# *REASONABLE BELIEF ABOUT INCOME TAX LIABILITY*

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*"For **where envy and self-seeking exist, confusion and every evil thing are there.** But the wisdom that is from above is first pure, then peaceable, gentle, willing to yield, full of mercy and good fruits, without partiality and without hypocrisy."*
*[James 3:16-17, Bible, NKJV]*

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# 1 Introduction

Those who are interested in the federal income tax issue and act upon their beliefs occasionally get into trouble, typically by being indicted for some alleged income tax crime. Of course when they are required to put forward a legal defense before the IRS or the Dept. of Justice, they must not only have the ability to testify but they also need to be prepared to offer documentary evidence which supports their beliefs. However, too often when attorneys enter the picture to help them, they find that many people simply have not documented everything upon which they relied. Frequently, these people have not kept the most important documents they studied and relied upon, which thus requires work in locating those particular items. This short memo explains how important it is to keep the books, documents, cases and other "reliance" materials you have studied, especially if that material constitutes an admission made by the government. It also explains the concept of "willfulness" and identifies the legal foundations upon which to base a reasonable informed belief about one's lack of an income tax liability.

What constitutes a "reasonable belief" and how to develop one is therefore the subject of this article. Reasonable belief is important because:

1. All income tax crimes have "willfulness" as a prerequisite.
2. A person who has a reasonable belief that they are not "liable" and who can explain and defend it forcefully cannot "willfully" violate any tax law.
3. If the belief is not only reasonable, but also substantiated by what the law and the courts say on the subject, then the person's beliefs are also difficult to challenge in a court setting as well.

What most Americans consider to be "reasonable belief" on the subject of taxation is quite contrary to what a court, tax attorney, or a jury would consider "reasonable". Most of this disparity results from the vacuum of coverage relating to legal subjects in the public school system. Those who rely on "best industry practice" or on what most people "assume" or "presume" on this subject are building their house on sand and eventually will be victimized for their presumptuousness.

> *"'But the person who does anything presumptuously, whether he is native-born or a stranger, that one brings reproach on the LORD, and he shall be cut off from among his people."*
> *[Numbers 15:30, Bible, NKJV]*

Before we can therefore come to a reasonable, court-defensible assurance that what we believe is not only true, but is also confirmed by what the law actually says, we must therefore take some time to learn what our legal system says about the basis for such a belief. This memorandum of law will attempt to do this. It will also establish what we call a "reliance defense", which is simply facts and legally admissible evidence upon which to base a reasonable belief about either state or federal tax liability.

# 2 The Internal Revenue Code: Public Policy and Civil Religion Disguised to LOOK like "law"

> *"**To lay, with one hand, the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms.***
>
> ***Nor is it taxation. 'A tax,' says Webster's Dictionary, 'is a rate or sum of money assessed on the person or property of a citizen by government for the use of the nation or State.' 'Taxes are burdens or charges imposed by the Legislature upon persons or property to raise money for public purposes.' Cooley, Const. Lim., 479.**"*
> *[Loan Association v. Topeka, 20 Wall. 655 (1874) ]*

It is our contention that:

1. The tax codes are so complex and so convoluted that they are unknowable
2. The Average American not only has never read the tax codes, but wouldn't even know where to go to read them.
3. Even if they could find the Internal Revenue Code or their state revenue code, they wouldn't understand it, because the GOVERNMENT schools very deliberately dumb down the average American by ENSURING that he/she receives no

legal training so that they will defer to a satanic priesthood called the legal profession to make all the important decisions and determinations for them.

4. Even most members of the legal profession have no knowledge of the tax codes.

> *"We must note here, as a matter of judicial knowledge, that most lawyers have only scant knowledge of tax law."*
> *[Bursten v. U.S., 395 F.2d. 976, 981 (5th Cir,. 1968)]*

Hence, what we really have on our hands is not a society of law as the founding fathers intended, but a "society of men", a society of PUBLIC POLICY, a Civil Religion, and a society of Political Correctness, not unlike that in Jesus' time.

> *"**The government of the United States has been emphatically termed a government of laws, and not of men**. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right."*
> *[Marbury v. Madison, 5 U.S. 137, 1 Cranch 137, 2 L.Ed. 60 (1803)]*

And WHAT men? A wicked priesthood of government bureaucrats who only care about padding their own pockets and couldn't care less about your rights or equality under the law. These crooks abuse their authority to manufacture legal ignorance in the government/public school system and then harvest that ignorance when the corporate drones graduate from the fool academy and enter the work/slave force. The public schools manufacture children in their own corporate image, because all governments are corporations. Hence, all children are indoctrinated to become good public officers within the mother corporation called "taxpayers". We can hardly be a "society of law" when the average American is FORBIDDEN from learning or reading enough of the law to properly supervise the activities of their SERVANTS in the government.

In order to turn a "society of law" into a "society of men", such as an oligarchy of judges, judges and prosecutors must substitute THEIR will or that of a covetous policy board called "jurists" in place of what the law actually says:

> *"In the United States, sovereignty resides in the people…the Congress cannot invoke sovereign power of the People to override their will as thus declared."*
> *[Perry v. U.S., 294 U.S. 330 (1935)]*

The "will of the people" is the written law. When a judge won't allow this written law to be discussed in the courtroom, then he is substituting HIS WILL or worst yet, THE JURY'S WILL in place of "their will as thus declared", meaning THE PEOPLE'S WILL.

To make things even worse, at tax trials, the government makes sure that all of the people on the jury and even on the bench have a criminal conflict of interest in relation to the tax matter at issue, because all of them are "tax consumers" who receive socialist "benefits" that derive ***directly*** from the tax at issue. This is a CRIME in violation of 18 U.S.C. §208, 18 U.S.C. §201, 28 U.S.C. §144, and 28 U.S.C. §455.

> *"And **you shall take no bribe, for a bribe blinds the discerning and perverts the words of the righteous**."*
> *[Exodus 23:8, Bible, NKJV]*

> *"He who is greedy for gain troubles his own house,*
> ***But he who hates bribes will live**."*
> *[Prov. 15:27, Bible, NKJV]*

> *"Surely oppression destroys a wise man's reason.*
> *And **a bribe debases the heart**."*
> *[Ecclesiastes 7:7, Bible, NKJV]*

Even the judge in every tax trial is targeted for bribes by the I.R.S. Current U.S. law encourages prosecutorial and judicial conflicts of interest, non-neutrality, non-impartiality and corruption of justice in the federal courts. See:

1. 5 U.S.C. §4502 Rewards In General:
   http://www.law.cornell.edu/uscode/5/usc_sec_05_00004502----000-.html
2. 5 U.S.C. §4503 Agency Rewards:
   http://www.law.cornell.edu/uscode/5/usc_sec_05_00004503----000-.html
3. 5 U.S.C. §4504 Presidential Rewards:
   http://www.law.cornell.edu/uscode/5/usc_sec_05_00004504----000-.html

4. 5 U.S.C. §4505 Rewards to former employees:
http://www.law.cornell.edu/uscode/5/usc_sec_05_00004505----000-.html

None of this bribery is new to the IRS. It's manual on pages 1,229 to 1,291 (Delegation Orders of January 17, 1983) outlines the IRS system of monetary awards . . .

> *"of up to and including $5,000, for any one individual employee or group of employees, in his/her immediate office, including field employees, engaged in National Office projects; and contributions of employees of other government agencies and armed forces members."*
> *[Delegation Orders of January 17, 198, pp. 1229-12913]*

This would include U.S. District Court judges and prosecuting U.S. attorneys from the U.S. Dept. of Justice, or should we say INjustice.

Isn't the most BASIC element of "due process of law" a completely and totally impartial decision maker, meaning an impartial judge AND jury? What do you think that a committee full of tax consumers is going to say when asked whether they like having their tax bill raised and their "benefits" (bribes) reduced by a person who doesn't consent to participate in their Marxist wealth transfer scheme? Here is the way one informed reader puts it:

> *The nation is divided into those who work hard for the benefit of others, and the others who are hardly working - and enjoy those benefits. That is inequitable, and should not be.*
>
> *But as long as the electorate is composed of a majority of takers, the givers won't prevail AND the laws on bribery will chronically be violated as a matter of public policy.*

Now do you know why ALL "income taxes" are in fact statutorily classified as "gifts" in 31 U.S.C. §321? Because they are criminal bribes (see 18 U.S.C. §201) to jurists to ILLEGALLY recruit more public officer franchisees called "taxpayers". Every time you hear the word "tax", you should think of the word "gift", and then ask yourself how a righteous government can throw people in jail for refusing to pay it gifts. Such criminal bribes are also a violation of God's law, which says on the subject the following. In America, by the way, EVERYONE is the "king" referred to below, because THE PEOPLE are the sovereigns and not their public servants:

> *"The king establishes the land by justice, but he who receives [socialist] bribes overthrows it."*
> *[Prov. 29:4, Bible, NKJV]*
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> ---
>
> *Avoid Bad Company*
>
> ***"My son, if sinners [socialists, in this case] entice you [with BRIBES and HANDOUTS],***
> ***Do not consent***
> ***If they say, "Come with us,***
> ***Let us lie in wait to shed blood;***
> ***Let us lurk secretly for the innocent [nontaxpayers] without cause;***
> *Let us swallow them alive like Sheol,*
> *And whole, like those who go down to the Pit:*
> ***We shall fill our houses with spoil [plunder];***
> ***Cast in your lot among us,***
> ***Let us all have one purse" [THE GOVERNMENT PURSE!]--***
> *My son, do not walk in the way with them,*
> *Keep your foot from their path;*
> *For their feet run to evil,*
> *And they make haste to shed blood.*
> *Surely, in vain the net is spread*
> *In the sight of any bird;*
> ***But they lie in wait for their own blood.***
> ***They lurk secretly for their own lives.***
> ***So are the ways of everyone who is greedy for gain;***
> ***It takes away the life of its owners."***
> *[Proverbs 1:10-19, Bible, NKJV]*

That's right. The civil temple called "government" has been turned into a whorehouse, and people have been duped into volunteering to become "taxpayers" are the unwitting whores. The U.S. Supreme Court predicted this corrupt government sanctioned bribery scheme when they ruled that the first income tax passed by Congress was unconstitutional:

> *"**Nothing can be clearer than that what the constitution intended to guard against was the exercise by the general government of the power of directly taxing persons and property within any state through a majority made up from the other states.** It is true that the effect of requiring direct taxes to be apportioned among the states in proportion to their population is necessarily that the amount of taxes on the individual [157 U.S. 429, 583] taxpayer in a state having the taxable subject-matter to a larger extent in proportion to its population than another state has, would be less than in such other state; but this inequality must be held to have been contemplated, and was manifestly designed to operate to restrain the exercise of the power of direct taxation to extraordinary emergencies, and to prevent an attack upon accumulated property by mere force of numbers. "*
>
> …
>
> *"Here I close my opinion. I could not say less in view of questions of such gravity that they go down to the **very foundations of the government**. If the provisions of the Constitution can be set aside by an act of Congress, where is the course of usurpation to end?*
>
> *The present **assault upon capital** is but the beginning. **It will be but the stepping stone to others larger and more sweeping**, until our political contest will become war of the poor against the rich; a war of growing intensity and bitterness."*
> *[Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 158 U.S. 601 (1895).]*

NOW do you know why the Congress had to corrupt the judiciary by making all judges into "taxpayers" with a criminal conflict of interest before income taxes could become widespread? It was because once judges are subject to IRS "selective enforcement" and therefore operate at gunpoint, they will have no choice but to become "taxpayer" recruiters who force people outside their jurisdiction through trickery, "words of art" and treachery to participate ILLEGALLY in excise taxable franchises. See the following cases for PROOF that this is going on: O'Malley v. Woodrough, 307 U.S. 277 (1939), Miles v. Graham, 268 U.S. 501 (1924), United States v. Hatter, 121 S.Ct 1782 (2001).

Thomas Jefferson, our most revered founding father, said that when permanent judges are biased as documented here, it is the DUTY of jurists to read and judge BOTH the FACTS AND THE LAW, and to leave the judge completely out of the decision:

> *"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 ]*
>
> *"**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 ]*

It should therefore also come as no surprise that financially biased judges in tax trials unlawfully and in criminal conspiracy to violate basic constitutional rights per 18 U.S.C. §241:

1. Forbid jurists from reading the law while serving on jury duty.
2. Ban jurists from going into the court's law library to study the law so they can properly supervise the activities of the judge and government prosecutor.
3. Forbid defendants from entering into evidence ANY provision of the tax laws that the jury could read.
4. Will call those who even want to quote what the law says as "frivolous", which is just another way of saying that the law and the people's collective will that it represents is IRRELEVANT!

The reason judges do all the above is because they want JURISTS to substitute their biased policies in place of what the law actually says. The innocent and the ignorant and especially the covetous are putty in the hands of tyrants. The Constitution is a trust document. The Grantors of the trust are the founding fathers. The Beneficiaries are YOU. The Trustees are public officers like the judge and the government prosecutor. The Constitution and all laws passed to implement it prescribe the strict limits placed upon Trustees in their official capacity. By refusing to disclose or discuss the law in the courtroom, indirectly the trustees are refusing to live within their delegation of authority, and making the public trust into a SHAM TRUST, primarily for their own PRIVATE financial advantage. The U.S. Code identifies what this kind of behavior is. It calls it COMMUNISM. They say in 50 U.S.C. §841 that the essence of COMMUNISM is an absolute refusal to recognize or respect the limitations placed upon government workers such as judges and prosecutors by the

Constitution or the laws passed in furtherance of it. Here is what they said which, by the way, constitutes OFFICIAL PUBLIC POLICY:

> *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 under illegal duress], 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 because under duress, 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 International Monetary Fund] 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*

Are you, the jury, going to become a "useful idiot" in the hands of communist public officers in this courtroom and recruit yet another communist by forcing the defendant to join that party and subsidize the bribery scheme? Even the U.S. Supreme Court held that jurists in this predicament aren't allowed to rule on matters that would adversely impact private rights that are UNALIENABLE, and therefore which you cannot lawfully consent to give away to a REAL government. Governments are created to protect, rather than destroy, tax, or regulate YOUR and MY PRIVATE rights.

> *"**The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political [and LEGAL] controversy**, to place them beyond the reach of majorities and officials [AND juries] and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other **fundamental rights may not be submitted to vote; they depend on the outcome of no elections [INCLUDING the "election" of a jury].**"*
> *[West Virginia Bd. of Ed. v Barnett, 319 U.S. 624, 638 (1943)]*

> *"It must be conceded that there are [PRIVATE] rights in every free government beyond the control of the State. **A government which recognized no such [PRIVATE] rights, which held the lives, liberty and property of its citizens, subject at all times to the disposition and unlimited control of even the most democratic depository of power [SUCH AS A JURY], is after all a despotism.** It is true that it is a despotism of the many--of the majority, if you choose to call it so--but it is not the less a despotism."*
> *[Loan Ass'n v. Topeka, 87 U.S. (20 Wall.) 655, 665 (1874)]*

And HOW does the life, liberty, and property become subject to the "unlimited control of even the most democratic depository of power"? By:

1. Refusing the recognize the LIMITS placed by the law upon the judge, the prosecutor, and the jury by REFUSING to discuss the law in the courtroom.
2. By prejudicially presuming that all citizens consented to become public officer franchisees working for the government, all of whose property has been donated to a public use to procure government "benefits". The franchise is called a "trade or business", which the Internal Revenue Code defines as "the functions of a public office." All such presumptions are a violation of due process of law and constitute what the last case above described as "robbery in the name of taxation" implemented not by LAW, but under the COLOR of law by force and coercion.

What Jesus in fact criticized, was that the Pharisees [lawyers] and scribes had substituted PUBLIC POLICY or the "commandments of men" in place of God's laws, and turned a society of laws into a society of men, which is exactly the same thing that is going on in spades today. As a matter of fact, when Pilate couldn't find fault in Him using the REAL law, Jesus had to be handed over to an angry unrestrained mob, which is a synonym for a "society of men", before they would even consider convicting and crucifying Him of anything. That mob was a law unto itself controlled primarily by emotion rather than reason. Here is what Jesus said on this predicament:

> *"**Woe to you lawyers! for you have taken away the keys of knowledge [by ABUSING words of art to deceive, and the rules of statutory construction to add things that are not in the definitions]; you did not enter yourselves, and you hindered those who were entering**."*
> *[Luke 11:52, INTERPRETATION: woe unto lawyers who write a law to deliberately be confusing or who use or interpret a law that is written in a confusing way to hide the truth or deceive people for their own selfish gain]*
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>
> ***"Woe to you, scribes and Pharisees, hypocrites! For you pay tithe of mint and anise and cummin, and have neglected the weightier matters of the law: justice and mercy and faith. These you ought to have done, without leaving the others undone."***
>
> ***[. . .]***
>
> *"**Woe to you, scribes and Pharisees [lawyers], hypocrites!** For you are like whitewashed tombs which indeed appear beautiful outwardly, but inside are full of dead men's bones and all uncleanness.*
>
> *Even so, you also outwardly appear righteous to men, **but inside you are full of hypocrisy and lawlessness**."*
> *[Jesus (God), talking to the lawyers, Matt. 23:13-36, Bible, NKJV]*
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>
> *And when the scribes and Pharisees saw Him eating with **the tax collectors and sinners**, they said to His disciples, "How is it that He eats and drinks with tax collectors and sinners?"*
>
> *When Jesus heart it, He said to them:*
>
> ***"Those who are well have no need of a physician, but those who are sick [tax collectors]. I did not come to call the righteous, but sinners, to repentance."***
> *[Mark 2:16-17, Bible, NKJV]*

Below is proof of our assertions about the complexity and unknowability of the current tax code from the Washington Post:

> *"In an exhaustive 18-month review, the President's Economic Recovery Advisory Board found that the complexity of the nation's tax laws has increased dramatically in recent years. **Lawmakers have changed the code more than 15,000 times since the last major overhaul in 1986.** Meanwhile, instruction booklets for the standard Form 1040 have swelled from 14 pages to 44 pages last year [2009]."*
> *[Volcker-led economic panel pushes lawmakers to simplify U.S. tax code, Washington Post, 9-27-2010]*

Read the above article for yourself:

| SEDM Exhibit #09.032, Washington Post 8-27-2010 Tax Article<br>http://sedm.org/Exhibits/ExhibitIndex.htm |
|---|

Note to reader what the Founding Fathers said about the above situation:

> *"It will be of little avail to the people, that the laws are made by men of their own choice, **if the laws be so voluminous that they cannot be read**, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or **undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow**. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?"* PUBLIUS.
> *[James Madison, Federalist Paper #62]*

In other words the IRC according to Founding Father James Madison, cannot be law because it has been changed more than 15,000 times since 1986 AD.

Also of note are:

1. Spreckels Sugar Refining Co. v. McClain, 192 U.S. 397, 24 S.Ct. 376, 418, U.S. 1904:

> *"Keeping in mind the well-settled rule that* **the citizen is exempt from taxation unless the same is imposed by clear and unequivocal language**, *and that where the construction of a tax law is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid."*

2. White v. Aronson, 302 U.S. 16, 20 & 21, 58 S.Ct. 95, U.S. 1937:

> *"Tax laws, like all other laws, are made to be obeyed. They should therefore be intelligible to those who are expected to obey them."*

Obviously the Internal Revenue Code does not meet any of these basic standards and cannot, by these factors, even be a law.

> *The board also found that the profusion of credits, deductions, phaseouts and conflicting eligibility requirements frays the sanity of ordinary taxpayers just as surely as it complicates the calculations of wealthy families and business owners. Tax provisions affecting families and children were among the most frequently cited sources of confusion, the report said.*
>
> *"**What the report makes clear is the enormous complexity of the tax law** . . . for an ordinary family trying to figure out and make sure they are complying with the laws and taking advantage of benefits offered," said Harvard economist and former Reagan administration economic adviser Martin Feldstein, who led the board's effort to develop a series of options for disentangling the code.*
>
> *For example, the report cites more than 20 tax laws that provide incentives to save for retirement and other purposes, such as education and medical expenses, and that together deprive the Treasury of an estimated $118 billion year. **But their sheer number and conflicting rules leave taxpayers confused and intimidated, the report says, raising doubts about their effectiveness.***

There are a few maxims of law that come to mind:

> ***When you doubt, do not act.*** *Quod dubitas, ne feceris.*
>
> ***Where the law is uncertain, there is no law.*** *Ubi jus incertum, ibi jus nullum.*
>
> ***It is a miserable state of things where the law is vague and uncertain.*** *Res est misera ubi jus est vagam et invertum.*
>
> ***The custom of fixing and refixing (making and annulling) laws is most dangerous.*** *Legis figendi et refigendi consuetudo periculosissima est.*
>
> ***It is a miserable slavery where the law is vague or uncertain.*** *Misera est servitus, ubi jus est vagum aut incertum.*
>
> ***When the law fails to serve as a rule, almost everything ought to be suspected.*** *Ubi non adest norma legis, omnia quasi pro suspectis habenda sunt.*

Anyone that has ever even tried to understand the code knows that it does not meet any standard of law. So remember that it is obvious who the Father of the Internal Revenue Code is. For he is the *father of lies, Satan himself*.

> *John 8:42 Jesus said unto them, If God were your Father, ye would love me: for I proceeded forth and came from God; neither came I of myself, but he sent me.*
>
> *43 Why do ye not understand my speech? even because ye cannot hear my word.*
>
> *44 **Ye are of your father the devil, and the lusts of your father ye will do. He was a murderer from the beginning, and abode not in the truth, because there is no truth in him. When he speaketh a lie, he speaketh of his own: for he is a liar, and the father of it.***

*45 And because I tell you the truth, ye believe me not.*

*46 Which of you convinceth me of sin? And if I say the truth, why do ye not believe me?*

*47 He that is of God heareth God's words: ye therefore hear them not, because ye are not of God.*

*48 Then answered the Jews, and said unto him, Say we not well that thou art a Samaritan, and hast a devil?*

*49 Jesus answered, I have not a devil; but I honour my Father, and ye do dishonour me.*

*50 And I seek not mine own glory: there is one that seeketh and judgeth.*

See the following for more quotes about taxes:

1. Family Guardian: Quotes on Taxes
   http://famguardian.org/Subjects/Taxes/QuotesOnTaxes.htm
2. Sovereignty Fellowship
   http://www.sovereignfellowship.com/tos/19.14/

And a few questions for any current tax slave, ahem, I mean "taxpayer":

1. Why do you act and file a Form 1040 and sign it UNDER PENALTY OF PERJURY when:
   1.1. You KNOW you doubt because the enormous complexity of the tax law?
   1.2. The Bible says it's a sin to PRESUME you know what to do. See Numbers 15:30, NKJV. Hence the only thing you can do is act and choose based ONLY upon admissible and credible evidence that you have seen with your own two eyes.
   1.3. It is a violation of due process of law and sometimes even a CRIME to PRESUME anything in deciding what to do.
   1.4. Not even the IRS will guarantee the accuracy of ANY form you sign? The notion of equal protection requires that the GOVENRMENT shall be held to the same standard as the sovereign people, and yet the IRS violates 26 U.S.C. §6065 by not validating the accuracy of all their forms UNDER PENALTY OF PERJURY, just like they hypocritically require of you.
   1.5. The IRS says you CANNOT trust ANYTHING on their website or anything they publish or write.
   1.6. The courts say you can't trust anything that a government employee says and can trust ONLY the law.
   1.7. You do not know the completed form is true and correct because you CANNOT know it is true and correct without reading a "code" that you have never even read.
   1.8. The entire Internal Revenue Code is identified as a HUGE statutory presumption in 1 U.S.C. §204 and the courts have held that statutory presumptions that damage constitutional rights are impermissible? "Prima facie evidence" means it is a PRESUMPTION, not evidence. Presumptions cannot be used as a substitute for evidence without violating due process or law and sanctioning crime and theft by the government.

> *"It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions."*
> *[Bailey v. Alabama, 219 U.S. 219 (1911)]*

2. And if you consider yourself to be an American Patriot why are you paying a tax that feeds Obama Marxism or Republican Party Fascism when the Internal Revenue Code cannot meet the standards of law established by:
   2.1. The United States Supreme Court.
   2.2. Founding Father James Madison.
   2.3. The Maxims of the Common Law?
3. If you have never even READ any portion of the Internal Revenue Code, and yet you sign tax forms under penalty of perjury stating that you have complied with it, aren't you in effect participating in a state sponsored religion in which:
   3.1. PRESUMPTION that you are complying acts as a substitute for religious "belief" or "faith" and the government becomes your new pagan deity which possesses "supernatural", meaning UNEQUAL powers in relation to you? Aren't they supposed to serve you instead of you serving them?
   3.2. The judge is the priest.
   3.3. The attorneys are the deacons.
   3.4. Court is the church building.

3.5. The franchise contract, which is the Internal Revenue CODE, is the state sponsored "bible"? There is a very good reason why they call it "code" instead of law: Because it is a franchise quasi-contract that doesn't acquire the "force of law" without your consent to BECOME a statutory franchisee called a "taxpayer".

3.6. Worship services are the court hearings?

3.7. "Taxes", which according to 31 U.S.C. §321(d) are really just "gifts", act as tithes to this state-sponsored church?

For a description of this religion, read:

| |
|---|
| *Socialism: The New American Civil Religion*, Form #05.016<br>http://sedm.org/Forms/FormIndex.htm |

On this subject, the U.S. Supreme Court has unequivocally held:

> *"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)]*

And WHAT exactly is it that this state sponsored religion worships? The Bible tells us that it is a religion that worship men and the creations of men, rather than God or Truth or Justice:

> *"**The idols of the nations are silver and gold,***
> ***The work of men's hands.***
> *They have mouths, but they do not speak;*
> *Eyes they have, but they do not see [evil];*
> *They have ears, but they do not hear [evil];*
> *Nor is there any breath in their mouths.*
> *Those who make them are like them;*
> *So is everyone who trusts in them."*
> *[Psalm 135:15-18, Bible, NKJV]*

The Bible also tells us what the reward will be for those who worship the money/mammon false god and idol:

> *"Getting treasures by a lying tongue is the fleeting fantasy of those who seek death."*
> *[Prov. 21:6, Bible, NKJV]*

> *"**For the love of money [and even government "benefits", which are payments] is the root of all evil: which while some coveted after, they have erred from the faith, and pierced themselves through with many sorrows.***
> *But thou, O man of God, flee these things; and follow after righteousness, godliness, faith, love, patience, meekness. Fight the good fight of faith, lay hold on eternal life, whereunto thou art also called, and hast professed a good profession before many witnesses."*
> *[1 Timothy 6:5-12, Bible, NKJV]*

If you would like to read the President's report on tax simplification, see:

| |
|---|
| SEDM Exhibit #09.033<br>http://sedm.org/Exhibits/ExhibitIndex.htm |

# 3 Legal Definition of "willfulness"

This section will provide authorities on the meaning of "willfulness".

## 3.1 Black's Law Dictionary, Sixth Edition

Black's Law Dictionary defines "willfulness" as follows:

> ***willful**. Proceeding from a conscious motion of the will; voluntary; knowingly deliberate. Intending the result which actually comes to pass; designed; intentional; purposeful; not accidental or involuntary.*

*Premeditated; malicious; done with evil intent, or with a bad motive or purpose, or with indifference to the natural consequence; unlawful; without legal justification.*

*An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law. It is a word of many meanings, with its construction often influenced to its context. Screws v. United States, 325 U.S. 91, 101, 65 S.Ct. 1031, 1035, 89 L.Ed. 1495.*

*A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. A willful act differs essentially from a negligent act. The one is positive and the other negative.*
*[Black's Law Dictionary, Sixth Edition, p. 1599]*

## 3.2 U.S. Supreme Court

The best source for a definition from the U.S. Supreme Court is the case of *United States v. Bishop*, 412 U.S. 346 (1973):

*"**The Court, in fact, has recognized that the word "willfully" in these statutes generally connotes a voluntary, intentional violation of a known legal duty**. **It has formulated the requirement of willfulness as "bad faith or evil intent," Murdock, 290 U.S., at 398 , or "evil motive and want of justification in view of all the financial circumstances of the taxpayer," Spies, 317 U.S., at 498 , or knowledge that the taxpayer "should have reported more income than he did." Sansone, 380 U.S., at 353 . See James v. United States, 366 U.S. 213, 221 (1961); McCarthy v. United States, 394 U.S. 459, 471 (1969).***

*This longstanding interpretation of the purpose of the recurring word "willfully" promotes coherence in the group of tax crimes. In our complex tax system, uncertainty often arises even among taxpayers who earnestly wish to follow the law. The Court has said, "It is not the purpose of the law to penalize frank difference of opinion or innocent errors made despite the [412 U.S. 346, 361] exercise of reasonable care." Spies, 317 U.S., at 496 . Degrees of negligence give rise in the tax system to civil penalties. The requirement of an offense committed "willfully" is not met, therefore, if a taxpayer has relied in good faith on a prior decision of this Court. James v. United States, 366 U.S., at 221 -222. Cf. Lambert v. California, 355 U.S. 255 (1957). The Court's consistent interpretation of the word "willfully" to require an element of mens rea implements the pervasive intent of Congress to construct penalties that separate the purposeful tax violator from the well-meaning, but easily confused, mass of taxpayers.*

*Until Congress speaks otherwise, we therefore shall continue to require, in both tax felonies and tax misdemeanors that must be done "willfully," the bad purpose or evil motive described in Murdock, supra. We hold, consequently, that the word "willfully" has the same meaning in 7207 that it has in 7206(1) . Since the only issue in dispute in this case centered on willfulness, it follows that a conviction of the misdemeanor would clearly support a conviction for the felony. 9 Under these circumstances a lesser-included-offense instruction was not required or proper, for in the federal system it is not the function of the jury to set the penalty. Berra v. United States, 351 U.S., at 134 -135. [412 U.S. 346, 362]"*
*[United States v. Bishop, 412 U.S. 346 (1973), Emphasis added]*

## 3.3 Department of Justice, Criminal Tax Manual

Everything after the line below was extracted from section 40.11 of the Department of Justice Criminal Tax Manual, which you can also view at:

*Department of Justice Criminal Tax Manual, 1994 edition*
http://famguardian.org/Publications/DOJTDCTM/DOJTDCTM.htm

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40.11 ***WILLFULNESS***
40.11[1] ***Generally***

Willfulness in protestor cases involves the same underlying principles as it does in any criminal tax case. Accordingly, reference should be made to the discussion of willfulness in the Sections of the *Manual* pertaining to the other various tax offenses. *See* Section 8.06, *supra*.

Willfulness is the voluntary, intentional violation of a known legal duty. *Cheek v. United States, 498 U.S. 192, 201 (1991)*; *United States v. Pomponio, 429 U.S. 10, 12 (1976)*; *United States v. Bishop, 412 U.S. 346, 360 (1973)*; *United States v. Johnson*, 893 F.2d. 451, 453 (1st Cir. 1990) ; *United States v. Schiff, 801 F.2d. 108, 110 (2d Cir. 1986), cert. denied, 480 U.S. 272 (1987)*; *United States v. Snyder*, 766 F.2d. 167, 170-71 (4th Cir. 1985); *United States v. Masat, 948 F.2d. 923, 931 (5th Cir. 1991)*; *United States v. Sassak, 881 F.2d. 276, 280 (6th Cir. 1989)*; *United States v. Benson*, 941 F.2d. 598, 613 (7th Cir. 1991); *United States v. Dykstra*, 991 F.2d. 450, 453 (8th Cir. 1993); *United States v. Kellogg, 955 F.2d. 1244, 1248 (9th Cir. 1992)*; *United States v. Willie, 941 F.2d. 1384, 1392 (10th Cir. 1991)*. It has the same meaning in both the felony and misdemeanor statutes of the Internal Revenue Code. *See* Section 8.06[1], *supra*.

Proof of willfulness may be based totally on circumstantial evidence. *United States v. Schiff*, 612 F.2d. 73, 77-78 (2d Cir. 1979); *Hellman v. United States* 339 F.2d. 36, 38 (5th Cir. 1964); *United States v. Grumka*, 728 F.2d. 794, 797 (6th Cir. 1984); *United States v. Gleason*, 726 F.2d. 385, 388 (8th Cir. 1984); *United States v. Fingado*, 934 F.2d. 1163, 1167 (10th Cir.), *cert. denied*, 112 S.Ct. 320 (1991). Because proof of willfulness usually must be established by circumstantial evidence:

> *[T]rial courts should follow a liberal policy in admitting evidence directed towards establishing the defendant's state of mind. No evidence which bears on this issue should be excluded unless it interjects tangential and confusing elements which clearly outweigh its relevance.*

*United States v. Collorafi*, 876 F.2d. 303, 305 (2d Cir. 1989).

Circumstantial evidence, in protestor cases, held competent to establish willfulness includes:

1. Tax protest activities and philosophies. *United States v. Turano*, 802 F.2d. 10, 11-12 (lst Cir. 1986); *United States v. Eargle*, 921 F.2d. 56, 58 (5th Cir. 1991); *United States v. Grosshans*, 821 F.2d. 1247, 1252 (6th Cir. 1987);
2. Filing of blatantly false W-4 forms in one year relevant to show willfulness and absence of mistake in filing false Schedule C forms in earlier years. *United States v. Johnson*, 893 F.2d. 451, 453 (1st Cir. 1990);
3. Prior taxpaying history, such as the prior filing of valid tax returns followed by the filing of a protest return and a letter from the Internal Revenue Service telling the defendant that his return "did not comply with tax laws and might subject him to criminal penalties." *United States v. Shivers, 788 F.2d. 1046, 1048 (5th Cir. 1986)* ; *United States v. Daniel*, 956 F.2d. 540, 543 (6th Cir. 1992); *United States v. DeClue*, 899 F.2d. 1465 (6th Cir. 1990); *United States v. Green*, 757 F.2d. 116, 123-24 (7th Cir. 1985); *United States v. Upton, 799 F.2d. 432, 433 (8th Cir. 1986)*; *United States v. Poschwatta, 829 F.2d. 1477, 1483 (9th Cir. 1987), cert. denied, 484 U.S. 1064 (1988)*;
4. Subsequent taxpaying conduct. *United States v. Upton, 799 F.2d. 432, 433 (8th Cir. 1986)*; *United States v. Richards, 723 F.2d. 646, 649 (8th Cir. 1983)*;
5. Filing false Forms W-4. *United States v. Connor*, 898 F.2d. 942, 945 (3d Cir. 1990), *cert. denied*, 110 S.Ct. 3284 (1990); *United States v. Shivers, 788 F.2d. 1046, 1048 (5th Cir. 1986)*; *United States v. Carpenter*, 776 F.2d. 1291, 1295 (5th Cir. 1985); *United States v. Ferguson*, 793 F.2d. 828, 831 (7th Cir.), *cert. denied*, 479 U.S. 933 (1986); *United States v. Schmitt, 794 F.2d. 555, 560 (10th Cir. 1986)*;
6. The amount of a defendant's gross income. *United States v. Payne, 800 F.2d. 227 (10th Cir. 1986)* [*i.e.*, the higher the defendant's gross income, the less likely the defendant was unaware of the filing requirement and the more likely the defendant's failure was intentional rather than inadvertent];
7. Proof that knowledgeable persons warned the defendant of tax improprieties. *United States v. Collorafi*, 876 F.2d. 303, 305 (2d Cir. 1989); *United States v. Dack*, 987 F.2d. 1282, 1285 (7th Cir. 1993).

### 40.11[2] ***Good Faith Belief***

A defendant's conduct is not willful if the jury finds that the defendant's conduct resulted from "ignorance of the law or a claim that because of a misunderstanding of the law, he had a good faith belief that he was not violating any of the provisions of the tax laws." *Cheek v. United States, 498 U.S. 192, 202 (1991)*. Cheek claimed that he did not file tax returns because he believed that he was not a taxpayer within the tax laws, that wages are not income, that the Sixteenth Amendment did not authorize the taxation of individuals and that the Sixteenth Amendment was unenforceable. *Cheek*, 498 U.S. at 195. The Court explained that:

> *In the end, the issue is whether, based on all the evidence, the Government has proved that the defendant was aware of the duty at issue, which cannot be true if the jury credits a good-faith misunderstanding and belief submission, whether or not the claimed belief is objectively reasonable.*

*Cheek*, 498 U.S. at 202 (emphasis added). The Supreme Court held that the trial court's jury instructions that Cheek's good faith beliefs or misunderstanding of the law would have to be objectively reasonable to negate willfulness were erroneous with reference to Cheek's non-constitutional arguments, stating:

> *It was therefore error to instruct the jury to disregard evidence of Cheek's understanding that, within the meaning of the tax laws, he was not a person required to file a return or pay income taxes and that wages are not taxable income, as incredible as such misunderstandings of and beliefs about the law might be.*

*Cheek*, 498 U.S. at 203.

The trial court did not err, however, in instructing the jury not to consider Cheek's claims that the tax laws are unconstitutional:

> *We thus hold that in a case like this, a defendant's views about the validity of the tax statutes are irrelevant to the issue of willfulness, need not be heard by the jury, and if they are, an instruction to disregard them would be proper. For this purpose, it makes no difference whether the claims of invalidity are frivolous or have substance.*

*Cheek*, 498 U.S. at 206. *See also United States v. Saussy*, 802 F.2d. 849, 853 (6th Cir. 1986), *cert. denied*, 480 U.S. 907 (1987); *United States v. Kraeger*, 711 F.2d. 6, 7 (2d Cir. 1983); *United States v. Burton*, 737 F.2d. 439, 442 (5th Cir. 1984); *United States v. Latham*, 754 F.2d. 747, 751 (7th Cir. 1985); *United States v. Moore*, 627 F.2d. 830, 833 n.l (7th Cir. 1980), *cert. denied*, 450 U.S. 916 (1981); *United States v. Karsky*, 610 F.2d. 548, 550 (8th Cir. 1979), *cert. denied*, 444 U.S. 1092 (1980); *United States v. Mueller*, 778 F.2d. 539, 541 (9th Cir. 1985); *United States v. Payne, 800 F.2d. 227 (10th Cir. 1986)*; *United States v. Pilcher*, 672 F.2d. 875, 877 (11th Cir.), *cert. denied*, 459 U.S. 973 (1982).

The *Cheek* Court stated that a jury considering a good faith belief claim:

> *would be free to consider any admissible evidence from any source showing that . . . [the taxpayer] was aware of his . . . [duties under the tax laws], including evidence showing his awareness of the Code or regulations, of court decisions rejecting his interpretations of the tax law, of authoritative rulings of the Internal Revenue Service, or any contents of the personal income tax return forms and accompanying instructions . . . .*

*Cheek*, 498 U.S. at 202.

In determining whether a subjective good faith belief was held, a jury should not be precluded from considering the reasonableness of the taxpayer's interpretation of the law.

> *[T]he more unreasonable the asserted beliefs or misunderstandings are, the more likely the jury will consider them to be nothing more than simple disagreement with known legal duties imposed by the tax laws and will find that the Government has carried its burden of proving knowledge.*

*Cheek*, 498 U.S. at 203-04. After remand, the Seventh Circuit upheld Cheek's conviction, *United States v. Cheek*, 3 F.3d. 1057 (7th Cir. 1993), *cert. denied*, 114 S.Ct. 1055 (1994), finding that the trial court's instruction that the jury could "consider whether the defendant's stated belief about the tax statutes was reasonable as a factor in deciding whether he held that belief in good-faith" was proper. *Cheek*, 3 F.3d. at 1063. *See also United States v. Becker*, 965 F.2d. 383, 388 (7th Cir. 1992), *cert. denied*, 112 S.Ct. 1411 (1993); *United States v. Powell*, 955 F.2d. 1206, 1212 (9th Cir. 1992) (jury may consider "the reasonableness of the interpretation of the law in weighing the credibility" of defendants' subjective belief that they were not required to file tax returns).

Tax protestors often claim that their beliefs that they are not required to file returns or pay taxes are based upon a careful study of legal decisions, statutes, legal treatises, and the like, and seek to have such materials admitted into evidence. *See, e.g., United States v. Bonneau*, 970 F.2d. 929, 931 (1st Cir. 1992); *United States v. Willie*, 941 F.2d. 1384, 1391 (10th Cir. 1991), *cert. denied*, 112 S.Ct. 1200 (1992). However, before such materials may be admitted, the taxpayer must lay a sufficient foundation of reliance. Nevertheless, the laying of such a foundation does not guarantee admissibility. Although legal and tax protestor materials upon which the defendant claims to have relied may be relevant to a good faith defense, there are competing interests which militate against the unrestricted admission of this type of evidence. The admission of such materials may confuse the jury as to the law, *see United States v. Barnett*, 945 F.2d. 1296, 1301 (5th Cir. 1991), *cert. denied*, 112 S.Ct. 1487 (1992); *Willie*, 941 F.2d. at 1395-97; *United States v. Kraeger*, 711 F.2d. 6, 7-8 (2d Cir. 1983); *United States v. Stafford*, 983 F.2d. 25, 28 n.14 (5th Cir. 1993); *United States v. Gleason*, 726 F.2d. 385, 388 (8th Cir. 1984); *United States v. Payne*, 978 F.2d. 1177, 1181-82 (10th Cir. 1992), *cert. denied*, 112 S.Ct. 2441 (1993), and may

assist a defendant who wishes to undermine the authority of the court and turn his trial into a tax protestor circus, *see Willie*, 941 F.2d. at 1395 & n.8. The exclusion of such materials from evidence does not prevent a defendant from conveying the core of his defense to the jury: the defendant may still testify as to his asserted beliefs and how he supposedly arrived at them. *See Barnett*, 945 F.2d. at 1301; *United States v. Hairston*, 819 F.2d. 971, 973 (10th Cir. 1987). It is for the district court to weigh the various competing interests and determine, in its discretion, whether, to what extent, and in what form, legal materials upon which a defendant claims to have relied should be admitted in any given case. *See Willie*, 941 F.2d. at 1398; Fed. R. Evid. 403.[1]

A prosecutor should not seek to exclude such evidence in all situations. *See United States v. Gaumer*, 972 F.2d. 723, 725 (6th Cir. 1992) (error not to allow defendant to read relevant excerpts of court opinions and Congressional Record upon which he assertedly relied in determining that he was not required to file tax returns); *United States v. Powell*, 955 F.2d. 1206, 1215 (9th Cir. 1992) ("In § 7203 prosecutions, statutes or case law upon which the defendant claims to have *actually relied* are admissible to disprove that element [willfulness] if the defendant lays a proper foundation which demonstrates such reliance."). Restraint should be exercised where appropriate so as not to jeopardize convictions on appeal. This is particularly true where the defendant has made a specific claim of reliance on a relatively limited amount of material. *See Barnett*, 945 F.2d. at 1301 n.3 (noting that exclusion of specific proffer of one or two sentences from an IRS handbook may have been error, albeit harmless, and contrasting this specific proffer with the "voluminous, 'cover the waterfront' exhibits" that defendant had originally offered). In such a situation, the prosecutor should consider requesting a limiting instruction rather than opposing the admission of such evidence. [2]

For examples of jury instructions on willfulness and the good faith defense that have been upheld, *see United States v. Droge*, 961 F.2d. 1030, 1037-38 (2d Cir.), *cert. denied*, 113 S.Ct. 609 (1992); *Stafford*, 983 F.2d. at 27; *United States v. Masat*, 948 F.2d. 923, 931-32 (5th Cir. 1991); *United States v. Dack*, 987 F.2d. 1282, 1285 (7th Cir. 1993); *United States v. Becker*, 965 F.2d. 383, 388 (7th Cir. 1992), *cert. denied*, 113 S.Ct. 1411 (1993); *United States v. Dykstra*, 991 F.2d. 450, 452-53 (8th Cir. 1993); *United States v. Fingado*, 934 F.2d. 1163, 1166-67 (10th Cir.), *cert. denied*, 112 S.Ct. 320 (1991); *United States v. Collins*, 920 F.2d. 619, 622-23 (10th Cir. 1990), *cert. denied*, 111 S.Ct. 2022 (1991).

## 3.4 Tax Procedure and Tax Fraud Book

The book *Tax Procedure and Tax Fraud, Patricia Morgan, 1999, ISBN 0-314-06586-5* further defines willfulness in the context of taxation as follows:

> ***willfulness***. *The Supreme Court's first attempt to define willfulness came in its 1933 decision of Murdock, supra. The Court first observed that the term "denotes an act which is intentional, or knowing, or voluntary, as distinguished from accidental." In language that would bedevil the courts for years thereafter, the Murdock Court further stated that "willfully" usually means "an act done with a bad purpose; without justifiable excuse; stubbornly, obstinately, perversely * * * or with bad faith or evil intent." Ten years later, the Court in Spies v. United States (S.Ct.1943) stated that the term willfulness connotes "evil motive and want of justification." Thirty years after Spies , in 1973, the Supreme Court was still referring to the willfulness requirement in terms of bad purpose or evil motive. In United States v. Bishop (S.Ct.1973), the Court stated that it "shall continue to require, in both tax felonies and tax misdemeanors that must be done 'willfully,' the bad purpose or evil motive described in Murdock."*
>
> *Finally, in 1976, the Supreme Court ended the confusion caused by these early continuing references to bad purpose and evil motive. Simply put, the issue was whether proof of a specific intent to violate the law was sufficient, or whether the jury was required to find that the taxpayer acted with bad purpose or evil motive. In United States v. Pomponio (S.Ct.1976), a per curiam decision, the Court seemed surprised that lower courts were requiring a finding of bad purpose or evil motive. The Court stated that the lower courts "incorrectly" assumed that the reference to an 'evil motive' in United States v. Bishop and earlier cases meant something more than the specific intent to violate the law***." The Court then stated the meaning of the term in language that remains standard definition: willfulness "simply means a voluntary, intentional violation of a known legal duty."*

[1] Among the factors which would be relevant to such a determination would be the centrality of these materials to a defendant's claimed misunderstanding of the tax laws, the materials' length and potential to confuse the jury, *see* ***Barnett***, 945 F.2d. at 1301 n.3, the degree to which such materials are merely cumulative to a defendant's testimony or to other evidence, the extent to which a defendant may be attempting to use them to instruct the jury on the law or to propagate tax protestor beliefs, and the potential utility of limiting instructions, *see and compare* ***United States v. Powell***, 955 F.2d. 1206, 1214 (9th Cir. 1992), *and* ***Willie***, 941 F.2d. at 1404 n.4 (Ebel, J., dissenting), *with* ***Willie***, 941 F.2d. at 1395 (majority opinion).

[2] The prosecutor may be able to utilize the proffered evidence to demonstrate the implausibility of a defendant's claim of good-faith reliance.

*Although courts and commentators still refer to the evil motive or bad purpose requirement, it is important to recognize that these terms are illustrative and do not impose any additional proof requirement. Thus, a jury finding that a defendant acted with an evil motive is tantamount to the ultimate finding of willfulness; on the other hand, a jury can find that a defendant acted willfully without finding that he acted with bad purpose or evil motive. In other words, although a voluntary violation of a known legal duty may reflect a bad purpose or evil motive, the Government need not prove, and the jury need not find, both the specific intent to violate the law and evil motive or bad purpose.*

*As Bishop, supra, makes clear, the term willfulness means the same thing in tax felonies as it does in tax misdemeanors. There is no lesser standard of intent for the willful failure to file misdemeanor than for the felony of attempted tax evasion: both require a voluntary, intentional violation of a known legal duty. Carelessness or mistake is insufficient in both the felony and the misdemeanor context.*
*[Tax Procedure and Tax Fraud, Patricia Morgan, 1999, ISBN 0-314-06586-5, pp. 310-312, ISBN 0-314-06586-5, 1999]*

# 4 Choice of Law in Civil Tax Litigation[3]

Within civil tax litigation, there are certain rules for determining what law may be cited as evidence of violation or injury. The foundation of these rules is Federal Rule of Civil Procedure 17(b), which says in pertinent part:

*IV. PARTIES > Rule 17.*
*Rule 17. Parties Plaintiff and Defendant; Capacity*

*(b) Capacity to Sue or be Sued.*

***Capacity to sue or be sued is determined as follows:***

***(1) for an individual who is not acting in a representative capacity, by the law of the individual's domicile;***
*(2) **for a corporation, by the law under which it was organized [laws of the District of Columbia]; and***
*(3) for all other parties, by the law of the state where the court is located, except that:*
*(A) a partnership or other unincorporated association with no such capacity under that state's law may sue or be sued in its common name to enforce a substantive right existing under the United States Constitution or laws; and*
*(B) 28 U.S.C. §§ 754 and 959(a) govern the capacity of a receiver appointed by a United States court to sue or be sued in a United States court.*
*[SOURCE: http://www.law.cornell.edu/rules/frcp/Rule17.htm]*

The above means literally that in civil tax litigation, the only type of law that can be cited is the law of the Defendant's domicile. The Defendant's domicile, in turn, is a matter of his own personal and political choice, and it is recorded on government forms, such as driver's license applications, tax forms, etc. See the following for details:

| *Why Domicile and Becoming a "Taxpayer" Require Your Consent*, Form #05.002<br>http://sedm.org/Forms/FormIndex.htm |
|---|

We also emphasize that a person with a domicile within a state of the Union does NOT maintain a domicile within the "United States" as defined in the Internal Revenue Code, 26 U.S.C. §7701(a)(9) and (a)(10) . See:

| http://famguardian.org/Subjects/Taxes/ChallJurisdiction/Definitions/freemaninvestigation.htm |
|---|

Therefore, by implication, the I.R.C. may not be cited against a person domiciled in a state of the Union. The only exception to this requirement is the case of a person who is acting in a representative capacity as an officer of the government. This is alluded to in Rule 17(b) above, when it says:

***Capacity to sue or be sued is determined as follows:***

***(1) for an individual who is not acting in a representative capacity, by the law of the individual's domicile;***
*(2) **for a corporation, by the law under which it was organized [laws of the District of Columbia]; and***

[3] Adapted from *Tax Fraud Prevention Manual, Form #06.008,* Chapter 5.

In the case where a person is acting in a representative capacity over a federal business entity, federal contract, or as a federal "employee", the *American Jurisprudence 2d* legal encyclopedia describes what law prevails. It says of claims of the United States against private parties 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, §42: Interest on Claim]*

Federal office, contract, or benefit claims may not be litigated in a state court because of the Separation of Powers Doctrine. Therefore, they must be litigated in federal court as a contract claim, and the rules of decision must be only federal law, based on the above. The laws to be applied, under Federal Rule of Civil Procedure 17(b), are the laws under which the United States Government federal corporation are organized, which are the U.S. Code, instead of state law. What makes the issue justiciable is that it is a federal benefit, employment, or contract issue. Our memorandum of law below also proves that Subtitle A of the I.R.C. attaches to people in states of the Union as "private law" or "contract law" at:

| *Requirement for Consent*, Form #05.003<br>http://sedm.org/Forms/FormIndex.htm |
|---|

The Internal Revenue Code, Subtitle A therefore attaches to people as "private law", "contract law" and "special law". Even the U.S. Supreme Court admitted this when it said:

> *"Even if the judgment is deemed to be colored by the nature of the obligation whose validity it establishes, and we are free to re-examine it, and, if we find it to be based on an obligation penal in character, to refuse to enforce it outside the state where rendered, see Wisconsin v. Pelican Insurance Co., 127 U.S. 265 , 292, et seq. 8 S.Ct. 1370, compare Fauntleroy v. Lum, 210 U.S. 230 , 28 S.Ct. 641,* ***still the obligation to pay taxes is not penal. It is a statutory liability, quasi contractual in nature, enforceable, if there is no exclusive statutory remedy, in the civil courts by the common-law action of debt or indebitatus assumpsit.*** ***United States v. Chamberlin, 219 U.S. 250 , 31 S.Ct. 155; Price v. United States, 269 U.S. 492 , 46 S.Ct. 180; Dollar Savings Bank v. United States, 19 Wall. 227; and see Stockwell v. United States, 13 Wall. 531, 542; Meredith v. United States, 13 Pet. 486, 493. This was the rule established in the English courts before the Declaration of Independence.*** *Attorney General v. Weeks, Bunbury's Exch. Rep. 223; Attorney General v. Jewers and Batty, Bunbury's Exch. Rep. 225; Attorney General v. Hatton, Bunbury's Exch. Rep. [296 U.S. 268, 272] 262; Attorney General v. _ _, 2 Ans.Rep. 558; see Comyn's Digest (Title 'Dett,' A, 9); 1 Chitty on Pleading, 123; cf. Attorney General v. Sewell, 4 M.&W. 77. "*
> *[Milwaukee v. White, 296 U.S. 268 (1935)]*

Below is the meaning of "quasi-contract" from the above quote:

> *"**Quasi contact**. An obligation which law creates in absence of agreement; it is invoked by courts where there is unjust enrichment. Andrews v. O'Grady, 44 Misc.2d. 28, 252 N.Y.S.2d. 814, 817. Sometimes referred to as implied-in-law contracts (as a legal fiction) to distinguish them from implied-in-fact contracts (voluntary agreements inferred from the parties' conduct). Function of "quasi-contract" is to raise obligation in law where in fact the parties made no promise, and it is not based on apparent intention of the parties. Fink v. Goodson-Todman Enterprises, Limited, 9 C.A.3d 996, 88 Cal.Rptr. 679, 690. See also Contract."*
> *[Black's Law Dictionary, Sixth Edition, p. 1245]*

The trouble is, the federal courts refuse to acknowledge the requirement to prove written or even constructive consent to the contract, and by ignoring the requirement for written, explicit consent, they have in effect made participation in this "scheme" to defraud the people involuntary and enforced. The result is racketeering and extortion, in violation of 18 U.S.C. §1951. We can easily see how being party to this contract makes us into "domiciliaries" and "residents" of the District of Columbia by examining the older implementing regulations for Section 7701 of the Internal Revenue Code below. Note that a party becomes a "resident" by virtue of whether they are engaged in a "trade or business", which means federal contracts and employment. In effect, consenting to the federal employment contract by engaging in a "trade or

business" contractually shifts one's domicile to the District of Columbia. Here is the regulation which proves this, which by the way was conveniently REMOVED from the code right after we published this finding in order to hide the true nature of the income tax from the average American:

> *26 CFR §301.7701-5 Domestic, foreign, resident, and nonresident persons.*
>
> *A domestic corporation is one organized or created in the United States, including only the States (and during the periods when not States, the Territories of Alaska and Hawaii), and the District of Columbia, or under the law of the United States or of any State or Territory. A foreign corporation is one which is not domestic. A domestic corporation is a resident corporation even though it does no business and owns no property in the United States.* ***A foreign corporation engaged in trade or business within the United States is referred to in the regulations in this chapter as a resident foreign corporation, and a foreign corporation not engaged in trade or business within the United States, as a nonresident foreign corporation****. A partnership engaged in trade or business within the United States is referred to in the regulations in this chapter as a resident partnership, and a partnership not engaged in trade or business within the United States, as a nonresident partnership.* ***Whether a partnership is to be regarded as resident or nonresident is not determined by the nationality or residence of its members or by the place in which it was created or organized.***
> *[26 CFR §301.7701-5, Amended by T.D. 8813, Federal Register: February 2, 1999 (Volume 64, Number 21), Page 4967-4975]*

To give you one simple example of how Subtitle A of the I.R.C. attaches to people in states of the Union as a federal employment contract and "private law" issue consistent with the above, consider the IRS Form W-4. The regulations describing the W-4 identify it as a "voluntary withholding agreement". Here is the regulation:

> *Title 26*
> *CHAPTER I*
> *SUBCHAPTER C*
> *PART 31*
> *Subpart E*
> *Sec. 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 Sec. 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. (b) Form and duration of agreement. (1)(i) Except as provided in subdivision (ii) of this subparagraph, an employee who desires to enter into an agreement under section 3402(p) shall furnish his employer with Form W-4 (withholding exemption certificate) executed in accordance with the provisions of section 3402(f) and the regulations thereunder. The furnishing of such Form W-4 shall constitute a request for withholding.*

Black's Law Dictionary defines an "agreement" essentially as a contract. When you fill out and submit a W-4, you are signing a contract or agreement to procure "social insurance" from the national (not "federal") government. That contract:

1. Makes you into a "Trustee" over federal property. See: http://famguardian.org/TaxFreedom/Forms/Emancipation/SSTrustIndenture.pdf
2. Makes you into a federal "employee", or at least an agent or fiduciary for a federal trust which is wholly owned by the mother corporation, the "United States", as defined in 28 U.S.C. §3002(15)(A).
3. Makes you into an "officer of a corporation", who is liable under 26 U.S.C. §6671(b) for all I.R.C. penalties and liable for all criminal provisions of the I.R.C. under 26 U.S.C. §7343.
4. Shifts your effective legal domicile to the District of Columbia, because that is the domicile of the trust that you now represent. This is confirmed by 26 U.S.C. §7701(a)(39) and 26 U.S.C. §7408(d) and Federal Rule of Civil Procedure 17(b).
5. Makes the Social Security Number into a "Taxpayer Identification Number" and a license number for the Trustee, which is now you. See: http://sedm.org/LibertyU/WhoAreTaxpayers.pdf
6. Makes your earnings into federal revenues and you into a "transferee" and "fiduciary" over federal payments. See 26 U.S.C. §§6901 to 6903.
7. Makes you into a federal subcontractor or "Kelley girl".
8. Donates your earnings and your time voluntarily to a "public use", thereby giving the public the right to control that use:

> *"Surely the matters in which the public has the most interest are the supplies of food and clothing; yet can it be that by reason of this interest the state may fix the price at which the butcher must sell his meat, or the vendor of boots and shoes his goods? Men are endowed by their Creator with certain unalienable rights,-'life, liberty, and the pursuit of happiness;' and to 'secure,' not grant or create, these rights, governments are instituted.* ***That property which a man has honestly acquired he retains full control of, subject to these limitations: First, that he shall not use it to his neighbor's injury, and that does not mean that he must use it for his neighbor's benefit; second, that if he devotes it to a public use, he gives to the public a right to control that use; and third, that whenever the public needs require, the public may take it upon payment of due compensation."*** *[Budd v. People of State of New York, 143 U.S. 517 (1892)]*

9. Makes the 1040 form into a profit and loss statement for a federal business trust. The amount "returned" on this form is the "corporate profit" that is the subject of the I.R.C. Subtitle A income tax. In effect, the 1040 form is a method by which subsidiaries of the mother corporation send "kickbacks" to the mother corporation.
10. Makes you into a withholding agent who is liable under 26 U.S.C. §1461 to "return" federal payments to your new employer, the federal government.

You can read why all the above is true in the following sources, should you wish to further investigate:

1. *Great IRS Hoax*, Form #11.302, Sections 5.6.11 and 5.6.16: http://famguardian.org/Publications/GreatIRSHoax/GreatIRSHoax.htm
2. *Resignation of Compelled Social Security Trustee*, Form #06.002: http://sedm.org/Forms/FormIndex.htm

Based on the above analysis, we will now list what law is admissible as evidence (not "presumed" evidence, but REAL evidence) of liability in a federal trial relating to tax issues. This list was adapted from the beginning of Chapter 5 of the *Tax Fraud Prevention Manual*, Form #06.008:

1. Federal district and circuit courts are administrative franchise courts created under the authority of Article 4, Section 3, Clause 2 of the Constitution and which have jurisdiction only over the following:
   1.1. Plenary/General jurisdiction over federal territory: Implemented primarily through "public law" and applies generally to all persons and things. This is a requirement of "equal protection" found in 42 U.S.C. §1981. Operates upon:
      1.1.1. The District of Columbia under Article 1, Section 8, Clause 17 of the U.S. Constitution.
      1.1.2. Federal territories and possessions under Article 4, Section 3, Clause 3 of the U.S. Constitution.
      1.1.3. Special maritime jurisdiction (admiralty) in territorial waters under the exclusive jurisdiction of the general/federal government.
      1.1.4. Federal areas within states of the Union ceded to the federal government. Federal judicial districts consist entirely of the federal territory within the exterior boundaries of the district, and do not encompass land not ceded to the federal government as required by 40 U.S.C. §255 and its successors, 40 U.S.C. §3111 and 3112. See section 6.4 of the *Tax Fraud Prevention Manual*, Form #06.008 et seq for further details.
   1.2. Subject matter jurisdiction:
      1.2.1. "Public laws" which operate throughout the states of the Union upon the following subjects:
         1.2.1.1. Postal fraud. See Article 1, Section 8, Clause 7 of the U.S. Constitution..
         1.2.1.2. Counterfeiting under Article 1, Section 8, Clause 6 of the U.S. Constitution.
         1.2.1.3. Treason under Article 4, Section 2, Clause 3 of the U.S. Constitution.
         1.2.1.4. Interstate commercial crimes under Article 1, Section 8, Clause 3 of the U.S. Constitution.
      1.2.2. "Private law" or "special law" pursuant to Article 4, Section 3, Clause 2 of the U.S. Constitution. Applies only to persons and things who individually consent through private agreement or contract. Note that this jurisdiction also includes contracts with states of the Union and private individuals in those states. Includes, but is not limited exclusively to the following:
         1.2.2.1. Federal employees, as described in Title 5 of the U.S. Code.
         1.2.2.2. Federal contracts and "public offices".
         1.2.2.3. Federal chattel property.
         1.2.2.4. Subtitle A of the Internal Revenue Code.
         1.2.2.5. Social Security, found in 42 U.S.C. Chapter 7.
2. Internal Revenue Manual, Section 4.10.7.2.9.8 says that the IRS cannot cite rulings below the Supreme Court to apply to more than the specific person who litigated:

*IRM 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.*
*[Source: http://www.irs.gov/irm/part4/ch10s11.html]*

This provision simply means that the IRS may not cite any court case below the Supreme Court against anyone other than the party who litigated it.

3. There is no federal common law within states of the Union, according to the Supreme Court in *Erie Railroad v. Tompkins*, 304 U.S. 64 (1938). By "federal common law", we mean federal judicial precedent that governs legal disputes over matters under exclusive state control, jurisdiction, and sovereignty. This would include all subject matters not delegated to the federal government by the federal Constitution. The reason why there can be no federal common law within states of the Union is that the federal courts cannot interfere with the sovereignty of the state courts and governments within their exclusive spheres. See *Alden v. Maine*, 527 U.S. 706 (1999) for a thorough explanation of this concept of sovereign immunity within judicial tribunals that is the foundation of separation of powers between the state and federal governments. Consequently, the rulings of federal district and circuit courts have no relevancy to state citizens domiciled in states of the Union who do not declare themselves to be "U.S. citizens" under 8 U.S.C. §1401 and who would litigate under constitutional diversity of citizenship pursuant to Article III, Section 2 of the Constitution but NOT statutory diversity pursuant to 28 U.S.C. §1332.

*"There is no Federal Common Law, and Congress has no power to declare substantive rules of Common Law applicable in a state. Whether they be local or general in their nature, be they commercial law or a part of the Law of Torts"*
*[Erie Railroad v. Tompkins, 304 U.S. 64 (1938)]*

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***"Common law**. As distinguished from statutory law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs and, in this sense, particularly the ancient unwritten law of England. In general, it is a body of law that develops and derives through judicial decisions, as distinguished from legislative enactments. The "common law" is all the statutory and case law background of England and the American colonies before the American revolution. People v. Rehman, 253 C.A.2d 119, 61 Cal.Rptr. 65, 85. It consists of those principles, usage and rules of action applicable to government and security of persons and property which do not rest for their authority upon any express and positive declaration of the will of the legislature. Bishop v. U.S., D.C.Tex., 334 F.Supp. 415, 418.*

*"Calif. Civil Code, Section 22.2, provides that the "common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in all the courts of this State."*

*"In a broad sense, "common law" may designate all that part of the positive law, juristic theory, and ancient custom of any state or nation which is of general and universal application, thus marking off special or local rules or customs.*

*"For federal common law, see that title.*

*"As a compound adjective "common-law" is understood as contrasted with or opposed to "statutory," and sometimes also to "equitable" or to "criminal."*
*[Black's Law Dictionary, Sixth Edition, p. 276]*

4. The Rules of Decision Act, 28 U.S.C. §1652, requires that the laws of the states of the Union are the only rules of decision lawfully permissible in federal courts. This means that EVERY federal court MUST cite state law and not federal law in all INCOME tax cases and MAY NOT cite federal case law.
5. The Federal Rule of Civil Procedure 17(b) say that the capacity to sue or be sued is determined by the law of the individual's domicile. It quotes two and only two exceptions to this rule, which are:
   5.1. A person acting in a representative capacity as an officer of a federal entity.
   5.2. A corporation that was created and is domiciled within federal territory.

   This means that if a person is domiciled within the exclusive jurisdiction of a state of the Union and not within a federal enclave, then state law are the rules of decision rather than federal law. Since state income tax liability in nearly every state is dependent on a federal liability first, this makes an income tax liability impossible for those domiciled outside the federal zone or inside the exclusive jurisdiction of a state, because such persons cannot be statutory "U.S. citizens" as defined in 8 U.S.C. §1401 nor "residents" as defined in 26 U.S.C. §7701(b)(1)(A).

> *IV. PARTIES > Rule 17.*
> *Rule 17. Parties Plaintiff and Defendant; Capacity*
>
> *(b) Capacity to Sue or be Sued.*
>
> ***Capacity to sue or be sued is determined as follows:***
>
> ***(1) for an individual who is not acting in a representative capacity, by the law of the individual's domicile;***
> ***(2) for a corporation, by the law under which it was organized; and***
> *(3) for all other parties, by the law of the state where the court is located, except that:*
> *(A) a partnership or other unincorporated association with no such capacity under that state's law may sue or be sued in its common name to enforce a substantive right existing under the United States Constitution or laws; and*
> *(B) 28 U.S.C. §§ 754 and 959(a) govern the capacity of a receiver appointed by a United States court to sue or be sued in a United States court.*
> *[SOURCE: http://www.law.cornell.edu/rules/frcp/Rule17.htm]*

A person engaged in a "trade or business" occupies a "public office" within the U.S. government, which is a federal corporation (28 U.S.C. §3002(15)(A)) created and domiciled on federal territory. They are also acting in a representative capacity as an officer of said corporation. Therefore, such "persons" are the ONLY real taxpayers against whom federal law may be cited outside of federal territory. Anyone in the government who therefore wishes to enforce federal law against a person domiciled outside of federal territory (the "United States" as defined in 26 U.S.C. §7701(a)(9) and (a)(10) and 4 U.S.C. §110(d)) and who is therefore not a statutory "U.S. citizen" or "resident" (alien) therefore must satisfy the burden of proof *with evidence* to demonstrate that the defendant lawfully occupied a public office within the U.S. government in the context of all transactions that they claim are subject to tax. See:

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|---|
| *The "Trade or Business" Scam*, Form #05.001<br>http://sedm.org/Forms/FormIndex.htm |

6. 28 U.S.C. §2679(d)(3) indicates that any action against an officer or employee of the United States, if he was not acting within his lawful delegated authority or in accordance with law, must be removed to State court and prosecuted exclusively under state law.
7. Any government representative, and especially one who is from the Dept. of Justice or the IRS, who cites a case below the Supreme Court in the case of a person who is a "national" but not a "citizen" under federal law as described in this book, is abusing case law for political purposes, usually with willful intent to deceive the hearer. Such devious tactics can only be described as abuse of case law for political, rather than lawful, purposes. Federal courts, incidentally, are NOT allowed to involve themselves in such "political questions", and therefore should not allow this type of abuse of case law, but judges who are fond of increasing their retirement benefits often will acquiesce if you don't call them on it as an informed American. This kind of bias on the part of federal judges, incidentally, is highly illegal under 28 U.S.C. §144 and 28 U.S.C. §455.

The book *Conflicts in a Nutshell* confirms some of the above conclusions by saying the following:

> *"After some 96 years of this, the Supreme Court acknowledged the unfair choice of forum this gave the plaintiff in a case governed by decisional rather than statutory law merely because the plaintiff and defendant happened to come from different states. Reconstruing the Rules of Decision Act, the Supreme Court in Erie overruled Swift and held that state law governs in the common law as well as in the statutory situation. Subsequent cases clarified that this means forum law; the law of the state in which the federal court is sitting.*

> *"The result is that the federal court in a diversity case sits in effect as just another state court, seeking out forum state law for all substantive issues. The Rules of Decision Act does not apply to procedural matters, however; for matters of procedure a federal court, sitting in a diversity or any other kind of case, applies its own rules. This has been so since 1938, when , coincidentally (Erie was also decided in 1938), the Federal Rules of Civil Procedure arrived on the scene."*
> *[Conflicts in a Nutshell, David D. Seigel, West Publishing, 1994; ISBN 0-314-02952-4, p. 317]*

See section 5.1.4 of the *Tax Fraud Prevention Manual*, Form #06.008 for further details on how the DOJ, IRS, and the Federal Judiciary abuse case law for political rather than legitimate or Constitutional legal purposes in order to encourage and foster false "presumption". Consequently, as you read the cites provided in this chapter, all of which derive from federal courts, you must take them with a grain of salt and a healthy bit of discretion. See also the memorandum of law entitled "Political Jurisdiction" to show how they abuse due process to injure your Constitutional rights by politicizing the courtroom:

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|---|
| *Political Jurisdiction*, Form #05.004<br>http://sedm.org/Forms/FormIndex.htm |

The above choice of law rules for federal district and circuit courts can be further summarized below:

1. Civil Jurisdiction originates from one or more of the following. Note that jurisdiction over all the items below originates from Article 4, Section 3, Clause 2 of the United States Constitution and relates to community "property" of the states under the stewardship of the federal government.
   - 1.1. Persons domiciled on federal territory wherever physically located. These persons include:
     - 1.1.1. Statutory "U.S. citizens" pursuant to 8 U.S.C. §1401.
     - 1.1.2. Statutory "residents" (aliens) lawfully admitted pursuant to 8 U.S.C. §1101(a)(3).
     - 1.1.3. "U.S. persons" defined in 26 U.S.C. §7701(a)(30).
   - 1.2. Engaging in franchises offered by the national government to persons domiciled only on federal territory, wherever physically situated. This includes jurisdiction over:
     - 1.2.1. Public officers, who are called "employees" in 5 U.S.C. §2105.
     - 1.2.2. Federal agencies and instrumentalities.
     - 1.2.3. Federal corporations
     - 1.2.4. Social Security, which is also called Old Age Survivor's Disability Insurance (OASDI).
     - 1.2.5. Medicare.
     - 1.2.6. Unemployment insurance, which is also called FICA.
   - 1.3. Management of federal territory and contracts.
2. Criminal jurisdiction originates from crimes committed only on federal territory.

In law, rights are property:

> ***Property.*** *That which is peculiar or proper to any person; that which belongs exclusively to one. In the strict legal sense,* ***an aggregate of rights which are guaranteed and protected by the government****. Fulton Light, Heat & Power Co. v. State, 65 Misc.Rep. 263, 121 N.Y.S. 536. The term is said to extend to every species of valuable right and interest. More specifically, ownership; the unrestricted and exclusive right to a thing; the right to dispose of a thing in every legal way, to possess it, to use it, and to exclude every one else from interfering with it. That dominion or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects. The exclusive right of possessing, enjoying, and disposing of a thing. The highest right a man can have to anything; being used to refer to that right which one has to lands or tenements, goods or chattels, which no way depends on another man's courtesy.*
>
> *The word is also commonly used to denote everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal, everything that has an exchangeable value or which goes to make up wealth or estate.* ***It extends to every species of valuable right and interest, and includes real and personal property, easements, franchises, and incorporeal hereditaments, and includes every invasion of one's property rights by actionable wrong.*** *Labberton v. General Cas. Co. of America, 53 Wash.2d 180, 332 P.2d. 250, 252. 254.*
>
> *Property embraces everything which is or may be the subject of ownership, whether a legal ownership. or whether beneficial, or a private ownership. Davis v. Davis. TexCiv-App., 495 S.W.2d. 607. 611. Term includes not only ownership and possession but also the right of use and enjoyment for lawful purposes. Hoffmann v. Kinealy, Mo., 389 S.W.2d. 745, 752.*

*Property, within constitutional protection, denotes group of rights inhering in citizen's relation to physical thing, as right to possess, use and dispose of it. Cereghino v. State By and Through State Highway Commission, 230 Or. 439. 370 P.2d. 694. 697.*

*Goodwill is property, Howell v. Bowden, TexCiv. App.. 368 S.W.2d. 842, &18; as is an insurance policy and rights incident thereto, including a right to the proceeds, Harris v. Harris, 83 N.M. 441,493 P.2d. 407, 408.*

*Criminal code. "Property" means anything of value. including real estate, tangible and intangible personal property, contract rights, choses-in-action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power. Model Penal Code. Q 223.0. See also Property of another, infra. Dusts. Under definition in Restatement, Second, Trusts, Q 2(c), it denotes interest in things and not the things themselves.*
*[Black's Law Dictionary, Fifth Edition, p. 1095]*

Anything that conveys rights is also property. Contracts convey rights and therefore are property. All franchises are contracts between the grantor and grantee and therefore also are property. Therefore, contracts, franchises, territory, and domicile (which is a protection franchise) all constitute property of the national government and are the original of all civil jurisdiction over the individual in federal courts. It is this jurisdiction mainly over government/public franchises which is the origin of nearly all civil jurisdiction that federal courts assert over most Americans.

All franchises cause those engaged in them to take on a "public character" and become government agents, officers, and "public officers" of one kind or another and the "office" they occupy has an effective domicile on federal territory. The public office is the "res" or subject of nearly all civil proceedings in the district and circuit franchise courts, and not the physical person occupying said office.

*"**Res**. Lat. **The subject matter of a trust [the Social Security Trust, in most cases] or will [or legislation].** In the civil law, a thing; an object. As a term of the law, this word has a very wide and extensive signification, including not only things which are objects of property, but also such as are not capable of individual ownership. And in old English law it is said to have a general import, comprehending both corporeal and incorporeal things of whatever kind, nature, or species. **By "res," according to the modern civilians, is meant everything that may form an object of rights, in opposition to "persona," which is regarded as a subject of rights. "Res," therefore, in its general meaning, comprises actions [or CONSEQUENCES of choices and CONTRACTS/AGREEMENTS you make by procuring BENEFITS] of all kinds; while in its restricted sense it comprehends every object of right, except actions.** This has reference to the fundamental division of the Institutes that all law relates either to persons, to things, or to actions.*

***Res is everything that may form an object of rights and includes an object, subject-matter or status.** In re Riggle's Will, 11 A.D.2d 51 205 N.Y.S.2d. 19, 21, 22. **The term is particularly applied to an object, subject-matter, or status, considered as the defendant [hence, the ALL CAPS NAME] in an action, or as an object against which, directly, proceedings are taken.** Thus, in a prize case, the captured vessel is "the res"; and proceedings of this character are said to be in rem. (See In personam; In Rem.) "Res" may also denote the action or proceeding, as when a cause, which is not between adversary parties, is entitled "In re _____".*
*[Black's Law Dictionary, Sixth Edition, pp. 1304-1306]*

The trust they are talking about in the phrase "subject matter of a trust" is the "public trust". Government is a public trust:

*TITLE 5--ADMINISTRATIVE PERSONNEL*
*CHAPTER XVI--OFFICE OF GOVERNMENT ETHICS*
*PART 2635--STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH--Table of Contents*
*Subpart A--General Provisions*
*Sec. 2635.101 Basic obligation of public service.*

*(a) **Public service is a public trust**. Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.*

In the case below, this source of civil jurisdiction over government franchises is called "statutory law":

***One great object of the Constitution is to permit citizens to structure their private relations as they choose subject only to the constraints of statutory or decisional law**.*

> ***To implement these principles, courts must consider from time to time where the governmental sphere [e.g. "public purpose" and "public office"] ends and the private sphere begins. Although the conduct of private parties lies beyond the Constitution's scope in most instances, governmental authority may dominate an activity to such an extent that its participants must be deemed to act with the authority of the government and, as a result, be subject to constitutional constraints.*** *This is the jurisprudence of state action, which explores the "essential dichotomy" between the private sphere and the public sphere, with all its attendant constitutional obligations. Moose Lodge, supra, at 172. "*
>
> *[. . .]*
>
> *Given that the statutory authorization for the challenges exercised in this case is clear, the remainder of our state action analysis centers around the second part of the Lugar test, whether a private litigant, in all fairness, must be deemed a government actor in the use of peremptory challenges. Although we have recognized that this aspect of the analysis is often a fact-bound inquiry, see Lugar, supra, 457 U.S. at 939, our cases disclose certain principles of general application.* ***Our precedents establish that, in determining whether a particular action or course of conduct is governmental in character, it is relevant to examine the following: the extent to which the actor relies on governmental assistance and benefits, see Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478 (1988); Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961); whether the actor is performing a traditional governmental function, see Terry v. Adams, 345 U.S. 461 (1953); Marsh v. Alabama, 326 U.S. 501 (1946); cf. San Francisco Arts & Athletics, Inc. v. United States Olympic [500 U.S. 614, 622] Committee, 483 U.S. 522, 544 -545 (1987);*** *and whether the injury caused is aggravated in a unique way by the incidents of governmental authority, see Shelley v. Kraemer, 334 U.S. 1 (1948). Based on our application of these three principles to the circumstances here, we hold that the exercise of peremptory challenges by the defendant in the District Court was pursuant to a course of state action.*
> *[Edmonson v. Leesville Concrete Company, 500 U.S. 614 (1991)]*

In support of the above conclusions, the following memorandum of law exhaustively analyzes the subject of civil statutory jurisdiction of the national government over persons domiciled outside of federal territory and in states of the Union and concludes that all statutory law is law only for the government and franchisees who are also part of the government:

| |
|---|
| *Why Statutory Civil Law is Law for Government and Not Private Persons*, Form #05.037<br>http://sedm.org/Forms/FormIndex.htm |

We will now summarize the conclusions of this section with a table so that they are perfectly clear:

1 **Table 1: Choice of law in tax litigation**

| # | Description | Choice of law | |
|---|---|---|---|
| | | ***Persons domiciled in states of the Union with no federal contracts, benefits, agency, or employment*** | ***Federal employees, contractors, benefit recipients, and agents*** |
| 1 | Subject matter constituting authority federal jurisdiction | None | Federal employment, contracts, agency |
| 2 | Authorities on source of jurisdiction | FRCP Rule 17(b)<br>Rules of Decision Act, 28 U.S.C. §1652<br>*Erie Railroad v. Tompkins*, 304 U.S. 64 (1938) | FRCP Rule 17(b)<br>5 U.S.C. §552(a)(1)<br>5 U.S.C. §553(a)(2)<br>26 CFR §601.702(a)(1)<br>31 CFR §1.3(a)(4)<br>44 U.S.C. §1505(a). |
| 3 | Only authorized place to litigate | State court<br>(See Alden v. Maine, 527 U.S. 706 (1999)) | Federal court<br>(See Alden v. Maine, 527 U.S. 706 (1999)) |
| 4 | Law to be applied | State revenue codes<br>(Internal Revenue Code is *excluded*)<br>State judicial precedents (stare decisis) ONLY | Internal Revenue Code<br>Federal District and Circuit Court precedents (stare decisis) ONLY |
| 5 | "Presumption" in court | Prohibited by U.S. Constitution because violates "due process" of law | Not prohibited, because Bill of Rights (first ten Amendments to the United States Constitution) do not apply in the "federal zone" |
| 6 | Taxable activity | None | "trade or business" as defined in 26 U.S.C. §7701(a)(26). See: http://famguardian.org/Subjects/Taxes/Articles/TradeOrBusinessScam.htm |
| 7 | Earnings are | Devoted to a private use | Devoted to a "public use" to procure "privileges" such as tax deductions under 26 U.S.C. §162, Earned income credits under 26 U.S.C. §32, and reduced liability, graduated rate under 26 U.S.C. §1. |
| 8 | Legal domicile of Defendant | State of the Union | District of Columbia<br>(see 26 U.S.C. §7701(a)(9) and (a)(10)) |
| 9 | Agency (role) of Defendant | Natural person (self)<br>(See *Hale v. Henkel*, 201 U.S. 43 (1906)) | 1 "Transferee" under 26 U.S.C. §6901<br>2 "Fiduciary" under 26 U.S.C. §6903<br>3 Federal "employee" under 26 CFR §31.3401(c )-1<br>4 "Officer of a corporation" under 26 U.S.C. §6671(b) and 26 U.S.C. §7343<br>5 "Public office". See Osborn v. Bank of U.S., 22 U.S. 738 (1824) for definition meaning of "public office" |
| 10 | Contract which created federal agency/employment | None | Social Security Form SS-5<br>IRS Form W-4<br>IRS Form 1040 |
| 11 | What you have to do to terminate federal agency/employment | Nothing | Send in:<br>*Resignation of Compelled Social Security Trustee*, Form #06.002:<br>http://sedm.org/Forms/FormIndex.htm |

| # | Description | Choice of law | |
|---|---|---|---|
| | | ***Persons domiciled in states of the Union with no federal contracts, benefits, agency, or employment*** | ***Federal employees, contractors, benefit recipients, and agents*** |
| 12 | Admissible evidence in a tax trial | State law<br>Statutes at Large after 1939. See 53 Stat. 1, Section 4.<br>Rulings of the Supreme Court and not lower courts. See Internal Revenue Manual, Section 4.10.7.2.8 | Whatever the judge wants. There can be no violation of due process for people who are not protected by the Constitution. |
| 13 | Enforcement of federal law requires ALL of the following | Positive law (see 1 U.S.C. §204 legislative notes for list of titles that are positive law). See: http://sedm.org/Forms/MemLaw/Consent.pdf<br>Implementing regulations published in the Federal Register | Proof of consent/contract<br>Statutes only.<br>Implementing regulations published in the Federal Register are NOT required under 44 U.S.C. §1505(a)(1) and 5 U.S.C. §553(a)(2). |

The party on the left in the above table, who is the person with no contracts, employment, or agency, is the person you want to be in order to be free and sovereign. The U.S. Supreme Court has said of such a person:

> *"The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State or to his neighbor to divulge his business, or to open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the State, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the Constitution. Among his rights are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under a warrant of the law. **He owes nothing to the public [including so-called "taxes" under Subtitle A of the I.R.C.] so long as he does not trespass upon their rights.**"*
> *[Hale v. Henkel, 201 U.S. 43, 74 (1906)]*

On the other hand, the party on the right, the federal employee or contractor, has essentially no Constitutional rights. This was explained by the U.S. Supreme Court as follows:

> *"The restrictions that the Constitution places upon the government in its capacity as lawmaker, i.e., as the regulator of private conduct, are not the same as the restrictions that it places upon the government in its capacity as employer. We have recognized this in many contexts, with respect to many different constitutional guarantees. Private citizens perhaps cannot be prevented from wearing long hair, but policemen can. Kelley v. Johnson, 425 U.S. 238, 247 (1976). Private citizens cannot have their property searched without probable cause, but in many circumstances government employees can. O'Connor v. Ortega, 480 U.S. 709, 723 (1987) (plurality opinion); id., at 732 (SCALIA, J., concurring in judgment). Private citizens cannot be punished for refusing to provide the government information that may incriminate them, but government employees can be dismissed when the incriminating information that they refuse to provide relates to the performance of their job. Gardner v. Broderick, [497 U.S. 62, 95] 392 U.S. 273, 277 -278 (1968). With regard to freedom of speech in particular: Private citizens cannot be punished for speech of merely private concern, but government employees can be fired for that reason. Connick v. Myers, 461 U.S. 138, 147 (1983). Private citizens cannot be punished for partisan political activity, but federal and state employees can be dismissed and otherwise punished for that reason. Public Workers v. Mitchell, 330 U.S. 75, 101 (1947); Civil Service Comm'n v. Letter Carriers, 413 U.S. 548, 556 (1973); Broadrick v. Oklahoma, 413 U.S. 601, 616 -617 (1973)."*
> *[Rutan v. Republican Party of Illinois, 497 U.S. 62 (1990)]*

If you would like to know all the many additional reasons why federal courts are presuming you to be a federal "employee" or "public officer" if they prosecute you for income tax crimes, penalties, or other infractions under Subtitle A of the Internal Revenue Code, please consult our other informative memorandum of law below. If you still doubt what we have said in this section, please also rebut the evidence and questions at the end of link below:

*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

# 5 Lack of Accuracy, Credibility, Reliability, & Truthfulness of IRS Statements and Publications[4]

When people read this pamphlet, they frequently ask:

> *"What about the IRS Publications? What you are saying conflicts with what they say and what the IRS tells me on the telephone. Who should I listen to?"*

The federal courts and the IRS' own Internal Revenue Manual answer this question quite forcefully, and the answer is NOT THE IRS OR ITS PUBLICATIONS! This may sound hard to believe, but our corrupt federal courts refuse to hold the IRS accountable for any of the following:

1. The content of their publications or even their forms. See Internal Revenue Manual, Section 4.10.7.2.8.
2. Following its own written procedures found in the Internal Revenue Manual (IRM)
3. Following the procedural regulations developed by the Secretary of the Treasury under 26 CFR Part 601.
4. The oral agreements or statements that its representatives make, even when their delegation order authorizes them to make such agreements. Instead, most settlements and agreements must be reduced to writing or they are unenforceable.

For this determination, we rely on the following cases, downloaded from the VersusLaw website (http://www.versuslaw.com) and posted prominently on the Family Guardian website. Read the authorities for yourself. We have highlighted the most pertinent parts of these authorities:

Table 2: Things IRS is NOT responsible or accountable for

| ***Not responsible for:*** | ***Controlling Case(s):*** |
|---|---|
| Following revenue rulings, handbooks, etc | CWT Farms Inc. v. Commissioner of Internal Revenue, 755 F.2d. 790 (11th Cir. 03/19/1985) |
| Following procedures in the Internal Revenue Manual (IRM) | U.S. v. Will, 671 F.2d. 963 (1982) |
| Following procedural regulations found in 26 CFR Part 601 | 1. Einhorn v. Dewitt, 618 F.2d. 347 (5th Cir. 06/04/1980)<br>2. Luhring v. Glotzbach, 304 F.2d. 560 (4th Cir. 05/28/1962) |
| Oral agreements or statements | Boulez v. C.I.R., 258 U.S.App. D.C. 90, 810 F.2d. 209 (1987) |

The most blatant and clear statement was made in the case of CWT Farms, Inc., above, which ruled:

> *"It is unfortunately all too common for government manuals, handbooks, and in-house publications to contain statements that were not meant or are not wholly reliable. If they go counter to governing statutes and regulations of the highest or higher dignity, e.g. regulations published in the Federal Register, they do not bind the government, and persons relying on them do so at their peril. Caterpillar Tractor Co. v. United States, 589 F.2d. 1040, 1043, 218 Ct.Cl. 517 (1978) (A Handbook for Exporters, a Treasury publication). Dunphy v. United States [529 F.2d. 532, 208 Ct.Cl. 986 (1975)], supra (Navy publication entitled All Hands). In such cases it is necessary to examine any informal publication to see if it was really written to fasten legal consequences on the government. Dunphy, supra. See also Donovan v. United States, 139 U.S. App. D.C. 364, 433 F.2d. 522 (D.C.Cir.), cert. denied, 401 U.S. 944, 91 S.Ct. 955, 28 L. Ed. 2d 225 (1971). (Employees Performance Improvement Handbook, an FAA publication)(merely advisory and directory publications do not have mandatory consequences). Bartholomew v. United States, 740 F.2d. 526, 532 n. 3 (7th Cir. 1984)(quoting Fiorentino v. United States, 607 F.2d. 963, 968, 221 Ct.Cl. 545 (1979), cert. denied, 444 U.S. 1083, 100 S.Ct. 1039, 62 L. Ed. 2d 768 (1980).*

> *Lecroy 's proposition that the statements in the handbook were binding is inapposite to the accepted law among the circuits that publications are not binding.*fn15 We find that the Commissioner did not abuse his discretion in promulgating the challenged regulations. First, Farms and International did not justifiably rely on the Handbook. Taxpayers who rely on Treasury publications, which are mere guidelines, do so at their peril. Caterpillar Tractor v. United States, 589 F.2d. 1040, 1043, 218 Ct.Cl. 517 (1978). Further, the Treasury's position on the sixty-day rule was made public through proposed section 1.993-2(d)(2) in 1972, before the taxable years at issue. Charbonnet v. United States, 455 F.2d. 1195, 1199- 1200 (5th Cir.1972). See also*

[4] From *Federal and State Tax Withholding Options for Private Employers*, section 9.

> *Wendland v. Commissioner of Internal Revenue, 739 F.2d. 580, 581 (11th Cir.1984). Second, whatever harm has been suffered by Farms and International resulted from a lack of prudence. As even the Lecroy 751 F.2d. at 127. See also 79 T.C. at 1069. "*
> *[CWT Farms Inc. v. Commissioner of Internal Revenue, 755 F.2d. 790 (11th Cir. 03/19/1985) ]*

Even the IRS' own Internal Revenue Manual (IRM) warns you that you ***can't*** depend on their publications, which include all of their forms!:

> *"IRS Publications, issued by the National Office, explain the law in plain language for taxpayers and their advisors... While a good source of general information, publications should not be cited to sustain a position."*
> *[Internal Revenue Manual, Section 4.10.7.2.8 (05-14-1999)]*

After reading the above, additional conclusions and inferences can safely and soundly be drawn by implication:

1. If the IRS is not responsible for following its own internal regulations found in 26 CFR Part 601, then it couldn't possibly be held liable for what it puts in its publications to the public EITHER. They could literally lie through their teeth and fool everyone into thinking they were "taxpayers" and not be held liable.
2. In the *Boulez* case above, an IRS representative who had explicit authority to make an agreement with the "taxpayer" still could not be held accountable for an oral agreement. This implies that all the phone advice given by IRS agents on their national 800 number cannot be relied upon as a basis for "good faith belief".
3. ONLY the Statutes at Large, as well as the regulations written by the Secretary of the Treasury found in 26 CFR Part 1 and 26 CFR Part 301, may be relied upon as having the "force of law", as the courts above described. Since 26 U.S.C. (also called the Internal Revenue Code) was never enacted as positive law, it stands only as "prima facie evidence of law" which may be rebutted by citing the sections of the Statutes at Large from which it was compiled.

To put one last nail in the coffin of this issue, below is a quote from a book entitled *Tax Procedure and Tax Fraud*, Patricia Morgan, 1999, ISBN 0-314-06586-5, West Group:

> *p. 21: "As discussed in §2.3.3, the IRS is not bound by its statements or positions in unofficial pamphlets and publications."*

> *p. 34: "*6. IRS Pamphlets and Booklets. *The IRS is not bound by statements or positions in its unofficial publications, such as handbooks and pamphlets."*

> *p. 34: "*7. Other Written and Oral Advice. *Most taxpayers' requests for advice from the IRS are made orally. Unfortunately, the IRS is not bound by answers or positions stated by its employees orally, whether in person or by telephone. According to the procedural regulations, 'oral advice is advisory only and the Service is not bound to recognize it in the examination of the taxpayer's return.' 26 CFR §601.201(k)(2). In rare cases, however, the IRS has been held to be equitably estopped to take a position different from that stated orally to, and justifiably relied on by, the taxpayer. The Omnibus Taxpayer Bill of Rights Act, enacted as part of the Technical and Miscellaneous Revenue Act of 1988, gives taxpayers some comfort, however. It amended section 6404 to require the Service to abate any penalty or addition to tax that is attributable to advice furnished* in writing *by any IRS agent or employee acting within the scope of his official capacity. Section 6404 as amended protects the taxpayer only if the following conditions are satisfied: the written advice from the IRS was issued in response to a written request from the taxpayer; reliance on the advice was reasonable; and the error in the advice did not result from inaccurate or incomplete information having been furnished by the taxpayer. Thus, it will still be difficult to bind the IRS even to written statements made by its employees. As was true before, taxpayers may be penalized for following oral advice from the IRS."*

If the IRS isn't held accountable in a court of law for what they say or even what they write, then they are, by implication, totally unaccountable to the public that they were put into existence to "serve". The Internal Revenue SERVICE, therefore, only SERVES the interests of itself and not the public at large. Furthermore, we believe the same rules should apply to Americans submitting their tax returns as those that apply to the IRS: not liable or responsible for what is written on the return. For instance, the "I declare under penalty of perjury" should be replaced with "I declare that this return as accurate and trustworthy as the advice and writings of the IRS". That is equivalent to saying that it is *untrue* and NOT trustworthy, and that will get you off the hook and also point out the hypocrisy and lawlessness of the IRS! What is good for the goose is good for the gander. Any other approach would be to condone hypocrisy and lawlessness and tyranny on the part of our government. Why aren't IRS agents required to sign their correspondence under penalty of perjury like all of the communication coming from the "taxpayer" so they CAN be held accountable? Here is what the U.S. Supreme Court had to say about this kind of hypocrisy and lawlessness. You be the judge!:

*"Our government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker [or a hypocrite with double standards], it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means...would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face."*
*[Justice Brandeis, Olmstead v. United States, 277 U.S. 438, 485. (1928)]*

It may also interest you to learn that even though YOU don't have to give any credence to IRS publications, the I.R.C. Says that IRS employees MUST follow published administrative guidance.

*TITLE 26 > Subtitle F > CHAPTER 80 > Subchapter A > § 7811*
*§ 7811. TAXPAYER ASSISTANCE ORDERS§7811*

*(a) Authority to issue*

***[. . .]***

***(3) Standard where administrative guidance not followed***

*In cases where any Internal Revenue Service employee is not following applicable published administrative guidance (including the Internal Revenue Manual), the National Taxpayer Advocate shall construe the factors taken into account in determining whether to issue a Taxpayer Assistance Order in the manner most favorable to the taxpayer.*

The IRS Restructuring and Reform Act of 1998, Section 1102, 112 Stat. 704 mimics the above by requiring the IRS to follow published administrative guidance, including the IRM.

## 6 Credibility of Federal Court Rulings on tax issues[5]

Some, and especially the IRS, upon reading and responding to this pamphlet, might respond by saying such ridiculous things as the following:

*"Federal courts have ruled against the position in this pamphlet. They have said the claims here are 'frivolous' and completely without merit."*

Well, first of all, even the IRS' own Internal Revenue Manual says the IRS cannot cite any ruling OTHER than the Supreme Court. The Supreme Court has never ruled against any of the arguments in this pamphlet:

*IRM 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 2the 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."*
*[IRM, 4.10.7.2.9.8 (05/14/99)]*

So if you hear the IRS or anyone from the legal profession spouting off federal judicial precedent below the Supreme Court, then they are:

1. Certainly not following the IRS' own rules on the subject.

[5] Adapted from *Federal and State Tax Withholding Options for Private Employers*, section 14.

2. Falsely presuming that the person who is the subject of the controversy is a federal employee, federal agent, or federal contractor acting in a representative capacity under the laws of the parent corporation, which is the United States government. 28 U.S.C. §3002(15)(A) defines the term "United States" to mean a federal corporation.
3. Falsely presuming that federal district and circuit case law is relevant to the average American.

> *"The power to create presumptions is not a means of escape from constitutional restrictions,"*
> *[New York Times v. Sullivan, 376 U.S. 254 (1964)]*

4. Citing irrelevant case law from a jurisdiction which does not apply to most Americans. The federal District and Circuit courts, in fact, are Article IV legislative and territorial courts that can only rule on what Congress says they can rule on, and in the context of federal property mainly. United States Judicial Districts encompass only federal property within the outer limits of the District that has been ceded to the federal government as required under Article 1, Section 8, Clause 17 of the Constitution.
5. Abusing irrelevant case law as a means of political propaganda.
6. Involving the federal courts in strictly "political questions" beyond their jurisdiction. See our free memorandum of law:

| |
|---|
| *Political Jurisdiction*, Form #05.004<br>http://sedm.org/Forms/FormIndex.htm |

7. Probably have a conflict of interest, because they wouldn't have a paying job if they admitted the truth about federal jurisdiction.

Second, the Declaratory Judgments Act, 28 U.S.C. 2201(a), says that federal courts don't have the authority to declare rights or status within the context of federal taxes. Can someone please explain how they can call a person a "taxpayer" who submits evidence under penalty of perjury proving that they are a "nontaxpayer"?

> *Specifically, Rowen seeks a declaratory judgment against the United States of America with respect to "whether or not the plaintiff is a taxpayer pursuant to, and/or under 26 U.S.C. §7701(a)(14)." (See Compl. at 2.)* ***This Court lacks jurisdiction to issue a declaratory judgment "with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986," a code section that is not at issue in the instant action. See 28 U.S.C. § 2201; see also Hughes v. United States, 953 F.2d. 531, 536-537 (9th Cir. 1991)*** *(affirming dismissal of claim for declaratory relief under § 2201 where claim concerned question of tax liability). Accordingly, defendant's motion to dismiss is hereby GRANTED, and the instant action is hereby DISMISSED.*
> *[Rowen v. U.S., 05-3766MMC. (N.D.Cal. 11/02/2005)]*

A "nontaxpayer", which is the status of most Americans, is outside the jurisdiction of the I.R.C. and no judge can apply the provisions of the I.R.C. to those who are not "taxpayers" or who do not consent to be "taxpayers". The same thing applies to the IRS as well.

> *"A reasonable construction of the taxing statutes does not include vesting any tax official with absolute power of assessment against individuals not specified in the statutes as a person liable for the tax without an opportunity for judicial review of this status before the appellation of 'taxpayer' is bestowed upon them and their property is seized..." [*Botta v. Scanlon, *288 F.2d. 504, 508 (1961)]*

> *"The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws..."*

> *"The distinction between persons and things within the scope of the revenue laws and those without is vital."*
> *[Long v. Rasmussen, 281 F. 236, 238 (1922)]*

Third, according to the Supreme Court in the case of *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938), there is no federal common law within states of the Union. State court precedent is the only thing that is even relevant for those who do not live on land within federal jurisdiction. Consequently, it's meaningless to spout out federal appellate cites and doing so is nothing but a dangerous exercise in political propaganda using "judge-made law" that is irrelevant to Americans living outside of federal jurisdiction.

Fourth, the book What Happened to Justice thoroughly analyzes all the historical enactments of Congress relating to the federal judiciary and proves that Congress has never specifically or properly invoked Article III of the Constitution in creating any of the federal district, circuit, or Supreme Courts. Consequently, all of these courts are Article IV territorial

legislative Courts that are not part of the Judicial Branch of the government. This means they are part of one of the political branches of the government and all of their rulings are political and administrative rather than judicial. They are incapable of exercising the "judicial power" of the United States contemplated in Article III of the Constitution. As a member of one of the political branches, every penalty they might attempt to impose amounts essentially to a bill of attainder and none of their rulings are trustworthy. Read the truth for yourself:

| |
|---|
| *What Happened to Justice?*, Form #06.012<br>http://sedm.org/Forms/FormIndex.htm |

Furthermore, these same "kangaroo courts" or "de facto courts" themselves have said that no one can or should trust *anything* that a member of the Executive or Legislative Branches of the Government says, which includes them! Everything they say is simply "political speech" that is therefore irrelevant and not obligatory to the average American.

> *"The Government may carry on its operations through conventional executive agencies or through corporate forms especially created for defined ends. See Keifer & Keifer v. Reconstruction Finance Corp., 306 U.S. 381, 390 , 518.* ***Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority. The scope of this authority may be explicitly defined by Congress or be limited by delegated legislation, properly exercised through the rule-making power.*** *And this is so even though, as here, the agent himself may have been unaware of the limitations upon his authority. See, e.g., Utah Power & Light Co. v. United States, 243 U.S. 389, 409 , 391; United States v. Stewart, 311 U.S. 60, 70 , 108, and see, generally, In re Floyd Acceptances, 7 Wall. 666."*
> *[Federal Crop Ins. V. Merrill, 332 U.S. 380 (1947)]*
>
> _____
>
> *Justice Holmes wrote: "Men must turn square corners when they deal with the Government." Rock Island, A. & L. R. Co. v. United States, 254 U.S. 141, 143 (1920). This observation has its greatest force when a private party seeks to spend the Government's money. Protection of the public fisc requires that those who seek public funds act with scrupulous regard for the requirements of law; respondent could expect no less than to be held to the most demanding standards in its quest for public funds. This is consistent with the general rule that those who deal with the Government are expected to know the law and may not rely on the conduct of Government agents contrary to law. 17 [467 U.S. 51, 64]*
>
> *[. . .]*
>
> *The appropriateness of respondent's reliance is further undermined because the advice it received from Travelers was oral. It is not merely the possibility of fraud that undermines our confidence in the reliability of official action that is not confirmed or evidenced by a written instrument. Written advice, like a written judicial opinion, requires its author to reflect about the nature of the advice that is given to the citizen, and subjects that advice to the possibility of review, criticism, and reexamination. The necessity for ensuring that governmental agents stay within the lawful scope of their authority, and that those who seek public funds act with scrupulous exactitude, argues strongly for the conclusion that an estoppel cannot be erected on the basis of the oral advice that underlay respondent's cost reports. That is especially true when a complex program such as Medicare is involved, in which the need for written records is manifest.*
> *[Heckler v. Comm Health Svc, 467 U.S. 51 (1984)]*
>
> _____
>
> *In their answers some of the defendants assert that when the forest reservations were created an understanding and agreement was had between the defendants, or their predecessors, and some unmentioned officers or agents of the United States, to the effect that the reservations would not be an obstacle to the construction or operation of the works in question; that all rights essential thereto would be allowed and granted under the act of 1905; that, consistently with this understanding and agreement, and relying thereon, the defendants, or their predecessors, completed the works and proceeded with the generation and distribution of electric energy, and that, in consequence, the United States is estopped to question the right of the defendants to maintain and operate the works.* ***Of this it is enough to say that the United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit. Lee v. Munroe, 7 Cranch, 366, 3 L.Ed. 373; Filor v. United States, 9 Wall. 45, 49, 19 L.Ed. 549, 551; Hart v. United States, 95 U.S. 316 , 24 L.Ed. 479; Pine River Logging Co. v. United States, 186 U.S. 279, 291 , 46 S. L.Ed. 1164, 1170, 22 Sup.Ct.Rep. 920.***
> *[Utah Power and Light v. U.S., 243 U.S. 389 (1917)]*
>
> _____
>
> *"It is contended that since the contract provided that the government 'inspectors will keep a record of the work done,' since their estimates were relied upon by the contractor, and since by reason of the inspector's mistake*

*the contractor was led to do work in excess of the appropriation, the United States is liable as upon an implied contract for the fair value of the work performed.* ***But the short answer to this contention is that since no official of the government could have rendered it liable for this work by an express contract, none can by his acts or omissions create a valid contract implied in fact. The limitation upon the authority to impose contract obligations upon the United States is as applicable to contracts by implication as it is to those expressly made.****"*
*[Sutton v. U.S., 256 U.S. 575 (1921)]*

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*Undoubtedly,* ***the general rule is that the United States are neither bound nor estopped by the acts of their officers and agents in entering into an agreement or arrangement to do or cause to be done what the law does not sanction or permit. Also, those dealing with an agent of the United*** ***[294 U.S. 120, 124]*** ***States must be held to have had notice of the limitation of his authority. Utah Power & Light Co. v. United States, 243 U.S. 389, 409 , 37 S.Ct. 387; Sutton v. United States, 256 U.S. 575, 579 , 41 S.Ct. 563, 19 A.L.R. 403.***

*How far, if at all, these general rules are subject to modification where the United States enter into transactions commercial in nature ( Cooke v. United States, 91 U.S. 389 , 399; White v. United States, 270 U.S. 175, 180 , 46 S.Ct. 274) we need not now inquire. The circumstances presented by this record do not show that the assured was deceived or misled to his detriment, or that he had adequate reason to suppose his contract would not be enforced or that the forfeiture provided for by the policy could be waived. New York Life Insurance Co. v. Eggleston, 96 U.S. 572 ; Phoenix Mut. Life Insurance Co. v. Doster, 106 U.S. 30 , 1 S.Ct. 18. The grounds upon which estoppel or waiver are ordinarily predicated are not shown to exist.*
*[Wilbur Natl Bank v. U.S., 294 U.S. 120 (1935)]*

Lastly, when federal jurisdiction is challenged in a tax case using the materials in this pamphlet, the existence of territorial and subject matter jurisdiction must be decided by the jury, and NOT by the judge. A conflict of interest would result otherwise, because judges are subject to IRS extortion in violation of 28 U.S.C. §144 and 28 U.S.C. §455, and 18 U.S.C. §208. See:

| |
|---|
| Why the Federal Courts Can't Properly Address These Questions<br>http://famguardian.org/TaxFreedom/Forms/Discovery/Deposition/WhyCourtsCantAddressQuestions.htm |

Judges have no authority to be labeling an argument which challenges federal jurisdiction as frivolous *without* involving the jury or without a separate pleading and trial on the matter of being frivolous. This prevents abuses of judicial authority and conflict of interest. The U.S. Attorney Manual confirms this:

***United States Attorney Manual***
***666 Proof of Territorial Jurisdiction***

*There has been a trend to treat certain "jurisdictional facts" that do not bear on guilt (mens rea or actus reus) as non-elements of the offense, and therefore as issues for the court rather than the jury, and to require proof by only a preponderance that the offense was committed in the territorial jurisdiction of the court to establish that venue has been properly laid. See United States v. Bowers, 660 F.2d. 527, 531 (5th Cir. 1981); Government of Canal Zone v. Burjan, 596 F.2d. 690, 694 (5th Cir. 1979); United States v. Black Cloud, 590 F.2d. 270 (8th Cir. 1979) (jury question); United States v. Powell, 498 F.2d. 890, 891 (9th Cir. 1974). The court in Government of Canal Zone v. Burjan, 596 F.2d. at 694-95, applied the preponderance test to determinations of whether or not the offenses took place within the Canal Zone which established not merely proper venue but subject matter jurisdiction as well. Other cases, however, hold that* ***the issue of whether the United States has jurisdiction over the site of a crime is a judicial question, see United States v. Jones, 480 F.2d. 1135, 1138 (2d Cir. 1973), but that the issue of whether the act was committed within the borders of the Federal enclave is for the jury and must be established beyond a reasonable doubt. See United States v. Parker, 622 F.2d. 298 (8th Cir. 1980); United States v. Jones, 480 F.2d. at 1138.*** *The law of your Circuit must be consulted to determine which approach is followed in your district.*

*The decision in Burjan should be viewed with caution. The analogy between territorial jurisdiction and venue has much to recommend it. Nevertheless, it is important to recognize that the two are not of equal importance.* ***As the Burjan court noted, citing Fed. R. Crim. P. 12, subject matter jurisdiction is so important that it cannot be waived and may be noticed at any stage of the proceeding****, see Government of the Canal Zone v. Burjan, 596 F.2d. at 693, whereas the Ninth Circuit in Powell rested its ruling that venue need be proved by only a preponderance on the relative unimportance of venue as evidenced by its waivability. There is a clear distinction between the question of which court of a sovereign may try an accused for a violation of its laws and whether the sovereign's law has been violated at all.*

> ***Proof of territorial jurisdiction may be by direct or circumstantial evidence, and at least at the trial level may be aided by judicial notice****. See United States v. Bowers, 660 F.2d. at 530-31; Government of Canal Zone v. Burjan, 596 F.2d. at 694. Compare Government of Canal Zone v. Burjan, 596 F.2d. 690 with United States v. Jones, 480 F.2d. 1135, concerning the role judicial notice may play on appeal.*
> *[http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/crm00666.htm]*

Consequently, it is a violation of due process and a conflict of interest for a federal judge to label as frivolous the arguments of a person who has challenged federal territorial or subject matter jurisdiction in a tax case without involving a jury, and especially where a jury trial has been demanded. Therefore, any citations of authority citing frivolous arguments in the context of challenges to federal jurisdiction must have been decided by a jury and not a judge.

# 7 Credibility of advice of tax professionals and tax industry trade publications

During the 1970s and early 1980s, the widespread proliferation of tax shelters, usually bearing the official stamp of approval of a lawyer's tax opinion, fostered the negative public perception of lawyers as "hired guns" whose help in evading income taxes could be bought for the right price. One direct and unfortunate result was an erosion of our system of self-assessment. As the public increasingly believed that most people cheated on their taxes, and that most wealthy individuals and corporations were assisted in doing so by crafty tax professionals, the stigma attached to "cheating" or "fudging" began to disappear. The Treasury Department, Congress, the organized bar, and the accounting profession have all attempted to address the problem.

Attorneys advising clients on tax matters owe a dual obligation: they must represent the client fairly and use available legal means to reduce the client's tax benefits to which she is legally entitled. On the other hand, the attorney also owes an obligation to the Government and the public to support and implement our self-assessment system. Taking "aggressive" positions, in the hope that the client's return will not be audited, violates the duty owed to the public when the position is legally unsupportable. By counseling such positions, or acquiescing in them, the lawyer is assisting in the evasion of taxes, with a resulting loss both of tax revenue and respect for our tax system.

Most lawyers are aware of the criminal penalties for aiding and abetting, and many are aware of the civil penalties imposed by the I.R.C. section 6701. Certainly, most tax advisors would not consciously advise a tax return position that would or might expose them to such penalties. The problem, however, is not so simple. Because the tax laws are so complex, and have been so fundamentally and frequently overhauled in the past two decades, the "correct" reporting position is not always self-evident. Given a choice between a conservative position, which might cost the taxpayer more than he actually, ultimately owed, and an aggressive position, which might cost the public tax revenues, which position can or should the lawyer advise? And is the lawyer absolved of any culpability if she advises the client that the position is not supported by adequate authority, but the client decides to take the position and risk possible penalties?

The answers to these questions are continuing to evolve. Standards established by Congress now are based on those of the American Bar Association ("ABA"), the American Institute of Certified Public Accountants ("AICPA") and the Treasury Department. Regulations governing practice before the Treasury are known as "Treasury Circular 230," the official title of which is "Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries and Appraisers before the Internal Revenue Service."

This section will describe the various standards articulated over the years and the effect of recent legislation on those standards, as well as on the penalties for noncompliance with the standards.

## 7.1 Admissibility of statements of Counsel as evidence of a good faith belief

The U.S. Supreme Court has said that the statements of counsel in legal briefs are inadmissible as evidence:

> *This finding of a continuing investigation, which forms the foundation of the majority opinion, comes from statements of counsel made during the appellate process. As we have said of other unsworn statements which were not part of the record and therefore could not have been considered by the trial court: "Manifestly, [such statements] cannot be properly considered by us in the disposition of [a] case." Adickes v. Kress & Co., 398 U.S. 144, 157 -158, n. 16. While I do not question the good faith of Government counsel, it is not the business of appellate courts to make decisions on the basis of unsworn matter not incorporated in a formal record.*
> *[United States v. Lovasco, 431 U.S. 783, 97 S.Ct. 2044, 52 L. Ed. 2d 752 (1977); Justice Stevens, Dissenting]*

## 7.2 The U.S. Supreme Court's opinion on expert advice

On the subject of expert advice about the requirement to file tax returns, the U.S. Supreme Court has said the following:

> ***This case is not one in which a taxpayer has relied on the erroneous advice of counsel concerning a*** *question of* ***law. Courts have frequently held that "reasonable cause" is established when a taxpayer shows that he reasonably relied on the advice of an accountant or attorney that it was unnecessary*** *to file a* ***return, even when such advice turned out to have been mistaken.*** *See, e.g., United States v. Kroll, 547 F2d 393, 395396 (CA7 1977); Commissioner v. American Assn. of Engineers Employment, Inc., 204 F.2d. 19, 21 (CA7 1953); Burton Swartz Land Corp. v. Commissioner, 198 F.2d. 558, 560 (CA5 1952); Haywood Lumber & Mining Co. v. Commissioner, 178 F.2d. at 771; Orient Investment & Finance Co. v. Commissioner, 83 U.S.App.D.C. at 75, 166 F.2d. at 603; Hatfried, Inc. v. Commissioner, 162 F.2d. at 633-635; Girard Investment Co. v. Commissioner, 122 F.2d. at 848; Dayton Bronze Bearing Co. v. Gilligan, 281 F. 709, 712 (CA6 1922).* ***This Court also has implied that, in such a situation, reliance on the opinion of a tax adviser may constitute reasonable cause for failure to file a return. See*** *Commissioner v. Lane-Wells Co., 321 U.S. 219 (1944) (remanding for determination whether failure to file return was due to reasonable cause, when taxpayer was advised that filing was not required).*
>
> ***When an accountant or attorney advises a taxpayer on a matter of tax law, such as whether a liability exists, it is reasonable for the taxpayer to rely on that advice. Most taxpayers are not competent to discern error in the substantive advice of an accountant or attorney. To require the taxpayer to challenge the attorney, to seek a "second opinion," or to try to monitor counsel on the provisions of the Code himself would nullify the very purpose*** *of* ***seeking the advice*** *of a* ***presumed expert in the first place.*** *See Haywood Lumber, supra, at 771. "Ordinary business care and prudence" do not demand such actions."*
> *[United States v. Boyle, 469 U.S. 241, 250-01 (1985)]*

## 7.3 The "Reasonable Basis" Standard

Although neither the ABA nor the AICPA directly regulates tax practice, each has a professional code (the ABA's Model Rules of Professional Conduct and the AICPA's Code of Professional Ethics), and each has committees that occasionally issue opinions dealing specifically with tax practice. In 1965 the ABA's Standing Committee on Ethics issued Formal Opinion 314, adopting the infamous "reasonable basis" for the position, with no attendant duty to disclose or "red flag" the position on the return. In 1977 the AICPA adopted a similar "reasonable support" standard.

Opinion 314 characterized the giving of tax advice and the representation of clients under tax audit as adversarial, and concluded that the lawyer's role in each should be governed by the same ethical rules governing litigation. The failure to distinguish between advising with respect to a return, and representing the client under audit, prompted many to question the Opinion and to predict serious erosion of the voluntary compliance system. Nonetheless, the reasonable basis standard prevailed, perhaps because it mirrored the tax system's standard for taxpayer behavior: the no-fault penalty of section 6662(d) was not introduced until 1982, so that only the negligence penalty was available to curtail taxpayer manipulation of the system. A reasonable basis for the return position thus shielded both the client and the lawyer from sanctions.

Because reliance on advice of a lawyer after full disclosure provides a defense of criminal sanctions and the negligence and fraud penalties, and because some lawyers interpreted the reasonable basis standard as permitting favorable opinions on very dubious positions, the situation deteriorated seriously in the 1970's. Taxpayers sought favorable opinions to insure against penalties, and lawyers stretched the reasonable basis standard to accommodate the clients' tax-minimizing goals, particularly in the area of tax shelter offerings. As one judge observed in acquitting a taxpayer of criminal charges:

> *"Surely it would be unfair to judge the client's criminal liability on a stricter standard than his lawyer's ethical obligation. [. . .]*
>
> *The scheme in the instance case is a very aggressive one. The Court is somewhat shocked that it was approved by competent counsel. [. . .T]he planning, particularly the A.B.A. opinion, tends to take a rather cavalier attitude towards obviously questionable schemes.*
> *[United States v. Yorke, unpublished opinion, D.Md. July 19, 1976]*

The ABA's Standing Committee reacted to the mounting criticism by issuing Formal Opinion 346 in 1981, setting forth stricter guidelines for the issuance of "tax opinions" in publicly offered tax shelters. For such offerings, the reasonable basis standard is replaced with requirements that the lawyer assess the likelihood that the claimed tax benefit will be realized by the investors. The Treasury amended Treasury Circular 230 to incorporate the tax shelter standards of Opinion 346.

Meanwhile, the Congress decided in 1982 to enact the no-fault penalty of section 6662(d), under which a taxpayer (but not his advisor) could be penalized for understatements of income even in the absence of negligence. Enactments of section 6662(d) created a disturbing anomaly: lawyers and accountants apparently could freely advise clients to take a position on a return if there was any reasonable basis for it; taxpayers who reported such positions, without disclosing them, would be liable for the penalty unless there was substantial authority for the position or the position was "red-flagged" on the return. The legislative history of section 6662(d) reveals that Congress intended the "substantial authority" standard to be stricter than the "reasonable basis" standard. On the other hand, the "substantial authority" standard is less strict than, and requires less authority than, a "more likely than not to succeed" standard, which section 6662(d) applies to tax shelter items.

## 7.4 ABA Opinion 85-352

In 1985 the ABA issued Opinion 85-352, in which it abandoned the "reasonable basis" standard, but opted for a completely new standard to replace it: the new standard requires that the return position have "some realistic possibility of success" if litigated. The ABA clearly rejected the more stringent "substantial authority" and "more likely than not" standards, and opted instead for a litigation-oriented standard akin to Rule 11 of the Federal Rules of Civil Procedure. As Opinion 85-352 states:

> *In summary, a lawyer may advise a reporting position on a return even where the lawyer believes the position probably will not prevail, there is no "substantial authority" in support of the position, and there will be no disclosure of the position on the return. However, the position to be asserted must be one which the lawyer in good faith believes is warranted in existing law or can be supported by a good faith argument for an extension, modification or reversal of existing law. This requires that there is some realistic possibility of success if the matter is litigated. In addition, in his role as advisor, the lawyer should refer to potential penalties and other legal consequences the client take the position advised.*

The response to this Opinion was not uniformly enthusiastic. Many believed that the ABA had not sufficiently addressed the problems created by the reasonable basis standard. In response, the ABA appointed a Special Task Force to study the new standard. In concluded that the "some realistic possibility of success" standard was intended to be stricter than the "reasonable basis" standard as interpreted by many lawyers. To provide some guidance, the Special Task Force stated that a position having only a 5% or 10% chance of success would not meet the new standard, but that one approaching a 30% chance of success should meet the standard. Report of the Special Task Force on Formal Opinion 85-352, 39 Tax Lawyer 635, 638 (1986). The new standard is thus stricter than the "reasonable basis" standard, but more lenient than the "substantial authority" standard.

Obviously, Opinion 85-352 did not cure the anomaly created by the taxpayer standard of section 6662(d) (substantial authority) being stricter than the standard governing lawyers (reasonable basis and later "some realistic possibility of success").

## 7.5 Treasury Circular 230

"Circular 230" is the shorthand description of regulations issued by the Treasury Department governing practice before the IRS. Congress granted the Treasury Department authority to "regulate the practice of representatives of persons" before the Department and to suspend or disbar representatives who are "incompetent" or "disreputable" or who "violate regulations." 31 U.S.C. §330. Regulations issued under this statute are found in Part 10 of Title 31 of the Code of Federal Regulations and in Treasury Circular 230, as revised from time to time. Treasury Circular 230 governs all persons authorized to practice before the IRS: lawyers, accountants, enrolled actuaries, and enrolled agents.

The right to practice before the IRS is statutory. 5 U.S.C. §500. Lawyers in good standing and certified public accountants have a statutory right to practice before the Service, so long as they file written declarations of their qualifications. Enrolled agents are individuals who lack the special training of lawyers and certified public accountants, but who qualify for practice before the IRS by passing certain examinations or by past employment with the IRS. 5 U.S.C. §500. Enrolled actuaries are authorized by section 10.3(d) of Treasury Circular 230 to practice before the Service.

As part of the 1998 Taxpayer Bill of Rights Act 3, Congress extended the common-law privilege of confidentiality of communication historically enjoyed by attorneys and clients to tax advice furnished to a taxpayer-client by any individual who is authorized to practice before the Treasury. This new uniform privilege, contained in Code section 7525, applies to tax advice given after July 22, 1998. The new privilege applies only in non-criminal tax matters before the IRS and non-criminal tax proceedings in federal court brought by or against the United States. The privilege does not apply to

communications concerning tax shelters (as defined in section 6662(d)(2)(c )(iii)) between a federally-authorized tax practitioner and a corporation or any of its shareholders or agents. The legislative history cautions that the new privilege applies only in circumstances in which the attorney-client privilege would exist, and notes that information disclosed to an attorney for the purpose of preparing the client's tax return is not privileged.

Thus, not everyone is entitled to practice before the IRS, and the Treasury Department is obligated by statute to regulate the practice of tax law before the IRS. Because the organized bar does not enforce its standard of conduct, such enforcement is left to the states, which show little interest in tax related issues. Thus, if there is to be a uniform standard for all who practice before the Service, and if the enforcement of the standard is to result in disciplinary action against offenders, the Treasury Department, through Circular 230, must establish and enforce the standards.

Between 1986 and 1994 there was controversy over proposed amendments to Circular 230 that would have permitted censuring those who advised return positions that could have subjected the taxpayer to the substantial understatement penalty of section 6662(d). In 1994 the Treasury withdrew these controversial proposals and amended Circular 230 to conform with the "realistic possibility of success" standard adopted by Congress for return preparers under section 6694. In the "Explanation of Changes" contained in the final adoption of the amendments, the Treasury Department explained its reasoning for adopting the "realistic possibility of success" standard:

> *To promote consistency in disclosure standards, the Circular 230 rules are patterned after the section 6694 rules and, therefore, a signing preparer must actually disclose (rather than merely advise disclosure of) nonfrivolous return positions that do not satisfy the realistic possibility of success standard. Because Treasury believes the realistic possibility standard is distinct from the not frivolous standard, these amendments to Circular 230 also distinguish between these two standards.*

## 8 Presumptions about law or who is subject to it are prohibited

Black's Law Dictionary, Sixth Edition, defines "presumption" as follows:

> ***presumption.*** *An inference in favor of a particular fact. A presumption is a rule of law, statutory or judicial, by which finding of a basic fact gives rise to existence of presumed fact, until presumption is rebutted. Van Wart v. Cook, Okl.App., 557 P.2d. 1161, 1163. A legal device which operates in the absence of other proof to require that certain inferences be drawn from the available evidence. Port Terminal & Warehousing Co. v. John S. James Co., D.C.Ga., 92 F.R.D. 100, 106.*
>
> *A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action. A presumption is not evidence. A presumption is either conclusive or rebuttable. Every rebuttable presumption is either (a) a presumption affecting the burden of producing evidence or (b) a presumption affecting the burden of proof. Calif.Evid.Code, §600.*
>
> *In all civil actions and proceedings not otherwise provided for by Act of Congress or by the Federal Rules of Evidence, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast. Federal Evidence Rule 301.*
>
> *See also Disputable presumption; inference; Juris et de jure; Presumptive evidence; Prima facie; Raise a presumption.*
> *[Black's Law Dictionary, Sixth Edition, p. 1185]*

American Jurisprudence Legal Encyclopedia 2d defines "presumption" as follows:

> *American Jurisprudence 2d*
> *Evidence, §181*
>
> *A presumption is neither evidence nor a substitute for evidence.* [6] *Properly used, the term "presumption" is a rule of law directing that if a party proves certain facts (the "basic facts") at a trial or hearing, the factfinder must also accept an additional fact (the "presumed fact") as proven unless sufficient evidence is introduced*

[6] Levasseur v Field (Me) 332 A2d 765; Hinds v John Hancock Mut. Life Ins. Co., 155 Me 349, 155 A2d 721, 85 ALR2d 703 (superseded by statute on other grounds as stated in Poitras v R. E. Glidden Body Shop, Inc. (Me) 430 A2d 1113); Connizzo v General American Life Ins. Co. (Mo App) 520 SW2d 661.

*tending to rebut the presumed fact.* [7] *In a sense, therefore, a presumption is an inference which is mandatory unless rebutted.* [8]

*The underlying purpose and impact of a presumption is to affect the burden of going forward.* [9] *Depending upon a variety of factors, a presumption may shift the burden of production as to the presumed fact, or may shift both the burden of production and the burden of persuasion.* [10]

*A few states have codified some of the more common presumptions in their evidence codes.*[11]*3 Often a statute will provide that a fact or group of facts is prima facie evidence of another fact.* [12] *Courts frequently recognize this principle in the absence of an explicit legislative directive.* [13]

Under the rules of Constitutional due process:

1. Presumptions may not be used to transcend the constraints of the Constitution:

   *"The power to create [false] presumptions is not a means of escape from constitutional restrictions," [New York Times v. Sullivan, 376 U.S. 254 (1964)]*

2. All persons are presumed innocent until proven guilty with evidence. That means that everyone must be presumed to be a "nontaxpayer" not subject to the I.R.C. until they are proven with evidence to be a "taxpayer" as defined in 26 U.S.C. §7701(a)(14).

   *The presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our system of criminal justice. Long ago this Court stated:*

   *The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law. [Coffin v. United States, 156 U.S. 432, 453 (1895).]*

3. Beliefs and opinions, including "presumptions", are forbidden to be used as evidence by the Federal Rules of Evidence:

   *Federal Rules of Evidence*
   *Rule 610. Religious Beliefs or Opinions*

   ***Evidence of the beliefs or opinions of a witness on matters of religion is not admissible*** *for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.*
   *[SOURCE: http://www.law.cornell.edu/rules/fre/rules.htm#Rule610]*

4. Presumptions are not evidence and cannot be used as a substitute for evidence.

   *This court has never treated a presumption as any form of evidence.* See, e.g., A.C. Aukerman Co. v. R.L. Chaides Constr. Co., *960 F.2d. 1020, 1037 (Fed.Cir.1992) ("[A] presumption is not evidence.");* see also Del Vecchio v. Bowers, *296 U.S. 280, 286, 56 S.Ct. 190, 193, 80 L.Ed. 229 (1935) ("[A presumption] cannot acquire the attribute of evidence in the claimant's favor.");* New York Life Ins. Co. v. Gamer, *303 U.S. 161, 171, 58 S.Ct. 500, 503, 82 L.Ed. 726 (1938) ("[A] presumption is not evidence and may not be given weight as*

[7] Inferences and presumptions are a staple of our adversary system of factfinding, since it is often necessary for the trier of fact to determine the existence of an element of a crime–that is an ultimate or elemental fact–from the existence of one or more evidentiary or basic facts. County Court of Ulster County v Allen, 442 US 140, 60 L Ed 2d 777, 99 S Ct 2213.

[8] Legille v Dann, 178 US App DC 78, 544 F2d 1, 191 USPQ 529; Murray v Montgomery Ward Life Ins. Co., 196 Colo 225, 584 P2d 78; Re Estate of Borom (Ind App) 562 NE2d 772; Manchester v Dugan (Me) 247 A2d 827; Ferdinand v Agricultural Ins. Co., 22 NJ 482, 126 A2d 323, 62 ALR2d 1179; Smith v Bohlen, 95 NC App 347, 382 SE2d 812, affd 328 NC 564, 402 SE2d 380; Larmay v Van Etten, 129 Vt 368, 278 A2d 736; Martin v Phillips, 235 Va 523, 369 SE2d 397.

[9] FRE Rule 301.

[10] §198.

[11] California Evidence Code §§ 621 et seq.; Hawaii Rules of Evidence, Rules 303, 304; Oregon Evidence Code, Rule 311.

[12] California Evidence Code § 602; Alaska Rule of Evidence, Rule 301(b); Hawaii Rule of Evidence, Rule 305; Maine Rule of Evidence, Rule 301(b); Oregon Rule of Evidence, Rule 311(2); Vermont Rule of Evidence, Rule 301(b); Wisconsin Rule of Evidence, Rule 301.

[13] American Casualty Co. v Costello, 174 Mich App 1, 435 NW2d 760; Glover v Henry (Tex App Eastland) 749 SW2d 502.

*evidence."). Although a decision of this court, Jensen v. Brown, 19 F.3d. 1413, 1415 (Fed.Cir.1994), dealing with presumptions in VA law is cited for the contrary proposition, the* Jensen *court did not so decide. [Routen v. West, 142 F.3d. 1434 C.A.Fed.,1998]*

5. No judge has or can have the delegated authority to convert a presumption into evidence. If he does, he is:
   5.1. Entertaining "political question" in violation of the separation of powers and acting as a legislative rather than judicial officer. See:

| |
|---|
| *Political Jurisdiction*, Form #05.004<br>http://sedm.org/Forms/FormIndex.htm |

   5.2. Establishing a state sponsored religion where presumption serves as the equivalent of religious faith. See:

| |
|---|
| *Socialism: The New American Civil Religion*, Form #05.016<br>http://sedm.org/Forms/FormIndex.htm |

   5.3. "Legislating from the bench" as an officer within the legislative rather than judicial branch, if the conversion from presumption to evidence relates to a statute that is not "positive law". In effect, he is "creating law" that was not otherwise legal evidence of an obligation. This, in polite terms, is called "judicial activism" and judges who engage in it are subject to impeachment from the bench.
6. Presumptions that impair constitutionally protected rights are a violation of due process:

> ***"Conclusive presumptions affecting protected interests:*** *A conclusive presumption may be defeated where its application would impair a party's constitutionally-protected liberty or property interests. In such cases, conclusive presumptions have been held to violate a party's due process and equal protection rights. [Vlandis v. Kline (1973) 412 U.S. 441, 449, 93 S.Ct 2230, 2235; Cleveland Bed. of Ed. v. LaFleur (1974) 414 U.S. 632, 639-640, 94 S.Ct. 1208, 1215-presumption under Illinois law that unmarried fathers are unfit violates process]"*
> *[Rutter Group Practice Guide-Federal Civil Trials and Evidence, paragraph 8:4993, page 8K-34]*

7. Statutes that create presumptions that impair constitutionally guaranteed rights are a violation of due process of law.

> *"But where the conduct or fact, the existence of which is made the basis of the statutory presumption, itself falls within the scope of a provision of the Federal Constitution, a further question arises.* ***It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions.*** *And the state may not in this way interfere with matters withdrawn from its authority by the Federal Constitution, or subject an accused to conviction for conduct which it is powerless to proscribe."*
> *[Bailey v. State of Alabama, 219 U.S. 219 (1911)]*

8. Any violation of the above requirements is a violation of due process of law that renders a void judgment that is unenforceable.

> *"A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere. Pennoyer v. Neff, 95 U.S. 714, 732-733 (1878)."*
> *[World-Wide Volkwagen Corp. v. Woodson, 444 U.S. 286 (1980)]*

It is a violation of due process to "assume" or "presume" anything in a legal setting. "Presumption", in fact, is the OPPOSITE of "due process", as the definition of "due process" admits in Black's Law Dictionary:

> ***"Due process of law****. Law in its regular course of administration through courts of justice. Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs.* ***A course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights.*** *To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of the creation—to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant,* ***he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance****. Pennoyer v. Neff, 96 U.S. 733, 24 L.Ed. 565. Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved.* ***If any question of fact or liability be conclusively be presumed [rather than proven] against him, this is not due process of law [and in fact is a VIOLATION of due process.****"*

*[Black's Law Dictionary, Sixth Edition, p. 500; Emphasis added]*

Furthermore, even *with evidence*, the federal courts do not have the authority to declare anyone a "taxpayer". Only YOU can do it, because only you can determine whether you want to be a customer of government protection called a "taxpayer"! Only AFTER you have made that decision, called yourself a "taxpayer", or acted like a "taxpayer" by Invoked the protection franchise agreement called the Internal Revenue Code, Subtitle A in your defense may the government or the court enforce it against you.

> *"And by statutory definition the term "taxpayer" includes any person, trust or estate **subject to** a tax imposed by the revenue act. ...Since the statutory definition of taxpayer is exclusive, the federal [and state] courts do not have the power to create nonstatutory taxpayers for the purpose of applying the provisions of the Revenue Acts..."*
> *[C.I.R. v. Trustees of L. Inv. Ass'n, 100 F.2d.18 (1939)]*

> *Specifically, Rowen seeks a declaratory judgment against the United States of America with respect to "whether or not the plaintiff is a taxpayer pursuant to, and/or under 26 U.S.C. §7701(a)(14)." (See Compl. at 2.) **This Court lacks jurisdiction to issue a declaratory judgment "with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986," a code section that is not at issue in the instant action. See 28 U.S.C. § 2201; see also Hughes v. United States, 953 F.2d. 531, 536-537 (9th Cir. 1991)** (affirming dismissal of claim for declaratory relief under § 2201 where claim concerned question of tax liability). Accordingly, defendant's motion to dismiss is hereby GRANTED, and the instant action is hereby DISMISSED.*
> *[Rowen v. U.S., 05-3766MMC. (N.D.Cal. 11/02/2005)]*

If the federal courts cannot declare you to be a "taxpayer" directly, they cannot do it indirectly by PRESUMING you are one!:

> *"**It is almost unnecessary to say, that what the legislature cannot do directly, it cannot do indirectly**. The stream can mount no higher than its source. The legislature cannot create corporations with illegal powers, nor grant unconstitutional powers to those already granted."*
> *[Gelpcke v. City of Dubuque, 68 U.S. 175, 1863 WL 6638 (1863)]*

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> *"**Congress cannot do indirectly what the Constitution prohibits directly**."*
> *[Dred Scott v. Sandford, 60 U.S. 393, 1856 WL 8721 (1856)]*

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> *"In essence, the district court used attorney's fees in this case as an alternative to, or substitute for, punitive damages (which were not available). **The district court cannot do indirectly what it is prohibited from doing directly**."*
> *[Simpson v. Sheahan, 104 F.3d. 998, C.A.7 (Ill.) (1997)]*

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> *"**It is axiomatic that the government cannot do indirectly (i.e. through funding decisions) what it cannot do directly.**"*
> *[Com. of Mass. v. Secretary of Health and Human Services, 899 F.2d. 53, C.A.1 (Mass.) (1990)]*

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> *"Almost half a century ago, this Court made clear that the government "may not enact a regulation providing that no Republican ... shall be appointed to federal office." Public Workers v. Mitchell, 330 U.S. 75, 100, 67 S.Ct. 556, 569, 91 L.Ed. 754 (1947). What the *78 **First Amendment precludes the government**2739 from commanding directly, it also precludes the government from accomplishing indirectly. See Perry, 408 U.S., at 597, 92 S.Ct., at 2697 (citing Speiser v. Randall, 357 U.S. 513, 526, 78 S.Ct. 1332, 1342, 2 L.Ed.2d. 1460 (1958))**; see supra, at 2735."*
> *[Rutan v. Republican Party of Illinois, 497 U.S. 62, 110 S.Ct. 2729, U.S.Ill. (1990)]*

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> *"Similarly, **numerous cases have held that governmental entities cannot do indirectly that which they cannot do directly. See *841 Board of County Comm'rs v. Umbehr, 518 U.S. 668, 674, 116 S.Ct. 2342, 135 L.Ed.2d. 843 (1996) (holding that the First Amendment protects an independent contractor from termination or prevention of the automatic renewal of his at-will government contract in retaliation for exercising his freedom of speech); El Dia, Inc. v. Rossello, 165 F.3d. 106, 109 (1st Cir.1999) (holding that a government could not withdraw advertising from a newspaper which published articles critical of that administration because it violated clearly established First Amendment law prohibiting retaliation for the exercising of freedom of speech); North Mississippi Communications v. Jones, 792 F.2d. 1330, 1337 (5th Cir.1986) (same).** The defendants violated clearly established Due Process and First Amendment law by boycotting the plaintiffs' business in an effort to get them removed from the college."*
> *[Kinney v. Weaver, 111 F.Supp.2d 831, E.D.Tex. (2000)]*

A violation of due process has occurred if anyone in the government, including the judge or the prosecutor, PRESUMES anything that impairs your constitutional rights. This includes the most damaging presumption of all, which is that you are a statutory "U.S. citizen" pursuant to 8 U.S.C. §1401 domiciled in a place that has no rights. The "territories" they are talking about below is the "United States" defined in 26 U.S.C. §7701(a)(9) and (a)(10) where all "taxpayers" maintain a domicile pursuant to 26 U.S.C. §911(d)(3)!

> *"Indeed, the practical interpretation put by Congress upon the Constitution has been long continued and uniform to the effect [182 U.S. 244, 279] that* ***the Constitution is applicable to territories acquired by purchase or conquest, only when and so far as Congress shall so direct. Notwithstanding its duty to 'guarantee to every state in this Union a republican form of government' (art. 4, 4), by which we understand, according to the definition of Webster, 'a government in which the supreme power resides in the whole body of the people, and is exercised by representatives elected by them,' Congress did not hesitate, in the original organization of the territories of Louisiana, Florida, the Northwest Territory, and its subdivisions of Ohio, Indiana, Michigan, Illinois, and Wisconsin and still more recently in the case of Alaska, to establish a form of government bearing a much greater analogy to a British Crown colony than a republican state of America****, and to vest the legislative power either in a governor and council, or a governor and judges, to be appointed by the President. It was not until they had attained a certain population that power was given them to organize a legislature by vote of the people. In all these cases, as well as in territories subsequently organized west of the Mississippi, Congress thought it necessary either to extend to Constitution and laws of the United States over them, or to declare that the inhabitants should be entitled to enjoy the right of trial by jury, of bail, and of the privilege of the writ of habeas corpus, as well as other privileges of the bill of rights."*
> *[Downes v. Bidwell, 182 U.S. 244 (1901)]*

The above false presumption is rebutted with evidence using the following forms that we encourage you to use during litigation:

1. *Citizenship, Domicile, and Tax Status Options*, Form #10.003
   http://sedm.org/Forms/FormIndex.htm
2. *Affidavit of Citizenship, Domicile, and Tax Status*, Form #02.001
   http://sedm.org/Forms/FormIndex.htm

The most prevalent unconstitutional presumptions engaged in by the government in tax trials are the following:

1. That you are a statutory "U.S. citizen" pursuant to 8 U.S.C. §1401 as described above. Instead, you are a constitutional but not statutory "citizen" and a "non-citizen national" pursuant to 8 U.S.C. §1101(a)(21) and 8 U.S.C. §1452 as described in the above two documents. See:
   *Why You Are a "national", "state national", and Constitutional but not Statutory Citizen*, Form #05.006
   http://sedm.org/Forms/FormIndex.htm
2. That the defendant is a "taxpayer". The foundation of American jurisprudence requires that ALL are presumed to be innocent until proven guilty, which means that they are presumed to be a "nontaxpayer" until proven to be a "taxpayer". In fact, it is a CRIME pursuant to 18 U.S.C. §912 to be a "taxpayer" if you did not already serve in a public office within the U.S. government BEFORE you filled out any tax forms because the I.R.C. doesn't authorize the CREATION of public offices or allow them to be exercised outside the place designated in 4 U.S.C. §72! See:
   *Who are "Taxpayers" and Who Needs a "Taxpayer Identification Number"?*, Form #05.013
   http://sedm.org/Forms/FormIndex.htm
3. That the Internal Revenue Code is legal evidence of an obligation. We prove in section 10 that this is simply not the case.
4. That the word "includes" as defined in 26 U.S.C. §7701(c ) allows them to add anything they want to a definition within the Internal Revenue Code. This violates the rules of statutory construction and due process of law. It also causes the entire Internal Revenue Code itself to act in effect as a "statutory presumption" and a state-sponsored religion based on belief rather than evidence:

> *"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)]*

> *"****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)]*

5. That ALL EARNINGS are "income" or "taxable income" or "gross income". This is not the case. Only earnings connected with a "trade or business" and a public office in the U.S. government or originating from within the government are "income".

*"We must reject in this case, as we have rejected in cases arising under the Corporation Excise Tax Act of 1909 (Doyle, Collector, v. Mitchell Brothers Co., 247 U.S. 179, 38 Sup.Ct. 467, 62 L. Ed.--), the broad contention submitted on behalf of the government that all receipts—everything that comes in-are income within the proper definition of the term 'gross income,' and that the entire proceeds of a conversion of capital assets, in whatever form and under whatever circumstances accomplished, should be treated as gross income. Certainly the term "income' has no broader meaning in the 1913 act than in that of 1909 (see Stratton's Independence v. Howbert, 231 U.S. 399, 416, 417 S., 34 Sup.Ct. 136), and for the present purpose we assume there is no difference in its meaning as used in the two acts."*
*[Southern Pacific Co., v. Lowe, 247 U.S. 330, 335, 38 S.Ct. 540 (1918)]*

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*"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)]*

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*"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)]*

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*"The conclusion reached in the Pollock case.. recognized the fact that taxation on income was, in its nature, an excise…"*
*[Brushaber v. Union Pacific Railroad Co., 240 U.S. 1, 16-17 (1916)]*

6. That the only way you can escape tax liability is to be "exempt". In fact, one can be "not subject", without being either "exempt" or an "exempt individual". That condition is described in 26 U.S.C. §7701(a)(31). See:

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| *Flawed Tax Arguments to Avoid*, Form #08.004, Section 5.10<br>http://sedm.org/Forms/FormIndex.htm |

7. That the IRS has the lawful authority to assess you with a tax liability without your consent. This is false, as proven below:

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| *Why the Government Can't Lawfully Assess Human Beings With an Income Tax Liability Without Their Consent*, Form #05.011<br>http://sedm.org/Forms/FormIndex.htm |

If you would like to learn more about the above false presumptions, see:

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| *Flawed Tax Arguments to Avoid*, Form #08.004<br>http://sedm.org/Forms/FormIndex.htm |

## 9 The I.R.C. repealed itself and all prior revenue statutes when it was codified in 1939

There have been three major versions of the Internal Revenue Code since its inception: 1939; 1954, 1986. If you trace the history of the current Internal Revenue Code, you will find that it began with the 1939 code. All revenue laws prior to the 1939 I.R.C. were repealed when the 1939 code was enacted, as evidenced by 53 Stat. 1, Section 4. In addition to repealing all the previous revenue laws, the 1939 code repealed itself! Below is the language of the repeal:

*AN ACT*

*To consolidate and codify the internal revenue laws of the United States.*

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the laws of the United States hereinafter codified and set forth as a part of this act under the heading "Internal Revenue Title" are hereby enacted into law.*

*SEC. 2. CITATION.—This act and the internal revenue title incorporated herein shall be known as the Internal Revenue Code and may be cited as "I. R. C.".*

*SEC. 3. EFFECTIVE DATE.—Except as otherwise provided herein, this act shall take effect on the day following the date of its enactment.*

*SEC. 4. REPEAL AND SAVINGS PROVISIONS.—(a) The Internal Revenue Title, as hereinafter set forth, is intended to include all general laws of the United States and parts of such laws, relating exclusively to internal revenue, in force on the 2d day of January 1939 (1) of a permanent nature and (2) of a temporary nature if embraced in said Internal Revenue Title.* ***In furtherance of that purpose, all such laws and parts of laws codified herein, to the extent they relate exclusively to internal revenue, are repealed, effective, except as provided in section 5, on the day following the date of the enactment of this act.***

*(b) Such repeal shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal, but all rights and liabilities under said acts shall continue, and may be enforced in the same manner, as if said repeal had not been made; nor shall any office, position, employment, board, or committee, be abolished by such repeal, but the same shall continue under the pertinent provisions of the Internal Revenue Title.*

*(c) All offenses committed, and all penalties or forfeitures incurred under any statute hereby repealed, may be prosecuted and punished in the same manner and with the same effect as if this act had not been passed.*

*(d) All acts of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, hereby repealed shall not be affected thereby, but all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising, or acts done or committed, prior to said repeal, may be commenced and prosecuted within the same time as if this act had not been passed.*

*(e) The authority vested in the President of the United States, or in any officer or officers of the Treasury Department, by the law as it existed immediately prior to the enactment of this act, hereafter to give publicity to tax returns required under any internal revenue law in force immediately prior to the enactment of this act or any information therein contained, and to furnish copies thereof and to prescribe the terms and conditions upon which such publicity may be given or such copies furnished, and to make rules and regulations with respect to such publicity, is hereby preserved. And the provisions of law authorizing such publicity and prescribing the terms, conditions, limitations, and restrictions upon such publicity and upon the use of the information gained through such publicity and the provisions of law prescribing penalties for unlawful publicity of such returns and for unlawful use of such information are hereby preserved and continued in full force and effect.*

*SEC. 5. CONTINUANCE OF EXISTING LAW.—Any provision of law in force on the 2d day of January 1939 corresponding to a provision contained in the Internal Revenue Title shall remain in force until the corresponding provision under such Title takes effect.*

*SEC. 6. ARRANGEMENT, CLASSIFICATION, AND CROSS REFERENCES.— The arrangement and classification of the several provisions of the Internal Revenue Title have been made for the purpose of a more convenient and orderly arrangement of the same, and, therefore, no inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion thereof, nor shall any out- line, analysis, cross reference, or descriptive matter relating to the contents of said Title be given any legal effect.*

*SEC. 7. EFFECT UPON SUBSEQUENT LEGISLATION.—The enactment of this act shall not repeal nor affect any act of Congress passed since the 2d day of January 1939, and all acts passed since that date shall have full effect as if passed after the enactment of this act; but, so far as such acts vary from, or conflict with, any provision contained in this act, they are to have effect as subsequent statutes, and as repealing any portion of this act inconsistent therewith.*

*SEC. 8. COPIES AS EVIDENCE OF ORIGINAL.—Copies of this act printed at the Government Printing Office and bearing its imprint shall be conclusive evidence of the original Internal Revenue Code in the custody of the Secretary of State.*

*SEC. 9. PUBLICATION.—The said Internal Revenue Code shall be published as a separate part of a volume of the United States Statutes at Large, with an appendix and index, but without marginal references; the date of enactment, bill number, public and chapter number shall be printed as a headnote.*

*SEC. 10. INTERNAL REVENUE TITLE.—The Internal Revenue Title, heretofore referred to, and hereby and herein enacted into law, is as follows:..*
*[Internal Revenue Code of 1939, 53 Stat. 1]*

You can find the 1939 Internal Revenue Code language above on the web at:

| Internal Revenue Code of 1939<br>http://www.famguardian.org/Disks/LawDVD/Federal/RevenueActs/Revenue%20Act%20of%201939.pdf |
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Subsequent versions of the 1939 code did not enact Title 26 of the U.S. Code into positive law either. There have been two major revisions of the I.R.C. since the 1939 code: 1954 Code and 1986 Code. Both of these codes referred to themselves simply as "amendments", but what they amended was a repealed code that was dead! If you look at the list of amendments in the 1954 code, it doesn't even list the sections of the previous 1939 code that were changed, and the reason it doesn't is because it is amending a dead, inactive, and repealed code! That is why the Internal Revenue Code is not only not positive law, but is not law at all. Instead, it is a "code of repealed laws" that have no force and effect at all against anyone who does not explicitly consent in some way. Consequently, any legal trials based on the Internal Revenue Code are simply religious inquisitions and not valid legal proceedings by any stretch of the imagination.

The 'enactment' of the IRC of 1954 was not the enactment into law of ***everything*** contained in that title, it was only the designation of the 1954 code as the new official "prima facie evidence" of the actual laws being represented by "code" (some of the more significant of which-- such as what is reflected in chapter 24 of the current code-- had been enacted after 1939). That is, prior to the 1954 code, the 1939 code was the official prima facie (conveniently indicative, but not legally definitive) evidence of the actual law-in-force. With the adoption of the 1954 code, the new version became that official "prima facie evidence".

Even the limited significance of this "enactment" is not as significant as it appears at first glance, because even the replacement of the 1939 code as prima facie evidence of the statutes is only partial. Section 7851 of the 1954 code contains extensive specifications as to which parts of the 1939 code are replaced by 1954 provisions, and to which specific things those limited replacements apply, making clear that much of the 1939 code remains the official codified representation of the actual statutes. For instance, Section 7851(a)(1)(A) reads as follows:

*(1) SUBTITLE A.—*

*(A) Chapters 1, 2, 4, and 6 of this title shall apply only with respect to taxable years beginning after December 31, 1953, and ending after the date of enactment of this title, and with respect to such taxable years, chapters 1 (except sections 143 and 144) and 2, and section 3801, of the Internal Revenue Code of 1939 are hereby repealed.*

The new 1954 code is a far less useful version, as it turns out. This is because those portions of the 1954 code purporting to represent laws-in-force prior to 1939 (which includes the vast majority of the internal revenue laws currently in effect) are actually just representations of the 1939 code representations of those laws, and with a great deal of consolidation and re-arrangement (ostensibly for the purpose of brevity or better organization). Only those statutes passed since the last 1939 code had been published are freshly represented in the 1954 code, a fact expressed in its "Derivation Tables" referenced at the end of this section.

The same is true of the "1986 code" (which is, in fact, nothing but the 1954 code with a new name, per Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095), which is why the derivation tables for that version contain no references to the 1954 code at all, but refer directly back to the 1939 code as the source from which all older statutory representations are derived.

*"Of the 50 titles, only 23 have been enacted into positive (statutory) law. These titles are 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 36, 37, 38, 39, 44, 46, and 49. When a title of the Code was enacted into positive law, the text of the title became legal evidence of the law. Titles that have not been enacted into positive law are only prima facie evidence of the law. In that case, the Statutes at Large still govern."*
*[United States Government Printing Office Website;*
*SOURCE: http://www.gpoaccess.gov/uscode/about.html]*

> *"Certain titles of the Code have been enacted into positive law, and pursuant to section 204 of title 1 of the Code, the text of those titles is legal evidence of the law contained in those titles. The other titles of the Code are prima facie evidence of the laws contained in those titles. The following titles of the Code have been enacted into positive law: 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 36, 37, 38, 39, 40, 44, 46, and 49."*
> *[United States House of Representatives Office of the Law Revision Counsel;*
> *SOURCE: http://uscode.house.gov/about/info.shtml]*

It will therefore be observed that title 26 is not an enacted title, either when it was first codified in 1939 or in any enactment since.

If you would like to see a history of the genesis of each section of the current Internal Revenue Code published by the U.S. government, see the following:

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| *Derivations of Code Sections of the Internal Revenue Codes of 1939 and 1954*, Litigation Tool #09.011<br>http://sedm.org/Litigation/LitIndex.htm |

Finally, if you would like exhaustive proof of how the Internal Revenue Code has been used to create a state-sponsored religion in which "presumption" acts as a substitute for religious faith, and the object of worship is the government rather than the true and living God, see:

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| *Socialism: The New American Civil Religion*, Form #05.016<br>http://sedm.org/Forms/FormIndex.htm |

## 10 The I.R.C. is not public law or positive law, but private law that only applies to those who individually consent

You can find a list of specific titles of the U.S. Code that are positive law by examining 1 U.S.C. §204. In addition, each Title of the U.S. Code indicates whether or not it contains positive law. As an example, Title One, General provisions, starts out with:

> *"This title has been made positive law by section 1 of the act of July 30, 1947, ch. 388, 61 Stat. 633, which provided in part that: 'Title 1 of the United States Code entitled 'General Provisions,' is codified and enacted into positive law and may be cited as '1 U.S.C. Sec….'"*

Whereas Title 26 makes no statement that it is positive law. Congress just says that I.R. Codes were "enacted" and how they may be cited, but never explicitly says they are "positive law". That means they don't obligate you to anything without your explicit consent in some form. In that sense, they are "private law" and amount essentially to a contract for federal employment.

No reference to the I.R. Code being positive law either in 1 U.S.C. §204 or in the "Title" itself confirms that it is "private law" that applies to specific "persons" rather than "all persons generally".

> ***"The foregoing considerations would lead, in case of doubt, to a construction of any statute as intended to be confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power. 'All legislation is prima facie territorial.' Ex parte Blain, L. R. 12 Ch. Div. 522, 528; State v. Carter, 27 N. J. L. 499; People v. Merrill, 2 Park. Crim. Rep. 590, 596. Words having universal scope, such as 'every contract in restraint of trade,' 'every person who shall monopolize,' etc., will be taken, as a matter of course, to mean only everyone subject to such legislation, not all that the legislator subsequently may be able to catch.*** *In the case of the present statute, the improbability of the United States attempting to make acts done in Panama or Costa Rica criminal is obvious, yet the law begins by making criminal the acts for which it gives a right to sue. We think it entirely plain that what the defendant did in Panama or Costa Rica is not within the scope of the statute so far as the present suit is concerned. Other objections of a serious nature are urged, but need not be discussed."*
> *[American Banana Co. v. U.S. Fruit, 213 U.S. 347 at 357-358]*

> *"The law of Congress in respect to those matters do not extend into the territorial limits of the states, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government."*
> *[Caha v. United States, 152 U.S. 211 (March 5, 1894)]*

These specific "persons" are public officers who chose to become "effectively connected" with the U.S. Government income. All such "persons" and "individuals" are employees, instrumentalities, agencies within the U.S. Government. They cannot be private parties because the Supreme Court has held that the ability to regulate private conduct is "repugnant to the Constitution":

> *"The power to "legislate generally upon" life, liberty, and property [of PRIVATE citizens], as opposed to the "power to provide modes of redress" against offensive state action, was "repugnant" to the Constitution. Id., at 15. See also United States v. Reese, 92 U.S. 214, 218 (1876); United States v. Harris, 106 U.S. 629, 639 (1883); James v. Bowman, 190 U.S. 127, 139 (1903). Although the specific holdings of these early cases might have been superseded or modified, see, e.g., Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964); United States v. Guest, 383 U.S. 745 (1966), their treatment of Congress' §5 power as corrective or preventive, not definitional, has not been questioned."*
> [City of Boerne v. Florez, Archbishop of San Antonio, 521 U.S. 507 (1997)]

This is confirmed, for instance, by:

1. 26 U.S.C. §6331(a), which is the ONLY person against whom levy and distraint (enforcement) may be instituted.
2. 26 U.S.C. §7343, which defines "person" for the purposes of the criminal provisions of the I.R.C. as:

> *". . .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."*

3. 26 U.S.C. §6671(b), which defines "person" for the purposes of the penalty provisions of the I.R.C. as:

> *". . .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."*

Incidentally, the "duty" they are talking about above is fiduciary duty as a "transferee" over federal payments. This fiduciary duty is then defined in 26 U.S.C. §6903. The fiduciary duty was created when you signed up to be a "trustee" for the Social Security Trust by signing and submitting Social Security Form SS-5. A trustee is a person who has a fiduciary duty to the Beneficiary of the trust. Your elected representatives in the District of Columbia are the beneficiary of the trust, which has a domicile in the District of Columbia pursuant to Federal Rule of Civil Procedure 17(b). See the following for exhaustive details on this scam:

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| *Resignation of Compelled Social Security Trustee*, Form #06.002<br>http://sedm.org/Forms/FormIndex.htm |

Another very important point about codes that are not "positive law" needs to be made here, which is that those codes within the U.S. code which are *not* "positive law", such as the Internal Revenue Code, are described simply as "prima facie evidence" of law. 1 U.S.C. §204 and the notes thereunder describe the I.R.C. as a "code" or a "title", but NEVER as a "law". Below is the text of 1 U.S.C. §204 to demonstrate this:

> *TITLE 1 > CHAPTER 3 > §204*
> *§204. Codes and Supplements as evidence of the laws of United States and District of Columbia; citation of Codes and Supplements*
>
> *In all courts, tribunals, and public offices of the United States, at home or abroad, of the District of Columbia, and of each State, Territory, or insular possession of the United States—*
>
> *(a) United States Code.—*
>
> ***The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, establish prima facie the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included**: Provided, however, **That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States.***

The term "prima facie evidence" is a fancy legal term or "word of art" that simply means "presumed to be law until rebutted with substantive evidence". "Prima facie" means "presumed":

> *"**Prima facie**. Lat. At first sight; on the first appearance; on the face of it; so far as can be judged from the first disclosure; **presumably; a fact presumed to be true unless disproved by some evidence to the contrary.** State ex rel. Herbert v. Whims, 68 Ohio App. 39, 28 N.E.2d. 596, 599, 22 O.O. 110. See also Presumption"*
> *[Black's Law Dictionary, Sixth Edition, p. 1189]*

Based on the discussion of "presumption" at:

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| *Presumption: Chief Weapon for Unlawfully Enlarging Federal Jurisdiction*, Form #05.017<br>http://sedm.org/Forms/FormIndex.htm |

. . .and the detailed coverage of "due process" starting in section 5.4.9 of the *Great IRS Hoax*, Form #11.302, we know that anything involving "presumption" is not only a Biblical sin under Psalm 19:12-13 and Numbers 15:30, but also is a violation of "due process".

> *"The power to create [false] presumptions is not a means of escape from constitutional restrictions,"*
> *[New York Times v. Sullivan, 376 U.S. 254 (1964)]*

> *This court has never treated a presumption as any form of evidence.* See, e.g., A.C. Aukerman Co. v. R.L. Chaides Constr. Co., *960 F.2d. 1020, 1037 (Fed.Cir.1992) ("[A] presumption is not evidence.");* see also Del Vecchio v. Bowers, *296 U.S. 280, 286, 56 S.Ct. 190, 193, 80 L.Ed. 229 (1935) ("[A presumption] cannot acquire the attribute of evidence in the claimant's favor.");* New York Life Ins. Co. v. Gamer, *303 U.S. 161, 171, 58 S.Ct. 500, 503, 82 L.Ed. 726 (1938) ("[A] presumption is not evidence and may not be given weight as evidence."). Although a decision of this court,* Jensen v. Brown, *19 F.3d. 1413, 1415 (Fed.Cir.1994), dealing with presumptions in VA law is cited for the contrary proposition, the* Jensen *court did not so decide.*
> *[Routen v. West, 142 F.3d. 1434 C.A.Fed.,1998]*

> ***"Conclusive presumptions affecting protected interests:** A conclusive presumption may be defeated where its application would impair a party's constitutionally-protected liberty or property interests. In such cases, conclusive presumptions have been held to violate a party's due process and equal protection rights. [Vlandis v. Kline (1973) 412 U.S. 441, 449, 93 S.Ct 2230, 2235; Cleveland Bed. of Ed. v. LaFleur (1974) 414 U.S. 632, 639-640, 94 S.Ct. 1208, 1215-presumption under Illinois law that unmarried fathers are unfit violates process]"*
> *[Rutter Group Practice Guide-Federal Civil Trials and Evidence, paragraph 8:4993, page 8K-34]*

> *"But where the conduct or fact, the existence of which is made the basis of the statutory presumption, itself falls within the scope of a provision of the Federal Constitution, a further question arises. **It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions.** And the state may not in this way interfere with matters withdrawn from its authority by the Federal Constitution, or subject an accused to conviction for conduct which it is powerless to proscribe."*
> *[Bailey v. State of Alabama, 219 U.S. 219 (1911)]*

It is a violation of due process to "assume" or "presume" that anything is "law" unless it was enacted into positive law and evidence is entered on the record of same. Positive law is the *only* legitimate or admissible evidence that the people ever consented to the enforcement of an enactment, and without such explicit consent, no enactment is enforceable nor may it adversely affect a person's rights. Once again, the Declaration of Independence says that all just powers derive from "consent", which implies that any compulsion by government absent consent is unjust. The only exception to this rule is the criminal laws, which could not function properly if consent of the criminal was required. "Presumption", in fact, is the OPPOSITE of "due process", as the definition of "due process" admits in Black's Law Dictionary:

> ***"Due process of law**. Law in its regular course of administration through courts of justice. Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. **A course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights.** To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of the creation—to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, **he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance**. Pennoyer v. Neff, 96 U.S. 733, 24 L.Ed. 565. Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. **If any question of fact or liability be conclusively be presumed [rather than proven] against***

***him, this is not due process of law [and in fact is a VIOLATION of due process.***"
*[Black's Law Dictionary, Sixth Edition, p. 500; Emphasis added]*

How do we rebut the false "presumption" that the Internal Revenue Code is law using admissible evidence? One way to rebut the fact that the Internal Revenue Code is "law" is to present section 4 of the 1939 Internal Revenue Code itself, located in 53 Stat. 1, and show that the code repealed all prior revenue laws as well as itself, and therefore is unenforceable. You can also present 1 U.S.C. §204 to show that it is not "law" or "positive law", but is "presumed to be law". Since all presumption which prejudices Constitutional rights is a violation of due process, then the code cannot be used as a substitute for real positive law evidence. The only reason this wouldn't work in a court of law is because a tyrant judge with a conflict of interest (in violation of 18 U.S.C. §208 and 28 U.S.C. §455) who is subject to IRS extortion won't allow such evidence to be admitted at trial because it is too likely to reduce his federal retirement benefits. However, if we put the evidence in our IRS administrative record BEFORE the trial by attaching it to the certified mail correspondence we send them, and keep the original correspondence and the notarized proof that we mailed it, then the corrupt judge can no longer keep it out of evidence and may not grant a motion "in limine" by the Department of Injustice to exclude it as evidence at trial. Our administrative record with the IRS is ALWAYS admissible as evidence.

The authority of the IRS is limited to seeing that a proper "return" (kickback) of U.S. Government property (income) is made by Federal Government "employees" and fiduciaries (Trustees) in the name of "tax". The tax is actually corporate profit that is kicked back to the mother corporation, which is defined as the "United States" in 28 U.S.C. §3002(15)(A). When IRS employees act upon property not within the authority given them by the I.R. Code, they are NOT acting in behalf of the U.S. government and must personally accept the consequences of their illegal actions.

IRS employees and government welfare recipients such as tax attorneys have invented a number of specious and false arguments relating to the fact that the I.R.C. is not "positive law". They will try to exploit your legal ignorance in order to deceive you into thinking that it IS positive law by any one of the following statements. Some have observed these false statements being made by Mr. Rookyard (http://www.geocities.com/b_rookard/) as he was debated him on the Sui Juris Forums (http://suijuris.net). The information below was used to "checkmate" him on each of these issues and thereby exposed his fraud to the large audience there. We have cataloged each false statement and provided a rebuttal you can use against it:

1. **FALSE STATEMENT #1**: "Everything in the Statutes at Large is 'positive law'. The IRC was published in the Statutes at Large. Therefore, the I.R.C. MUST be positive law."
2. **REBUTTAL TO FALSE STATEMENT #1**: Not everything in the Statutes at Large is "positive law", in fact. Both the current Social Security Act and the current Internal Revenue Code (the 1986 code) were published in the Statutes at Large and 1 U.S.C. §204 indicate that NEITHER Title 26 (the I.R.C.) nor Title 42 (the Social Security Act) of the U.S. Code are "positive law". Therefore, this is simply a false statement. If you would like to see the evidence for yourself, here it is:
   2.1. 1 U.S.C. §204: http://assembler.law.cornell.edu/uscode/html/uscode01/usc_sec_01_00000204----000-.html
   2.2. 1986 Internal Revenue Code, 100 Stat 2085: http://www.famguardian.org/Disks/LawDVD/Federal/RevenueActs/Revenue%20Act%20of%201986.pdf
   2.3. Current Social Security Act: http://www.ssa.gov/OP_Home/ssact/comp-toc.htm
3. **FALSE STATEMENT #2**: "The Statutes at Large, 53 Stat. 1, say the 1939 Internal Revenue Code was 'enacted'. Anything that is 'enacted' is 'law'. Therefore, the 1939 I.R.C. and all subsequent versions of it MUST be positive law."
4. **REBUTTAL TO FALSE STATEMENT #2**: A repeal of a statute can be enacted, and it produces no new "law". Seeing the word "enacted" in the Statutes of Law does not therefore necessarily imply that new "law" was created. In fact, you can go over both the current version of 1 U.S.C. §204 and all of its predecessors all the way back to 1939 and you will not find a single instance where the Internal Revenue Code has ever been identified as "positive law". If you think we are wrong, then show us the proof or shut your presumptuous and deceitful mouth.
5. **FALSE STATEMENT #3**: "The Internal Revenue Code does not need to be 'positive law' in order to be enforceable. Federal courts and the I.R.S. call it 'law' so it must be 'law'."
6. **REBUTTAL TO FALSE STATEMENT #3**: The federal courts are a foreign jurisdiction with respect to a state national domiciled in his state on land not subject to exclusive federal jurisdiction under Article 1, Section 8, Clause 17 and who has no contracts or fiduciary relationships with the federal government. This is covered extensively in the *Tax Fraud Prevention Manual*, Form #06.008, Chapter 6. Your statement represents an abuse of case law for political

rather than legal purposes as a way to deceive people. Even the IRS' own Internal Revenue Manual, Section 4.10.7.2.9.8 says that cases below the Supreme Court may not be cited to sustain a position. Furthermore, if you read the cases to which you are referring, you will find out that the party they were talking about was a "taxpayer". Because the Internal Revenue Code has no liability statute under Subtitle A, then the only way a person can become a "taxpayer" is by consenting to abide by the Code. If he consented, then the code becomes "law" for him. This is why even the U.S. Supreme Court itself refers to the income tax as "voluntary" in *Flora v. United States*, 362 U.S. 145 (1960). Consent is the ONLY thing that can produce "law", as we covered in previous sections. The I.R.C. is private law, special law, and contract law that only applies to those who explicitly consent by signing a contract vehicle, such as Forms W-4, an SS-5, or a 1040. Since all of these forms produce an obligation, then all of them are contracts. The obligation cannot exist without signing them, nor can the IRS lawfully or unilaterally assess a person on a 1040 form under 26 U.S.C. §6020(b) who does not first consent. See section 5.3.1 of the *Great IRS Hoax*, Form #11.302 for details on this scam.

## 11 So what exactly is the basis for a reasonable belief about tax liability?

The only basis for a reasonable belief is legally admissible evidence of what an enacted tax law actually says. Everything else essentially is based on presumption. 1 U.S.C. §204 establishes what types of legally evidence are admissible under the Federal Rules of Evidence when it says:

> *TITLE 1 > CHAPTER 3 > § 204*
> *§ 204. Codes and Supplements as evidence of the laws of United States and District of Columbia; citation of Codes and Supplements*
>
> *In all courts, tribunals, and public offices of the United States, at home or abroad, of the District of Columbia, and of each State, Territory, or insular possession of the United States—*
>
> *(a) United States Code.— **The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, establish prima facie the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included: Provided, however, That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States***

An examination of the legislative notes under 1 U.S.C. 204 then reveals which titles of the U.S. Code are "positive law" and which are not. Title 26 is not listed as being positive law. Therefore, it constitutes "prima facie" evidence of law. "prima facie" is defined in Black's Law Dictionary as "presumed to be evidence":

> *"**Prima facie**. Lat. At first sight; on the face of it; so far as can be judged from the first disclosure; presumably; a fact presumed to be true unless disproved by some evidence to the contrary. State ex rel. Herbert v. Whims, 68 Ohio App. 39, 28 N.E.2d. 596, 599, 22 O.O. 110. See also Presumption"*
> *[Black's Law Dictionary, Sixth Edition, p. 1189]*

Therefore, the Internal Revenue Code is simply "presumed" to be law. Under the rules of Constitutional due process, it cannot adversely affect the rights of anyone protected by the Constitution such as a person domiciled in a state of the Union:

1. All persons are presumed innocent until proven guilty with evidence. That means they are "nontaxpayers" not subject to the I.R.C. until they are proven to be "taxpayers" WITH EVIDENCE.
2. Presumptions are not evidence and cannot be used as a substitute for evidence.

> *This court has never treated a presumption as any form of evidence.* See, e.g., A.C. Aukerman Co. v. R.L. Chaides Constr. Co., *960 F.2d. 1020, 1037 (Fed.Cir.1992) ("[A] presumption is not evidence.");* see also Del Vecchio v. Bowers, *296 U.S. 280, 286, 56 S.Ct. 190, 193, 80 L.Ed. 229 (1935) ("[A presumption] cannot acquire the attribute of evidence in the claimant's favor.");* New York Life Ins. Co. v. Gamer, *303 U.S. 161, 171, 58 S.Ct. 500, 503, 82 L.Ed. 726 (1938) ("[A] presumption is not evidence and may not be given weight as evidence."). Although a decision of this court,* Jensen v. Brown, *19 F.3d. 1413, 1415 (Fed.Cir.1994), dealing with presumptions in VA law is cited for the contrary proposition, the* Jensen *court did not so decide.*
> *[Routen v. West, 142 F.3d. 1434 C.A.Fed.,1998]*

3. No judge has or can have the delegated authority to convert a presumption into evidence. If he does, he is:

3.1. Entertaining political questions in violation of the separation of powers.
3.2. Establishing a state sponsored religion where presumption serves as the equivalent of religious faith.
3.3. "Legislating from the bench", if the conversion relates to a statute that is not "positive law". In effect, he is "creating law" that was not otherwise legal evidence of an obligation.

4. Presumptions that impair constitutionally protected rights are a violation of due process:

> ***"Conclusive presumptions affecting protected interests:*** *A conclusive presumption may be defeated where its application would impair a party's constitutionally-protected liberty or property interests. In such cases, conclusive presumptions have been held to violate a party's due process and equal protection rights. [Vlandis v. Kline (1973) 412 U.S. 441, 449, 93 S.Ct 2230, 2235; Cleveland Bed. of Ed. v. LaFleur (1974) 414 U.S. 632, 639-640, 94 S.Ct. 1208, 1215-presumption under Illinois law that unmarried fathers are unfit violates process]"*
> *[Rutter Group Practice Guide-Federal Civil Trials and Evidence, paragraph 8:4993, page 8K-34]*

5. Statutes that create presumptions that impair constitutionally guaranteed rights are impermissible.

> *"But where the conduct or fact, the existence of which is made the basis of the statutory presumption, itself falls within the scope of a provision of the Federal Constitution, a further question arises.* ***It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions.*** *And the state may not in this way interfere with matters withdrawn from its authority by the Federal Constitution, or subject an accused to conviction for conduct which it is powerless to proscribe."*
> *[Bailey v. State of Alabama, 219 U.S. 219 (1911)]*

6. Any violation of the above requirements is a violation of due process of law that renders a void judgment that is unenforceable.

> *"A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere. Pennoyer v. Neff, 95 U.S. 714, 732-733 (1878)."*
> *[World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980)]*

The audience for this pamphlet is only people domiciled either in Heaven or in states of the Union. Therefore:

1. "presumption" may not be employed by any reader of this pamphlet without violating the Constitution.
2. The Internal Revenue Code does not constitute a reasonable basis for belief about tax liability, because it requires presumption.
3. The only thing that can be cited is positive law from the Statutes at Large that is not repealed. Everything published in the Statutes at Large that has not been repealed is admissible as non prima-facie evidence of law. The current version of 1 U.S.C. §204 doesn't say that but earlier versions do.

We then investigated further after we learned the above. In particular, we looked at the enactment of the 1939 Internal Revenue Code, 53 Stat. 1. Section 4 of that act says that all prior revenue Laws were repealed by the act, which means that all revenue laws passed before January 2, 1939 were repealed, including those found in the Statutes at Large. Below is the text of that act:

> ***1939 Internal Revenue Code, 53 Stat. 1, Section 4***
>
> *SEC. 4. REPEAL AND SAVINGS PROVISIONS.— (a) The Internal Revenue Title, as hereinafter set forth, is intended to include all general laws of the United States and parts of such laws, relating exclusively to internal revenue, in force on the 2d day of January 1939 (1) of a permanent nature and (2) of a temporary nature if embraced in said Internal Revenue Title. In furtherance of that purpose, all such laws and parts of laws codified herein, to the extent they relate exclusively to internal revenue, are repealed, effective, except as provided in section 5, on the day following the date of the enactment of this act.*
>
> *(b) Such repeal shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal, but all rights and liabilities under said acts shall continue, and may be enforced in the same manner, as if said repeal had not been made; nor shall any office, position, employment, board, or committee, be abolished by such repeal, but the same shall continue under the pertinent provisions of the Internal Revenue Title.*
>
> *(c) All offenses committed, and all penalties or forfeitures incurred under any statute hereby repealed, may be prosecuted and punished in the same manner and with the same effect as if this act had not been passed.*

*(d) All acts of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, hereby repealed shall not be affected thereby, but all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising, or acts done or committed, prior to said repeal, may be commenced and prosecuted within the same time as if this act had not been passed.*

*(e) The authority vested in the President of the United States, or in any officer or officers of the Treasury Department, by the law as it existed immediately prior to the enactment of this act, hereafter to give publicity to tax returns required under any internal revenue law in force immediately prior to the enactment of this act or any information therein contained, and to furnish copies thereof and to prescribe the terms and conditions upon which such publicity may be given or such copies furnished, and to make rules and regulations with respect to such publicity, is hereby preserved. And the provisions of law authorizing such publicity and prescribing the terms, conditions, limitations, and restrictions upon such publicity and upon the use of the information gained through such publicity and the provisions of law prescribing penalties for unlawful publicity of such returns and for unlawful use of such information are hereby preserved and continued in full force and effect.*

*[SOURCE:*
*http://www.famguardian.org/Disks/LawDVD/Federal/RevenueActs/Revenue%20Act%20of%201939.pdf]*

We also showed earlier in section 4 that Internal Revenue Manual, Section 4.10.7.2.9.8 says that court decisions below the Supreme Court may not be cited to sustain a reasonable belief.

*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 2the 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."*
*[IRM, 4.10.7.2.9.8 (05/14/99)*
*http://www.irs.gov/irm/part4/ch10s11.html]*

Based on the preceding analysis, let us now summarize all the things you CANNOT rely on as a reasonable basis for belief about tax liability so that we can conclude by showing what is left. Below, we have listed the items in descending order of precedence and priority as evidence in a court of law. The items that are "positive law" and which may be enforced have "Yes" in the column entitled "Force of law?". You can find a subset of the below table at the link below:

http://famguardian.org/TaxFreedom/LegalRef/PrecOfLaws.htm

**Table 3: Sources of belief**

| *Prec-edence #* | *Authority* | *Author* | *Force of Law? (Yes/No)* | *Evidentiary weight* | *Authorities* |
|---|---|---|---|---|---|
| 1 | Constitution | "We the People" | Yes | Real | |
| 2 | Statutes at Large | Congress | Yes. See Note 3 | Real | |
| 3 | U.S. Code | Congress | Yes in most cases. See Note 1 | Titles that are positive law are "evidence". Titles that are not are "prima facie evidence". | Titles 26, 42, and 50 do not have the force of law and are not "positive law". See 1 U.S.C. §204 legislative notes. |
| 4 | Code of Federal Regulations (CFR) | Various | Yes in most but not all cases. See Note 2 | Titles that are positive law are "evidence". Titles that are not are "prima facie evidence". | Titles 26, 42, and 50 do not have the force of law and are not "positive law". See 1 U.S.C. §204 legislative notes. |
| 4.1 | 26 CFR Part 1: Income taxes | Treasury | Yes | Not evidence | |
| 4.2 | 26 CFR Part 31: Employment taxes | Treasury | Yes | Not evidence | |

| Prec-edence # | Authority | Author | Force of Law? (Yes/No) | Evidentiary weight | Authorities |
|---|---|---|---|---|---|
| 4.3 | 26 CFR Part 301: Secretary of Treas. Regs | Treasury | Yes | Not evidence | 1. 26 U.S.C. §7805(a).<br>2. 5 U.S.C. §553.<br>3. Rowan Co., Inc. v. U.S., 452 U.S. 247, 101 S.Ct. 2288, 68 L.Ed.2d. 814 (1981) |
| 4.4 | 26 CFR Part 601: Procedural Regs | IRS | No*<br>See Note 4 | Not evidence | 1. Einhorn v. Dewitt, 618 F.2d. 347 (5th Cir. 06/04/1980)<br>2. Luhring v. Glotzbach, 304 F.2d. 560 (4th Cir. 05/28/1962) |
| 5 | Internal Revenue Manual (IRM) | IRS | No*<br>See Note 4 | Not evidence | 1. U.S. v. Will, 671 F.2d. 963 (1982). Also click here<br>2. Internal Revenue Manual, Section 4.10.7.2.8. |
| 6 | Supreme Court Rulings | Supreme court | Yes | Real | Internal Revenue Manual 4.10.7.2.9.8 |
| 7 | Circuit Court Rulings | Circuit court | No | Not evidence | Internal Revenue Manual 4.10.7.2.9.8 |
| 8 | District Court Rulings | District court | No | Not evidence | Internal Revenue Manual 4.10.7.2.9.8 |
| 9 | IRS Publications | IRS | No | Not evidence | U.S. v. Will, 671 F.2d. 963 (1982). Also click here |
| 10 | Treasury Decisions and Orders | Treasury | No | Not evidence | Internal Revenue Manual, Section 4.10.7.2.8. |
| 11 | IRS Telephone or agent advice | IRS | No | Not evidence | Click here |

**NOTES:**

1. Only have the force of law if enacted into positive law. The Internal Revenue Code is *not* enacted into positive law, and therefore it is only "prima facie evidence" of law. The Statutes at Large from which the I.R.C. is written are the only real "law" you can cite as an authority or evidence in tax litigation.
2. Only have the force of law if published and promulgated by the Secretary of the Treasury in the Federal Register in accordance with the Administrative Procedures Act, 5 U.S.C. §553. All regulations promulgated in the Federal Register are "legislative regulations".
3. The federal Statutes at Large are not available online from the government for any year after 1874. Our link above to the Statutes at Large is for the period 1789-1873. The ONLY source of these statutes covering all years is a federal depository library (free) or Potomac Publishing (fee service): http://www.potomacpub.com/
4. The internal procedures of the federal agency MUST be followed in any agency action that adversely affects the rights of individuals. See Morton v. Ruiz, shown below. Consequently, all enforcement actions attempted by the IRS must be in strict accordance with the Internal Revenue Manual and part 601 of 26 CFR, or the revenue agents can be held personally liable for deprivations of rights under 42 U.S.C. §1983.

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

5. The IRS Internal Revenue Manual, Section 4.10.7.2.8 indicates that all IRS publications, and by implication all their forms as well, "may not be cited to sustain a position". You will note that several documents fall in this category, including the IRM itself, IRS publications, and all of their forms.

> *Internal Revenue Manual*
> *4.10.7.2.8 (05-14-1999)*
> *IRS Publications*
>
> *IRS Publications, issued by the Headquarters Office, explain the law in plain language for taxpayers and their advisors. They typically highlight changes in the law, provide examples illustrating Service positions, and*

*include worksheets. Publications are nonbinding on the Service and do not necessarily cover all positions for a given issue. While a good source of general information, publications should not be cited to sustain a position. [Source: http://www.irs.gov/irm/part4/ch10s11.html]*

Therefore, the ***only*** remaining reasonable basis for belief about tax liability is:

1. The Constitution of the United States of America.
2. Enacted positive law from the Statutes at Large AFTER 1939.
3. Rulings of the Supreme Court and NOT lower federal courts.

Next, we must determine WHERE we as a concerned, involved American can find the above sources of REAL law. Based on researching sources for the above three, we have summarized our findings in the table below:

**Table 4: Legitimate sources of belief**

| ***Prec-edence #*** | ***Authority*** | ***Author*** | ***Sources*** |
|---|---|---|---|
| 1 | Constitution | "We the People" | 1. U.S. Govt: http://www.gpoaccess.gov/constitution/browse.html<br>2. Findlaw: http://www.findlaw.com/casecode/constitution/ |
| 2 | Statutes at Large AFTER January 2, 1939 | Congress | 1. U.S. Govt (1789-1875): http://memory.loc.gov/ammem/amlaw/lwsllink.html<br>2. Potomac Publishing (fee service, all years. Costs $900/year for a subscription): http://www.potomacpub.com/techdata/asp/main/index/index.aspx |
| 3 | Supreme Court Rulings | Supreme court | 1. Supreme Court: http://www.supremecourtus.gov/<br>2. Findlaw: http://www.findlaw.com/casecode/supreme.html<br>3. Cornell: http://straylight.law.cornell.edu/supct/index.html |

Of the Statutes at Large, the U.S. Ninth Circuit Court of Appeals has said the following:

> *"All persons in the United States are chargeable with knowledge of the Statutes-at-Large…. It is well established that anyone who deals with the government assumes the risk that the agent acting in the government's behalf has exceeded the bounds of his authority"*
> *[Bollow v. Federal Reserve Bank of San Francisco, 650 F.2d. 1093, 9th Cir., (1981)*
> *SOURCE: http://famguardian.org/Subjects/Taxes/CourtCases/BollowVFedResBankOfSanFran-560F2d1093(9thCir1981).pdf]*

The U.S. Supreme Court has also said that every man is SUPPOSED TO KNOW THE LAW:

> *"Every man is supposed to know the law. A party who makes a contract with an officer [of the government] without having it reduced to writing is knowingly accessory to a violation of duty on his part. Such a party aids in the violation of the law."*
> *[Clark v. United States, 95 U.S. 539 (1877)]*

The most noticeable thing about the above, is that there is no place on any government or commercial website where a concerned American can read any of the Statutes at Large passed after 1875, which are technically the only REAL, enacted, positive law available. We find this situation simply appalling. Obviously, Congress does not want Americans reading the real law or they would make it easy to do so. Instead, they would rather that:

1. Americans read what essentially amounts to government propaganda called the Internal Revenue Code
2. Americans base all of their decisions upon essentially hearsay evidence from colleagues, IRS publications that have deliberate lies, and tax professionals with a conflict of interest.
3. Those who want to read the REAL law from the Statutes at Large must either pay huge sums of money to only ONE source, Potomac Publishing, to read it online, or visit a Federal Depository Library at a major university, which in most cases is inaccessible and inconvenient to most Americans, and especially those who live in rural areas.

We find the above predicament that our representatives and lawmakers have put us in to be a scandal of monumental proportions that must be fixed before there is ever any hope of returning to a Constitutionally administered tax system. In

the meantime, while we are waiting for reforms of the above deficiencies, we believe it constitutes malicious abuse of legal process and conspiracy against rights to hold the average American accountable to obey enacted laws that he can't even read and doesn't have access to. HYPOCRISY!

## 12 Building a strong reliance defense[14]

A criminal defendant may offer evidence during trial regarding certain statements and representations made by government if those statements relate to his intent and understanding of the law, and many of such statements may qualify as admissions made by the government; see *United States v. Van Griffin*, 874 F.2d. 634, 638 (9th Cir. 1989)(government manuals admissible as party admissions under Federal Rule of Evidence 801(d)(2)(D)); and *United States v. GAF Corp.*, 928 F.2d. 1253 (2nd Cir. 1991). In *Arizona Grocery Co. v. Atchison, T. & S.F. Ry. Co.*, 284 U.S. 370, 52 S.Ct. 183 (1932), it was held that a party could rely upon the representations made by a government agency, and in *Moser v. United States*, 341 U.S. 41, 71 S.Ct. 553 (1951), the Court held that such reliance could constitute a defense to actions taken by the government. These decisions are buttressed by others such as *Raley v. Ohio*, 360 U.S. 423, 79 S.Ct. 1257 (1959), *Cox v. Louisiana*, 379 U.S. 559, 85 S.Ct. 476 (1965), *United States v. Laub*, 385 U.S. 475, 487, 87 S.Ct. 574 (1967), and *United States v. Penn. Industrial Chemical Corp.*, 411 U.S. 655, 674, 93 S.Ct. 1804, 1816 (1973). In *Penn. Industrial*, supra, a company being criminally prosecuted for water pollution sought to assert a defense of reliance upon certain applicable agency regulations, but the trial court precluded the admission of that evidence. In reversing, the Supreme Court held that this reliance did constitute a defense and that the agency representations, the subject regulations, should be given as jury instructions.

The federal appellate courts do recognize the "reliance" defense. One of the earliest cases granting verdict for a defendant on this ground was *United States v. Mancuso*, 139 F.2d. 90, 92 (3rd Cir. 1943). Here, the defendant filed suit to enjoin being drafted and the district court erroneously granted an injunction. Mancuso later used the injunction order as justification for refusing induction. His conviction for refusing enlistment was vacated because of his reliance upon the erroneous order. See also *United States v. Albertini*, 830 F.2d. 985 (9th Cir. 1987).

Other courts have addressed this issue. In *United States v. Tallmadge*, 829 F.2d. 767, 775 (9th Cir. 1987), the defendant was being prosecuted for possessing firearms after conviction for a felony. In defense, Tallmadge demonstrated that a licensed arms dealer, held to be a government agent, represented to him that it was lawful for him to acquire firearms. Because Tallmadge relied upon the word of this government agent, that court held that it would violate due process to convict him:

The prosecution and conviction of Tallmadge for the receipt and possession of firearms, after he was misled by the government agent who sold him the weapons into believing that his conduct would not be contrary to federal law, violated due process.

In *United States v. Clegg*, 846 F.2d. 1221 (9th Cir. 1988), the defendant was charged with arms smuggling in Pakistan and sought to defend himself with the factual defense that high government officials approved his activities; that court held such to be a valid defense. In *United States v. Heller*, 830 F.2d. 150, 154 (11th Cir. 1987), the defendant, a lawyer, was convicted of tax crimes and sought to defend on the basis that his accounting methods conformed with the dictates of a tax court decision. In reversing the convictions, that court held that a jury instruction covering the substance of the tax court decision upon which Heller had relied should have been given. In *United States v. Hedges*, 912 F.2d. 1397 (11th Cir. 1990), the defendant had acted upon the advice given to him by a Standards of Conduct officer regarding a conflict of interest matter. Hedges was prosecuted for conflicts violations, defended himself with the factual argument that he had relied upon the advice of the Standards officer, and tendered a corresponding requested jury instruction which was not given. On appeal, the court acknowledged the validity of this defense and held it was an error to refuse the giving of a jury instruction on this point. In *United States v. Brady*, 710 F.Supp. 290 (D.Colo. 1989), a defendant charged with illegal possession of firearms ("coyote getters") was acquitted when he showed that he directly relied upon the word of a state judge. The most recent case on this issue, *United States v. Levin*, 973 F.2d. 463 (6th Cir. 1992), was one where the trial court dismissed an indictment because of reliance upon a government representation.

Several state courts also acknowledge this defense. In *Schiff v. People*, 111 Colo. 333, 141 P.2d. 892 (1943), the defendant had received stolen property and informed the police about such, who instructed him to simply retain possession; his conviction for possessing stolen property was reversed. In *People v. Markowitz*, 18 N.Y.2d. 953, 223 N.E.2d. 572 (1966), a defendant who was told by certain public officials that he did not need a license to sell merchandise at Yankee Stadium had his conviction vacated through use of this defense. In *State v. Ragland*, 4 Conn. Cir. 424, 233 A.2d 698 (1967), a

[14] Adapted from the article at: http://famguardian.org/Subjects/Taxes/Articles/reliance.htm

defendant's conviction for driving without a license was vacated based upon the fact that he drove the car on the occasion in question at the order of police officers. In *Connelly v. State*, 181 Ga.App. 261, 351 S.E.2d. 702 (1987), a defendant who had relied upon a misleading driver's license form had his conviction for driving offenses reversed. In *State v. Chiles*, 569 So.2d. 45 (La.App. 4 Cir. 1990), a pawn shop owner who relied upon the practices of the local sheriff's office had her conviction for failure to abide by record keeping laws reversed. See also *Commonwealth v. Twitchell*, 617 N.E.2d. 609, 616-620 (Mass. 1993), and *State v. McKown*, 475 N.W.2d. 63, 68 (Minn. 1991). The refined essence of these cases is that a criminal defendant does have available to him the defense of reliance upon representations made to him by government officials, whether judges or executive department officers and agents.

Please keep whatever materials you have relied upon. If you have relied upon cases quoted from some book, go get copies of those cases at the law library so that you can assert the defense of reliance upon the word of judges. If you have relied upon a quote of something else which is allegedly derived from a government publication, get that document.

## 13 Defending yourself in a criminal tax proceeding in federal court as a Sui Juris Litigant

> *"My [God's] people are destroyed for lack of knowledge."*
> *[Hosea 4:6, Bible, NKJV]*

Those who have been criminally prosecuted for acting on their sincere beliefs that they are "nontaxpayers" are encouraged to employ the following useful free resources. The tools are listed in descending order of importance, relevance, and value:

1. *Criminal Tax Manual*, U.S. Dept. of Justice: This is the play book the government uses to prosecute tax crimes. http://www.usdoj.gov/tax/readingroom/2001ctm/index.htm
2. *U.S. Attorneys' Manual*, Dept. of Justice: Internal guidance to U.S. attorneys who are your opponents. http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/
3. *Federal Criminal Practice Guide*, James Publishing: Practice guide used by attorneys to defend or prosecute federal criminal acts. Inexpensive and very complete. Only $99. http://www.jamespublishing.com/books/fcp.htm
4. *Civil Court Remedies for Sovereigns: Taxation*, Litigation Tool #10.002. Contains pointers on mainly civil tax litigation, but there is a lot of good information here. http://sedm.org/Litigation/LitIndex.htm
5. *SEDM Litigation Tools Page*: Excellent free litigation tools. http://sedm.org/Litigation/LitIndex.htm
6. *Legal Research Sources*: Exhaustive free legal resources of every description. http://famguardian.org/TaxFreedom/LegalRef/LegalResrchSrc.htm
7. *Responding to a Criminal Tax Indictment*, Litigation Tool #10.004 http://sedm.org/Litigation/LitIndex.htm
8. *SEDM Forms Page*: Section 1.5 contains several very useful memorandums of law that you can attach to your legal pleadings. http://sedm.org/Forms/FormIndex.htm

## 14 Conclusions and Summary

This section will summarize the facts revealed in this pamphlet into a brief summary useful to present to juries in a criminal tax trial:

1. In America, the people and not the government are "sovereign".

> *"In the United States, sovereignty resides in the people…the Congress cannot invoke sovereign power of the People to override their will as thus declared."*
> *[Perry v. U.S., 294 U.S. 330 (1935)]*

> *"**Sovereignty** itself is, of course, not subject to law, for it **is the author and source of law**…While sovereign powers are delegated to…the government, **sovereignty itself remains with the people**."*
> *[Yick Wo v. Hopkins, 118 U.S. 356 (1886)]*

> *"The words 'people of the United States' and 'citizens,' are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the government through their representatives. They are what we familiarly call the 'sovereign people,' and every citizen is one of this people, and a constituent member of this sovereignty. ..."*
> *[Boyd v. State of Nebraska, 143 U.S. 135 (1892)]*

2. The essence of sovereignty is the requirement for consent in all human interactions. The purpose of establishing government is to prevent you from being compelled to do anything, including consent to receive or pay for government protection or "benefits".
3. The purpose of establishing government is to procure "protection".
4. In America, ALL powers possessed by the government are delegated to it by We The People.

> *"The question is not what power the federal government ought to have, but what powers, in fact, have been given by the people.. The federal union is a government of delegated powers. It has only such as are expressly conferred upon it, and such as are reasonably to be implied from those granted. In this respect, we differ radically from nations where all legislative power, without restriction or limitation, is vested in a parliament or other legislative body subject to no restriction except the discretion of its members." (Congress)*
> *[U.S. v. William M. Butler, 297 U.S. 1 (1936)]*

> *"The Government of the United States is one of delegated powers alone. Its authority is defined and limited by the Constitution. All powers not granted to it by that instrument are reserved to the States or the people."*
> *[United States v. Cruikshank, 92 U.S. 542 (1875)]*

5. A government of delegated powers alone cannot possess any power that the people themselves do not ALSO possess.

> *Nemo dat qui non habet. No one can give who does not possess. Jenk. Cent. 250.*

> *Nemo plus juris ad alienum transfere potest, quam ispe habent. One cannot transfer to another a right which he has not. Dig. 50, 17, 54; 10 Pet. 161, 175.*

> *Nemo potest facere per alium quod per se non potest. No one can do that by another which he cannot do by himself.*

> *Qui per alium facit per seipsum facere videtur. He who does anything through another, is considered as doing it himself. Co. Litt. 258.*

> *Quicpuid acquiritur servo, acquiritur domino. Whatever is acquired by the servant, is acquired for the master. 15 Bin. Ab. 327.*

> *Quod per me non possum, nec per alium. What I cannot do in person, I cannot do by proxy [the Constitution]. 4 Co. 24.*

> *What a man cannot transfer, he cannot bind by articles [the Constitution].*
> *[Bouvier's Maxims of Law, 1856]*

6. The Declaration of Independence says that all just governments derive their authority from the "consent of the governed". Another way of saying this is that only those who consent can be "governed".
7. The process of "consenting to be governed" and thereby delegating authority to protect you to a specific government:
   7.1. Is described by your voluntary choice of domicile within the jurisdiction of the government.
   7.2. Is called "animus manendi" in the legal field.
8. You cannot be compelled to choose a domicile or "residence" within a specific government and thereby procure the protection of that specific government. All such choices MUST be voluntary:

> *"**The rights of the individual are not derived from governmental agencies**, either municipal, state or federal, or even from the Constitution. They exist inherently in every man, by endowment of the Creator, and are merely reaffirmed in the Constitution, and **restricted only to the extent that they have been voluntarily surrendered by the citizenship to the agencies of government.** The people's rights are not derived from the government, but the government's authority comes from the people.*946 The Constitution but states again these rights already existing, and when legislative encroachment by the nation, state, or municipality invade these original and permanent rights, it is the duty of the courts to so declare, and to afford the necessary relief. The fewer restrictions that surround the individual liberties of the citizen, except those for the preservation of the public health, safety, and morals, the more contented the people and the more successful the democracy."*
> *[City of Dallas v Mitchell, 245 S.W. 944 (1922)]*

> *"**The citizen cannot complain [about the laws or the tax system], because he has voluntarily submitted himself to such a form of government.** He owes allegiance to the two departments, so to speak, and within their respective spheres must pay the penalties which each exacts for disobedience to its laws. In return, he can demand protection from each within its own jurisdiction."*
> *[United States v. Cruikshank, 92 U.S. 542 (1875), emphasis added]*

The reason the "citizen" voluntarily submitted himself to such a form of government is because he WOULDN'T be called a "citizen" in the first place if he hadn't. Instead, he would be called a nonresident or a transient foreigner:

> ***citizen.** One who, under the Constitution and laws of the United States, or of a particular state, **is a member of the political community, owing allegiance and being entitled to the enjoyment of full civil rights.** 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 wherein they reside. U.S. Const., 14th Amend. See Citizenship.*
>
> *"Citizens" are members of a political community who, in their associated capacity, **have established or submitted themselves to the dominion of a government for the promotion of their general welfare and the protection of their individual as well as collective rights. Herriott v. City of Seattle, 81 Wash.2d 48, 500 P.2d. 101, 109.***
>
> *The term may include or apply to children of alien parents from in United States, Von Schwerdtner v. Piper, D.C.Md., 23 F.2d. 862, 863; U.S. v. Minoru Yasui, D.C.Or., 48 F.Supp. 40, 54; children of American citizens born outside United States, Haaland v. Attorney General of United States, D.C.Md., 42 F.Supp. 13, 22; Indians, United States v. Hester, C.C.A.Okl., 137 F.2d. 145, 147; National Banks, American Surety Co. v. Bank of California, C.C.A.Or., 133 F.2d. 160, 162; nonresident who has qualified as administratrix of estate of deceased resident, Hunt v. Noll, C.C.A.Tenn., 112 F.2d. 288, 289. However, neither the United States nor a state is a citizen for purposes of diversity jurisdiction. Jizemerjian v. Dept of Air Force, 457 F.Supp. 820. On the other hand, municipalities and other local governments are deemed to be citizens. Rieser v. District of Columbia, 563 F.2d. 462. A corporation is not a citizen for purposes of privileges and immunities clause of the Fourteenth Amendment. D.D.B. Realty Corp. v. Merrill, 232 F.Supp. 629, 637.*
>
> *Under diversity statute [28 U.S.C. §1332], which mirrors U.S. Const, Article III's diversity clause, a person is a "citizen of a state" if he or she is a citizen of the United States and a domiciliary of a state of the United States. Gibbons v. Udaras na Gaeltachta, D.C.N.Y., 549 F.Supp. 1094, 1116.*
> *[Black's Law Dictionary, Sixth Edition, p. 244]*

For further details, see:

| |
|---|
| *Why Domicile and Becoming a "Taxpayer" Require Your Consent*, Form #05.002<br>http://sedm.org/Forms/FormIndex.htm |

9. People who consent to be "governed" and thereby "protected" are "customers" of the government "protection" program and are called:
   9.1. "citizens" if they were born in the country.
   9.2. "residents" if they were born in a different country.
   9.3. "inhabitants" if they are either a "citizen" or a "resident".
   9.4. "taxpayers".
   9.5. "individuals"
10. People who do not consent to be governed or protected are called:
   10.1. "nonresidents".
   10.2. "nonresident aliens" but not "individuals".
   10.3. "transient foreigners".
   10.4. "in transitu".
   10.5. "sojourners".
   10.6. "perpetual travelers".
11. No jury has the right to force you to become a "customer" of government "protection" called a "citizen", "resident", "inhabitant", or "taxpayer". Only you can make that choice because in America, the people are the sovereigns and not the government who *serves* them. Anyone who forces you to become a customer of government protection is:
   11.1. Advocating a criminal "protection racket".
   11.2. Forcing you to contract with the government for "protection".
   11.3. Perpetuating a corporate monopoly, because all governments are corporations.
12. The above facts explain why the Supreme Court has declared that "taxes" are not "debts", and therefore do not constitute a legal liability in a classical sense. It is because YOU as the sovereign have the right to determine whether you want to be protected and how much protection you want to pay for.

> *In his work on the Constitution, the late Mr. Justice Story whose praise as a jurist is in all civilized lands, speaking of the clause in the Constitution giving to Congress the power to lay and collect taxes, says of the theory which would limit the power to the object of paying the debts that, thus limited, it would be only a power to provide for the payment of debts then existing. [Footnote 4]* ***And certainly if a narrow and limited interpretation would thus restrict the word "debts" in the Constitution, the same sort of interpretation would in like manner restrict the same word in the act. Such an interpretation needs only to be mentioned to be rejected. We refer to it only to show that a right construction must be sought through larger and less technical views. We may, then, safely decline either to limit the word "debts" to existing dues, or to extend its meaning so as to embrace all dues of whatever origin and description.***
>
> ***What, then, is its true sense? The most obvious, and, as it seems to us, the most rational answer to this question is that Congress must have had in contemplation debts originating in contract or demands carried into judgment, and only debts of this character.*** *This is the commonest and most natural use of the word. Some strain is felt upon the understanding when an attempt is made to extend it so as to include taxes imposed by legislative authority, and there should be no such strain in the interpretation of a law like this.*
>
> ***We are the more ready to adopt this view because the greatest of English elementary writers upon law, when treating of debts in their various descriptions, gives no hint that taxes come within either, [Footnote 5] while American state courts of the highest authority have refused to treat liabilities for taxes as debts in the ordinary sense of that word, for which actions of debt may be maintained.***
>
> *The first of these cases was that of* Pierce v. City of Boston, *[Footnote 6] 1842, in which the defendant attempted to set off against a demand of the plaintiff certain taxes due to the city. The statute allowed mutual debts to be set off, but the court disallowed the right to set off taxes. This case went, indeed, upon the construction of the statute of Massachusetts, and did not turn on the precise point before us, but the language of the court shows that taxes were not regarded as debts within the common understanding of the word.*
>
> *The second case was that of* Shaw v. Pickett, *[Footnote 7] in which the Supreme Court of Vermont said,*
>
> ***"The assessment of taxes does not create a debt that can be enforced by suit, or upon which a promise to pay interest can be implied. It is a proceeding* in invitum.*"***
>
> *The next case was that of the* City of Camden v. Allen, *[Footnote 8] 1857. That was an action of debt brought to recover a tax by the municipality to which it was due. The language of the Supreme Court of New Jersey was still more explicit:* ***"A tax, in its essential characteristics," said the court, "is not a debt nor in the nature of a debt. A tax is an impost levied by authority of government upon its citizens or subjects for the support of the state. It is not founded on contract or agreement. It operates* in invitum. *A debt is a sum of money due by certain and express agreement. It originates in and is founded upon contracts express or implied."***
> *[Lane County v. Oregon, 74 U.S. 7 Wall. 71 71 (1868)]*

13. YES, the government does have the right to criminalize non-payment for its services, but only among "taxpayers" serving in public offices within the U.S. government. The decision to BECOME a "taxpayer" is voluntary because they can't compel you to serve in a public office, but after that decision has been made, compliance with the tax laws is NOT voluntary.

    | *Why Domicile and Becoming a "Taxpayer" Require Your Consent*, Form #05.002<br>http://sedm.org/Forms/FormIndex.htm |
    |---|

14. The Internal Revenue Code is Constitutional so long as those who enforce it don't compel people not lawfully occupying public offices to satisfy the obligations described therein and enforce the requirement for consent at every state of collection and enforcement. This is because nothing that one consents to can be classified as an injury in a court of law:

> *Consensus facit legem.*
> *Consent makes the law. A contract is a law between the parties, which can acquire force only by consent.*
> *[Bouvier's Maxims of Law, 1856;*
> *SOURCE: http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviersMaxims.htm]*
>
> ---
>
> *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.*
*[Bouvier's Maxims of Law, 1856;*
*SOURCE: http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviersMaxims.htm]*

15. No one but you has the right to declare your civil status and thereby consent to satisfy all the civil obligations associated with that civil status. The First Amendment protects the right even of those who are not "citizens" or "residents" or "club members" to be free from compelled association, which means free from being forced to join a political group called a "state" and sponsor the activities of that group. That is why the First Amendment IS the First Amendment: Because the first thing you must do when forming any political group is to give the right to those who are not members to NOT join! In other words, they can't force you to join their "club" or to become a member of the club called a "citizen", "resident", "inhabitant", or "taxpayer". The way you associate, in fact, is to choose your civil status and to avail yourself of all the rights and privileges associated with that status, such as a "citizen", "resident", "person", "individual", etc. See:

| |
|---|
| *Your Exclusive Right to Establish and Declare Your Civil Status*, Form #13.008<br>http://sedm.org/Forms/FormIndex.htm |

## 15 Resources for further study and rebuttal

A number of additional resources are available for those who wish to further investigate the contents of the pamphlet:

1. *SEDM Liberty University*: Solid instructional materials to learn about law, liberty, government, and taxation so that you may confidently defend your legal rights in court and convincingly present your beliefs to any jury. http://sedm.org/LibertyU/LibertyU.htm
2. *SEDM Memorandums of Law, Forms Page Section 1.5*: Extensive legal research upon which you may soundly base a solid reliance defense. Right from the government's own mouth. http://sedm.org/Forms/FormIndex.htm
3. *Sovereignty Research DVD*, Form #11.101: Every piece of free information available on the SEDM Website. Use this as your reliance defense by attaching it to correspondence sent to government. Makes a good "jury entertainment package". http://sedm.org/Forms/FormIndex.htm
4. *Socialism: The New American Civil Religion*, Form #05.016: Memorandum of Law which proves that the federal courts have become churches and our government has become a false pagan god and a religious cult in violation of the First Amendment: http://famguardian.org/Subjects/Taxes/Articles/Christian/GovReligion.htm
5. *Tax Deposition Questions*, Form #03.016: sound legal evidence upon which to base a reasonable belief http://sedm.org/Forms/FormIndex.htm

## 16 Questions that Readers, Grand Jurors, and Petit Jurors Should be Asking the Government

These questions are provided for readers, Grand Jurors, and Petit Jurors to present to the government or anyone else who would challenge the facts and law appearing in this pamphlet, most of whom work for the government or stand to gain financially from perpetuating the fraud. If you find yourself in receipt of this pamphlet, you are demanded to answer the questions within 10 days. Pursuant to Federal Rule of Civil Procedure 8(b)(6), failure to deny within 10 days constitutes an admission to each question. Pursuant to 26 U.S.C. §6065, all of your answers must be signed under penalty of perjury. We are not interested in agency policy, but only sources of reasonable belief identified in this pamphlet.

Your answers will become evidence in future litigation, should that be necessary in order to protect the rights of the person against whom you are attempting to unlawfully enforce federal law.

1. Admit that presumption is a violation of due process of law guaranteed by the Constitution of the United States of America.

> ***"Due process of law**. Law in its regular course of administration through courts of justice. Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. **A course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the***

***enforcement and protection of private rights.*** *To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of the creation—to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant,* ***he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance****. Pennoyer v. Neff, 96 U.S. 733, 24 L.Ed. 565. Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved.* ***If any question of fact or liability be conclusively be presumed [rather than proven] against him, this is not due process of law."***
*[Black's Law Dictionary, Sixth Edition, p. 500]*

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

2. Admit that presumptions which prejudice the Constitutional rights of the accused are impermissible and unconstitutional.

*"Statutes creating permanent irrebuttable presumptions have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments. In Heiner v. Donnan, 285 U.S. 312 (1932), the Court was faced with a constitutional challenge to a federal statute that created a conclusive presumption that gifts made within two years prior to the donor's death were made in contemplation of death, thus requiring payment by his estate of a higher tax. In holding that this irrefutable assumption was so arbitrary and unreasonable as to deprive the taxpayer of his property without due process of law, the Court stated that it had "held more than once that a statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the Fourteenth Amendment." Id., at 329. See, e. g., Schlesinger v. Wisconsin, 270 U.S. 230 (1926); Hoeper v. Tax Comm'n, 284 U.S. 206 (1931). See also Tot v. United States, 319 U.S. 463, 468 -469 (1943); Leary v. United States, 395 U.S. 6, 29 -53 (1969). Cf. Turner v. United States, 396 U.S. 398, 418 -419 (1970).*

*The more recent case of Bell v. Burson, 402 U.S. 535 (1971), involved a Georgia statute which provided that if an uninsured motorist was involved in an accident and could not post security for the amount of damages claimed, his driver's license must be suspended without any hearing on the question of fault or responsibility. The Court held that since the State purported to be concerned with fault in suspending a driver's license, it [412 U.S. 441, 447] could not, consistent with procedural due process, conclusively presume fault from the fact that the uninsured motorist was involved in an accident, and could not, therefore, suspend his driver's license without a hearing on that crucial factor.*

*Likewise, in Stanley v. Illinois, 405 U.S. 645 (1972), the Court struck down, as violative of the Due Process Clause of the Fourteenth Amendment, Illinois' irrebuttable statutory presumption that all unmarried fathers are unqualified to raise their children. Because of that presumption, the statute required the State, upon the death of the mother, to take custody of all such illegitimate children, without providing any hearing on the father's parental fitness. It may be, the Court said, "that most unmarried fathers are unsuitable and neglectful parents. . . . But all unmarried fathers are not in this category; some are wholly suited to have custody of their children." Id., at 654. Hence, the Court held that the State could not conclusively presume that any individual unmarried father was unfit to raise his children; rather, it was required by the Due Process Clause to provide a hearing on that issue. According to the Court, Illinois "insists on presuming rather than proving Stanley's unfitness solely because it is more convenient to presume than to prove. Under the Due Process Clause that advantage is insufficient to justify refusing a father a hearing . . . ." Id., at 658. 4 [412 U.S. 441, 448] "*
*[*Vlandis v. Kline *(1973) 412 U.S. 441, 449, 93 S.Ct 2230, 2235;* Cleveland Bed. of Ed. v. LaFleur *(1974) 414 US 632, 639-640, 94 S.Ct. 1208, 1215-presumption under Illinois law that unmarried fathers are unfit violates process]*

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

3. Admit that statutory presumptions used against a party to the Constitution domiciled within a state of the Union also amount to a violation of due process:

*"It is apparent,' this court said in the Bailey Case ( 219 U.S. 239 , 31 S.Ct. 145, 151) 'that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions."*
*[Heiner v. Donnan, 285 U.S. 312 (1932)]*

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

4. Admit that "presumption" is a sin under the Bible as revealed below:

> *"But the person who does anything presumptuously, whether he is native-born or a stranger, that one brings reproach on the LORD, and he shall be cut off from among his people."*
> *[Numbers 15:30, Bible, NKJV]*

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

5. Admit that the only basis for reasonable belief about tax liability, for a person protected by the Constitution, is admissible evidence that does not require any kind of unconstitutional "presumption".

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

6. Admit that 1 U.S.C. §204 and the legislative notes thereunder shows that the Internal Revenue Code is not "positive law", but instead is "prima facie evidence" of law.

> *TITLE 1 > CHAPTER 3 > § 204*
> *§ 204. Codes and Supplements as evidence of the laws of United States and District of Columbia; citation of Codes and Supplements*
>
> *In all courts, tribunals, and public offices of the United States, at home or abroad, of the District of Columbia, and of each State, Territory, or insular possession of the United States—*
>
> *(a) United States Code.— The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, establish prima facie the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included: Provided, however, **That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States.***

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

7. Admit that "prima facie" means "presumed" to be law without the requirement for actual evidence supporting the fact that it, or any portion of it, has been enacted into "law".

> *"**Prima facie**. Lat. At first sight; on the first appearance; on the face of it; so far as can be judged from the first disclosure; presumably; a fact presumed to be true unless disproved by some evidence to the contrary. State ex rel. Herbert v. Whims, 68 Ohio App. 39, 28 N.E.2d. 596, 599, 22 O.O. 110. See also Presumption"*
> *[Black's Law Dictionary, Sixth Edition, p. 1189]*

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

8. Admit that because the Internal Revenue Code is not "positive law" but only "presumed" to be law, then all regulations written to implement it have the same status.

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

9. Admit that the I.R.C., absent proof that the specific statute being cited is enacted into positive law, may not be cited as evidence in any tax trial in which the accused is protected by the Constitution and the Bill of Rights without violating due process of law and the Constitutional rights of the accused.

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

10. Admit that in the case of titles of the U.S. Code that are not positive law, the Statutes at Large, and not the title itself, govern.

> *NOTE: Of the 50 titles, only 23 have been enacted into positive (statutory) law. These titles are 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 36, 37, 38, 39, 44, 46, and 49. When a title of the Code was enacted into positive law, the text of the title became legal evidence of the law. Titles that have not been enacted into positive law are only prima facie evidence of the law.* ***In that case, the Statutes at Large still govern.***
> *[SOURCE: U.S. Government Printing Office Access, About the U.S. Code, http://www.gpoaccess.gov/uscode/about.html]*

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

11. Admit that consent makes the law, and therefore consent of both parties to a "proposal" causes that proposal to turn even presumptions into "law" and "evidence":

> *Consensus facit legem.*
> *Consent makes the law. A contract is a law between the parties, which can acquire force only by consent.*
> *[Bouvier's Maxims of Law, 1856;*
> *SOURCE: http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviersMaxims.htm]*

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

12. Admit that absent express consent of the accused under the civil law, a statute not enacted into law does not become "evidence" or "law" for that may be cited against that person.

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

13. Admit that the Declaration of Independence states that rights protected by the Constitution are "unalienable" in relation to the government.

> *"We hold these truths to be self-evident, that all men are created equal, that* ***they are endowed by their Creator*** *with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed"*
> *[Declaration of Independence]*

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

14. Admit that an "unalienable" right is one that cannot be bargained away, sold, or transferred by any mechanism, including a franchise agreement or a "public office", which is also a franchise.

> *"Unalienable. Inalienable; incapable of being aliened, that is, sold and transferred."*
> *[Black's Law Dictionary, Fourth Edition, p. 1693]*

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

15. Admit that when the government is hiring "employees" occupying a "public office", it comes down to the same level as an ordinary private corporation in equity, waives sovereign immunity, and cannot be acting as a government if the hiring process involves the surrender of rights protected by the United States Constitution of those it is contracting with.

> *Moreover, if the dissent were correct that the sovereign acts doctrine permits the Government to abrogate its contractual commitments in "regulatory" cases even where it simply sought to avoid contracts it had come to regret, then the Government's sovereign contracting power would be of very little use in this broad sphere of public activity. We rejected a virtually identical argument in Perry v. United States, 294 U.S. 330 (1935), in which Congress had passed a resolution regulating the payment of obligations in gold.* ***We held that the law could not be applied to the Government's own obligations, noting that "the right to make binding obligations is a competence attaching to sovereignty."*** *Id. at 353.*
>
> *See also Clearfield Trust Co. v. United States, 318 U.S. 363, 369 (1943) ("`****The United States does business on business terms****'") (quoting United States v. National Exchange Bank of Baltimore, 270 U.S. 527, 534 (1926)); Perry v. United States, supra at 352 (1935) ("****When the United States, with constitutional authority, makes contracts, it has rights and incurs responsibilities similar to those of individuals who are parties to such instruments. There is no difference . . . except that the United States cannot be sued without its consent****") (citation omitted); United States v. Bostwick, 94 U.S. 53, 66 (1877) ("****The United States, when they contract with their citizens, are controlled by the same laws that govern the citizen in that behalf****"); Cooke v. United States, 91 U.S. 389, 398 (1875) (****explaining that when the United States "comes down from its position of sovereignty, and enters the domain of commerce, it submits itself to the same laws that govern individuals there****").*
>
> *See Jones, 1 Cl.Ct. at 85 ("****Wherever the public and private acts of the government seem to commingle, a citizen or corporate body must by supposition be substituted in its place, and then the question be determined whether the action will lie against the supposed defendant****"); O'Neill v. United States, 231 Ct.Cl. 823, 826 (1982) (sovereign acts doctrine applies where, "[w]ere [the] contracts exclusively between private parties, the party hurt by such governing action could not claim compensation from the other party for the governing action"). The dissent ignores these statements (including the statement from Jones, from which case Horowitz drew its reasoning literally verbatim), when it says, post at 931, that the sovereign acts cases do not emphasize the need to treat the government-as-contractor the same as a private party.*
>
> *[United States v. Winstar Corp. 518 U.S. 839 (1996)]*

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

16. Admit that a government of delegated powers such as the United States can possess no power, including sovereign immunity and the requirement for consent to be sued, not possessed by the People themselves as private individuals from whom that power was delegated:

> *Nemo dat qui non habet. No one can give who does not possess. Jenk. Cent. 250.*
>
> *Nemo plus juris ad alienum transfere potest, quam ispe habent. One cannot transfer to another a right which he has not. Dig. 50, 17, 54; 10 Pet. 161, 175.*
>
> *Nemo potest facere per alium quod per se non potest. No one can do that by another which he cannot do by himself.*
>
> *Qui per alium facit per seipsum facere videtur. He who does anything through another, is considered as doing it himself. Co. Litt. 258.*
>
> *Quicpuid acquiritur servo, acquiritur domino. Whatever is acquired by the servant, is acquired for the master. 15 Bin. Ab. 327.*
>
> *Quod per me non possum, nec per alium. What I cannot do in person, I cannot do by proxy [the Constitution]. 4 Co. 24.*

*What a man cannot transfer, he cannot bind by articles [the Constitution].*

*[Bouvier's Maxims of Law, 1856]*

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

17. Admit that no entity that calls itself a "government" can lawfully use its power to contract with private citizens to destroy rights protected by the Constitution, the protection of which was the purpose for its creation, without at least devolving down to the same level in equity as those same individuals from whom it derives all its delegated powers.

> *"**The rights of individuals and the justice due to them, are as dear and precious as those of states.** Indeed the latter are founded upon the former; and the great end and object of them must be to secure and support the rights of individuals, or else vain is government."*
> *[Chisholm v. Georgia, 2 U.S. (2 Dall.) 419, 1 L.Ed. 440 (1793)]*

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

18. Admit that the current Internal Revenue Code is based on the Statutes at Large passed after January 2, 1939, and that all prior revenue statutes in the Statutes at Large were Repealed by the Internal Revenue Code of 1939, 53 Stat. 1.

See: SEDM Exhibit #05.027, 53 Stat. 1, Section 4 available at http://sedm.org/Exhibits/ExhibitIndex.htm

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

19. Admit that there is no place that an American Citizen can go on the Internet to read any part of the Statutes at Large on any government website for the period 1875 to about three years ago.

- Library of Congress, Statutes at Large, http://memory.loc.gov/ammem/amlaw/lwsllink.html
- GPO Access Website, Statutes at Large: http://www.gpoaccess.gov/statutes/index.html

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

20. Admit that absent a place on the Internet to go to read the Statutes at Large, the main other source of government information of this kind is a Federal Depository Library.

See: GPO Website, http://www.gpoaccess.gov/fdlp.html

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

21. Admit that it would be inconvenient for the average American, and especially those in rural areas, to visit a Federal Depository Library.

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

22. Admit that without a convenient place to read the only REAL law on the subject of taxation, the average American is deprived of the required "reasonable notice" of the statutes that he is expected and required to obey if he is a "taxpayer" under the I.R.C.

> *"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) . Without proper prior notice to those who may be affected by a government decision, all other procedural rights may be nullified. The exact contents of the notice required by due process will, of course, vary with the circumstances.*
> *[Administrative Law and Process in a Nutshell, Ernest Gellhorn, 1990, West Publishing, p. 214]*

See also: *Requirement for Reasonable Notice*, Form #05.022, available at http://sedm.org/Forms/FormIndex.htm

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

23. Admit that under Federal Rule of Civil Procedure Rule 17(b), the law of the individual's domicile determines the rules of decision and the choice of law in civil tax matters.

> *IV. PARTIES > Rule 17.*
> *Rule 17. Parties Plaintiff and Defendant; Capacity*
>
> *(b) Capacity to Sue or be Sued.*
>
> ***Capacity to sue or be sued is determined as follows:***
>
> *(1) for an individual who is not acting in a representative capacity, by the law of the individual's domicile;*
> *(2) **for a corporation, by the law under which it was organized [laws of the District of Columbia]; and***
> *(3) for all other parties, by the law of the state where the court is located, except that:*
> *(A) a partnership or other unincorporated association with no such capacity under that state's law may sue or be sued in its common name to enforce a substantive right existing under the United States Constitution or laws; and*
> *(B) 28 U.S.C. §§ 754 and 959(a) govern the capacity of a receiver appointed by a United States court to sue or be sued in a United States court.*
> *[SOURCE: http://www.law.cornell.edu/rules/frcp/Rule17.htm]*

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

24. Admit that Constitutional protections, including those prohibiting presumptions, do not apply to federal "employees" or "public officers" on official duty

> *"The restrictions that the Constitution places upon the government in its capacity as lawmaker, i.e., as the regulator of private conduct, are not the same as the restrictions that it places upon the government in its capacity as employer. We have recognized this in many contexts, with respect to many different constitutional guarantees. Private citizens perhaps cannot be prevented from wearing long hair, but policemen can. Kelley v. Johnson, 425 U.S. 238, 247 (1976). Private citizens cannot have their property searched without probable cause, but in many circumstances government employees can. O'Connor v. Ortega, 480 U.S. 709, 723 (1987) (plurality opinion); id., at 732 (SCALIA, J., concurring in judgment). Private citizens cannot be punished for refusing to provide the government information that may incriminate them, but government employees can be dismissed when the incriminating information that they refuse to provide relates to the performance of their job. Gardner v. Broderick, [497 U.S. 62, 95] 392 U.S. 273, 277 -278 (1968). With regard to freedom of speech in particular: Private citizens cannot be punished for speech of merely private concern, but government employees can be fired for that reason. Connick v. Myers, 461 U.S. 138, 147 (1983). Private citizens cannot be punished for partisan political activity, but federal and state employees can be dismissed and otherwise punished for that reason. Public Workers v. Mitchell, 330 U.S. 75, 101 (1947); Civil Service Comm'n v. Letter Carriers, 413 U.S. 548, 556 (1973); Broadrick v. Oklahoma, 413 U.S. 601, 616 -617 (1973)."*
> *[Rutan v. Republican Party of Illinois, 497 U.S. 62 (1990)]*

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

25. Admit that based on the answer to the previous question, a person who is regarded by the court as a federal "employee" or "public officer" in the context of a specific financial transaction is "presumed" to have forfeited his/her Constitutional rights, for the most part, as a condition of his/her employment contract/agreement.

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

26. Admit that a federal "employee" is exercising "agency" on behalf of the federal government when operating within the confines of his lawfully delegated authority.

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

27. Admit that pursuant to 4 U.S.C. §72, all those exercising a "public office" as "employees" within the federal government pursuant to 5 U.S.C. §2105 are presumed to have a legal "domicile" in the District of Columbia.

> *TITLE 4 > CHAPTER 3 > § 72*
> *§ 72. Public offices; at seat of Government*
>
> *All offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided by law.*
> *[http://www4.law.cornell.edu/uscode/html/uscode04/usc_sec_04_00000072----000-.html]*

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

28. Admit that those acting as federal "employees" or "public officers" on official duty, even if otherwise domiciled within a state of the Union, must be regarded under Federal Rule of Civil Procedure Rule 17(b) as having a legal "domicile" in the District of Columbia.

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

29. Admit that a person engaged in a "trade or business" holds a "public office" in the United States and qualifies as a federal "employee" as defined in 5 U.S.C. §2105, 26 U.S.C. §3401(c ), and 26 CFR §31.3401(c )-1.

> *26 U.S.C. §7701: Definitions*
>
> *"(a)(26) The term 'trade or business' includes the performance of the functions of a public office."*

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

30. Admit that it is a violation of due process during any judicial proceeding to "presume" that a person is a federal "employee", "public officer", or "taxpayer" without proof appearing on the record of same, in cases where such presumption is challenged by either party.

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

31. Admit that the federal courts have ruled that persons can actually be penalized for relying on any IRS publication, statement or form as a basis for belief about tax liability.

See section 5 earlier.

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

32. Admit that even when advised by a tax professional, a "taxpayer" filing a return still accepts full liability for the accuracy of what appears on the return filed.

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

33. Admit that laws enacted within the Statutes at Large constitute positive law, for most but not all cases.

See 1 U.S.C. §204 and its predecessors.

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

34. Admit that the Internal Revenue Code of 1939 was published as separate volume of the Statutes at Large, and that it is the ONLY enactment of Congress that has such distinction.

> *Internal Revenue Code of 1939, Section 9, 53 Stat. 2*
>
> *SEC. 9. PUBLICATION.—The said Internal Revenue Code shall be published as a separate part of a volume of the United States Statutes at Large, with an appendix and index, but without marginal references; the date of enactment, bill number, public and chapter number shall be printed as a headnote.*
> *[Internal Revenue Code of 1939, Section 9, 53 Stat. 2*
> *http://www.famguardian.org/Disks/LawDVD/Federal/RevenueActs/Revenue%20Act%20of%201939.pdf]*

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

35. Admit that because the I.R.C. is not positive law, and because it was published in the Statutes at Large, then not all enactments published in the Statutes at Large are necessarily "positive law" and therefore "law" in the absence of unchallenged presumption.

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

36. Admit that presumption in the legal realm operates as the equivalent of "faith" in the religious realm, in that it is the embodiment of a belief that is not substantiated by admissible evidence.

> *"Now **faith is the substance of things hoped for, the evidence of things not seen [or examined or admitted into evidence].**"*
> *[Heb. 11:1, Bible, NKJV]*

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

37. Admit that the federal government may not create a church, and especially not one which includes the payment of "tithes" called "taxes" as a requirement.

> *"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)]*

---

> *"****[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)]*

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

38. Admit that "taxes", with respect to a "state" are similar to "tithes" with respect to a "church" and that membership in both a "nation" or "state" on the one hand is just as voluntary as membership in a "church" on the other hand.

Please rebut the content of the article entitled "Our government has become idolatry and a false religion." at:

http://famguardian.org/Subjects/Taxes/Articles/Christian/GovReligion.htm

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

39. Admit that membership in a "state" is consummated by a combination of two voluntary choices of an individual: allegiance and domicile.

Please rebut the questions at the end of the pamphlet:

*Why Domicile and Becoming a "Taxpayer" Require Your Consent*, Form #05.002
http://sedm.org/Forms/FormIndex.htm

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

40. Admit that income "taxes" are membership dues paid only by those with a domicile and/or residence within the territorial jurisdiction of a "state" for the protection afforded by the "state".

> "**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)]

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

41. Admit that one may not be compelled to exercise their protected First Amendment right to politically associate with a specific state or government and are protected from "compelled association" by the First Amendment to the United States Constitution.

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

42. Admit that those who have voluntarily exercised their right to politically associate with a specific state are called "citizens" and "residents" (aliens) in relation to that state, while those who have not are called "nonresidents", "transient foreigners", "stateless persons", and "nonresident aliens".

YOUR ANSWER: ____Admit ____Deny

CLARIFICATION:_____

## Affirmation:

I declare under penalty of perjury as required under 26 U.S.C. §6065 that the answers provided by me to the foregoing questions are true, correct, and complete to the best of my knowledge and ability, so help me God. I also declare that these answers are completely consistent with each other and with my understanding of both the Constitution of the United States, Internal Revenue Code, Treasury Regulations, the Internal Revenue Manual, and the rulings of the Supreme Court but not necessarily lower federal courts.

Name (print):_____

Signature:_____

Date:_____

Witness name (print):_____

Witness Signature:_____

Witness Date:_____