limited to corporate activities, and not include wages. He relies on a series of Supreme Court cases rendered shortly after ratification of the Sixteenth Amendment, and which define the scope of corporate income. NONE of those cases, however, stands for the proposition that only corporate income is taxable. To the contrary, like Richards, supra, many of these cases state: "income may be defined as gain derived from capital, FROM LABOR, OR FROM BOTH COMBINED". See, e.g., Bowers v. Kerbaugh-Empire Co., 271 U.S. 170, 174 (1926); Merchant's Loan & Trust Co. v. Smietanka, 255 U.S. 509, 518 (1921); Eisner v. Macomber, 252 U.S. 189, 207 (1919); Doyle v. Mitchell Bros. Co., 247 U.S. 179, 185 (1918); Stratton's Independence. Ltd. v. Howbert, 231 U.S. 399, 415 (1913) (emphasis added). In particular, in Southern Pacific Co. v. Lowe, 247 U.S. 330, 333-34 (1918), the Supreme Court quoted the income statute at the time as imposing a tax on "every person residing in the United States . . . upon the entire net income arising and accruing from all sources". Thus, the plain language of the authorities upon which Plaintiff relies belies his*

*position." Tornichio v. United States, 81 AFTR2D PAR. 98-582, KTC 1998-71 (N.D.Ohio 1998), (suit for refund of frivolous return penalties dismissed and sanctions imposed for filing a frivolous refund suit), aff'd 1999 U.S. App. LEXIS 5248, 99-1 U.S. Tax Cas. (CCH) Par. 50,394, 83 AFTR2d Par. 99-579, KTC 1999-147 (6th Cir. 1999). In affirming, the 6th Circuit stated that, "Tornichio's legal assertions are patently spurious, as it cannot be seriously argued that an individual's taxable income is based solely on income derived from corporate activities," and imposed additional sanctions for filing a frivolous appeal.*

*"[T]he frivolous argument that wages are not income "has been rejected so frequently that the very raising of it justifies the imposition of sanctions." Connor v. Commissioner, 770 F.2d 17, 20 (2d Cir. 1985); Bey v. New York, 164 F.3d 617, 617 (2d Cir. 1998). Section 61(a) of the Internal Revenue Code clearly defines gross income as "all income from whatever source derived," which includes wages, salaries, and compensation for services. 26 U.S.C. section 61(a); 26 C.F.R. section 1,61-2(a). The plaintiffs erroneously rely on cases that have defined the scope of corporate income to argue that non-corporate income is not taxable. "To the contrary, . . . many of these cases state: 'income may be defined as gain derived from capital, from labor, or from both combined.'" Tornichio v. United States, 81 AFTR2D PAR. 98-582, KTC 1998-71 (N.D.Ohio 1998), aff'd 1999 U.S. App. LEXIS 5248, 99-1 U.S. Tax Cas. (CCH) Par. 50,394, 83 AFTR2d Par. 99-579, KTC 1999-147 (6th Cir. 1999)], 1998 WL 381304, at *3 (citations omitted). The plaintiffs' claim that they are owed a refund because they had no tax liability for the years 1993 through 1996 is therefore foreclosed by well- established law." Gavigan v. United States, 87 AFTR2d Par. 2001-480, No. 3:99CV697 (DJS) (D.Conn. 11/30/2000), (suit for refund of frivolous return penalties dismissed).*

As usual, Evans didn't tell the WHOLE story here and does not explain the following:

> *"As repeatedly pointed out by this court, the Corporation Tax Law of 1909..**imposed an excise or privilege tax, and not in any sense, a tax upon property or upon income merely as income**. It was enacted in view of the decision of Pollock v. Farmer's Loan & T. Co., 157 U.S. 429, 29 L. Ed. 759, 15 Sup. St. Rep. 673, 158 U.S. 601, 39 L. Ed. 1108, 15 Sup. Ct. Rep. 912, which held the income tax provisions of a previous law to be unconstitutional because amounting in effect to a direct tax upon property within the meaning of the Constitution, and because not apportioned in the manner required by that instrument."*
> *[U.S. v. Whiteridge, 231 U.S. 144, 34 S.Sup. Ct. 24 (1913)]*
>
> ---
>
> *"Income has been taken to mean the same thing as used in the Corporation Excise Tax Act of 1909 (36 Stat. 112) in the 16th Amendment, and in the various revenue acts subsequently passed."*
> *[Bowers v. Kerbaugh-Empire Co., 271 U.S. 170, 174, (1926)]*

The "privilege" they were talking about is the privilege to operate in a corporate capacity. Many are deceived by the form of the current Internal Revenue Code into thinking that it imposes a tax on other than corporations, and this is not true because:

1. The tax is upon a privileged, excise taxable activity called a "trade or business", which is defined in 26 U.S.C. §7701(a)(26) as "the functions of a public office".
2. Pursuant to 26 U.S.C. §864(c)(3), everything originating from the "United States" is treated as being connected to a "trade or business". Consequently, the term "sources within the United States" is synonymous with "trade or business" income. Indirectly, this also constitutes an admission that the tax only applies to the United States government activities, and contractors or business partners who are engaged in "public offices".
3. The "United States" is defined as "a federal corporation" in 28 U.S.C. §3002(15)(A). The U.S. Supreme Court has also said that all governments are corporations:

> *"Corporations are also of all grades, and made for varied objects; **all governments are corporations, created by usage and common consent, or grants and charters which create a body politic for prescribed purposes; but whether they are private, local or general, in their objects, for the enjoyment of property, or the exercise of power, they are all governed by the same rules of law, as to the construction and the obligation of the instrument by which the incorporation is made. One universal rule of law protects persons and property**. It is a fundamental principle of the common law of England, that the term freemen of the kingdom, includes 'all persons,' ecclesiastical and temporal, incorporate, politique or natural; it is a part of their magna charta (2 Inst. 4), and is incorporated into our institutions. The persons of the members of corporations are on the same footing of protection as other persons, and their corporate property secured by the same laws which protect that of individuals. 2 Inst. 46-7. 'No man shall be taken,' 'no man shall be disseised,' without due process of law, is a principle taken from magna charta, infused into all our state constitutions, and is made inviolable by the federal government, by the amendments to the constitution."*
> *[Proprietors of Charles River Bridge v. Proprietors of, 36 U.S. 420 (1837)]*

4. The term "United States" is only defined in a "geographical sense" within 26 U.S.C. §7701(a)(9) and (a)(10) to mean the District of Columbia. However, it is also used in a "corporate sense" throughout the code, and it is impossible to distinguish in each instance which of the two senses it is used in. This confusion is deliberate.
5. Those engaged in a "public office" are "officers of a corporation", and that corporation is "U.S. Inc." While they are acting on behalf

of the corporation as "public officials" engaged in a "trade or business", their legal identity takes on the character of the corporation they represent. The "U.S. Inc.", in fact, is a statutory "U.S. citizen" within the meaning of 8 U.S.C. §1401, and therefore those engaged in a "trade or business" are also treated as statutory "U.S. citizens" in the context of their "social insurance" contract.

> *"**A corporation [and those acting on its behalf as its officers in the context of their official duties] is a citizen**, resident, or inhabitant of the state or country by or under the laws of which it was created, and of that state or country only."*
> *[19 Corpus Juris Secundum, Corporations, §886]*

What all three of the above, "citizen", "resident", and "inhabitant" have in common is "domicile". Domicile is the basis of the authority to impose an income tax, and corporations must, by law, have a domicile in the place of their creation. In the case of the "U.S. Inc.", that place of creation is the District of Columbia:

> *"**Thus, the Court has frequently held that domicile or residence, more substantial than mere presence in transit or sojourn, is an adequate basis for taxation, including income, property, and death taxes**. Since the Fourteenth Amendment makes one a citizen of the state wherein he resides, **the fact of residence creates universally reciprocal duties of protection by the state and of allegiance and support by the citizen. The latter obviously includes a duty to pay taxes, and their nature and measure is largely a political matter.** Of course, the situs of property may tax it regardless of the citizenship, domicile, or residence of the owner, the most obvious illustration being a tax on realty laid by the state in which the realty is located."*
> *[Miller Brothers Co. v. Maryland, 347 U.S. 340 (1954)]*

6. The terms "U.S. citizen" and "U.S. resident (alien)" are synonymous with "U.S. person" defined in 26 U.S.C. §7701(a)(30), which is a person who maintains a "domicile" within this corporation, which is synonymous with employment or contracts with the corporation. That domicile arises under 26 U.S.C. §7701(a)(39) and 26 U.S.C. §7408(d). If the "U.S. Inc." really did have territorial jurisdiction within states of the Union, these two provisions would be unnecessary, because their effect is to shift the effective domicile of those subject to the I.R.C. to the District of Columbia. Since kidnapping is illegal under 18 U.S.C. §1201, that transmutation of legal or contractual "domicile" pursuant to Federal Rule of Civil Procedure 17(b) must occur voluntarily, which means those who don't actually live in the District of Columbia must voluntarily consent to the provisions of I.R.C. Subtitle A. For them, the I.R.C. acts as the equivalent of an "employment agreement" or "insurance contract", and like all contracts, it defines precisely where and under what conditions the terms of that contract must be litigated. It just so happens that the contract can only be litigated in federal courts with the effective domicile of the litigants situated in the District of Columbia. Since it involves a private contract and franchise between you and Uncle Sam, then it amounts to "property" of the U.S. government which is litigated and managed under the authority of Article 4, Section 3, Clause 2 of the United States Constitution. This trick is much more thoroughly explained in our article below:
   *Why domicile and becoming a "taxpayer" require your consent*

The fact that the Internal Revenue Code also applies to persons other than corporations does not mean that the code applies to other than corporations. Instead, it means that all the other entities that are *not* corporations, when they are "taxpayers", are performing corporate functions as an agent or fiduciary for the mother corporation as "public offices" or agents, under private contract, with the federal government. That agency is established by the methods identified in item 3.10 in the previous question. In that sense, the I.R.C. amounts essentially to a "franchise agreement", not unlike McDonald's has with its franchisees. The persons who sign up for this franchise do so by exercising their PRIVATE right to contract primarily to procure the benefits and "privileges" of "social insurance". The origin of the jurisdiction of Subtitle A of the Internal Revenue Code is primarily through the exercise of this private right to contract, which begins with the W-4. The W-4 describes itself as an "agreement", which means a "contract". The form VERY DELIBERATELY doesn't say this, but the regulations demonstrate this fact conclusively:

> *§ 31.3402(p)-1 Voluntary withholding agreements.*
>
> *(a) In general.*
>
> *An employee and his employer may enter into an agreement under section 3402(b) to provide for the withholding of income tax upon payments of amounts described in paragraph (b)(1) of §31.3401(a)–3, made after December 31, 1970. **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.** The amount to be withheld pursuant to an agreement under section 3402(p) shall be determined under the rules contained in section 3402 and the regulations thereunder. See §31.3405(c)–1, Q&A–3 concerning agreements to have more than 20-percent Federal income tax withheld from eligible rollover distributions within the meaning of section 402.*

Those who don't sign this contract and thereby surrender their Constitutional rights and become "taxpayers":

1. Can't qualify for the benefits.
2. Don't need Socialist Security Numbers, TINs, or EINs. These numbers are only required for those engaged in a privileged, excise taxable "trade or business". The instructions for IRS form 1042-S confirms this, which says:

***Box 14, Recipient's U.S. Taxpayer Identification Number (TIN)***

*You must obtain and enter a U.S. taxpayer identification number (TIN) for:*

- *Any recipient whose income is effectively connected with the conduct of a trade or business in the United States.*

*[IRS Form 1042-S Instructions, p. 14]*

3. Are treated as "nonresident aliens" not engaged in a "trade or business" who don't earn "gross income", as plainly stated in 26 C.F.R. §1.872-2(f).

> *Title 26: Internal Revenue*
> *PART 1—INCOME TAXES*
> *nonresident alien individuals*
> *§ 1.872-2 Exclusions from gross income of nonresident alien individuals.*
>
> *(f) Other exclusions.*
>
> ***Income which is from sources without [outside] the United States [District of Columbia, see 26 USC 7701(a)(9) and (a)(10)], as determined under the provisions of sections 861 through 863, and the regulations thereunder, is not included in the gross income of a nonresident alien individual unless such income is effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual.*** *To determine specific exclusions in the case of other items which are from sources within the United States, see the applicable sections of the Code. For special rules under a tax convention for determining the sources of income and for excluding, from gross income, income from sources without the United States which is effectively connected with the conduct of a trade or business in the United States, see the applicable tax convention. For determining which income from sources without the United States is effectively connected with the conduct of a trade or business in the United States, see section 864(c)(4) and §1.864–5.*

4. Are identified as a "foreign estate" pursuant to 26 U.S.C. §7701(a)(31).

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### 3.12 The income tax applies only to government employees.

Like the argument about whether the United States includes the states of the United States, this argument depends on a misunderstanding of the word "includes."

I.R.C. section 3401(c), which relates to withholding of income tax from wages, defines the word "employee" as follows:

> *"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." I.R.C. section 3401(c).*

Notice the word "includes"? As defined by I.R.C. section 7701(c), the use of "includes" does not exclude anything otherwise within the meaning of "employee," so "employee" includes what you would normally think of as employees, as well as some things you might not ordinarily think of as employees, such as elected officials of state and local governments.

Evans is flat out wrong in his conclusions about "includes":

1. The purpose of law is to define and limit jurisdiction of the public employees so they don't injure citizens.
2. The jurisdiction of a government of finite delegated powers cannot be defined using terms that aren't explicitly and completely defined.
3. The word "includes" only acts as a term of enlargement when the definition is broken up into several sections. However, collectively, the entire I.R.C. must define all of the persons and things that it includes or it is void for vagueness.
4. There is no place within the I.R.C. other than 26 U.S.C. §3401(c ) which expands upon the definition of "employee" to include other things. Therefore, under the rules of statutory construction, what is not explicitly included is implicitly excluded by implication, so as to remove the requirement for guessing or presumption, which are violations of due process:

> *"**Expressio unius est exclusio alterius**. A maxim of statutory interpretation meaning that **the expression of one thing is the exclusion of another.** Burgin v. Forbes, 293 Ky. 456, 169 S.W.2d 321, 325; Newblock v. Bowles, 170 Okl. 487, 40 P.2d 1097, 1100. Mention of one thing implies exclusion of another. **When certain persons or things are specified in a law, contract, or will, an intention to***

***exclude all others from its operation may be inferred.*** *Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded."*
*[Black's Law Dictionary, Sixth Edition, page 581]*

5. The only definition of "includes" ever published in the Federal Register confirms the above conclusions:

   *Treasury Decision 3980, Vol. 29, January-December, 1927, pgs. 64 and 65*

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

6. If you want to know more about the scam Mr. Evans tried to just pull on you, please read our exhaustive analysis entitled Legal Deception, Propaganda, and Fraud, Form #05.014

What have the courts said about the claim that only government employees are subject to income tax?

> *"Similarly, Latham's instruction which indicated that under 26 U.S.C. § 3401(c) the category of 'employee' does not include privately employed wage earners is a preposterous reading of the statute. It is obvious that within the context of both statutes the word 'includes' is a term of enlargement not of limitation, and the reference to certain entities or categories is not intended to exclude all others." United States v. Latham, 754 F.2d 747, 750 (7th Cir. 1985).*
>
> *"To the extent Sullivan argues that he received no 'wages' in 1983 because he was not an 'employee' within the meaning of 26 U.S.C. § 3401(c), that contention is meritless. Section 3401(c), which relates to income tax withholding, indicates that the definition of 'employee' includes government officers and employees, elected officials, and corporate officers. The statute does not purport to limit withholding to the persons listed therein." Sullivan v. United States, 788 F.2d 813, 815 (1st Cir. 1986).*
>
> *"Petitioner's assertion that he is not a person required to pay tax as he is not an officer, employee or elected official of the United States, a State, or any political subdivision thereof, or of a corporation, is wholly meritless." United States v. Rice, 659 F.2d 524, 528 (5th Cir. 1981).*
>
> *"[P]laintiff's claim that only public officials can be taxed is completely frivolous and without merit." McAffee v. United States, 84 AFTR2d ¶99-5536(N.D.Ga. 1999) (sanctions imposed in the amount of $500 for filing a frivolous claim).*
>
> *"The term 'person' under the Internal Revenue Code is not, as the Turners would have it, limited to a person employed by the federal government." United States v. Turner, 86 AFTR2d ¸2000-5290, No. Civ. 99-00817 SOM/FIY (U.S.D.C. Hi. 3/10/2000).*
>
> *In Pabon v. Commissioner, T.C. Memo 1994-476, the petitioner alleged, among other things, that he "is not an employee of the Federal or state governments, is not engaged in a revenue taxable activity of alcohol, tobacco or firearms and therefore not subject to any excise [sic] tax...." The court concluded that the petition "is nothing but tax protester rhetoric and legalistic gibberish...."*

We agree with Evans that I.R.C. Subtitle A imposes an income tax on other than "government employees". Instead, it imposes the income tax on "public offices", because that is what a "trade or business" is defined as in 26 U.S.C. §7701(a)(26). A "public office" can include federal employment, but the agency of a "public office" can also be created with other types of legal persons, such as corporations, partnerships, etc. For a detailed analysis, see the following informative memorandum of law on the subject:

> *Why Your Government is Either a Thief or You are a "public officer" for Income Tax Purposes, Form #05.008*
> *DIRECT LINK: https://sedm.org/Forms/05-MemLaw/WhyThiefOrPubOfficer.pdf*
> *FORMS PAGE: http://sedm.org/Forms/FormIndex.htm (OFFSITE LINK)*

The IRS website and all IRS publications are mysteriously silent about the nature of what it takes to qualify for this "public office". The reason they are silent about it is because they don't want people to know any of the following:

1. The I.R.C. Subtitle A describes an indirect excise tax upon a privileged activity called a "trade or business".
2. For all those who do not hold elected or appointed political office, they may "elect" themselves into this office by voluntarily filling out and signing a W-4 or SS-4.
3. Once they have been elected to this "public office", the position is permanent until they rescind or retrace the W-4 or SS-4 or demonstrate that it was originally filled out under duress.
4. Those who do not hold elected political office and who have not volunteered using the W-4, SS-4, or SS-5, are "nontaxpayers" and may not lawfully have any information returns filed against them, including W-2, 1042-S, 1098, or 1099. Pursuant to 26 U.S.C.

§6041, all such information returns may only be filed for those engaged in a "trade or business", which means a "public office".
5. Persons who file false information returns are civilly liable under 26 U.S.C. §7434 for a minimum of $5,000 and a maximum of the tax collected and attorneys fees to collect, payable to the person they filed the wrongful information return against.

If the IRS would be honest about the above on their website and throughout their publications, then there would likely be almost no "taxpayers". They hide this because they want to deceive you, and thereby manufacture more "taxpayers" and "sheep". If you want to know more about this scam, read the following article:

> *The Trade "Trade or Business" Scam, Form #05.001 (OFFSITE LINKS)*
> *DIRECT LINK: http://sedm.org/Forms/05-MemLaw/TradeOrBusScam.pdf*
> *FORMS PAGE: http://sedm.org/Forms/FormIndex.htm*

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### 3.13 The income tax applies only to people exercising "privileges" or engaged in "revenue taxable activities" such as the sale of alcohol, tobacco, and firearms.

This is a most peculiar argument, because there is NOTHING in the Constitution that gives Congress any power to regulate or restrict the manufacture or sale of alcohol, tobacco, or firearms. In fact, the 18th Amendment (the Prohibition amendment) was proposed and ratified because it was recognized that Congress could not by statute prohibit the manufacture or sale of alcohol.

This argument seems to flow backwards from the tax resisters' understanding that taxes on alcohol have existed since Colonial days, and a tax on distilled spirits was one of the first taxes enacted by Congress. (Although it was not without its critics. Consider the Whiskey Rebellion of 1794.) Tax resisters therefore assume that, since Congress can tax it, Congress has the power to regulate it, which misses the point entirely. Congress can tax almost EVERYTHING, but its powers of regulation are limited to interstate commerce (and things affecting interstate commerce). And so the paradox is that, in order to claim that Congress does not have a power it clearly has (the power to tax incomes), tax resisters concede to Congress powers which it does NOT have (the powers to regulate alcohol, tobacco, and firearms).

And the courts have rejected the argument that the income tax is based on a regulated "privilege," usually with the consideration it deserves (i.e., none):

> *In Pabon v. Commissioner, T.C. Memo 1994-476, the petitioner alleged, among other things, that he "is not an employee of the Federal or state governments, is not engaged in a revenue taxable activity of alcohol, tobacco or firearms and therefore not subject to any exise [sic] tax...." The court concluded that the petition "is nothing but tax protester rhetoric and legalistic gibberish...."*
>
> *"Furthermore, Olson's attempt to escape tax by deducting his wages as 'cost of labor' and by claiming that he had obtained no privilege from a governmental agency illustrate the frivolous nature of his position. This court has repeatedly rejected the argument that wages are not income as frivolous, [citations omitted] and has also rejected the idea that a person is liable for tax only if he benefits from a governmental privilege." Olson v. United States, 760 F.2d 1003, 1005 (9th Cir. 1985).*
>
> *"All individuals, freeborn and nonfreeborn, natural and unnatural alike, must pay federal income tax on their wages, regardless of whether they have requested, obtained or exercised any privilege from the federal government. United States v. Sloan, 939 F.2d 499, 501 (7th Cir. 1991), cert. den. 112 S.Ct. 940 (1992).*
>
> *"Plaintiff appears to argue that according to the Sixteenth Amendment, federal income tax is not a direct tax on wages or salaries of individuals, but that it is an excise tax on the privilege of engaging in some privileged or regulated activity. Therefore, according to plaintiff, this 'indirect excise tax' can only be imposed on the income of corporations and the dividend income of stockholders. Despite plaintiff's many case citations allegedly supporting his argument, the Sixteenth Amendment, valid as described above, clearly authorizes Congress to levy a direct income tax upon individuals who are United States citizens. In addition, as described above, plaintiff's wages and gambling earnings are clearly within the I.R.C.'s definition of 'income,' and are properly subject to taxation." Betz v. United States, 40 Fed.Cl. 286, 294-296 (1998)*
>
> *"The Debtor contends that only two types of taxes have a basis in the United States Constitution: (1) direct taxes, or taxes on people or property, and (2) indirect taxes, or taxes on a taxable activity or taxable event. The Debtor asserts, however, that the IRS has not identified a source or 'subject' of income taxes which is contained within one of these categories. Specifically, the Debtor stated:*
>
> > *"And the question I would ask of this Court is what is actually being taxed. Is it people, is it property or is it some revenue taxable activity. There cannot be any intelligent conversation about a tax until the actual subject of the tax is known.*
>
> *[Discussion of Brushaber and other cases omitted.]*

*According to these authorities, therefore, it appears that it is immaterial as to whether the 'source' or the 'subject' of an income tax is people, property, or a taxable activity, as suggested by the Debtor. Congress is authorized to tax the income of individuals by virtue of Article I of the United States Constitution and the Sixteenth Amendment. The United States Supreme Court has defined 'income' 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.' Eisner v. Macomber, 252 U.S. 189, 207 (1919). The IRS is not required to show that the Debtor's income is derived from a 'revenue taxable activity.'" In re: Michael Fleming, 86 AFTR2d ¶2000-5138; No. 97-6342-8G3 (U.S.Bank.Ct. M.D.Fl. 8/9/2000).*

*"In the alternative, Plaintiff argues that even if section 6321 is controlling law, its applicability is limited by the Code of Federal Regulations to businesses dealing with alcohol, tobacco, or firearms. ... Title 26 of the Code of Federal Regulations sections 301.6321-1 et seq. discusses liens for taxes. [citation omitted] These statutes are not limited to persons associated with alcohol, tobacco, and firearms." Bilger v. United States, 87 AFTR2d Par. 2001-468, No. CIV F 00-6486 OWW JLO (U.S.D.C. E.D.Ca. 1/9/2001).*

*"[Peth] argues that he is not a "person liable" to pay taxes under 26 U.S.C. § 6001. The argument is this: the tax imposed by Title 26, according to plaintiff, is "not unapportioned direct tax," because any such tax 'would be in conflict with the apportionment restriction of direct taxes contained in [Article I of the Constitution].' Moreover, he finds that there are no apportioned taxes imposed by Title 26. Thus, any tax under Title 26 must be an indirect tax, that is, a tax upon some right, privilege, or corporate franchise. Plaintiff says he is not a privileged person, nor has he taken any corporate franchise. Therefore, so the argument goes, Title 26 has no application to him. The argument has no merit. See U.S. Const. amend. XVI; Brushaber v. Union Pacific R. Co., 240 U.S. 1, 17-19, 60 L. Ed. 493, 36 S. Ct. 236 (1915)." Peth v. Breitzmann, 611 F. Supp. 50 (E.D.Wis. 1985), 1985 U.S. Dist. LEXIS 21509, 85-1 U.S.T.C. ¶9321, 55 AFTR2d 1280.*

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## 4. Procedural Fallacies

### 4.1. The Internal Revenue Service has never adopted any regulations imposing any income tax. Furthermore, failing to file a tax return is not a crime because the relevant provisions of the Internal Revenue Code have never been implemented by regulations.

As a general rule, a statute does not require regulations to be valid, and the fact that there are no regulations under a particular section of the Internal Revenue Code is completely irrelevant.

*"Donald Langert argues that he does not owe federal individual income taxes because the Internal Revenue Service has failed to identify any agency regulation which entitles the IRS to impose a tax upon him. Plaintiff argues that the statutes which comprise the Internal Revenue Code do not, in and of themselves, authorize the IRS to take any action; the IRS may only "implement" these statutes through the regulations contained in Title 26 of the Code of Federal Regulations.*

*"The Court finds Plaintiffs "implementing regulation" argument without merit; it fundamentally misconstrues those provisions of the Internal Revenue Code which relate to the powers and duties of the Secretary of the Treasury, 26 U.S.C. section 7801(a), and the Commissioner of the Internal Revenue Service, 26 U.S.C. section 7802(a). Pursuant to Section 7805(a) of the Code, the Commissioner has broad authority to "prescribe all NEEDFUL rules and regulations for the enforcement of [the Code], including all rules and regulations as may be NECESSARY by reason of any alteration of law in relation to internal revenue." 26 U.S.C. section 7805(a) (emphasis added); see also Commissioner of Internal Revenue v. Engle, 464 U.S. 206, 226-27, 104 S. Ct. 597, 604 (1984). Section 7805(a) is a general grant of authority by Congress to the Commissioner to promulgate -- as necessary -- "interpretive regulations" stating the agency's views of what the existing Code provisions already require. E. I. du Pont de Nemours & Co. v. Commissioner of Internal Revenue, 41 F.3d 130, 135 & n. 20 (3th Cir. 1994). Section 7805(a) does not require the promulgation of regulations as a prerequisite to the enforcement of each and every provision of the Code. The Commissioner's power to promulgate regulations pursuant to section 7805(a)*

> *. . . " is not the power to make law," but only the power "to carry into effect the will of Congress as expressed by the statute." In case where "the provisions of the [Code] are unambiguous, and its directions specific, there is no power to amend it by regulation."*

*"Lovett's Estate v. United States, 621 F.2d 1130, 1135 (Ct. Cl. 1980) (citations omitted). Thus, if the Congressional mandate of a Code provision is sufficiently clear, an interpretative regulation is not necessary. Russell v. United States, 95-1 U.S. Tax Cas. (CCH) paragraph 50,029, at 87,122 (W.D. Mich. Nov. 23, 1994)." Langert v. United States, KTC 1995-398, Case No. 3-94-1464 (D.Minn. 1995), (footnotes omitted).*

*"The statutes themselves require the payment of the tax and the filing of a return. 26 U.S.C. § 6012. The contents of the required return are described, in a general way, right in the statute. If a taxpayer had done his*

> *best to fashion and file a homemade return for want of notice of the IRS forms, and had paid the applicable tax, then 5 U.S.C. § 552 might protect him from being 'adversely affected' by nonpublication of a form. However, the Bowers simply have evaded income taxes, and their duty to pay those taxes is manifest on the face of the statutes, without any resort to IRS rules, forms or regulations. Cf. Welch v. United States, 750 F2d 1101-11 (1st Cir. 1985), (prosecution under 26 U.S.C. § 6702 for filing frivolous return not barred by nonpublication of interpretive IRS guidelines)." United States v. Bowers, 920 F.2d 220, 222 (4th Cir. 1990), (footnotes omitted).*

See also, *United States v. Koliboski*, 732 F.2d 1328, 1329 (7th Cir. 1984); *United States v. Saunders*, 951 F.2d 1065, 1067-68 (9th Cir. 1991).

Langert, like all the other cases Evans cites, focused on the wrong issues. Satan just loves winning by keeping people focused on irrelevant issues. A fundamental requirement for enforcement of any law is "reasonable notice". Click here for details. The requirement to publish implementing regulations originates form this Constitutional requirement. The Federal Register Act, 44 U.S.C. §1505(a)(1) and the Administrative Procedures Act, 5 U.S.C. §553(a)(2) both state that the only occasion where implementing regulations are NOT required is for federal employees, agencies, the military, and federal benefit recipients. All he had to do was prove that he wasn't a member of any of these groups and therefore that the government was required to publish enforcement regulations that are subject to "public notice and comment". Absent publishment of said regulations for a person domiciled in a state of the Union who is not a "citizen or resident of the United States" (District of Columbia), implementing regulations published in the Federal Register are Constitutionally required and failure to publish means that a person cannot be adversely affected thereby:

> *26 C.F.R. §601.702 Publication and public inspection*
>
> *(a)(2)(ii) Effect of failure to publish.*
>
> *Except to the extent that a person has actual and timely notice of the terms of any matter referred to in subparagraph (1) of this paragraph which is required to be published in the Federal Register,* ***such person is not required in any manner to resort to, or be adversely affected by, such matter if it is not so published or is not incorporated by reference therein pursuant to subdivision*** *(i) of this subparagraph.* ***Thus, for example, any such matter which imposes an obligation and which is not so published or incorporated by reference will not adversely change or affect a person's rights.***

The only way the above courts could rule against a party who used the above arguments would be to make any one of the following prejudicial presumptions and thereby violate the constitutional rights and due process rights of the litigant:

1. That the litigant is a "U.S. person" pursuant to 26 U.S.C. §7701(a)(30) who has no Constitutional rights because domiciled where the Constitution does not apply. "U.S. persons" include statutory "citizens of the United States" under 8 U.S.C. §1401 or "resident aliens" under 26 U.S.C. §7701(b)(1)(A). Persons born in and domiciled in states of the Union are not "U.S. persons", but rather CONSTITUTIONAL but not Statutory citizens and statutory "non-resident non-persons" defined in 8 U.S.C. §1101(a)(21).
2. That the litigant is a federal employee, contractor, agent, benefit recipient, or member of the military.

Litigants should challenge the above presumptions and provide affidavits contradicting the above facts. This will leave the court no "wiggle room" to play the tricks they did above. Based on the above analysis, the following court basically admitted that all "taxpayers" under I.R.C. Subtitle A are federal "employees" or "public officials" engaged in a trade or business, when it said:

> *"Federal income tax regulations governing filing of income tax returns do not require Office of Management and Budget control numbers because* ***requirement to file tax return is mandated by statute, not by regulation.****"*
> *[U.S. v. Bartrug, E.D.Va.1991, 777 F.Supp. 1290]*

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### 4.2 The Internal Revenue Code is not law.

The arguments that the Internal Revenue Code is not a valid statute are all strange, and take several different forms.

One form of argument is simply that the Internal Revenue Code was never enacted. This is easily disproved by checking the records of the U.S. Congress. The Internal Revenue Code of 1954 was passed by both houses of Congress as House Resolution 8300, and was signed by President Eisenhower on August 16, 1954, at about 9:45 a.m., becoming Public Law 83-591. The Internal Revenue Code is now known as the "Internal Revenue Code of 1986" as a result of changes made by Public Law 99-514. (Public Laws are numbered consecutively within each session of Congress, each session lasting two years. The Congress that convened in January of 2001 is the 107th, so the first bill passed by that Congress and signed by the President will become P.L. 107-1, the second will be P.L. 107-2, and so forth.)

The other argument is more subtle and more complicated. Many of the statutes of the United States have been "codified," or reorganized into more orderly collections of statutes known as the "United States Code," which is divided by subject matter into "titles." As part of this codification, many statutes that were enacted separately have been reenacted together as part of the United States Code, so that the

Code itself became "positive law." For example, the statutes relating to federal courts have been organized and reenacted as Title 28 of the United States Code. When referring to a provision of Title 28, it is usually not necessary to worry about when or how it was enacted; all you need to do is refer to the right section of Title 28. For convenient reference, the Internal Revenue Code has been published as Title 26 of the United States Code but, technically speaking, has never been enacted *as part of* the United States Code. This is explained in the printed volumes of the United States Code, which states that Title 26 is *evidence* of the provisions of the Internal Revenue Code, but that Title 26 itself is not "positive law," which remains in the revenue laws enacted by Congress (such as Public Law 591 of 1954 and Public Law 99-514) which can be found in the U.S. Statutes at Large.

The distinction between Title 26 of the United States Code and "positive law" is purely technical and would never be important to anyone unless the U.S. Government Printing Office made a typographical error in printing Title 26 of the United States Code, so that the United States Code did not accurately reflect the revenue laws enacted by Congress. If a typographical error did occur, then the courts would look to the U.S. Statutes at Large to determine the text of the relevant law, instead of Title 26 of the United States Code.

So, the provisions of the Internal Revenue Code have been enacted by Congress and the fact that the Internal Revenue Code as not been reenacted or codified as part of the United States Code is irrelevant.

What do the courts say about tax resister claims to the contrary?

> *"Indeed, as we have repeatedly held, the entire Internal Revenue Code was validly enacted by Congress and is fully enforceable." United States v. McDonald, 919 F.2d 146 (10th Cir. 1990); [United States v.] Studley, 783 F.2d [934] at 940 [9th Cir. 1986].*
>
> *"Congress's failure to enact a title into positive law has only evidentiary significance and does not render the underlying enactment invalid or unenforceable. See 1 U.S.C. § 204(a) (1982), (the text of titles not enacted into positive law is only prima facie evidence of the law itself). Like it or not, the Internal Revenue Code is the law, and the defendants did not violate Ryan's rights by enforcing it." Ryan v. Bilby, 764 F2d 1325, 1328 (9th Cir. 1985).*
>
> *"The petitioner's argument that the Internal Revenue Code was not enacted by Congress is equally meritless. The Internal Revenue Code of 1954 was enacted by the 83rd Congress on August 16, 1954 (ch. 736, 68A Stat. 3) and has been amended by Congress with some frequency since that time." Urban v. Commissioner, T.C. Memo. 1991-220, affd. per curiam, 964 F.2d 888 (9th Cir. 1992).*
>
> *The claim that "Title 26 was not enacted into 'positive law,' has been rejected as 'frivolous,' 'baseless,' 'specious,' and 'preposterous.' See United States v. Hooper, No. 93-35565, 1995 WL 792039, at *1 (9th Cir. Dec. 11, 1995) ('frivolous'); United States v. Zuger, 602 F.Supp. 889, 891-92 (D.C.Conn.1984), aff'd, 755 F.2d 915 (2d Cir.) (table), 'specious'); accord, Young v. Internal Revenue Service, 596 F.Supp. 141, 149 (N.D.Ind.1984) ('preposterous'); Sloan v. United States, 621 F.Supp. 1072, 1076 (N.D.Ind.1985), aff'd in part and appeal dismissed, 812 F.2d 1410 (7th Cir.1987) (table) (litigants advancing 'frivolous' arguments such as assertions that the Internal Revenue Code is not positive law subjected to sanctions under Rule 11, FED. R. CIV. P.); Hackett v. Commissioner of Internal Revenue, No. 85-1558, 1986 WL 16862, at *1 (6th Cir. April 21, 1986) (appeal of dismissal of petition challenging tax deficiency assessment describing 'positive law' argument as 'frivolous')." United States v. Maczka, 957 F.Supp. 988, 991 (W.D.Mich. 1996).*
>
> *"In his opposition, Plaintiff asserts that 'Title 26 U.S.C. (including section 6321) has not been enacted into positive law, and is not the law, but is only prima facie evidence of the law.' ... Congress' failure to enact a title into positive law has only evidentiary significance and does not render the underlying enactment invalid or unenforceable. See 1 U.S.C. section 204(a). 'Like it or not, the Internal Revenue Code is the law'. Ryan v. Bilby, 764 F.2d 1325, 1328 (9th Cir. 1985); see also United States v. Zuger, 602 F.Supp. 889, 891-92 (D. Conn. 1984) ('holding that the failure of Congress to enact a title as such and in such form into positive law . . . in no way impugns the validity, effect, enforceability, or constitutionality of the laws as contained and set forth in the title'), aff'd. without op., 755 F.2d 915 (2d Cir.), cert. denied, 474 U.S. 805 (1985); Young v. IRS, 596 F.Supp. 141, 149 (N.D.Ind. 1984) (asserting that 'even if Title 26 was not itself enacted into positive law, that does not mean that the laws under the title are null and void'). Plaintiff's positive law argument is without merit." Bilger v. United States, 87 AFTR2d Par. 2001-468, No. CIV F 00-6486 OWW JLO (U.S.D.C. E.D.Ca. 1/9/2001).*

We agree with Evans and the cases he cites that the I.R.C is "law". That is not the question. The question is:

1. Who is I.R.C. Subtitle A law for?
2. To what excise taxable activity does it apply?
3. What behavior constitutes consent to engage in the activity and pay taxes incident to it?.

The answers to the above questions are contained in the pamphlet below:

> *Requirement for Consent, Form #05.0, Form #05.003 (OFFSITE LINKS)*
> *DIRECT LINK: http://sedm.org/Forms/05-MemLaw/Consent.pdf*
> *FORMS PAGE: http://sedm.org/Forms/FormIndex.htm*

The answers to those questions are:

1. It is law for persons in the District of Columbia, which is what the "United States" is defined as in 26 U.S.C. §7701(a)(9) and (a)(10). It is also law for anyone else who signs an agreement or contract with the U.S. government, such as a W-4, 1040, SS-5, or who constructively consents based on their behavior.
2. The taxable activity is a "trade or business".
3. Consent to engage in the activity is manifested by the means identified in item 3.10 earlier.

For a detailed analysis on who the I.R.C. is "law" for, refer to the following article:

> *Requirement for Consent, Form #05.003*
> *DIRECT LINK: http://sedm.org/Forms/05-MemLaw/Consent.pdf (OFFSITE LINK)*
> *FORMS PAGE: http://sedm.org/Forms/FormIndex.htm*

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### 4.3 The Office of Management and Budget does not require any form for the income tax imposed by section 1 of the Internal Revenue Code, or identifies section 1 of the Code as applying only to nonresident aliens.

More nonsense.

The actual facts are these:

- Under the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501-3520, (which may or may not have reduced any paperwork), the Office of Management and Budget (OMB) is required to number each form required by an agency of the federal government for the collection of information and identify the law or regulation that requires that the form be filed.
- Treas. Reg. § 602.101(c) lists various regulations that require returns and the OMB control numbers for IRS forms required by those regulations.
- The individual income tax return, Form 1040, was assigned the OMB control number 1545-0074, and is listed as a form required by a number of different regulations, including regulations under section 61 ("Gross Income Defined"), section 63 ("Taxable Income Defined"), and section 6012 ("Persons Required to Make Returns of Income").
- Initially, the information schedule for foreign earned income, Form 2555 (OMB Control No. 1545-0067), was listed as a form required by a number of different regulations, including Treas. Reg. § 1.1-1 ("Tax Imposed").
- The Paperwork Reduction Act of 1980 relates to forms for the collection of information. Section 1 of the Internal Revenue Code (and Treas. Reg. § 1.1-1) imposes a tax on taxable income and provides the rates for calculating the tax but does not actually require the collection of any information. The obligation to file a tax return is imposed by section 6012, and the regulations under that section describe the return that must be filed.
- The IRS decided that the reference to Form 2555 was inconsistent and confusing, so in 1994 the listing of OMB numbers for IRS forms was amended by deleting the reference to Treas. Reg. § 1.1-1 and adding OMB Control No. 1545-0067 (Form 2555) to the forms required by Treas. Reg. § 1.6012-1. (Document 94-1253, filed May 24, 1994.)

The IRS has therefore complied with the Paperwork Reduction Act of 1980, and the regulations of the OMB, by identifying the regulations that require the collection of the information required by Forms 1040 and 2555.

Even if the IRS had not complied with the Paperwork Reduction Act, it would have had few (if any) consequences for most taxpayers, because there is a difference between paperwork required by an agency of the federal government and paperwork required by Congress itself:

> *"Where an agency fails to follow the PRA [Paperwork Reduction Act] in regard to an information collection request that the agency promulgates via regulation, at its own discretion, and without express prior mandate from Congress, a citizen may indeed escape penalties for failing to comply with the agency's request. See, e.g., United States v. Hatch, 919 F.2d 1394 (9th Cir. 1990); United States v. Smith, 866 F.d 1092 (9th Cir. 1989). But where Congress sets forth an explicit statutory requirement that they citizen provide information, and provides statutory criminal penalties for failure to comply with the request, that is another matter. This is a legislative command, not an administrative request. The PRA was not meant to provide criminals with an all-purpose escape hatch. See United States v. Burdett, 768 F.Supp. 409 (E.D.N.Y. 1991); see also United States v. Wunder, 919 F.2d 34, 38 (6th Cir. 1990) ('Defendant was not convicted of violating a regulation but of violating a statute which required him to file an income tax return.')" United States v. Hicks, 947 F.2d 1356 (9th Cir. 1991).*
>
> *"[Partos] notes that the only OMB number, 1545-0067, found for section 1.1-1, Income Tax Regs., in the OMB number tables is the number assigned to Form 2555, Foreign Earned Income. Therefore, petitioner concludes that section 1 imposes a tax only on foreign earned income. He insists that Form 1040 (and Form 1040EZ) are simply supplemental forms for record keeping purposes.*
>
> *"Petitioner has confused the imposition of the Federal income tax, set forth in section 1 and in section 1.1-1, Income Tax Regs., with the duty to file a return set forth in sections 6001, 6011, and 6012, together with their*

> *accompanying regulations. These latter regulations require the "collection of information" on a Federal income tax return.*
> *"The Internal Revenue Service has obtained OMB approval of the process of collecting information through Federal income tax returns. The OMB has assigned numbers 1545-0074, 1545-0675, and others to that process. Sec. 602.101(c), Statement of Procedural Rules. This process of collection of information is embodied and authorized in the regulations. These regulations include, among other things, those relating to taxpayers' record keeping and reporting requirements (sec. 1.6001-1, Income Tax Regs.), those relating to the duty of taxpayers to file Federal income tax returns (sec. 1.6011-1, Income Tax Regs.), and those relating to persons required to file income tax returns (sec. 1.6012- 1, Income Tax Regs.). See Beam v. Commissioner, T.C. Memo. 1990-304." Partos v. Commissioner of Internal Revenue, T.C. Memo. 1991-408.*

As a defense to incorrect filing of tax returns, the "OMB Control Number argument" has never been accepted by any court, and was specifically rejected in *United States v. Holden,* 963 F2d 1114 (8th Cir. 1992); *United States v. Bentson,* 947 F2d 1353 (9th Cir. 1991); and *United States v. Dawes,* 92-2 USTC ¶ 50,493 (10th Cir. 1991).

See also, *Aldrich v. Commissioner*, T.C. Memo 1993-290.

We agree with Evans on the above.

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### 4.4 The Internal Revenue Code does not require any payment of tax by individuals, and the Internal Revenue Service has admitted this by failing to include any reference to section 1 or section 6012 in the Privacy Act Statement included in Form 1040.

Even more nonsense. Courts have had no difficulty in concluding that the liability for income tax is imposed by the Internal Revenue Code and is not negated by the words used by the IRS on the tax forms.

See, for example, *Billman v. Commissioner,* 83 T.C. 534 (1984), aff'd 847 F.2d 887 (D.C. Cir. 1988), in which the court stated:

> *"[Billman] contends that, as a 'private individual defined in the Privacy Act,' he is not required to pay tax because the 'IRS has admitted that the * * * [Internal Revenue Code] does not apply' to such individuals. He notes that the Privacy Act requires the Internal Revenue Service to (5 U.S.C. sec. 552a(e)(3)): 'inform each individual whom it asks to supply information * * * the authority * * * which authorizes the solicitation of the information.' He then concludes that, because the Form 1040 'Privacy Act Notice' fails to mention section 6012, I.R.C. 1954, he is not required to provide any tax related information and, indeed, is freed from paying any tax at all. In our judgment, petitioner's position is based on sheer sophistry. We hold that the Form 1040 'Privacy Act Notice' does satisfy the requirements of the Privacy Act, and that, in any event, even if there were a failure to comply with the Privacy Act, such failure would not nullify petitioner's liability for Federal income taxes.";*

The court above was correct. However, Billman was an IDIOT because he focused on the wrong form, the 1040, which the IRS Document 7130 says is only for use by "citizens and residents of the United States", which no person domiciled within a state of the Union is. The correct form is the 1040NR, and THAT form has absolutely no privacy act warning and Billman could have successfully used that claim on the 1040NR booklet. The reason the 1040NR booklet has no privacy warning is that the Privacy Act cannot cover "nonresident aliens". The term "individual", as defined in the Privacy Act, 5 U.S.C. §552a(a)(2), is defined to include "citizens and residents" but EXCLUDE "nonresident aliens". The U.S. government has NO LEGAL AUTHORITY to maintain records at all, including Privacy Act records, on nonresident persons. You have to become a "resident" by filing the WRONG tax form, the 1040, before the Privacy Act is even relevant. Most American domiciled in states of the Union who file the correct tax form, the 1040NR, and preserve their status as nonresident aliens and do not engaged in a "trade or business" cannot earn "gross income", as confirmed by 26 C.F.R. §1.872-2. See:

> *Non-Resident Non-Person Position, , Form #05.020 (OFFSITE LINKS)*
> *DIRECT LINK: http://sedm.org/Forms/05-MemLaw/NonresidentNonPersonPosition.pdf*
> *FORMS PAGE: http://sedm.org/Forms/FormIndex.htm*

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### 4.5 The Internal Revenue Service is not an agency of the federal government, but a private corporation incorporated in Delaware (or, alternatively, an agency of the government of Puerto Rico).

Section 7801(a) of the Internal Revenue Code states that the administration and enforcement of the Code shall be performed by or under the supervision of the Secretary of the Treasury. Section 7802(a) then says that there shall be a Commissioner of Internal Revenue in the Department of the Treasury who shall have such duties and powers as may be prescribed by the Secretary of the Treasury. Finally, Section 7803(a) of the Code states that the Secretary is authorized to employ persons for the administration and enforcement of the

Internal Revenue Code.

Acting under these laws, the Department of the Treasury has adopted regulations creating the Internal Revenue Service, of which the following is a part:

> *"The Internal Revenue Service is a bureau of the Department of the Treasury under the immediate direction of the Commissioner of Internal Revenue. The Commissioner has general superintendence of the assessment and collection of all taxes imposed by any law providing internal revenue. The Internal Revenue Service is the agency by which these functions are performed." Treas. Reg. Section 601.101(a)*

Faced with the claim that the IRS is not an agency of the United States government, the courts have reached the obvious conclusion:

> *"It is clear that the Internal Revenue Code gave the Secretary of the Treasury full authority to administer and enforce the Code, and the power to create an agency to administer and enforce the tax laws. Pursuant to that legislative grant of authority, the Secretary created the Internal Revenue Service, so that the IRS is an agency of the Department of the Treasury, created pursuant to Congressional statute." Snyder v. IRS,*
>
> *"Plaintiff attempts to circumvent this conclusion by arguing that the IRS is 'a private corporation' because it was not created by 'any positive law' (i.e., statute of Congress) but rather by fiat of the Secretary of the Treasury. Apparently, this argument is based on the fact that in 1953 the Secretary of the Treasury renamed the Bureau of Internal Revenue as the Internal Revenue Service. However, it is clear that the Secretary of the Treasury has full authority to administer and enforce the Internal Revenue Code, 26 U.S.C. § 7801, and has the power to create an agency to administer and enforce the laws. See 26 U.S.C. § 7803(a). Pursuant to this legislative grant of authority, the Secretary created the IRS. 26 C.F.R. § 601.101. The end result is that the IRS is a creature of 'positive law' because it was created through congressionally mandated power. By plaintiff's own 'positive law' premise, the, the IRS is a validly created governmental agency and not a 'private corporation.'" Young v. Internal Revenue Service, 596 F.Supp. 141 (N.D.Ind. 1984).*
>
> *See also, Cameron v. IRS, 593 F.Supp. 1540, 1549 (N.D.Ind. 1984).*
>
> *"We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit. The constitutionality of our income tax system-including the role played within that system by the Internal Revenue Service and the Tax Court--has long been established." Crain v. Commissioner, 737 F.2d 1417 (5th Cir. 1984), (responding to, among other things, a claim that the "Internal Revenue Service, Incorporated" lacks authority).*
>
> *"Salman's argument that the Internal Revenue Service is not a government agency is wholly without merit." Salman v. Jameson, 52 F.3d 334 (9th Cir. 1995). (Salman has now been enjoined against filing any other lawsuits against the IRS or the United States. See Salman v. Jameson, 97-1 USTC ¶50,452, 79 A.F.T.R.2d ¶97-2667 (D.Nev. 1997).)*

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## 4.6 The tax laws only apply to "taxpayers" and you are not required to file returns or pay taxes if you are not a "taxpayer."

At best, this argument is circular or tautological. At worst, it represents nothing more than an absurd manipulation of words.

> *"Plaintiff claims on appeal that he is not a taxpayer subject to IRS jurisdiction.... Plaintiff's claim that he is not a taxpayer is unsupported and frivolous." Beerbower v. Commissioner of Internal Revenue, 787 F.2d 588 (6th Cir. 1986). See also, Martin v. Commissioner of Internal Revenue, 756 F.2d 38 (6th Cir. 1985).*
>
> *"Drefke argues that taxes are debts which can only be imposed voluntarily when individuals contract with the government for services and that those who choose to enter such contracts do so by signing 1040 and W-4 forms. By refusing to sign those forms, Drefke argues that he is 'immune' from the Internal Revenue Service's jurisdiction as a 'nontaxpayer.'*
>
> *"This is an imaginative argument, but totally without arguable merit." United States v. Drefke, 707 F.2d 978, 981 (8th Cir. 1983), cert. den., sub nom., Jameson v. United States, 464 U.S. 942 (1983).*
>
> *"The crux of Sasscer's argument is that this Court lacks jurisdiction because he does not qualify as a 'taxpayer' within the meaning of the Internal Revenue Code. The Code defines the term 'person' to include any 'individual.' 26 U.S.C. section 7701(a)(1). The term 'taxpayer,' in turn, refers to 'any person subject to any internal revenue tax.' 26 U.S.C. section 7701(a)(14). The Code imposes a tax on all income, see United States v. Sloan, 939 F.2d 499, 500 (7th Cir. 1991), and any person required to pay any tax must file a return, see 26 U.S.C. sections 6001, 6011, 7203. The duty to pay federal income taxes is 'manifest on the face of the statues, without any resort to IRS rules, forms, or regulations.' United States v. Bowers, 920 F.2d 220, 222 (4th Cir. 1990); see 26*

U.S.C. sections 1, 61, 63.

*The court above LIED. 26 U.S.C. 7701(a)(1) defines the term "person" to include "**AN** individual", not "**ANY** individual". That "individual" is the **same** one defined in 5 U.S.C. §552a(a)(2) as a federal employee or agent, who cannot also be a "taxpayer" under the I.R.C. unless he is engaged in a "trade or business". EVERYTHING that goes on IRS form 1040 is "gross income" derived from a "trade or business".*

*The Court above also did not defined "income", but it means earnings connected with a "trade or business". In that sense, yes the code DOES impose a tax on "all income", but it is literally impossible for Americans domiciled in states of the Union to earn "income" as legally defined unless:*

1. *They consent to call their earnings "wages" under a voluntary withholding agreement, W-4. See 26 U.S.C. §3402(p). If they hadn't made such a voluntary "election" to treat their earnings as "wages", are not engaged in a "trade or business", and receive no payments from the U.S. government or the District of Columbia pursuant to 26 U.S.C. §871, then they could have no "taxable income" as a nonresident alien.*
2. *They assess themselves by filling out the WRONG form, the 1040, and sending it in. The correct form to fill out for persons domiciled in states of the Union who do not wish to receive "social insurance" is the IRS form 1040NR, not the 1040. See:*

   *Non-Resident Non-Person Position, F, Form #05.020 (OFFSITE LINKS)*
   *DIRECT LINK: http://sedm.org/Forms/05-MemLaw/NonresidentNonPersonPosition.pdf*
   *FORMS PAGE: http://sedm.org/Forms/FormIndex.htm*

3. *Someone files a false information return that connects their earnings to a "trade or business" and they don't rebut it. Click here for details.*

*"Sasscer is an individual and, thus, qualifies as a 'person' under the tax laws. Because the record indicates that Sasscer earned taxable income during the period from 1976-1989, he meets the definition of a 'taxpayer' subject to the requirements of the Internal Revenue Code. The federal courts have consistently rejected such 'non-taxpayer' status claims as meritless, see, e.g., United States v. Gardell, 23 F.3d 395, 1994 WL 17097 *1 (1st Cir. 1994)(unpublished opinion); United States v. Sloan, 939 F.2d 499, 501 (7th Cir. 1991); United States v. Karlin, 785 F.2d 90, 91 (3d Cir. 1986); United States v. Studley, 783 F.2d 934, 937 (9th Cir. 1985); United States v. Drefke, 707 F.2d 978, 981 (8th Cir. 1983), and this Court will do the same."e; United States v. John L. Sasscer, 86 AFTR2d Par. 2000-5317, No. Y-97-3026 (D.C. Md. 9/25/2000), (footnote omitted).*

*The court above is admitting what we just said. The court is admitting that "taxable income" is income connected with a "trade or business" by an information return or W-4 of some kind. Those who don't rebut these false information return reports definitely are "taxpayers". The big secret is:*

1. *The IRS won't tell them how to do this and has no publications on the subject, because they don't want people to have a way to lawfully avoid paying income taxes.*
2. *26 U.S.C. §7434 provides a civil remedy whereby those who are victims of false information returns may remedy the wrong in federal court. The IRS doesn't pursue people under the statute who file false information returns because that would reduce their revenues from the illegal enforcement of the Internal Revenue Code.*
3. *26 U.S.C. §7207 provides a criminal remedy so that those who willfully and fraudulently file these false information returns can be put behind bars where they belong.*

*If you want to know the details on how to rebut false information returns, see:*

1. *Correcting Erroneous IRS Form 1042s, Form #04.003 (OFFSITE LINK)*
2. *Correcting Erroneous IRS Form 1098, Form #04.004 (OFFSITE LINK)*
3. *Correcting Erroneous IRS Form 1099, Form #04.005. (OFFSITE LINK)*
4. *Correcting Erroneous IRS Form W-2, Form #04.006 (OFFSITE LINK)*

*If you want to permanently stop PRIVATE employers and financial institutions from filing these false reports, see:*

*Demand for Verified Evidence of Trade or Business Activity: Information Return, Form #04.007*
*DIRECT LINK: http://sedm.org/Forms/04-Tax/0-CorrErrInfoRtns/DmdVerEvOfTradeOrBusiness-IR.pdf*
*FORMS PAGE: http://sedm.org/Forms/FormIndex.htm*

*"Again, the notion that the tax on the income from employment or labor of a human being is an unconstitutional*

> *tax on his existence, and that only artificial entities such as corporations, formed and continued by State action, can be subjected to income tax, is, in this day and age, even when alternative approaches to raising revenue are receiving legislative consideration, too quaint to require extended discussion. In this connection, petitioners' notion that common speech restricts the term 'person' to artificial persons is just wrong. 'Person' is the generic term; it usually refers to human beings; when it is extended to include other entities, such as corporations, they are included in the definition of person and, to provide clarity and contrast, the term 'individual' is applied to human beings. Petitioners are 'individuals' within the meaning of the Internal Revenue Code. The fact that the term 'individual' is not defined in the Internal Revenue Code is also of no moment. As previously stated, words in the Internal Revenue Code have their commonly accepted meanings as used in common speech." Liddane v. Commissioner, T.C. Memo 1998-259. In a later case involving income for other years, the Liddanes "filed a brief in which they reasserted the same partially incomprehensible but thoroughly frivolous arguments that they are not liable for Federal income taxes." Liddane v. Commissioner, T.C. Memo 1999-330 (deficiencies affirmed and sanctions of $10,000 imposed for each docketed case for filing a frivolous petition). The Third Circuit affirmed, stating that "Appellants' argument that the Internal Revenue Code does not define income or impose income tax liability on individuals is also meritless. 26 U.S.C. section 1 clearly imposes income tax liability on individuals." Liddane v. Commissioner, KTC 2000-28, No. 99-5499 (3d Cir. 1/14/2000).*

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### 4.7 I have revoked my consent to be a taxpayer.

The flip side of the claim that the income tax is voluntary is the claim that you can "unvolunteer" from the tax system.

Needless to say, the courts have not been impressed.

> *"Sasscer contends nevertheless that he is a 'non-taxpayer' due to his decision to rescind and revoke his consent to taxpayer status. Specifically, he refers to a letter and affidavit filed with the IRS on April 13, 1985. In the letter, Sasscer proclaims that he is a 'freeman, a free sovereign individual.' The attached Affidavit of Revocation and Recission declares that Sasscer is not 'and never was a "taxpayer" as that term is defined in the Internal Revenue Code, a "person liable" for any Internal Revenue tax, or a "person" subject to the provisions of that Code.' This well-worn argument has been uniformly repudiated by the federal courts. The federal income tax is not voluntary, and a person may not elect to opt out of the federal tax laws by a unilateral act of revocation and recission. See, e.g., Lesoon v. Commissioner of Internal Revenue, 141 F.3d 1185, 1998 WL 166114 (10th Cir. 1998); United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993); Damron v. Yellow Freight System, Inc., 18 F. Supp. 2d 812, 819-20 (E.D. Tenn. 1998), aff'd, 188 F.3d 506 (6th Cir. 1999)." United States v. John L. Sasscer, 86 AFTR2d Par. 2000-5317, No. Y-97-3026 (D.C. Md. 9/25/2000), (footnote omitted).*

The fact is, Subtitle A of the I.R.C. is voluntary for nontaxpayers. Those who have not done any of the actions described earlier in question 3.10 are in fact "nontaxpayers", and cannot lawfully become the target of any IRS collection action. However, don't expect either the IRS, the Courts, or especially a tax lawyer such as Mr. Evans to tell you how to make their services and their job irrelevant and unnecessary. As we like to say:

> *"Never ask a barber if you need a haircut."*

You will never see or read a government publication about how to unvolunteer, because they don't want you stopping the flow of plunder into their retirement fund or their checking account. The process of un-volunteering is described below:

> *Sovereignty Forms and Instructions Manual*, Form #10.005
> *http://sedm.org/ItemInfo/Ebooks/SovFormsInstr/SovFormsInstr.htm (OFFSITE LINK)*

We might add that it has been extremely difficult discovering information needed to assemble the above manual, because the government has very carefully made sure that it isn't available and isn't clearly explained anywhere.,

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### 4.8 I have a letter from the IRS saying that I am not required to file an income tax return.

An example of "garbage in, garbage out." If you write to the IRS and say that you are a non-resident alien with no taxable income, the IRS will write back and say that you are not required to file a tax return. It means nothing, because you have lied to the IRS.

A person domiciled within a state of the Union who wrote the IRS claiming to be a "nonresident alien" and who satisfied all of the below criteria didn't lie. They told the truth:

1. Opened all financial accounts using a W-8BEN and did not provide a Social Security number that would connect them to a "trade or business" or to federal agency as a "trustee" over a federal business trust called Social Security. See:

http://famguardian.org/TaxFreedom/Forms/Emancipation/SSTrustIndenture.pdf
2. Rebutted all references to a Social Security Number on every correspondence provided by the IRS, which might link them to federal agency or employment as a "trustee" over a federal business trust called Social Security. See: http://famguardian.org/TaxFreedom/Forms/Emancipation/SSTrustIndenture.pdf
3. No earnings connected to a "trade or business". See: DIRECT LINK: http://sedm.org/Forms/05-MemLaw/TradeOrBusScam.pdf (OFFSITE LINK)
4. Rebutted all false information returns filed against them that might connect them to a "trade or business".
5. Identified themselves as a "transient foreigner" or "non-resident non-person" instead of a "citizen" or "resident" on all federal government forms.
6. Claimed no domicile within the "United States", as defined in 26 U.S.C. §7701(a)(9) and (a)(10). See: *Why Domicile and Becoming a "Taxpayer" Require Your Consent*, *Form #05.002* (OFFSITE LINK) DIRECT LINK: http://sedm.org/Forms/05-MemLaw/Domicile.pdf FORMS PAGE: http://sedm.org/Forms/FormIndex.htm

The only liar, for this issue, is Mr. Evans. This is exhaustively proven in the article below.:

> *Non-Resident Non-Person Position*, *Form #05.020 (OFFSITE LINKS)*
> *DIRECT LINK: http://sedm.org/Forms/05-MemLaw/NonresidentNonPersonPosition.pdf*
> *FORMS PAGE: http://sedm.org/Forms/FormIndex.htm*

We're still waiting for Mr. Evans to rebut the admissions at the end of the document above. Until he does, the evidence supporting our position is simply overwhelming.

Now, if you wrote to the IRS and said that you were a citizen of Montana with $50,000 of wages received in the past year, and the IRS said that you were not required to file a tax return, *that* would be interesting. But the IRS has never sent anyone any such letter.

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### 4.9 I am not required to file a tax return because I wrote a letter to the IRS demanding to know where in the Internal Revenue Code it says I am required to file and the IRS has failed to respond.

The IRS is not required to respond to every kook and misfit looking for an argument.

If you have a serious question about the tax laws, you can call or write to the IRS and they will try to give you some guidance. If you want to play 20 questions, go elsewhere.

Demand letters only work when there is a legal right to make the demand. If I am owed a debt, I have a right to demand payment. If I make a demand for payment, and receive no payment, I have the right to sue. However, if there is no valid debt, then sending a demand letter is meaningless, because there is no legal obligation to respond to a demand for a debt which doesn't exist.

Same thing with the IRS. There are statutes that give people the right to make demands on the IRS under certain circumstances. For example, section 6905 of the Internal Revenue Code gives the executor of an estate the right to demand that the IRS determine what income taxes might have been owed by the decedent within nine months of the notice. If the IRS fails to respond within nine months, the executor can distribute the decedent's estate without any personal liability for any income taxes that might be owed.

BUT!!!!!

There is nothing in the Internal Revenue Code, no statute of the United States, and no court decision in the history of the United States that requires the IRS to respond to the demands of taxpayers wanting to know why they are legally required to pay income taxes. If the IRS fails to respond to those kinds of letters, it means *absolutely nothing!*

At least one court has rejected this kind of claim (after dismissing a "hodgepodge of unsupported assertions, irrelevant platitudes, and legalistic gibberish") as follows:

> *"Finally, petitioner contends that her attempts to secure explanations from the IRS about her arguments were reasonable cause for her failure to file returns for the years in issue. They were not. Petitioner apparently did not consult with an attorney or accountant or any competent tax professional before discontinuing her prior history of filing returns. She cites innumerable cases out of context, while ignoring the innumerable cases upholding the validity of the Federal income tax and rejecting arguments by individuals that they are not required to file Federal income tax returns and pay Federal income taxes. Her failure to file returns for the years in issue was not due to reasonable cause. She is liable for the addition to tax [for failure to file a return or pay any tax] under section 6651(a) as determined by respondent." Rogers v. Commissioner, T.C. Memo 2001-20 (1/30/2001).*

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### 4.10 The tax laws cannot be enforced against citizens in federal courts, because federal courts are

**"admiralty" or "maritime" courts.**

As ridiculous as this claim is, at least one court has taken the time to refute it:

> *"The Saunders argue that the district court lacked jurisdiction to enforce the summonses. In support of their position, they cite The Glide, 167 U.S. 606, 623-24, 17 S.Ct. 930, 936, 42 L.Ed. 296 (1897), which holds that '[t]he maritime and admiralty jurisdiction conferred by the constitution and laws of the United States upon the district courts of the United States is exclusive.' The Saunders apparently interpret this language as limiting the jurisdiction of federal district courts to admiralty and maritime actions. The Saunders also seem to believe that, by issuing a notice of dishonor under the Uniform Commercial Code, they prevent the IRS from characterizing this case as a contract in admiralty or a maritime action, leaving the district court no basis for jurisdiction.*
>
> *"The Saunders reading of The Glide founders. In describing the district courts' maritime and admiralty jurisdiction as 'exclusive' the Supreme Court excluded state courts from adjudicating either category of lawsuit. The Court did not, by employing the phrase 'exclusive,' delimit the bases of federal jurisdiction. To the contrary, Congress has expressly directed federal district courts to hear tax enforcement matters. See 26 U.S.C. §§ 7402(b), 7604(a); 28 U.S.C. § 1340. We have repeatedly confirmed the authority--indeed, duty--of the district courts to adjudicate tax summons cases such as the one being prosecuted here. See, e.g., United States v. Author Servs., Inc., 804 F.2d 1520, 1525 (9th Cir.1986), amended, 811 F.2d 1264 (9th Cir.1987)."* United States v. Saunders, 951 F.2d 1065 (9th Cir. 1991).

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## 5. Paranoid Delusions

Certain arguments of tax resisters transcend legal fallacies, and can only be described as neurotic or psychotic delusions.

### 5.1 There are lots of tax resisters who have won cases against the IRS, such as John Cheek, Lloyd Long, and Gail Sanocki.

John Cheek was a classic tax resister. He was a pilot for American Airlines who filed no tax returns for 5 years. He was convicted of willfully failing to file and appealed his conviction all the way to the U.S. Supreme Court, which reversed his conviction and remanded the case for a new trial. The opinion of the Supreme Court is rather confusing, and deals entirely with the issue of whether Cheek should have been allowed to present evidence that he sincerely believed that he was not required to file a tax return. The opinion is confusing because the court characterized his beliefs as "absurd" and ruled that he could not argue that the income tax was unconstitutional or otherwise invalid. Exactly what he would be allowed to present to the jury at his retrial is not clear, but whatever it was, it didn't do him any good, because he was convicted again at his second trial. See *United States v. Cheek*, 3 F3d 1057 (7th Cir. 1993).

The Lloyd Long case is one of the great "victories" of tax resisters, meaning that it is absolutely meaningless. Mr. Long was prosecuted for criminal failure to file and was acquitted by a jury, which apparently had a reasonable doubt about whether he had "willfully" failed to file. His acquittal does not "prove" that you are not required to file income tax returns, any more than the acquittal of O.J. Simpson "proves" that it is legal to kill your ex-wife.

Gail Sanocki is another mythical (and unpublished) case, the facts of which are not clear. Apparently, the IRS was proceeding against her and her husband and, at some point in the proceedings, the IRS dropped its case against her (but not her husband). She had made many of the usual tax resister arguments, but the government probably dropped the case against her because of doubts about whether she was an "innocent spouse" and so was not responsible for the tax returns filed by her husband. Although tax resisters like to claim that the government was conceding the validity of her tax resister arguments, there is simply no reason to believe that it was anything but a case of the government deciding not to prosecute because of doubts about the evidence, not doubts about the law.

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### 5.2 There are many lawyers and well-educated people who believe that tax resister positions are valid and have been successful in arguing tax resister cases. People like Lowell H. Becraft, Irwin Schiff, etc.

A contributor to misc.taxes has made the following observations about the career of Lowell H. Becraft as a tax lawyer: Lowell H. Becraft has been sanctioned several times for wasting the time of the courts with the arguments described in this FAQ. See *Becraft v. United States*.

Irwin Schiff served time in federal prison for income tax evasion. While he was in prison, the IRS took the royalties from the sale of his book to pay his back taxes. For a fairly complete history of the losses of Irwin Schiff against the United States tax system, see *Schiff v. United States*, 919 F.2d 830 (2nd Cir. 1990); *United States v. Schiff*, 876 F.2d 272 (2nd Cir. 1989); *United States v. Schiff*, 801 F.2d 108 (2nd Cir. 1986), cert. denied, 480 U.S. 945 (1987); *Schiff v. Simon & Schuster, Inc.*, 780 F.2d 210 (2nd Cir. 1985); *Schiff v. Simon & Schuster, Inc.*, 766 F.2d 61 (2nd Cir. 1985) (per curiam); *Schiff v. Commissioner*, 751 F.2d 116 (2nd Cir. 1984) (per curiam); *United States v. Schiff*, 647 F.2d 163 (2nd Cir. 1981), cert. denied, 454 U.S. 835 (1981); *United States v. Schiff*, 612 F.2d 73 (2nd Cir. 1979).

Irwin Schiff also once made the mistake of appearing on television and offered to pay $100,000 to anyone who can identify the sections of the Internal Revenue Code that impose any liability for tax. A man named Richard Newman identified sections 1, 6012, 6151, 6153, 7201, 7202 and 7203 in a telephone call to the television station the following morning and then sued Schiff when he refused to pay the $100,000. The 6th Circuit Court of Appeals agreed that Newman was right about the tax laws and that Schiff's claim was "ridiculous," but ruled for Schiff under principles of contract law, because Newman did not telephone the television station with the correct answer within the time specified in Schiff's offer. *Neuman v. Schiff*, 778 F.2d 460 (8th Cir. 1985).

Students of Mr. Schiff have not fared any better.

> *"At his criminal trial, Mr. Letscher testified that he filed tax returns and paid his taxes until 1980. In 1981, he began listening to and reading materials prepared by Irwin Schiff, a tax protester. Strarting from late 1980, Mr. Letscher attended several seminars hosted by Mr. Schiff. He also subscribed to newsletters prepared by Mr. Schiff. On the basis of information from Mr. Schiff and Mr. Letscher's own research, Mr. Letscher decided not to file any more tax returns because he could not find any law which required him to do so." United States v. Letscher, KTC 1999-648 (U.S.D.C. S.D.N.Y. 1999), (footnotes and citations omitted).*

Mr. Letscher was convicted of both willful failure to file and tax evasion and was sentenced to 33 months imprisonment. In the civil action cited above, the United States sought to reduce the various tax deficiencies and tax liens against Mr. Letscher to judgments against him and trusts he controlled, and the above description of was part of the court's opinion leading to the conclusion that " Mr. Letscher's pattern of misconduct provides clear and convincing evidence that he intended to evade payment of federal income taxes and justifies the imposition of civil fraud penalties."

William T. Conklin claims to be successful in fighting the IRS, and has described himself as a "known tax resister like Jesus Christ, Thomas Jefferson, Benjamin Franklin and George Washington." *Conklin v. United States*, KTC 1994-259, Case No. 89-N-1514 (D. Col. 1994). Unfortunately, his claims of success are contradicted by the public record, because he has lost every case on record. See, e.g., *Conklin v. Commissioner*, 91 T.C. 41 (1988); *Church of World Peace, Inc. v. Commissioner*, T.C. Memo 1992-318; *Church of World Peace, Inc. v. Commissioner*, T.C. Memo 1994-87; *Church of World Peace, Inc. v IRS*, 715 F.2d 492; *United States v. Church of World Peace*, 775 F.2d 265; *Conklin v. United States*, 812 F.2d 1318; *Conklin v. C.I.R.* , 897 F.2d 1032; *Tavery v. United States*, 897 F.2d 1027; *Tavery v. United States*, Civ. No. 87-Z-180, USDC Colorado;

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### 5.3 There are lots of court decisions favorable to tax resisters, but the judges always seal the transcripts, suppress the opinions, or issue "gag orders" against the parties so that the opinions are never published.

Of course, there is no evidence of this nonsense, and it doesn't even make any sense.

If a judge didn't want it known that he had ruled in favor of a tax resister, why doesn't the judge simply rule *against* the tax resister instead of *for* him? A decision against a tax resister is easy to justify, based on all of the other court decisions described in this FAQ. A decision for the tax resister goes against all the published decisions by other judges *and then the judge keeps the decision a secret!* Why would anyone go to so much trouble? And if the judge believes the decision is right, why keep it a secret?

And how does the judge keep the decision a secret from the successful tax resister, and keep him from exercising his 1st Amendment right to publicize the decision?

It all makes no sense.

Over 90% of all cases that go to trial go unpublished and over 95% of cases are either dismissed or settled before they go to trial. This is confirmed by the website at:

*http://nonpublication.com*

The above website points out that nonpublication of cases is a very serious problem that threatens the integrity of our judicial system.

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### 5.4 The court decisions against tax resisters are all rendered by ignorant, corrupt judges who have a vested interest in maintaining the status quo because their salaries are paid by the income tax and they are not going to bite the hand that feeds them.

There is absolutely no evidence that any of the rulings described in this FAQ were obtained by corruption. Also consider the following:

- The judicial decisions that are cited in this FAQ go back more than 200 years, to 1796, when the U.S. Supreme Court unanimously upheld the constitutionality of a tax imposed on a citizen of Virginia for carriages held for personal use. In all that time, there has

never been a single judge in the history of the United States to rule that Congress could not impose a tax on individuals living within the states of the United States.
- No judge in the history of the United States has ever ruled that wages were not income, or that Congress could not tax wages.
- There have been only five judges in the history of the United States to rule that a tax on certain types of income (from property) might be unconstitutional (in the Pollock decision in 1894), and they were overruled by the 16th Amendment fairly quickly.

In order to believe that all of the rulings against tax resisters are the result of ignorant, corrupt judges, you must believe that *every single judge* in the history of the United States has been ignorant or corrupt. That doesn't sound likely.

The idea that judges have a vested interest in upholding the income tax is equally absurd. Under the Constitution, federal judges are appointed for life and their salaries can never be reduced. So a federal judge is always going to get paid regardless of how the judge rules. If a judge considered only his or her own self-interest, the judge would rule *against* the income tax, because then the judge would also not be required to pay any taxes and could keep the full amount of the lifetime salary guaranteed by the Constitution.

In short, the idea that rulings against tax resisters are tainted by corruption or stupidity is just the whinings of people who refuse to accept the fact that they are wrong.

Mr. Evan ignores the importance of conflict of interest of the federal judiciary. Even Thomas Jefferson, one of our most beloved founding fathers, said the federal judiciary is the most dangerous of all parts of the government because of conflict of interest and bias.

> *"Contrary to all correct example, [the Federal judiciary] are in the habit of going out of the question before them, to throw an anchor ahead and grapple further hold for future advances of power.* ***They are then in fact the corps of sappers and miners, steadily working to undermine the independent rights of the States and to consolidate all power in the hands of that government in which they have so important a freehold estate****."*
> *[Thomas Jefferson: Autobiography, 1821. ME 1:121]*
>
> *"We all know that permanent judges acquire an esprit de corps; that, being known,* ***they are liable to be tempted by bribery; that they are misled by favor, by relationship, by a spirit of party, by a devotion to the executive or legislative****; that it is better to leave a cause to the decision of cross and pile than to that of a judge biased to one side; and that the opinion of twelve honest jurymen gives still a better hope of right than cross and pile does."*
> *[Thomas Jefferson to Abbe Arnoux, 1789. ME 7:423, Papers 15:283]*
>
> *"****It is not enough that honest men are appointed judges. All know the influence of interest on the mind of man, and how unconsciously his judgment is warped by that influence. To this bias add that of the esprit de corps, of their peculiar maxim and creed that 'it is the office of a good judge to enlarge his jurisdiction,' and the absence of responsibility, and how can we expect impartial decision between the General government, of which they are themselves so eminent a part, and an individual state from which they have nothing to hope or fear****?"*
> *[Thomas Jefferson: Autobiography, 1821. ME 1:121]*
>
> *"At the establishment of our Constitutions, the judiciary bodies were supposed to be the most helpless and harmless members of the government.* ***Experience, however, soon showed in what way they were to become the most dangerous; that the insufficiency of the means provided for their removal gave them a freehold and irresponsibility in offic****e; that their decisions, seeming to concern individual suitors only, pass silent and unheeded by the public at large; that these decisions nevertheless become law by precedent, sapping by little and little the foundations of the Constitution and working its change by construction before any one has perceived that that invisible and helpless worm has been busily employed in consuming its substance. In truth, man is not made to be trusted for life if secured against all liability to account."*
> *[Thomas Jefferson to A. Coray, 1823. ME 15:486]*
>
> *"I do not charge the judges with willful and ill-intentioned error; but honest error must be arrested where its toleration leads to public ruin.* ***As for the safety of society, we commit honest maniacs to Bedlam; so judges should be withdrawn from their bench whose erroneous biases are leading us to dissolution. It may, indeed, injure them in fame or in fortune; but it saves the republic, which is the first and supreme law.****"*
> *[Thomas Jefferson: Autobiography, 1821. ME 1:122]*
>
> *"****The original error [was in] establishing a judiciary independent of the nation, and which, from the citadel of the law, can turn its guns on those they were meant to defend, and control and fashion their proceedings to its own will.****"*
> *[Thomas Jefferson to John Wayles Eppes, 1807. FE 9:68]*
>
> *"****It is a misnomer to call a government republican in which a branch of the supreme power [the Federal Judiciary] is independent of the nation****."*
> *[Thomas Jefferson to James Pleasants, 1821. FE 10:198]*

> *"**It is left... to the juries, if they think the permanent judges are under any bias whatever in any cause, to take on themselves to judge the law as well as the fact. They never exercise this power but when they suspect partiality in the judges; and by the exercise of this power they have been the firmest bulwarks of English liberty.**"*
> *[Thomas Jefferson to Abbe Arnoux, 1789. ME 7:423, Papers 15:283]*

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### 5.5 The court decisions against tax resisters are all rendered by judges who are afraid of being audited by the IRS and so are afraid to rule against the IRS.

Ridiculous. Judges rule against the IRS all the time, on all sorts of issues. Judges have even fined the IRS and its agents for violating the law. And yet there is no verified instance of any judge ever getting audited by the IRS following a ruling by the judge against the IRS.

In addition, there are known examples of judges being biased against the IRS. The most extreme case was Justice William O. Douglas. During his many years on the U.S. Supreme Court, Justice Douglas voted against the IRS at almost every opportunity, frequently dissenting (without opinion) from otherwise unanimous decisions. The accepted explanation of this odd voting record is that he was still angry at having been audited once by the IRS. Justice Douglas was a very strong-willed, outspoken man, and if the IRS has ever taken any other actions against him, he would have let us know about it.

And even if the IRS did audit a judge, what harm could the IRS do? Most judges have little more than their salaries from the government and some investment income. If they report all of their income (as they are required to do) and claim the usual deductions, what can the IRS do? (Contrary to what tax resisters think, the IRS can't just go in and fabricate numbers. There has to be some facts that will justify imposing additional taxes.)

Finally, if the IRS did have a vendetta against a judge, and tried to run the judge through the wringer because of it, could you imagine the public outcry that would result if the judge made the story public? It is sometimes suggested that the IRS is too *soft* in politically sensitive cases, rather than too hard, because the IRS fears a backlash from Congress if it appeared that any audit or other action were politically motivated.

In short, this is just a paranoid delusion.

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### 5.6 The IRS always wins against tax resisters because the IRS only litigates cases against ignorant, ill-prepared defendants it knows it can beat, and it always settles cases against the smart defendants who know how to beat the IRS.

This is a ridiculous assertion. The claim is that the IRS is 100% accurate in assessing whether it will win or lose any given case, and that is impossible.

Tax resisters lose because they make ridiculous arguments, like those described in this FAQ.

We agree with Evans. We would also add that another reason they lose is because they are either too lazy to do their homework or they rely on what Mr. Evans tells them as their only basis of belief. It is a VERY bad idea to rely upon anything but enacted positive law as a reasonable basis for belief, and courts do not hesitate to sanction and penalize those who rely on anything other than these sources. See:

> *Reasonable Belief About Income Tax Liability, Form #05.007 (OFFSITE LINKS)*
> *DIRECT LINK: http://sedm.org/Forms/05-MemLaw/ReasonableBelief.pdf*
> *FORMS PAGE: http://sedm.org/Forms/FormIndex.htm*

"willfulness" is a prerequisite of every tax crime. Only sources of reasonable belief documented in the above pamphlet may be used to deflect a charge of "willfulness" and a criminal prosecution. The I.R.C. is not listed as a source of reasonable belief in the above memorandum of law.

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### 5.7 The taxpayers who have challenged the tax system and lost all lost because they argued their cases badly.

Many of the tax resister arguments presented in this FAQ may seem to be redundant, saying the same things over and over again, using

only slightly different words.

The problem is that most tax resisters believe that their positions are correct, and all of the tax resister losses are due to "bad arguments." For example, Lowell H. Becraft, a lawyer who represents tax resisters and has representing the losing taxpayer in many of the decisions cited in this FAQ, has put together a web page listing the "destroyed arguments" that he believes were ruined by the "ill prepared, desperate people" who raised the arguments in court, lost, and so created bad precedents for everyone else.

Like Lowell Becraft, many tax resisters therefore believe that, if the courts do not agree with them, it is only because they have not yet used the right words to explain their positions. So, after a particular argument loses for the twentieth or thirtieth time, one of the less dim bulbs in the tax resister community comes up with a new "formula" with different words, that they then proclaim to be the "real thing."

This is all a delusion, of course. Tax resisters lose because their basic ideas are ridiculous, contrary to common sense, history, statutes, and all previous court decisions. Losing a case with a tax resister theory and then trying again with a "better argument" is the legal equivalent of re-arranging the deck chairs after the Titanic has hit the iceberg.

We agree with Evans. We would also add that another reason they lose is because they are either too lazy to do their homework or they rely on what Mr. Evans or any other "expert" tells them as their only basis of belief.

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### 5.8 Why do you always assume that the courts are right and the tax resisters are wrong? Couldn't the courts be wrong about what the Constitution means?

Basically, the process of law is a process of consensus. We have a variety of procedures, some political, some judicial, and some bureaucratic, for determining what the law should be and how it should be applied. If we don't like the results, we have ways of changing the results, and when there are conflicts, we have ways of resolving conflicts. However, when the courts, the legislatures, and the voters all agree on what the law is, that is what the law is. The fact that some people believe that the law *should be* different means that they are free to argue their positions within the political system and attempt to change the results.

In the case of the income tax, there is no conflict. The judicial branch, executive branch, and legislative branches of our government, and a majority of the voters, all agree that (1) an income tax is constitutional, (2) it applies to wages, (3) every citizen and resident of every state is required to file a tax return and pay the tax. That is what the law is. There is no question about it.

When lawyers talk about what "the law" is, they are talking about how a judge will rule. Not how the judge *should* rule, or *might* rule, but *will* rule. Measured by that standard, this FAQ states what "the law" is, because a judge will rule against the tax resister arguments described above 100% of the time. Not 95% of the time, or even 99.999% of the time. 100.00%.

We agree with Evans on this subject.

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## 6. More About Tax Resisters

### 6.1 What penalties can be imposed on tax resisters?

Being a tax resister is not without its costs. The cases against tax resisters usually include one or more of the following civil or criminal penalties:

> *A failure to file an income tax return, or pay the tax when due, results in a civil penalty of 5% per month (not to exceed a total of 25%). IRC section 6651.*
>
> *A willful failure to file an income tax return is a crime punishable a fine of not more than $25,000 and imprisonment of not more than one year, or both. IRC section 7203. This criminal penalty is in addition to the civil penalty under section 6651.*
>
> *IRC section 6702 allows the IRS to impose a $500 civil penalty against any individual who files a return which is incorrect on its face, or from which a tax cannot be calculated, if the return is based on "a position which is frivolous." or a desire to impede the administration of the federal income tax. This penalty is often imposed against tax resisters who file returns with that are blank, contain frivolous claims regarding what is "income," or are not signed under penalties of perjury.*
>
> *IRC section 6653(a) requires a penalty of five percent of any underpayment of tax due to "careless, reckless, or intentional disregard" of rules or regulations.*
>
> *IRC section 6653(b) requires a civil penalty of 75% of any underpayment of tax due to fraud. If there is a fraud*

*penalty imposed, then there is no penalty for negligence (section 6653(a)) or failure to file or pay (section 6651).*

*IRC section 6673 allows the Tax Court to assess damages of up to $5,000 against taxpayers who file petitions in Tax Court that are "frivolous or groundless." All of the arguments described in this FAQ have been described as "frivolous or groundless" by the Tax Court, and penalties assessed against tax resisters.*

*A willful attempt to evade the income tax is a crime punishable a fine of not more than $100,000 and imprisonment of not more than five years, or both. IRC section 7201. This criminal penalty is in addition to the civil penalty for fraud under section 6653(b).*

These penalties are all in addition to the interest that will be imposed on underpayments of tax.

The above is a terrorist tactic that doesn't apply to "nontaxpayers". Only "taxpayers" who are subject to I.R.C. can be the proper subject of the I.R.C. Subtitle A. Such a person has "trade or business" earnings or receives government payments and is domiciled in the District of Columbia. Only by being an "officer or employee of a corporation or partnership" can such a person be subject to penalties he describes. This is confirmed by the definition of "person" found in 26 U.S.C. §6671(b).

> *TITLE 26 > Subtitle F > CHAPTER 68 > Subchapter B > PART I > Sec. 6671.*
> *Sec. 6671. - Rules for application of assessable penalties*
>
> *(a) Penalty assessed as tax*
>
> *The penalties and liabilities provided by this subchapter shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this title to "tax" imposed by this title shall be deemed also to refer to the penalties and liabilities provided by this subchapter.*
>
> *(b) Person defined*
>
> *The term "person", as used in this subchapter, 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*

There is no provision of the I.R.C. which expands upon the above definition in the context of penalties within the I.R.C. We also emphasize that those engaged in a "trade or business" fit the description of "person" above, because:

1. They are "public officers" of the "United States", which is defined in 28 U.S.C. §3002(15)(A) to be a federal corporation.
2. They have a fiduciary duty to the federal corporation as such officers pursuant to 26 U.S.C. §6903. In the case of persons domiciled in states of the Union, that oath is the perjury oath on the W-4, the SS-5, and the 1040 forms they are filing to account for their activities as such "public officer".
3. While on official duty exercising "the functions of their public office", their effective domicile is the District of Columbia, pursuant to Federal Rule of Civil Procedure 17(b), 26 U.S.C. §7701(a)(39), and 26 U.S.C. §7408(d ).

These conclusions are much more completely addressed in the free pamphlet below:

> *Why Penalties are Illegal for Anything But Federal Employees, Contractors, and Agents, Form #05.010 (OFFSITE LINKS)*
> *DIRECT LINK: http://sedm.org/Forms/05-MemLaw/PenaltiesIllegal.pdf*
> *FORMS PAGE: http://sedm.org/Forms/FormIndex.htm*

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### 6.2 Why do tax resisters keep violating the laws, and keep litigating, even after it is clear that they have lost and have no valid arguments?

If the assertions addressed in this FAQ are so ridiculous, why do people believe them?

A certain amount of the appeal of tax resister arguments is simple greed. People love something for nothing, and the idea that it might be possible to stop paying income taxes is enough to make many people believe anything.

The Seventh Circuit has made the following observation:

> *"Some people believe with great fervor preposterous things that just happen to coincide with their self-interest. 'Tax protesters' have convinced themselves that wages are not income, that only gold is money, that the Sixteenth Amendment is unconstitutional, and so on. These beliefs all lead--so tax protesters think--to the elimination of their obligation to pay taxes." Coleman v. Commissioner, 791 F.2d 68, 69 (7th Cir. 1986).*

Pure self-centered avarice can explain the initial appeal of tax resister arguments, but why do tax resisters become so mindlessly devoted to their beliefs? In many cases, judges have taken the time in pre-trial conferences to explain to tax resisters that they are totally wrong, and that if they persist with their arguments, not only will they lose but the judge will fine them for wasting court time with their nonsense. And yet the tax resisters persist. Why?

Why, after losing cases, do tax resisters continue to argue the same claim in a different court? Or why, having lost one case using one preposterous claim, do they switch allegiance to a different preposterous claim and go back into battle with the IRS?

Consider the plight of Lorin Sloan as described by the 7th Circuit Court of Appeals:

> *Like moths to a flame, some people find themselves irresistibly drawn to the tax protestor movement's illusory claim that there is no legal requirement to pay federal income tax. And, like the moths, these people sometimes get burned. Lorin G. Sloan believed these claims and because he acted upon them now faces four months in a federal prison; there can be little doubt that he has been burned.*
>
> *[. . . .]*
>
> *The real tragedy of this case is the unconscionable waste of Mr. Sloan's time, resources, and emotion in continuing to pursue these wholly defective and unsuccessful arguments about the validity of the income tax laws of the United States. Despite our rejection of Mr. Sloan's legal analysis of the tax laws, we are not unmindful of the sincerity of his beliefs. On the other hand, we are less sure of the sincerity of the professional tax protestors who promote their views in literature and meetings to persons like Mr. Sloan, yet are unlikely ever to face the type of penalties incurred by him. It may be that our decision will not alter Mr. Sloan's views regarding the tax laws of this country, for he has stated that if we affirm his conviction without applying the law as he understands it, our decision will be "a sham to which I WILL NOT SUBMIT." It may also be that serving his sentence in prison will not alter Mr. Sloan's view. We hope this pessimistic assessment is incorrect. United States v. Sloan, 939 F.2d 499 (7th Cir. 1991).*

My experiences with tax resisters lead me to believe that their motivations are ultimately emotional or psychological, and not financial, and that they do not really care whether or not they are presenting any legitimate arguments to the courts, but are using conflicts with the IRS and the courts to vent their personal and political frustrations.

Evans is wrong on this point. The reason tax resisters continue entertaining flawed notions is because people like Mr. Evans, primarily through deliberate omission and deception, perpetuate confusion and thereby prolong litigation and expense that goes into the pockets of lawyers like Mr. Evans. These devious tactics of his include:

1. Willfully refusing to educate them about the true nature of the income tax as an indirect excise tax upon a "trade or business".
2. Willfully refusing to explain what activities constitute the equivalent of "constructive consent" to become "taxpayers" subject to the I.R.C.
3. Willfully refusing to explain the fundamental differences in meaning between the "words of art" used in the field of taxation and everyday words.
4. Willfully refusing to clearly state which context they are using for a particular word they are using. On this website, for instance, when we wish to imply the legal definition of a word, we surround it in quotes and identify the statute where it is defined. When we wish to imply the common definition, we remove the quotes and the statute references.
5. Willfully refusing to define exactly where the government's jurisdiction to impose an income tax comes from, which is:
   5.1 One's domicile. See *Why Domicile and Becoming a "Taxpayer" Require Your Consent*, Form #05.002, at http://sedm.org/Forms/FormIndex.htm. (OFFSITE LINK)
   5.2 The voluntary, avoidable, excise taxable activities one engages in, which in the case of Subtitle A of the I.R.C. is a "trade or business", as defined in 26 U.S.C. §7701(a)(26). See:
   *The "Trade or business" Scam*, Form #05.001 (OFFSITE LINK)
   DIRECT LINK: https://sedm.org/Forms/05-MemLaw/TradeOrBusScam.pdf
   FORMS PAGE: http://sedm.org/Forms/FormIndex.htm
6. Willfully refusing to recognize and respect all the implications of the Separation of Powers Doctrine. This doctrine requires, for instance, that the term "United States" and "State" as used throughout in the Constitution, have an entirely different meaning than Acts of Congress. In the Constitution, "United States" refers to the collective states that are members of the Union, and "State" implies the individual members. In federal statutory law, however, "United States" in most cases means the territories and possessions of the United States, the District of Columbia, and federal areas within states of the Union and excludes lands subject to the exclusive, plenary jurisdiction of the states. This is what we call the "federal zone". The natural consequence of this distinction is that there are actually two "citizens of the United States", because there are TWO "United States", depending on the context the phrase is used in:
   5.1 The one defined in the Fourteenth Amendment and including all persons born or naturalized in a state of the Union. We call these people CONSTITUTIONAL but not STATUTORY citziens and statutory "non-resident non-persons", and they are defined in 8 U.S.C. §1101(a)(21).
   5.2 Persons born or naturalized in and domiciled within the exclusive, plenary jurisdiction of the federal government and therefore subject to federal law. These people are defined in 8 U.S.C. §1401 and 8 U.S.C. §1101(a)(22)(B) and exclude persons born in

states of the Union.

If you would like to know more about the TWO types of "citizens of the United States", read our article:

> *Why you are a "national", "state national", and Constitutional but not Statutory Citizen*
> *http://famguardian.org/Publications/WhyANational/WhyANational.pdf*

The reason Mr. Evans refuses to recognize and respect and account for all of the implications of the Separation of Powers Doctrine is that it is the heart of the Constitution and the main method of protecting your rights and your liberties as a sovereign American national.

> *"We start with first principles. The Constitution creates a Federal Government of enumerated powers. See U.S. Const., Art. I, 8. As James Madison wrote, "[t]he powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." The Federalist No. 45, pp. 292-293 (C. Rossiter ed. 1961).* ***This constitutionally mandated division of authority "was adopted by the Framers to ensure protection of our fundamental liberties." Gregory v. Ashcroft, 501 U.S. 452, 458 (1991) (internal quotation marks omitted). "Just as the separation and independence of the coordinate branches of the Federal Government serves to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.****" Ibid. "*
> *[U.S. v. Lopez, 514 U.S. 549 (1995)]*

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> *"The people of the United States, by their Constitution, have affirmed a division of internal governmental powers between the federal government and the governments of the several states-committing to the first its powers by express grant and necessary implication; to the latter, or [301 U.S. 548, 611] to the people, by reservation, 'the powers not delegated to the United States by the Constitution, nor prohibited by it to the States.' The Constitution thus affirms the complete supremacy and independence of the state within the field of its powers. Carter v. Carter Coal Co., 298 U.S. 238, 295 , 56 S.Ct. 855, 865. The federal government has no more authority to invade that field than the state has to invade the exclusive field of national governmental powers; for, in the oft-repeated words of this court in Texas v. White, 7 Wall. 700, 725, 'the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government.' The necessity of preserving each from every form of illegitimate intrusion or interference on the part of the other is so imperative as to require this court, when its judicial power is properly invoked, to view with a careful and discriminating eye any legislation challenged as constituting such an intrusion or interference. See South Carolina v. United States, 199 U.S. 437, 448 , 26 S.Ct. 110, 4 Ann.Cas. 737."*
> *[Steward Machine Co. v. Davis, 301 U.S. 548 (1937)]*

Like most members of the law profession and government servants, he wants to break down this separation of powers so that he can pick your pocket and expand his power and influence. In doing so, he violates his oath as a attorney to "support and defend the constitution against all enemies, foreign and domestic." The problem is not what Mr. Evans says, but what he very deliberately *avoids saying* in order to advantage himself and the courts he derives his livelihood from and who license him to practice. If he tells the truth, they pull his license and he starves to death. The main sin is "omission", not "commission". This type of sinister manipulation by the "chief priests of the civil religion of socialism" in the federal and state supreme courts is what perpetuates the unlawful extortion, fraud, oppression, slavery, and feudalism that we live under in the de facto tax system we have today. These courts are the ones who effectively "license" said attorneys. See:

> *Unlicensed Practice of Law, Form #05.029 (OFFSITE LINKS)*
>
> - *Sample*
> - *PDF in member subscriptions*
> - *Member Subscriptions*

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### 6.3 A "tax protester" is only someone classified as a "tax protester" by the Internal Revenue Service in accordance with the IRS definition of "tax protester."

The IRS may have had an internal policy for the classification of some taxpayers as "tax protesters." However, the IRS has no authority over the use or application of the English language, and the phrase "tax resister" is commonly applied to two types of people:

> *People who refuse to pay taxes in order to protest policies of the federal government that are supported by those taxes (such as people who refused to pay taxes during the Vietnam War); and*
>
> *People who refuse to pay taxes or file tax returns out of a mistaken belief, firmly held, that the federal income tax*

*is unconstitutional, invalid, voluntary, or otherwise does not apply to them under one of a number of bizarre arguments, most of which are described in this FAQ.*

This FAQ uses the phrase "tax resister" in the second sense, referring to people who refuse to file returns or pay taxes because of ridiculous and far-fetched arguments against the validity or application of the tax laws.

The IRS has used an internal definition that is somewhat similar to the second one, but with the added element of an "ostensible" expression of dissatisfaction with the tax system. The Internal Revenue Manual, Audit, § 4293.11, defines "tax protester" any individual who advocates and/or uses a 'tax protest scheme,'" and defines "tax protest scheme" as "an scheme without basis in law or fact for the ostensible purpose of expressing dissatisfaction with the substance, form, or administration of the tax laws by either interfering with such administration or attempting to illegally avoid or reduce tax liabilities." However, an "illegal tax resister" designation by the IRS was sometimes applied inappropriately, and led to complaints about unduly harsh treatment of taxpayers who were not really protesting or evading taxes. As a result, section 3707 of the Internal Revenue Service Restructuring and Reform Act of 1998, P.L. 105-206, prohibits the officers and employees of the IRS from designating any taxpayer "as illegal tax resisters (or any similar designation)."

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## 6.4 The federal income tax is inapplicable, invalid, unenforceable, or unconstitutional because _____.

Because most tax resisters believe that their positions are correct, and all of the tax resister losses are due to "bad arguments.", they also believe that, if the courts do not agree with them, it is only because they have not yet used the right words to explain their positions. So, after a particular argument loses for the twentieth or thirtieth time, one of the less dim bulbs in the tax resister community comes up with a new "formula" with different words.

So this FAQ is not complete, and will never be complete. As you are reading this, some nut with a defective grasp of law, history, economics, and the English language is developing a new reason why the income tax does not apply to him.

[This use of the pronoun "him" is not unconsciously sexist. Most tax resisters are men, which suggests that feminists might be right, and women really are smarter than men.]

The issue is not whether the I.R.C. is law for "persons" engaged in a "trade or business" and domiciled within the District of Columbia. It absolutely is. 26 U.S.C. §864(c)(3), in fact, says that nearly everything originating from "sources within the United States", meaning the GOVERNMENT, is associated with a "trade or business". Instead, the issue is:

1. What exactly is a "trade or business"? The I.R.S. website never completely defines it because they don't want people to learn that it is an excise tax based on avoidable, voluntary activities.
2. Who is engaged in a "trade or business".
3. How does a person who is not engaged in a "trade or business" connect their earnings to this activity? We allege that this happens by filing USUALLY FALSE information returns or tax returns.
4. May those who are not engaged in a "trade or business" revoke their election to treat their earnings as connected to a "trade or business" by revoking their W-4 and replacing it with a W-8BEN, rebutting false information returns, and thereby become nonresident aliens nontaxpayers not engaged in a "trade or business" under the provisions of 26 C.F.R. §1.872-2?
5. Was the consent to engage in a "trade or business" procured lawfully and done so in a fully informed manner? The fact is, it was not in the vast majority of cases, because it was procured from minors who could not lawfully consent and the consent was a product of fraud by the government.
6. By what lawful authority do the "public offices" that are the subject of the tax established in states of the Union? 4 U.S.C. §72 says that all public offices shall be exercised ONLY in the District of Columbia and not elsewhere except as expressly authorized by law?
7. Why do the federal courts unlawfully allow information returns that aren't even signed and therefore are inadmissible as evidence pursuant to Fed.Rul.Ev. 802, the Hearsay rule, and in violation of 26 U.S.C. §6065 to be used basically as an unconstitutional presumption that destroys the rights of those against whom it is filed? Click here for details.
8. Why aren't federal judges and prosecutors prosecuted for establishing a federal religion in violation of the First Amendment by habitually engaging in prejudicial presumption that destroys people's constitutional rights? This FRAUD is extensively described in the following:
   *Presumption: Chief Weapon for Unlawfully Enlarging Federal Jurisdiction*, Form #05.017
   http://sedm.org/Forms/05-MemLaw/Presumption.pdf
9. How can federal district courts, which are in fact "franchise courts", lawfully officiate over tax trials against those who are NOT public officers? These courts are, in fact, are not even in the judicial branch of the government and instead are in the Executive Branch? See and rebut:
   *What Happened to Justice: Why There is No Justice in Federal Court and What to Do About It*
   http://sedm.org/ItemInfo/Ebooks/WhatHappJustice/WhatHappJustice.htm
10. How can a judge who is a "taxpayer" subject to IRS extortion participate in any trial involving income taxes without having a conflict of interest in violation of 28 U.S.C. §§144 and 455. Click here for some questions to ask the judge about this FRAUD.
11. How can the IRS, which is at least ALLEGED to be in the Executive Branch of the government, lawfully collect a tax that the

Constitution says only Congress and the House of Representatives can collect?
11.1 Aren't the "taxation" and representation" functions supposed to exist in the SAME person, and isn't this the foundation of an accountable government? See Great IRS Hoax, section 6.5.1 for details.
11.2 Didn't the U.S. Supreme Court say that Congress cannot delegate any of its delegated powers, such as "the power to LAY AND COLLECT taxes" mentioned in Article 1, Section 8, Clause 1 of the Constitution, to another FOREIGN branch of government? Doesn't this violate the Separation of Powers Doctrine that is the heart of the United States Constitution?

> *"When, in short, either branch of the government usurps that part of the sovereignty, which the Constitution assigns to another branch, liberty ends, and tyranny commences."*
> *[The Betsey, 3 U.S. 6 (1794)*

For more on the above FRAUD and conspiracy against rights, see:
*Government Conspiracy to Destroy the Separation of Powers*, Form #05.023
DIRECT LINK: http://sedm.org/Forms/05-MemLaw/SeparationOfPowers.pdf (OFFSITE LINK)

12. By what authority does Mr. Evans cite case law from these non-judicial, administrative franchise courts against persons domiciled in states of the Union who are NOT lawfully occupying a public office in the government?
12.1 The U.S. Supreme Court said there is no federal common law within states of the Union. See Erie Railroad Co. v. Tomkins, 304 U.S. 64 (1938).
12.2 The Rules of Decision Act, 28 U.S.C. §1652, says that the rules of decision within states of the Union are STATE law, not federal law.
12.3 It is illegal to kidnap a persons identity without their consent. 26 U.S.C. §7701(a)(39) and 26 U.S.C. §7408(d) both accomplish the equivalent of kidnapping the legal identity of person and moving it unlawfully to the District of Columbia. How can this kidnapping lawfully be accomplished without the informed, written consent of the party? How can Mr. Evans cite FOREIGN case law from this legislatively but not constitutionally FOREIGN jurisdiction against persons who never consented, who are domiciled in a state of the Union on other than federal territory, and who are "non-resident non-persons" and CONSTITUTIONAL but not STATUTORY "citizens" pursuant to 8 U.S.C. §§1101(a)(21)?

    In short, by citing irrelevant case law, Mr. Evans is establishing a religion and practicing religion, not law, in the case of persons domiciled in states of the Union. He is abusing irrelevant case law as a means to exploit your ignorance and "encrypt" his prejudicial and false presumptions to his own personal financial benefit. This is confirmed by Fed.Rul.Civ.Proc. 17(b), which says that the law of the persons domicile are the rules of decision in all civil matters. Taxation is a civil matter.
13. If Mr. Evans wants to assert that a "trade or business" includes things other than a "public office", where in the statutes are the OTHER things he wishes to include EXPRESSLY described? The law must give "reasonable notice" of the behavior expected SOMEWHERE in order to be enforceable, and doing otherwise constitutes an unlawful presumption and an abuse of the court system to establish the equivalent of a state-sponsored religion.

> *"**Expressio unius est exclusio alterius**. A maxim of statutory interpretation meaning that **the expression of one thing is the exclusion of another.** Burgin v. Forbes, 293 Ky. 456, 169 S.W.2d 321, 325; Newblock v. Bowles, 170 Okl. 487, 40 P.2d 1097, 1100. Mention of one thing implies exclusion of another. **When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred.** Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded."*
> *[Black's Law Dictionary, Sixth Edition, page 581]*

> *"**When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning.** Meese v. Keene, 481 U.S. 465, 484-485 (1987) ("It is axiomatic that the statutory definition of the term excludes unstated meanings of that term"); Colautti v. Franklin, 439 U.S. at 392-393, n. 10 ("As a rule, `a definition which declares what a term "means" . . . excludes any meaning that is not stated'"); Western Union Telegraph Co. v. Lenroot, 323 U.S. 490, 502 (1945); Fox v. Standard Oil Co. of N.J., 294 U.S. 87, 95-96 (1935) (Cardozo, J.); see also 2A N. Singer, Sutherland on Statutes and Statutory Construction § 47.07, p. 152, and n. 10 (5th ed. 1992) (collecting cases). That is to say, the statute, read "as a whole," post at 998 [530 U.S. 943] (THOMAS, J., dissenting), leads the reader to a definition. That definition does not include the Attorney General's restriction -- "the child up to the head." Its words, "substantial portion," indicate the contrary."*
> *[Stenberg v. Carhart, 530 U.S. 914 (2000)]*

> *"It is axiomatic that the statutory definition of the term excludes unstated meanings of that term. Colautti v. Franklin, 439 U.S. 379, 392, and n. 10 (1979). Congress' use of the term "propaganda" in this statute, as indeed in other legislation, has no pejorative connotation.{19} **As judges, it is our duty to [481 U.S. 485] construe legislation as it is written, not as it might be read by a layman, or as it might be understood by someone who has not even read it."***
> *[Meese v. Keene, 481 U.S. 465, 484 (1987)]*

14. How can the IRS lawfully enforce against humans domiciled in states of the Union who are not federal instrumentalities WITHOUT the required implementing regulations published in the Federal Register as MANDATED by 44 U.S.C. §1505 and 5 U.S.C. §553? Granted, the Secretary of the Treasury has the DISCRETION to publish implementing regulations pursuant to 26 U.S.C. §7805(a), but

he DOES NOT have the authority to waive the affirmative requirements of positive law found in the Federal Register Act, 44 U.S.C. §1505 and the Administrative Procedures Act, 5 U.S.C. §553 in the case of ALL persons domiciled in states of the Union. If you disagree, please rebut the admissions at the end of the following or SHUT UP and take your licks:

*IRS Due Process Meeting Handout*, Form #03.008
http://sedm.org/Forms/03-Discovery/IRSDueProcMtgHandout.pdf

15. The only remaining internal revenue district is in the District of Columbia. Pursuant to 26 U.S.C. §7601, the IRS can only enforce within an internal revenue district. How can the IRS lawfully enforce in a state of the Union where Congress enjoys no legislative jurisdiction?
16. How can the President *lawfully* establish an internal revenue ENFORCEMENT district on other than federal territory pursuant to 26 U.S.C. §7421 and in a place that Congress enjoys NO LEGISLATIVE JURISDICTION?

> ***"It is no longer open to question that the general government, unlike the states, Hammer v. Dagenhart, 247 U.S. 251, 275 , 38 S.Ct. 529, 3 A.L.R. 649, Ann.Cas.1918E 724, possesses no inherent power in respect of the internal affairs of the states; and emphatically not with regard to legislation."***
> *[Carter v. Carter Coal Co., 298 U.S. 238, 56 S.Ct. 855 (1936)]*

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> *"The difficulties arising out of our dual form of government and the opportunities for differing opinions concerning the relative rights of state and national governments are many; **but for a very long time this court has steadfastly adhered to the doctrine that the taxing power of Congress does not extend to the states or their political subdivisions**. The same basic reasoning which leads to that conclusion, we think, requires like limitation upon the power which springs from the bankruptcy clause. United States v. Butler, supra."*
> *[Ashton v. Cameron County Water Improvement District No. 1, 298 U.S. 513; 56 S.Ct. 892 (1936)]*

Mr. Evans is sure to entirely avoid the questions above because they strike at the heart of where the authority to enforce the I.R.C. comes from and why Mr. Evans is trying to pull a fast one on you. There is no question that the I.R.C. is constitutional and lawful when enforced only within federal territory, and those DOMICILED on federal territory WHEREVER SITUATED. For those domiciled within states of the Union and who are NOT lawfully occupying a public office, it may NOT be enforced as required by 4 U.S.C. §72 and 26 U.S.C. §7601 and Treasury Order 150-02 (repealed) and Executive Order 10289. There is no question that:

1. Federal tax forms do not and cannot lawfully create any new public offices, and that they are being criminally abused in violation of 18 U.S.C. §912 to create public offices in violation of 4 U.S.C. §72.
2. People domiciled within states of the Union start out as " nonresident aliens" and NOT statutory "individuals" (public officers) when they are born there.
3. They may "elect" to become "residents" (aliens) by:
   3.1 LAWFULLY Entering public office.
   3.2 Falsely declaring any statutory status on a government form, including statutory "U.S. citizen" per 8 U.S.C. §1401.
   3.3 Signing up for Social Security pursuant to 20 C.F.R. §422.104 while ALREADY occupying public office.
   3.4 Signing a W-4 per 26 C.F.R. §31.3401(a)-3(a), but only AFTER they have *previously* entered public office within the government.
4. Signing up for government "benefits" causes a waiver of sovereign immunity pursuant to 28 U.S.C. §1332 and 28 U.S.C. §1605(a)(2) by becoming " residents" subject to the exclusive jurisdiction of the United States and liable to perform under the terms of the franchise agreement embodied in the Social Security Act and the Internal Revenue Code. HOWEVER, these so-called "benefits" and the franchises that implement them may not lawfully be offered within constitutional statues of the Union. The Definition of "State" within these franchises DOES NOT include states of the Union and PRESUMING that they are included is a violation of due process of law, a tort, and a destruction of the separation of powers doctrine that the foundation of the United States Constitution.

Why is Mr. Evans trying to hide the requirement for consent to engage in a "trade or business" and thereby deceive you into believing that what actually amounts to an indirect excise tax upon federal public office instead "looks" like a direct tax upon the labor of a human being? Why is he pretending that you can alienate a right protected by the Constitution through a commercial franchise when the Declaration of Independence says all such rights are UNALIENABLE and cannot be sold, bargained away or transferred through any commercial process?

> *"Unalienable. Inalienable; incapable of being aliened, that is, sold and transferred."*
> *[Black's Law Dictionary, Fourth Edition, p. 1693]*

IT IS BECAUSE HE IS A LIAR and wants to pick your pocket, folks. Like the money changers that Jesus got furious at by flipping over the money tables in the church court, he has turned what started out as an honorable profession protecting unalienable rights into a profitable franchise to auction people's rights off to the highest bidder using false presumption, omission, and deception, and pocketing all the money. He is a public officer in a SHAM TRUST, the public trust, as an attorney. That SHAM TRUST is the DE FACTO United States Government thoroughly described in the following and it is called "Babylon the Great Harlot" in the Bible Book of Revelation:

*De Facto Government Scam*, Form #05.043 (OFFSITE LINK)
DIRECT LINK: http://sedm.org/Forms/05-MemLaw/DeFactoGov.pdf
FORMS PAGE: https://sedm.org/Forms/FormIndex.htm

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