THE <u>REAL</u> TRUTH
ABOUT
THE IRS'S "TRUTH" ABOUT
"FRIVOLOUS" TAX ARGUMENTS

An Objective, Authoritative Analysis of the IRS's Official, Anonymous List and Rebuttal of "Frivolous" Tax Issues

PUBLISHED BY TRUTH ATTACK

Putting the government back in its box . . . one tentacle at a time

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This material is not intended to be considered as legal advice, which can only be rendered with a complete knowledge of the facts of each unique case, nor is it intended to advise, recommend or encourage anyone to fail or refuse to file income tax returns or pay income taxes claimed by the Internal Revenue Service. The sole purpose of this document is to inform the public of the false claims and legal misrepresentations being made to it by its servants and to encourage the public to demand that its representatives in Congress and elected and appointed officials bring the IRS to heel by requiring the IRS to apply the law as enacted by Congress and signed into law by the President, thereby preserving the rule of law essential to any free nation.

ABOUT THE AUTHORS

In compiling this evaluation of the IRS's claims that it has refuted what it calls "frivolous" tax arguments, Truth Attack assembled a panel of the best minds in the field. The authors of this expose' of the IRS's falsehoods and deception set out in its official listing and rebuttal of what it calls "frivolous tax arguments" are tax and legal professionals with over 168 years of experience in taxation and legal matters. Between them they hold ten Bachelor's degrees and five doctorates and hold licenses to practice law in eight states and are admitted in the United States Supreme Court, all twelve federal Circuit Courts of Appeals and numerous federal district courts. Although the person or persons who wrote the Internal Revenue Service's "The Truth About Frivolous Tax Arguments" were, understandably, too ashamed to associate their names with that document, Truth Attack is declining to identify the experts who compiled and drafted this rebuttal of the IRS's lies about the law, not because they were unwilling, but because Truth Attack is unwilling to subject them to the risk of IRS vendettas and assaults.

THE REAL TRUTH ABOUT THE IRS'S "TRUTH" ABOUT "FRIVOLOUS" TAX ARGUMENTS

An Objective, Authoritative Analysis of the IRS's Official, Anonymous List and Rebuttal of "Frivolous" Tax Issues

The following is an item-by-item assessment of *The Truth About Frivolous Tax Arguments*, the Internal Revenue Service's official list of what it has dubbed "frivolous" tax arguments. In its publication the IRS purports to debunk numerous arguments that have been made in opposition to the IRS's exaggerated version of the income tax laws.

The assessments of the IRS's claims were made by qualified, highly credentialed attorneys and tax professionals, all of whom not only checked the IRS's claims for accuracy but also verified all of the authorities and points raised in the assessments.

The fact of the matter is that the IRS's publication, *The Truth About Frivolous Tax Arguments*, is riddled with lies, half-truths and misrepresentations. While some of the contentions the IRS calls "frivolous arguments" listed here are without merit some legitimate, real problems with the IRS's application of the income tax are valid and are supported by not only the written law as enacted by Congress, but by the Supreme Court's interpretation of those statutes.

This document sets out the entire IRS "Truth" About publication exactly as it appears on its web site, right down to their choice of font (this font). The real TRUTH about the IRS's phony "Truth" About Frivolous Tax Arguments is simply inserted below in Times New Roman font. None of the IRS's portion of this document has been altered in any way, which can be easily verified by comparing it to their web site.

A NOTE ABOUT INFERIOR COURT CASES:

In its "Truth" About publication the IRS relies on numerous inferior court cases. Inferior courts are those inferior to the Supreme Court and consist of Tax and Claims Courts, Bankruptcy Courts, District Courts and Courts of Appeal, all of which are created by Congress. The IRS acknowledges in its Internal Revenue Manual, and Truth Attack agrees with them on this point, that inferior court holdings are not law and are binding only on the parties to the suit in question, and even then, only as to the years litigated. According to the IRM only Supreme Court cases are binding on it and considered the law of the land, "equivalent to the code".

Why, then, would the IRS rely so heavily on so many cases it considers neither binding nor the law of the land? The reader is invited, encouraged, to pull some of those inferior court cases up and read them carefully. In virtually every instance the statement by the court being relied upon by the IRS is not actually a holding, a ruling or conclusion necessary to a ruling on an issue before the court. The vast majority of such case "holdings" are actually "dictum", extraneous statements by the court of its opinion. In other such inferior court cases the case is selected by the IRS simply because it is wrong. For example, note in the discussion of the *Collins* case below and the court's "holding" that the Supreme Court "held" in the *Brushaber* case exactly the opposite of what the Supreme Court actually held. Rather than tell you what *Brushaber* actually held, the IRS chooses, rather, to hold up an inferior court case because it misrepresented the true *Brushaber* holding. The IRS knew that the *Collins* statement was a lie, but apparently thinks that knowingly repeating the lie of another is not lying.

Time and space do not permit us to chase down all of these inferior court "holdings" or "dicta", and since they are not binding law and can support no legitimate argument that conflicts with the code or the holdings of the Supreme Court, those cases are ignored for the purposes of this work.

FIRST: *ARGUMENTS AND ISSUES THE IRS DOES NOT CLAIM ARE FRIVOLOUS*

To begin with there are some arguments the IRS regularly labels as "frivolous" that are not included in its official list of "frivolous" arguments. First and foremost among the Tax Honesty Movement's objections is its contention that ***there is no statute in the Internal Revenue Code clearly and plainly imposing liability for the income tax on the typical working American***. That objection is not among the IRS's official list of "frivolous" arguments. The IRS does describe that issue in its including among the listed issues the argument that payment of income taxes is voluntary, but it fails to rebut it other than to contend that Section 1 imposes the tax and that Section 6151 tells those liable when and where to pay a tax for which they are liable. Thus, the IRS, by neither including the absence of a liability statute on the list nor producing such a statute,

THE IRS IS ADMITTING NOT ONLY THAT IT IS NOT A "FRIVOLOUS" ARGUMENT BUT ALSO THAT IT HAS NO AUTHORITY REFUTING THE ARGUMENT!!

Also notably absent and, therefore, apparently not "frivolous", is the argument that ***there is no legal basis for the IRS's claim that the basis for moneys received in exchange for our labor***, our "most sacred and inviolable of property", ***is zero,*** making our wages and salaries ***100% profit—received for nothing!?!*** The Supreme Court has repeatedly held that our labor is our property.

The basis (that amount that must be deducted from gross receipts from an exchange in order to determine what, if any, of those proceeds are profit, or income) for any transaction is determined according to Sections 1001 et seq. None of those sections provides for a "zero basis" (the IRS's "rule" for determining how much of our wages or salaries is profit, i.e., income). Every transaction has a "basis" that is either determined by the cost of the property conveyed or, where there is no cost, the value. If our labor is without value then why would anyone be willing to pay us for it?

THAT ISSUE IS NOT ON THE IRS'S OFFICIAL LIST OF "FRIVOLOUS" ARGUMENTS!! THUS THE IRS IS ADMITTING NOT ONLY THAT IT IS NOT A "FRIVOLOUS" ARGUMENT BUT ALSO THAT IT HAS NO AUTHORITY REFUTING THE ARGUMENT!!

In addition, the law provides that the income tax is imposed only on "taxable" income, that is, income that is derived from engaging in a *privileged* activity that is *within* the taxing authority of the federal government. See *Stanton v. Baltic Mining*, 240 U.S. 103 (1916). Yet the Supreme Court has held in scores of cases that when we work for a living we are exercising a God-given, Constitutionally protected and tax exempt right, not a privilege. Thus***, since the tax is only on "taxable" activities and exercising our right to labor for a living is not "taxable", the income tax has no application to our working for a living or any wages or salaries that activity might generate.***

Indeed, the IRS in its regulations (26 CFR 1.861-8T) tells us that we should not even include tax-exempt income in gross income. So what about the Tax Honesty Movement's contention that those of us who work for a living should exclude our wages and salaries, received in exchange for our labor and derived from ***our exercising a right, not a privilege***, as any part of our "gross income"?

THAT ISSUE IS NOT ON THE IRS'S OFFICIAL LIST OF "FRIVOLOUS" ARGUMENTS!! THUS THE IRS IS ADMITTING NOT ONLY THAT IT IS NOT A "FRIVOLOUS" ARGUMENT BUT ALSO THAT IT HAS NO AUTHORITY REFUTING THE ARGUMENT!!

So what about the rest of the IRS's "Truth" About Frivolous Tax Arguments? Just how "truthful" is the IRS's account of these issues?

A. The Voluntary Nature of the Federal Income Tax System

1. Contention: The filing of a tax return is voluntary.

Some taxpayers assert that they are not required to file federal tax returns because the filing of a tax return is voluntary. Proponents point to the fact that the IRS itself tells taxpayers in the Form 1040 instruction book that the tax system is voluntary. Additionally, the Supreme Court's opinion in Flora v. United States, 362 U.S. 145, 176 (1960), is often quoted for the proposition that "[o]ur system of taxation is based upon voluntary assessment and payment, not upon distraint."

The Law: The word "voluntary," as used in Flora and in IRS publications, refers to our system of allowing taxpayers initially to determine the correct amount of tax and complete the appropriate returns, rather than have the government determine tax for them from the outset. The requirement to file an income tax return is not voluntary and is clearly set forth in sections 6011(a), 6012(a), et seq., and 6072(a). See also Treas. Reg. § 1.6011-1(a).

This is a misrepresentation by omission. ***The code section setting forth the requirement to file a tax return is missing from this statement***. The IRS is talking out of both sides of its mouth because in its instructions for the Form 1040 (page 97 of the 2009 instructions) it clearly states something different:

> "Our legal right to ask for information is Internal Revenue Code Sections **6001**, 6011, and 6012(a), and their regulations. They say that you must file a return or statement with us for any tax you are **liable** for."

Why is Section 6001 mysteriously omitted when that is the first section cited in its own instructions regarding the requirement to file a Form 1040? What is it about that section that the IRS wants to conceal from you?

But the deception continues, progressing from deception by omission to active misrepresentation of the law:

> Any taxpayer who has received more than a statutorily determined amount of gross income is obligated to file a return.

This misrepresentation presents another conflict between what the IRS says in the instruction book and what it is saying in this publication purporting to be the "truth". The only thing that prevents this statement from being an outright lie is the word "taxpayer". Since a "taxpayer", the person required to pay the tax, would be liable for the tax, then and only then would the amount of gross income become relevant. A "taxpayer" is defined as one who is "subject to" a tax (26 USC 7701(a)(14), i.e., one liable for a tax. If the statement had been about a "citizen", or "you", it would have been a blatant lie. So why is that so important?

Take another look at the Privacy Act Notice quoted above. Is it addressing "taxpayers"? No, it is addressing "you". Does it say anything about those receiving "more than a statutorily determined amount of gross income"? No, it doesn't. According to the disclosure that the law requires (as opposed to this publication, which is not governed by Congressional mandate) the requirement to file a return is based on whether **"you are <u>liable</u> for"** a tax.

Let's examine the conspicuously omitted section of the code, Section 6001, and see if we can find out what the IRS does not want you to see:

> "Every person ***<u>liable</u>*** for any tax imposed by this title or for the collection thereof **shall keep such records, render such statements, *<u>make such returns</u>* and comply with such rules and regulations as the Secretary may from time to time prescribe**." (emphasis added)

Both the Privacy Act Notice in the instruction book for the Form 1040 and the mysteriously concealed code section, Section 6001, say that only those **LIABLE** for a tax are required to file a return.

What about the other sections that are disclosed? What do they really say? Section 6011 begins with "When required by regulations . . .", but who is "required by regulations" to do anything? Section 6001, above, makes it plain as day that only those **LIABLE** for a tax are obligated to "comply with such . . . regulations". But Section 6011 goes on from there to mention a familiar word:

> a) General rule — When required by regulations prescribed by the Secretary any person made **<u>liable</u>** for any tax imposed by this title [*which would include the income tax*], or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary.

> Every person required to make a return or statement shall include therein the information required by such forms or regulations.

So who is required to comply with regulations, including those indicating that a Form 1040 should be completed and filed? Only those persons **liable** for the income tax are required to comply with regulations according to Section 6001.

What about the last section cited? Section 6012(a) is often referred to by the IRS as the sole basis for being required to file a Form 1040, although we now know that the requirement is actually based on Sections 6001, 6011 **AND** (not **OR**) 6012(a). Section 6012(a) actually adds a second precondition for a requirement to file, ***narrowing, not broadening***, that group:

> (a) General rule — Returns with respect to income taxes under subtitle A shall be made by the following:
>
> (1) (A) **Every individual having for the taxable year gross income which equals or exceeds the exemption amount** . . .

Notably absent from that section is any requirement to keep records, so how can anyone who kept no records complete a return? Nor does this section make anyone subject to regulations, including those regulations that specify the form, manner and place for filing returns.

This section does not add any "filers" to those LIABLE for a tax, but rather actually *excludes* those who are liable but have income less than the standard exemption. In fact, section 6012 is listed in the index of most IRC publications as "**exclusion** from requirement to file".

Thus, the Truth about this argument is that although we can debate at length the meaning of "voluntary" and its various usages, the IRS has misrepresented the law in an effort to call this argument "frivolous".

Why? Because there is no statute imposing ***liability*** for the income tax on working Americans, an issue that we have already seen is admittedly not frivolous—not on the official list of frivolous arguments. If the Truth about this argument, that a requirement to file a return is based upon whether one is **liable**, had been revealed instead of concealed then the next question would be "Then who does the law say is liable for the income tax and, being liable, must keep records, render statements, make returns and comply with regulations?"

CONCLUSION: Since there is no law making the typical working American liable for the income tax then the typical working American is not required by law to keep records, render statements or to comply with regulations, including those designating form and manner of filing returns. ***Above all, he is not required by law to file an income tax return.*** See Section 6001. So if he does so without being required by law then he must be doing so "voluntarily", strictly of his own election and volition. Thus, filing an income tax return is "voluntary" in the most "voluntary" sense of the word and the IRS's response to that argument is . . . well . . . frivolous.

CAVEAT: Now, this part of the IRS's contention, while perhaps without legal basis, is true from a factual standpoint. Notwithstanding the law or the absence of law the IRS, acting in concert with the U. S. Department of Justice (DOJ) and the courts, have imprisoned many Americans whose only crime was to discover the Truth about the inapplicability of the income tax to them and to dare to confront the government with that Truth. In case after case the Truth has been paraded before the IRS, DOJ prosecutors and both trial and appellate judges only to have them all turn a willfully blind eye and deaf ear to the law all of them are solemnly sworn to uphold. Anyone daring to expose themselves as being among those who have seen the Truth about the IRS's and DOJ's lies and myths about the income tax law is in jeopardy of harsh reprisals despite the law to the contrary. Thus it is not recommended that you confront them. These tax enforcement agencies are "armed and dangerous" and they will do you harm.

It is recommended that you do the same thing that you would if you were to recognize a band of armed and dangerous fugitives. You would not attempt a citizen's arrest in that case but you would report your sighting to the authorities, wouldn't you? Since reporting the government's illegal activities to the government would be tantamount to informing one of the armed and dangerous fugitives that you have recognized them, that would be imprudent at best, and more likely be a disastrous mistake. The authorities in this case must be those who have authority over the government . . . We the People of America. The owners and masters of the government must be informed of their government's misconduct. Instead of confronting the gang of outlaws, tell your family, your neighbors, your friends, your co-workers and associates. Tell it to the People and call upon them to bring the force of the law down on the government.

In United States v. Tedder, 787 F.2d 540, 542 (10th Cir. 1986), the court clearly states, "although Treasury regulations establish voluntary compliance as the general method of income tax collection, Congress gave the Secretary of the Treasury the power to enforce the income tax laws through involuntary collection . . . . The IRS' efforts to obtain compliance with the tax laws are entirely proper." The IRS issued Revenue Ruling 2007-20, 2007-14 I.R.B. 863, warning taxpayers of the consequences of making this frivolous argument.

In August 2005, the Justice Department announced that Royal Lamarr Hardy was sentenced to a 156-month prison term for, among other things, selling a tax evasion scheme called the "Reliance Defense" that incorrectly asserted the income tax laws were voluntary (i.e., the laws imposed no legal obligation to pay tax or file a return). Hardy was also ordered to pay costs of prosecution in the amount of $59,267.88, and restitution to the IRS for $197,555. See 2005 TNT 169-12 (Aug. 31, 2005).

In August 2007, a U.S. District Court permanently barred Robert Schulz and his organizations, We the People Congress and We the People Foundation, from promoting a tax scheme that helped employers and employees improperly stop tax withholding from wages on the false premise that federal income taxation is voluntary. The court concluded that the First Amendment did not protect the two organizations that operate the website, or their founder, because the site incited criminal conduct. The court also ordered that the web site that sold the materials stating that individuals can legally stop paying taxes be shut. See http://www.usdoj.gov/tax/txdv07214.htm, and http://www.usdoj.gov/tax/txdv07595.htm. The result in this case was affirmed on appeal and certiorari was denied. United States v. Schulz, 529 F. Supp. 2d 341 (N.D.N.Y. 2007), aff'd, 517 F.3d 606 (2d Cir. 2008), cert. denied, 129 S.Ct. 435 (2008).

While not necessarily a key element in determining whether the IRS's responses to these "frivolous" arguments are founded in law or are, themselves, frivolous, it is important to place the *Schulz* case in perspective because it demonstrates the lengths to which government employees and government (as opposed to public) servants will go to quiet any who dare to make any attempt to inform the public of the government's violation of the income tax laws. In this case neither Bob Schulz nor his organizations were permitted a hearing of any kind in spite of the fact that they disputed every allegation of the suit against them and presented proof that they had evidence to support their denials. Due Process was not a factor and the general concept of a fair hearing was no deterrent to either the IRS, the DOJ or the trial or appellate courts, who simply ignored the law, refused to hear any evidence of the facts and summarily issued the injunction sought.

Relevant Case Law:

Helvering v. Mitchell, 303 U.S. 391, 399 (1938) – the U.S. Supreme Court stated that "[i]n assessing income taxes, the Government relies primarily upon the disclosure by the taxpayer of the relevant facts . . . in his annual return. To ensure full and honest disclosure, to discourage fraudulent attempts to evade the tax, Congress imposes [either criminal or civil] sanctions."

Note in passing that the *Helvering* case is cited in support of the IRS's contention here that the income tax is not "voluntary", but the ruling fails to address that point. The cases following are all inferior court cases and, based upon the IRS's own policies and procedures set out in its Internal Revenue Manual (IRM), inferior court cases are binding only on the parties and even then only for the years in question. Thus all of these cases can be disregarded as not binding on either the IRS or the citizen. ***According to the IRM only Supreme Court cases have the effect of law, "equivalent to the code" and lower court decisions are not binding on either the IRS or the citizen.*** So where is the Supreme Court case saying "voluntary" does not mean "voluntary"?

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993), cert. denied, 510 U.S. 1193 (1994) – the court held that "[a]ny assertion that the payment of income taxes is voluntary is without merit."

United States v. Tedder, 787 F.2d 540, 542 (10th Cir. 1986) – the court upheld a conviction for willfully failing to file a return, stating that the premise "that the tax system is somehow 'voluntary' . . . is incorrect."

United States v. Richards, 723 F.2d 646, 648 (8th Cir. 1983) – the court upheld conviction and fines imposed for willfully failing to file tax returns, stating that the claim that filing a tax return is voluntary "was rejected in

United States v. Drefke, 707 F.2d 978, 981 (8th Cir. 1983), cert. denied, Jameson v. United States, 464 U.S. 642 (1983) – wherein the court described appellant's argument as 'an imaginative argument, but totally without arguable merit.'"

Johnson v. Commissioner, T.C. Memo. 1999-312, 78 T.C.M. (CCH) 468, 471 (1999), aff'd, 242 F.3d 382 (9th Cir. 2000) – the court found Johnson liable for the failure to file penalty and rejected his argument "that the tax system is voluntary so that he cannot be forced to comply" as "frivolous."

Woods v. Commissioner, 91 T.C. 88, 90 (1988) – the court rejected the claim that reporting income taxes is strictly voluntary, referring to it as a "'tax protester' type" argument, and found Woods liable for the penalty for failure to file a return.

2. Contention: Payment of tax is voluntary.

In a similar vein, some argue that they are not required to pay federal taxes because the payment of federal taxes is voluntary. Proponents of this position argue that our system of taxation is based upon voluntary assessment and payment. They frequently claim that there is no provision in the Internal Revenue Code or any other federal statute that requires them to pay or makes them liable for income taxes, and they demand that the IRS show them the law that imposes tax on their income. The stance that is taken is that until the IRS can prove to these taxpayers' satisfaction, which is effectively impossible because they never will be satisfied, the existence and applicability of the income tax laws, they will not report or pay income taxes. These taxpayers reflexively dismiss any attempt by the IRS to identify the laws, thereby continuing the cycle. The IRS has issued Revenue Ruling 2007-20, 2007-14 I.R.B. 863, discussing this frivolous position at length and warning taxpayers of the consequences of asserting it.

The Law: The requirement to pay taxes is not voluntary and is clearly set forth in section 1 of the Internal Revenue Code, which imposes a tax on the taxable income of individuals, estates, and trusts as determined by the tables set forth in that section. (Section 11 imposes a tax on the taxable income of corporations.)

This contention is a total misrepresentation, not only of the position of the Tax Honesty Community, by making the totally unsupported claim that those demanding that the IRS point out any statutory imposition of liability for payment of the tax would never be satisfied, but misrepresents the import of Section 1. The Tax Honesty Community would be satisfied with any statute that clearly and plainly identifies them as liable for the income tax. What they will not be satisfied with is being told they are making a "frivolous argument" by merely asking to be shown any law that entitles the IRS to demand personal information or money from them. Nor are they satisfied with twisted distortions and misstatements of the law.

In order to better understand what Section 1 does and does not do it is beneficial to look at how statutes impose liability for a tax. So, let's look at one example to demonstrate how the law tells us who is liable for a tax. Section 5001 imposes a tax on distilled spirits:

> "There is hereby imposed on all distilled spirits produced in or imported into the United States a tax at the rate of $13.50 on each proof gallon and a proportionate tax at the like rate on all fractional parts of a proof gallon."

Notice that this tax is on **<u>ALL</u>** distilled spirits, whether produced in or imported into the United States. By the IRS's reasoning, anyone who has income is liable because Section 1 imposes a tax on taxable income, so anyone who has distilled spirits must be liable for the distilled spirits tax.

Do you have any distilled spirits? The tax is imposed on ALL distilled spirits, domestic and imported. ALL would certainly include those in your liquor cabinet. So where are your distilled spirits records? Why haven't you been filing a distilled spirits tax return?

Well, before you reach for your nitro pills or your distilled spirits, let's look at Section 5005, entitled "Persons Liable for Tax":

> "The ***distiller*** or ***importer*** of distilled spirits ***shall be liable*** for the taxes imposed thereon by section 5001(a)(1)."

Are you a distiller or importer? No? Then perhaps that is why even though you have distilled spirits and the tax is imposed on ALL distilled spirits, you are not required to keep records or to file a distilled spirits tax return. Having distilled spirits does not make one liable for the distilled spirits tax. Being a distiller or importer, however, does because a statute plainly and clearly states that distillers and importers are the ones liable for that tax.

Is this an exceptional or unusual provision? No. Every tax in the Internal Revenue Code has a **specific statute** stating exactly who is liable for that tax. In fact, there is a specific liability provision for the income tax, but it has nothing to do with working Americans.

Now, what about the IRS's Section 1? Section 1 is the first section of sub-chapter 1, "Determination of Tax Liability", so wouldn't you expect that some section in this sub-chapter would tell us who is liable for the income tax? The Part, "Tax on Individuals", also would suggest that the tax is going to be imposed on ***someONE***, not just ***someTHING***. Titles and headings are not law, but that would lead one to believe we are at least in the right part of Subtitle A, the income tax law, to expect to see exactly who the law says is liable for that tax.

Now let's take a look at the letter of the law. Section 1 “Tax imposed”, a heading. Subsection (a) “Married individuals filing jointly and surviving spouses”, more heading, and, finally, the statute:

> “There is hereby imposed on the ***taxable income <u>of</u>*** [not ON] (1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and (2) every surviving spouse (as defined in section 2(a)), a tax determined in accordance with the following table: . . .”

and then it goes on to set out the rates of taxation.

Section 1(b), same thing, except that the tax is imposed on the ***taxable income OF*** heads of households and a different set of rates is provided. Subsection (c) is on the ***taxable income OF*** unmarried individuals, (d) the ***taxable income OF*** married individuals filing separately, and, finally, (e) the ***taxable income OF*** estates and trusts. In all those subsections the tax is not imposed on individuals, as the heading suggests, but is on taxable income. So what is taxed? In other words, what is the subject of the tax? ***Taxable income***, that is, income within the meaning of the Constitution and the 16^{th} Amendment that is derived from engaging in an activity that is within the taxing authority of the federal government, ***is the subject of the tax***.

Do you see anything there that says anyone is liable? Required to pay? Must pay? Do you know anyone named “taxable income”?

Now, do you have income? Does having income make you liable according to Section 1? Did having distilled spirits make you liable for the tax on ALL distilled spirits? No. It takes a statute to do that—a statute like Section 5005. In fact, does Section 1 say that anyone is liable? No, it doesn't, and the IRS is being dishonest in suggesting that it does.

Are we being literal in our reading of Section 1? We are, indeed, but that is because when it comes to reading tax laws we are supposed to be literal, looking only at the exact and precise letter of the law, assuming nothing, presuming nothing, inferring nothing.

Unless the letter of the law makes one liable, then he is free of the tax. Look at what the Supreme Court said in *U.S. v. Merriam*, 263 U.S. 179, 187-8 (1923):

> “On behalf of the Government it is urged that taxation is a practical matter and concerns itself with the substance of the thing upon which the tax is imposed rather than with legal forms or expressions. ***But in statutes levying taxes the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the Government and in favor of the taxpayer.*****”** (emphasis added)

The *Merriam* court goes on to quote Lord Cairns in *Partington* v. *Attorney-General,* saying,

> "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. ***On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be*.**" Id, at 188 (emphasis added)

In *U. S. v. Calamaro*, 354 U.S. 351 (1957), the Supreme Court made it clear that the rule of strict construction applies specifically to the question of who is and who is not liable for the payment of a tax, without regard to implication, inference or even legislative intent. Thus, to suggest that in the absence of a clear and plain statutory imposition of liability one is not liable would seem supported by Supreme Court authorities.

So, Section 1, contrary to the IRS's contention, makes no one liable for the income tax. The IRS's contention that it does is clearly false . . . frivolous.

> Furthermore, the obligation to pay tax is described in section 6151, which requires taxpayers to submit payment with their tax returns.

Again, this would be a bald faced lie but for the clever use of the term "taxpayer". A taxpayer is one who is "subject to a tax" (26 USC 7701(a)(14)), but what law makes the typical American, living and working here in the States, subject to the income tax? If there is no such law, then those Americans are not "subject to the income tax", nor are they "taxpayers", and under the provisions of Sections 6001, 6011 and 6012(a), they are not required to file an income tax return (see discussion of Contention A-1, above).

So who does Section 6151 apply to? Is it you? Let's look at that section and see:

> Section 6151. **Time and place for paying tax shown on returns**
>
> (a) General rule — Except as otherwise provided in this subchapter, when a return of tax is required under this title or regulations, **the person required to make such return** shall, without assessment or notice and demand from the Secretary, pay such tax to the internal revenue officer with whom the return is filed, and shall pay such tax **at the time and place fixed for filing the return** (determined without regard to any extension of time for filing the return).

Obviously, Section 6151 pertains only to one **"required to make such return"**. From our discussion of Contention A-1, we know that **the only persons required to file a return are those LIABLE for the tax**. How could Section 6151, then, apply to anyone who the law had not already identified as **LIABLE** for the income tax? It cannot and it does not.

We also know, then, that since there is no law making the typical working American **LIABLE** for the income tax the Code does not make him one **"required to make such return"**, so Section 6151 cannot and does not apply to the typical working American, a fact admitted by the IRS's omission of that issue in its official list of "frivolous arguments".

The falsehood of this statement by the IRS is apparent in that not only does Section 6151 apply only to those whom the law, the IRC, clearly and plainly identifies as liable for the income tax, it is being cited as making someone liable when its only effect is to designate **when** and **where** one who **is** liable and, therefore, **required to file a return**, must pay the tax. When and where? At **the time and place fixed for filing the return**.

CONCLUSION: The Truth about the IRS's response to Contention A-2 is that it is false, misleading and clearly "frivolous", without basis or foundation in law. An actual reading of Section 6151 readily reveals that it does not impose liability on anyone and merely applies to those upon whom liability is already imposed, those "required to make such return", and does no more than its title indicates, stating **when and where** the liable person is required to pay the tax for which he is **LIABLE**. Thus, if one is not under a legal obligation to pay taxes for which he is not liable, then his payment of those taxes must be, again, "voluntary", of his own election and volition (albeit under the extreme duress of intimidation and threats). The IRS's position on this contention is, then, without any basis in law . . . frivolous.

Failure to pay taxes could subject the noncomplying individual to criminal penalties, including fines and imprisonment, as well as civil penalties.

CAVEAT: Again, the caveat above regarding Contention A-1 is reiterated here. These people are armed and dangerous and you cannot rely on either DOJ or the courts to protect you from them.

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

In discussing section 6151, the Eighth Circuit Court of Appeals stated that "when a tax return is required to be filed, the person so required 'shall' pay such taxes to the internal revenue officer with whom the return is filed at the fixed time and place. The sections of the Internal Revenue Code imposed a duty on Drefke to file tax returns and pay the . . . tax, a duty which he chose to ignore." United States v. Drefke, 707 F.2d 978, 981 (8th Cir. 1983), cert. denied, Jameson v. United States, 464 U.S. 642 (1983).

In United States v. Kuglin, No. 03-20111 (W.D. Tenn. Aug. 8, 2003), Vernice B. Kuglin faced criminal charges for falsifying Forms W-4 and failing to pay taxes on $920,000 of income between 1996 and 2001, but was acquitted by a federal jury. Kuglin argued that she attempted to determine whether the income was taxable but the Service did not respond to her letters. Government officials issued press releases making it clear that the outcome in Kuglin should be treated as an "aberration" and noting that persons acquitted of criminal tax violations are not relieved of their obligation to pay taxes due. See 2003 TNT 155-12 (Aug. 11, 2003); 2003 TNT 155-13 (Aug. 11, 2003); 2003 TNT 158-2 (Aug. 14, 2003).

The defendant in United States v. Brunet, No. 03-00057 (M.D. Tenn. March 12, 2004), argued he could not find any information that would lead him to conclude the Internal Revenue Code made him liable to file income tax returns or pay taxes. In stark contrast to Kuglin, the jury returned guilty verdicts against Brunet on four counts of tax evasion and the court sentenced him to serve 27 months in prison. See 2004 TNT 51-33 (March 12, 2004).

There have been no civil cases where the Service's lack of response to a taxpayer's inquiry has relieved the taxpayer of the duty to pay tax due under the law. Courts have in rare instances waived civil penalties because they have found that a taxpayer relied on a Service misstatement or wrongful misleading silence with respect to a factual matter. Such an estoppel argument does not, however, apply to a legal matter such as whether there is legal authority to collect taxes. See, e.g., McKay v. Commissioner, 102 T.C. 465 (1994), rev'd as to other issues, 84 F.3d 433 (5th Cir. 1996). Kuglin's case, discussed above, did not prove to be the exception. Despite her acquittal of criminal charges, on September 12, 2004, Kuglin entered a settlement with the IRS in the Tax Court in which she agreed to pay more than half a million dollars in back taxes and penalties. Kuglin v. Commissioner, Docket No. 21743-03; see 2004 TNT 177-6 (Sept. 13, 2004).

In August 2004, an appellate court affirmed a federal district court preliminary injunction barring Irwin Schiff, Cynthia Neun, and Lawrence N. Cohen from selling a tax scheme that fraudulently claimed that payment of federal income tax is voluntary. United States v. Schiff, 379 F.3d 621 (9th Cir. 2004), cert. denied 546 U.S. 812 (2005); see http://www.usdoj.gov/tax/txdv04551.htm. Also, in October 2005, the trio was convicted by a Las Vegas jury for various criminal charges relating to the federal income tax laws. See 2005 TNT 205-4 (Oct. 25, 2005).

Schiff received a sentence of more than 12 years in prison and was ordered to pay more than $4.2 million in restitution to the IRS; Neun received a sentence of nearly 6 years and was ordered to pay $1.1 million in restitution to the IRS; and Cohen received a sentence of nearly 3 years and was ordered to pay $480,000 in restitution to the IRS. See http://www.usdoj.gov/opa/pr/2006/February/06_tax_098.html; 2006 TNT 38-67 (Feb. 24, 2006); 2006 TNT 24-62 (Feb. 3, 2006).

In September 2008, a federal district court in Nevada sentenced Irwin Schiff to 11 months in prison for criminal contempt. The court reinstated 15 criminal contempt convictions imposed during Schiff's 2005 trial for promotion of tax defier schemes. The 11-month sentence is to be served consecutively to the 151-month sentence previously imposed for Schiff's conspiracy and tax convictions. See http://www.usdoj.gov/tax/txdv08789.htm.

In June 2009, Lawrence Cohen, an associate of Irwin Schiff, pled guilty to aiding and assisting in the preparation of a false Form 1040. Cohen faces up to three years in prison and a $250,000 fine. Cohen also agreed to pay restitution for the taxes owed. http://www.justice.gov/opa/pr/2009/June/09-tax-596.html.

In 2007, a dentist, Dr. Elaine Brown, and her husband, Ed Brown, were prosecuted in a federal district court in New Hampshire of conspiracy to defraud the federal government and, as to Dr. Brown, income tax evasion, among other charges. These taxpayers claimed that they were not subject to taxation and that the IRS never responded to their demands for a legal explanation. In an opening statement to the jury, Ed Brown proclaimed, "We will once and for all show beyond the shadow of a doubt . . . that the federal income tax system is a fraud." They failed to do so, however, as the jury convicted the Browns on all charges. See http://www.usdoj.gov/tax/usaopress/2007/txdv07WEM_Browns.pdf. After being sentenced in April, they refused to surrender themselves to authorities and were arrested at their home on October 4, 2007, to begin serving their prison terms.

On January 29, 2009, the Browns were indicted on eleven obstruction and weapons-related charges in connection with the 2007 trial and standoff. In July, the Browns were convicted on all counts. The most serious counts were carrying and possessing firearms and destructive devices in connection with and in furtherance of crimes of violence and carried a possible life sentence, with a thirty-year minimum sentence. http://www.atf.gov/press/releases/2009/07/070909-bos-edward-and-elaine-brown-convicted.html. On October 2, 2009, Elaine Brown was sentenced to thirty-five years in prison, and on January 11, 2010, Edward Brown was sentenced to thirty-seven years in prison. http://www.justice.gov/usao/nh/press/october09/AH_TO_Brown.html; http://www.justice.gov/usao/nh/press/january10/AH_TO_Brown.html.

Relevant Case Law:

United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993), cert. denied, 510 U.S. 1193 (1994) – the court stated that the "[taxpayers'] claim that payment of federal income tax is voluntary clearly lacks substance" and imposed sanctions in the amount of $1,500 "for bringing this frivolous appeal based on discredited, tax-protester arguments."

Schiff v. United States, 919 F.2d 830, 833 (2d Cir. 1990), cert. denied, 501 U.S. 1238 (1991) – the court rejected Schiff's arguments as meritless and upheld imposition of the civil fraud penalty, stating "[t]he frivolous nature of this appeal is perhaps best illustrated by our conclusion that Schiff is precisely the sort of taxpayer upon whom a fraud penalty for failure to pay income taxes should be imposed."

Wilcox v. Commissioner, 848 F.2d 1007, 1008 (9th Cir. 1988) – the court rejected Wilcox's argument that payment of taxes is voluntary for American citizens, stating that "paying taxes is not voluntary" and imposing a $1,500 penalty against Wilcox for raising frivolous claims.

United States v. Bressler, 772 F.2d 287, 291 (7th Cir. 1985), cert. denied, 474 U.S. 1082 (1986) – the court upheld Bressler's conviction for tax evasion, noting, "[he] has refused to file income tax returns and pay the amounts due not because he misunderstands the law, but because he disagrees with it . . . . [O]ne who refuses to file income tax returns and pay the tax owing is subject to prosecution, even though the tax protester believes the laws requiring the filing of income tax returns and the payment of income tax are unconstitutional."

Packard v. United States, 7 F. Supp. 2d 143, 145 (D. Conn. 1998), aff'd, 198 F.3d 234 (2d Cir. 1999) – the court dismissed Packard's refund suit for recovery of penalties for failure to pay income tax and failure to pay estimated taxes where the taxpayer contested the obligation to pay taxes on religious grounds, noting that "the ability of the Government to function could be impaired if persons could refuse to pay taxes because they disagreed with the Government's use of tax revenues."

United States v. Sieloff, 2009 WL 1850197, 104 A.F.T.R.2d 2009-5067 (M.D. Fla. Jun. 25, 2009) – the court rejected the taxpayer's argument that he was not obligated to pay income taxes because the tax system is based upon voluntary assessment and payment.

United States v. Scott, 2009 WL 1439187, 103 A.F.T.R.2d 2009-2336 (D.D.C. May 20, 2009) – the court imposed sanctions of $1,500 under section 6673 against husband and wife petitioners and rejected their argument that payment of income tax is voluntary.

Horowitz v. Commissioner, T.C. Memo. 2006-91, 91 T.C.M. (CCH) 1120 – the court imposed sanctions in the amount of $10,000 in rejecting the taxpayer's arguments, including the frivolous claim that he could find no statute or regulation making him liable for an income tax.

Bonaccorso v. Commissioner, T.C. Memo. 2005-278, 90 T.C.M. (CCH) 554 (2005) – the taxpayer filed zero returns based on the argument that he found no Code section that made him liable for any income tax. The court held that the taxpayer's argument was frivolous citing to section 1 (imposes an income tax), section 63 (defines taxable income as gross income minus deductions), and section 61 (defines gross income). The court also imposed a $10,000 sanction against the taxpayer under section 6673 for making frivolous arguments.

3. Contention: Taxpayers can reduce their federal income tax liability by filing a "zero return."

Some taxpayers are attempting to reduce their federal income tax liability by filing a tax return that reports no income and no tax liability (a "zero return") even though they have taxable income. Many of these taxpayers also request a refund of any taxes withheld by an employer. These individuals typically attach to the zero return a Form W-2, or another information return that reports income and income tax withholding, and rely on one or more of the frivolous arguments discussed throughout this outline to support their position.

The Law: There is no authority that permits a taxpayer that has taxable income to avoid income tax by filing a zero return. Section 61 provides that gross income includes all income from whatever source derived, including compensation for services. Courts have repeatedly penalized taxpayers for making the frivolous argument that the filing of a zero return can allow a taxpayer to avoid income tax liability or permit a refund of tax withheld by an employer. Courts have also imposed the frivolous return and failure to file penalties because such forms do not evidence an honest and reasonable attempt to satisfy the tax laws or contain sufficient data to calculate the tax liability. The IRS issued Revenue Ruling 2004-34, 2004-1 C.B. 619, warning taxpayers of the consequences of making this argument. Furthermore, the inclusion of the phrase "nunc pro tunc," or other legal phrase, does not have any legal effect and does not serve to validate a zero return. See Rev. Rul. 2006-17, 2006-1 C.B. 748.

This contention, Contention A-3, is problematic for both those who advocate the filing of "zero returns" and the IRS. Many such advocates have suggested using "zero returns" on the basis of incorrect, even frivolous, arguments, but the impetus behind their appeal is that a citizen who realizes that the IRS's fictional "zero basis" rule it uses to frivolously contend that wages and salaries are 100% profit—income—is baseless is looking for a way to counter that lie. Seeking a way to avoid being charged a tax on a no-profit and no income exchange and prevent their being accused of willful failure to file (see caveats above), these knowledgeable citizens file returns showing that the 1099's or W-2's are incorrect and that the true amount of gross income (within the meaning of the Constitution and the 16th Amendment) is zero.

The IRS has designated Form 4852 as the proper form for correcting or rebutting 1099's and W-2's, but when one uses that form to demonstrate that none of the funds reported were profit (or income), resulting in a zero gross income number on the return, the IRS regards that as a confrontation of the agency's mythical and deceptive "zero basis" practices and the IRS hates to be confronted with the Truth. (See also, discussion of Contention B-2, below.)

To be specifically correct, even if one were **LIABLE** for the income tax, if he did not receive profits in excess of the standard exemption he is excluded by Section 6012(a) from those required to file a return in the first place. The Catch-22 situation here is that when the IRS receives a W-2 or 1099 it presumes that 100% of the funds reported are profit and, although the burden to prove income, that a profit was realized, is on the IRS it merely "proclaims" the profit proven by the W-2 or 1099. Thus, if one were to stand on the law and the facts and refuse to file because he realized no profits or gains (income) he may be in hot water for not filing, but if he truthfully completes a tax return rebutting the IRS's presumption of profits, using forms provided by the IRS for that very purpose, he will be, albeit unlawfully, penalized $5,000 for a "frivolous" filing.

This "shot if you do and hung if you don't" arrangement leaves one with but one "safe" alternative, and that is to lie on the return, falsely stating that gross receipts were all profit, sign what one knows is false under penalty of perjury and pay taxes on the gross receipts as though they were 100% profit. This produces a bizarre configuration in which the victim is required to lie so that the perpetrator can cheat and steal. The victim hands over and the IRS exacts, unlawfully, a portion of his "most sacred and inviolable of property" . . . his labor. It is not honest, ethical, moral or even legal, but honesty is not a virtue afforded any respect by the IRS. ("In a time of universal deceit, telling the truth is a revolutionary act." George Orwell)

Ironically, if one were engaging in selling commodities (a taxable activity) and at the end of the year his records demonstrated that he broke even the IRS would have no problem with a "zero return". But if one who is engaged in laboring for a living (a tax exempt exercise of a fundamental right) were to show that he broke even, he will be penalized or prosecuted for filing a truthful return.

CONCLUSION: Since one without profits is not required by law to file an income tax return (absence of liability aside) then the only requirement to do so would be from some other compulsion . . . fear, intimidation, threats and, where required, force of arms. The IRS's contention that its ability to exact punishment for obedience of the law and disobedience of IRS lore entitles it to forcibly take one's labor is beyond frivolous, it is outrageous. A truthful return (absence of liability aside) showing that none of the gross receipts were profit is more than the law requires of one who earns his living by his own labor and the rejection of the use of forms (Form 4852) specifically provided by the IRS for that purpose is without any lawful basis . . . frivolous.

In December 2005, a federal district court in Arizona permanently barred Beverly J. Hill and Darrell J. Hill (individually and doing business as Superior Claims Management) from, among other things, preparing or filing federal tax returns for any person or entity other than themselves. The court found that the couple filed zero returns on behalf of their clients based on various frivolous tax arguments, thus interfering with the administration and enforcement of the internal revenue laws. United States v. Hill, 2005 WL 3536118, 97 A.F.T.R.2d (RIA) 548 (D. Ariz. Dec. 22, 2005), aff'd, United States v. Romero-Hill, 197 Fed. Appx. 613 (9th Cir. 2006); see also 2005 TNT 248-8 (Dec. 27, 2005).

In April 2006, a federal district court in Michigan permanently barred Charles Conces from promoting several fraudulent tax schemes, including one in which he filed "zero returns" on behalf of his clients on the faulty premise that income is not taxable. See http://www.usdoj.gov/opa/pr/2006/April/06_tax_243.html; see also 2006 TNT 80-36 (Apr. 25, 2006). In March 2007, U.S. Marshals arrested Conces. The arrest resulted from a federal judge's order on February 23, 2007, finding Conces in civil contempt of court for failing to obey a court order entered on February 8. The February 8 order compelled Conces to disclose to the government the identities of certain persons for whom he drafted or provided advice regarding federal income taxes, the identities of the persons who are responsible for his website, and all documents that he drafted or assisted in drafting for these persons. The order was affirmed on appeal, United States v. Conces, 507 F.3d 1028 (6th Cir. 2007), cert. denied, 128 S. Ct. 2449 (2008). Conces refused to disclose the identities and documents as ordered by the court. See http://www.usdoj.gov/tax/txdv07121.htm.

In February 2008, a federal court in Dallas permanently barred Phillip M. Ballard from preparing federal income tax returns for anyone other than himself. The court found that Ballard, whose business is called Asset & IRS Shield, Inc., prepared federal income tax returns for customers that falsely showed nothing but zeroes on most, if not all, lines. See http://www.usdoj.gov/tax/txdv08114.htm.

Relevant Case Law:

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

United States v. Schiff, 379 F.3d 621 (9th Cir. 2004) – the court of appeals upheld a federal district court preliminary injunction barring Irwin Schiff and two associates from promoting their "zero-income" tax return theories through his bookstore and three Internet websites. As the court noted, Mr. Schiff "has a long history of opposition to the federal income tax laws" and has never been successful in court with his theory that "the federal income tax is voluntary."

Little v. United States, 2005 WL 2989696, at *4 (M.D.N.C. Nov. 7, 2005), aff'd, 178 Fed. Appx. 230 (4th Cir. 2006) – taxpayer filed income tax returns showing "0" income and "0" tax liability, even though his W-2 Forms showed taxable income. In response, the IRS imposed penalties for submitting frivolous returns in violation of 26 U.S.C. § 6702. The court noted that multiple other courts have upheld such a penalty assessment in similar cases where taxpayers filed a "zero return" based on various "tax protester" arguments. Determining that plaintiff failed to raise any genuine issues of material fact, the court upheld the penalties.

Schultz v. United States, 2005 WL 1155203, at *3 (W.D. Mich. 2005) – "Courts have consistently found the arguments made by Plaintiffs, or ones very similar, in support of an all zero return to be frivolous."

Yuen v. United States, 290 F.Supp.2d 1220, 1224 (D. Nev. 2003) – taxpayer's tax returns were substantially incorrect and frivolous, when he filed returns with zeros on nearly every line, and thus, the court decided, assessments of frivolous return penalties were valid.

Gillett v. United States, 233 F.Supp. 2d 874, 881 (W.D. Mich. 2002) – the court stated "[n]umerous federal courts have upheld the imposition of the $500 sanction by the IRS pursuant to 26 U.S.C. § 6702(a) [for frivolous returns], where, as here, a tax form is filed stating that an individual had no income, but the attached W-2 forms show wages, tips, or other compensation of greater than zero."

Bonaccorso v. Commissioner, T.C. Memo. 2005-278, 90 T.C.M. (CCH) 554 (2005) – the taxpayer filed zero returns based on the argument that he found no Code section that made him liable for any income tax. The court held that the taxpayer's argument was frivolous citing to section 1 (imposes an income tax), section 63 (defines taxable income as gross income minus deductions), and section 61 (defines gross income). The court also imposed a $10,000 sanction against the taxpayer under section 6673 for making frivolous arguments.

Halcott v. Commissioner, T.C. Memo. 2004-214 – the court held the taxpayer liable for the penalty under section 6651(a)(1) for failure to timely file his return where the taxpayer filed a "zero return."

Hill v. Commissioner, T.C. Memo. 2003-144, 85 T.C.M. (CCH) 1328, 1331 (2003) – the court imposed a $15,000 penalty under section 6673 because the taxpayer took the frivolous "zero return" position.

Rayner v. Commissioner, T.C. Memo. 2002-30, 83 T.C.M. (CCH) 1161 (2002), aff'd, 70 Fed. Appx. 739 (5th Cir. 2003), cert. denied, 540 U.S. 1139 (2004) – the court imposed a $5,000 penalty under section 6673 where the taxpayer argued the frivolous "zero return" position.

4. Contention: The IRS must prepare federal tax returns for a person who fails to file.

Proponents of this argument contend that section 6020(b) obligates the IRS to prepare and sign under penalties of perjury a federal tax return for a person who does not file a return. Thus, those who subscribe to this contention claim that they are not required to file a return for themselves.

The Law: Section 6020(b) merely provides the IRS with a mechanism for determining the tax liability of a taxpayer who has failed to file a return. Section 6020(b) does not require the IRS to prepare or sign under penalties of perjury tax returns for persons who do not file and it does not excuse the taxpayer from civil penalties or criminal liability for failure to file.

To the IRS's credit, this statement is almost true. Section 6020(b) does not relieve one who is **liable** and, therefore, required to file a return from doing so, but contrary to the IRS's contention here Section 6020(b) does NOT authorize the IRS to do anything. So, who does Section 6020(b) authorize to file a return?

26 U.S.C. § 6020. Returns prepared for or executed by Secretary

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

(b) Execution of return by **Secretary**

(1) Authority of **Secretary** to execute return — If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the **Secretary** shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

Does this section say anything about the IRS? The Secretary refers to the Secretary of the Treasury, not the IRS. Why is the IRS again misrepresenting the law in this document that is purported to be the "truth"? Why isn't the truth good enough? Are those in the IRS simply compulsive liars? Or are they trying to conceal something else from us?

The Secretary can delegate authority to others, but that has to be done by a duly issued Delegation Order (DO). So has the Secretary delegated authority to make and execute income tax returns? A check of the Federal Register, where all rules and regulations directly affecting the public must be published fails to disclose any such delegation order. Since the Treasury Department is a law abiding agency of the federal government, if such a delegation order had been issued then, surely, it would have complied with the law and published it in the Federal Register. Therefore, unless and until otherwise demonstrated and disclosed, it must be presumed that only the Secretary has the authority to sign returns pursuant to Section 6020(b).

CONCLUSION: It is true that Section 6020(b) does not relieve anyone from having to file a tax return when he is liable for a tax and, therefore, required to file. On the other hand, Section 6020(b) does not authorize anyone other than the Secretary himself to execute a return when one required to file fails to do so.

Relevant Case Law:

United States v. Cheek, 3 F.3d 1057, 1063 (7th Cir. 1993), cert. denied, 510 U.S. 1112 (1994) – the court held the district court did not err when it instructed the jury that defendant's belief that Section 6020 permitted the Secretary of the Treasury to prepare a tax return for a person did not negate "in any way" the obligation to file a tax return.

Notice that this case states that the **Secretary**, **not the IRS**, is permitted to prepare a tax return. So why is it cited as relevant to the IRS's contention is that 6020(b) authorizes the IRS to do so? More deception—more frivolous argument.

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

In re Bergstrom, 949 F.2d 341, 343 (10th Cir. 1991) – recognized that "[c]ourts have held that 26 U.S.C. § 6020(b) provides the IRS with some recourse if a taxpayer fails to file a return as required under 26 U.S.C. § 6012, but that it does not excuse a taxpayer from the filing requirement."

United States v. Barnett, 945 F.2d 1296, 1300 (5th Cir. 1991), cert. denied, 503 U.S. 941 (1992) - where defense counsel in prosecution for willful failure to file individual federal income tax returns raised inference that the IRS actually had some statutory duty to file returns for delinquent taxpayers, court properly instructed jury that IRS has no such duty.

Schiff v. United States, 919 F.2d 830, 832 (2d Cir. 1990) cert. denied, 501 U.S. 1238 (1991) – the court rejected the taxpayer's argument that the IRS must prepare a substitute return pursuant to section 6020(b) prior to assessing deficient taxes, stating "[t]here is no requirement that the IRS complete a substitute return."

Moore v. Commissioner, 722 F.2d 193, 196 (5th Cir. 1984) – the court stated that "section [6020(b)] provides the Secretary with some recourse should a taxpayer fail to fulfill his statutory obligation to file a return, and does not supplant the taxpayer's original obligation to file established by 26 U.S.C. § 6012."

United States v. Lacy, 658 F.2d 396, 397 (5th Cir. 1981) – the court, in upholding the taxpayer's conviction for willfully and knowingly failing to file a return, stated that" . . . the purpose of section 6020(b)(1) is to provide the Internal Revenue Service with a mechanism for assessing the civil liability of a taxpayer who has failed to file a return, not to excuse that taxpayer from criminal liability which results from that failure."

Stewart v. Commissioner, T.C. Memo. 2005-212, 90 T.C.M. (CCH) 269 (2005) – the court found that the IRS need not prepare a substitute return in order to determine a deficiency where the taxpayer has not filed a return for the year at issue.

5. Contention: Compliance with an administrative summons issued by the IRS is voluntary.

This contention, *in general*, is incorrect, but to call it frivolous would be a misapplication of the term because there are exceptions to that general rule, such as first party summonses that are subject to Fifth Amendment rights to decline responding, summonses for information or documents that the IRS already has and summonses that lack required approval or are issued for purpose of harassment alone. Those instances, however, do not constitute a basis for a blanket refusal to comply with any summons.

Some summoned parties may assert that they are not required to respond to or comply with an administrative summons. Proponents of this position argue that a summons thus can be ignored. The Second Circuit's opinion in Schulz v. IRS, 413 F.3d 297 (2d Cir. 2005) ("Schulz II") is often cited to support this proposition.

The *Schulz* case referred to does correctly indicate that a summons alone does not rise to the level of a court order and, accordingly, refusal to comply does not subject one to exposure to being held in contempt of court, but where the IRS is required to initiate a suit for enforcement of the summons the court can assess the costs associated with that suit against a defendant who fails to make a showing that his refusal was legally justified. Before complying or refusing to comply the summoned person should make a complete and careful evaluation of his rights and obligations and whether the summons is properly issued before refusing to comply.

The Law: A summons is an administrative device with which the IRS can summon persons to appear, testify, and produce documents. The IRS is statutorily authorized to inquire about any person who may be liable to pay any internal revenue tax, and to summons a witness to testify or to produce books, papers, records, or other data that may be relevant or material to an investigation. 26 U.S.C. § 7602; United States v. Powell, 379 U.S. 48 (1964). Sections 7402(b) and 7604(a) of the Internal Revenue Code grant jurisdiction to district courts to enforce a summons, and section 7604(b) governs the general enforcement of summonses by the IRS.

Section 7604(b) allows courts to issue attachments, consistent with the law of contempt, to ensure attendance at an enforcement hearing "[i]f the taxpayer has contumaciously refused to comply with the administrative summons and the [IRS] fears he may flee the jurisdiction." Powell, 379 U.S. at 58 n.18; see also Reisman v. Caplin, 375 U.S. 440, 448-49 (1964) (noting that section 7604(b) actions are in the nature of contempt proceedings against persons who "wholly made default or contumaciously refused to comply," with an administrative summons issued by the IRS). Under section 7604(b), the courts may also impose contempt sanctions for disobedience of an IRS summons.

Failure to comply with an IRS administrative summons also could subject the non-complying individual to criminal penalties, including fines and imprisonment. 26 U.S.C. § 7210. While the Second Circuit held in Schulz II that, for due process reasons, the government must first seek judicial review and enforcement of the underlying summons and to provide an intervening opportunity to comply with a court order of enforcement prior to seeking sanctions for noncompliance, the court's opinion did not foreclose the availability of prosecution under section 7210.

Relevant Case Law:

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Schulz v. IRS, 413 F.3d 297 (2d Cir. 2005) ("Schulz II") – the court, upholding its prior per curiam opinion, reported at Schulz v. IRS, 395 F.3d 463 (2d Cir. 2005) ("Schulz I"), held that, based upon constitutional due process concerns, an indictment under 26 U.S.C. § 7210 shall not lie and contempt sanctions under 26 U.S.C. § 7604(b) shall not be levied based on disobedience of an IRS summons until that summons has been enforced by a federal court order and the summoned party, after having been given a reasonable opportunity to comply with the court's order, has refused. The court noted that "[n]either this opinion nor Schulz I prohibits the issuance of pre-hearing attachments consistent with due process and the law of contempts." Schulz II, 413 F.3d at 304.

It is interesting to note that when you look at the ruling in *Schulz* one cannot help seeing that compulsory compliance with a summons does not arise until it has been given the force of a court order. If compliance is not compulsory in the absence of a court order, wouldn't that at least resemble "voluntary"? The same caveat noted above regarding the awarding of costs in the enforcement action should be considered before deciding to defy a summons.

United States v. Becker, 58-1 U.S.T.C. ¶ 9403, at 68,062-68,064 (S.D.N.Y. 1958), aff'd, 259 F.2d 869 (2d Cir.) (per curiam), cert. denied, 258 U.S. 929 (1959) – In Becker, the defendant failed to produce certain books and records specified in an IRS summons because, he claimed, the books and records had been destroyed by fire. The government filed an information on January 10, 1958, in which it charged that Becker, the defendant, had violated 26 U.S.C. § 7210. Based upon the evidence presented at trial (including the fact that some of the specified books were subsequently produced in compliance with a grand jury subpoena), the district court found that Becker had been duly summoned and, as a fact beyond a reasonable doubt, had willfully and knowingly neglected to produce certain books and papers called for by a summons served upon him by a special agent of the IRS. Becker, 58-1 U.S.T.C. ¶ 9403, at 68,064. The court therefore found Becker guilty of the charge under section 7210. Id.

B. The Meaning of Income: Taxable Income and Gross Income

1. Contention: Wages, tips, and other compensation received for personal services are not income.

This argument asserts that wages, tips, and other compensation received for personal services are not income, because there is allegedly no taxable gain when a person "exchanges" labor for money. Under this theory, wages are not taxable income because people have basis in their labor equal to the fair market value of the wages they receive; thus, there is no gain to be taxed. A variation of this argument misconstrues section 1341, which deals with computations of tax where a taxpayer restores a substantial amount held under claim of right, to somehow allow a deduction claim for personal services rendered.

Another similar argument asserts that wages are not subject to taxation where a person has obtained funds in exchange for their time. Under this theory, wages are not taxable because the Code does not specifically tax these so-called "time reimbursement transactions." Some take a different approach and argue that the Sixteenth Amendment to the United States Constitution did not authorize a tax on wages and salaries, but only on gain or profit.

The Law: For federal income tax purposes, "gross income" means all income from whatever source derived and includes compensation for services. I.R.C. § 61. Any income, from whatever source, is presumed to be income under section 61, unless the taxpayer can establish that it is specifically exempted or excluded. In Reese v. United States, 24 F.3d 228, 231 (Fed. Cir. 1994), the court stated, "an abiding principle of federal tax law is that, absent an enumerated exception, gross income means all income from whatever source derived." The IRS issued Revenue Ruling 2007-19, 2007-14 I.R.B. 843, advising taxpayers that wages and other compensation received in exchange for personal services are taxable income and warning of the consequences of making frivolous arguments to the contrary.

The IRS's description of Section 61 is false and deceptive, making the IRS's position in this regard not only frivolous, but fraudulent.

In order to arrive at the conclusion that wages and salaries, etc., are "income" the IRS has had to distort and misstate the substance of Section 61 by the substitution of "and includes" for the true language of the section, "including". While this may appear to be a minor change its effect is to totally misstate the substance of the section. Here is the IRS's misrepresentation of Section 61:

> For federal income tax purposes, "gross income" means all income from whatever source derived **and includes** compensation for services. I.R.C. § 61.

That statement would mean that "gross income" a) means all income from whatever source derived, **AND** b) **includes** compensation for services. But here is what Section 61 actually says:

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

> “(1) Compensation for services, including fees, commissions, fringe benefits, and similar items; . . ."

Section 61 does not say that gross income includes compensation for services. On the contrary, it says only that gross income means income (which does not define “income”) derived from whatever SOURCE. The section goes on to identify those SOURCES as “including” (NOT “and includes”) compensation for services. Thus compensation for services is not gross income, but merely one of the sources from which income may (or may not) be derived.

Section 61 does not define “income” nor does it tell us how income is derived from the various sources listed, but to demonstrate the true meaning it is helpful to restate the section using terms that are known to everyone:

> Fruit juice means all juice from whatever fruit derived, including oranges, apples, etc.

Does that statement mean that the term “fruit juice” includes oranges and apples? Or does it say that oranges and apples are fruits from which fruit juice may be derived? Of course, it means the latter.

In order to have Section 61 say what the IRS wants you to believe it has substituted “and includes” for “including”, completely altering the meaning of the language, lying about what the section actually says. What that false statement does is to convert our fruit juice definition to “Fruit juice means all juices from whatever fruit derived 'and includes' oranges and apples.”

Is an orange or an apple 100% fruit juice? Well, neither is compensation for services 100% profit or gain, i.e., “income”. Gross income is only the income (profit or gain) that can be **derived from** compensation for services, just as fruit juice is only the juice that can be **derived from** oranges and apples.

Why is the IRS lying to us about the language of Section 61?

We all know how to squeeze juice from an orange, but how do we squeeze profit or gain from a financial exchange? In other words, how does one “derive income” from any transaction? Sections 1001 et seq. set out the rules for determining what part, if any, of an exchange of property for money is “profit” or “gain”—income. In every instance the law provides that before any profit can be “derived” from a transaction the “basis” must be deducted from the price paid. Basis in every instance described in those sections of the code is either the cost or the value of the property.

Our labor is not rendered for another without cost nor is it without value. Laboring for a living is always at the expense of time out of our life span and our working life span, eventually depleting that time entirely. It is at the expense of our exertion, energy, knowledge, skill and talents, all *expended* for the benefit of another. Nor can our labor be without value, since if that were the case who would pay for it? As a practical matter, our labor must be worth more than we receive for it because if it were not the employer could not resell that labor for a profit.

The IRS knows that our labor is not only our property, but our most “sacred and inviolable property”. *Butcher's Union v. Crescent City Co.*, 111 U.S. 746, 757 (1884). Yet it contends without any lawful basis whatsoever that money received in exchange for that property is 100% profit. **None of the basis sections provides for a “zero basis” for any transaction. NOT ONE!!** So where does the IRS get the notion that moneys received in exchange for labor have a “zero basis”—neither cost nor value? It has dreamed it up, fabricated the “zero basis” rule for wages and salaries received for one's property, his most “sacred and inviolable” of property, at that.

Since it is impossible to assign a specific value for our labor it is also impossible to determine what part, if any, is profit and the Supreme Court has made it very clear to the IRS that where a profit cannot be clearly and distinctly identified and separated from the capital (basis for the property conveyed) no income can be derived from that transaction. *Eisner v. Macomber*, 252 U.S. 189 (1920). The only way one can derive profit or gain—”income”—from labor is by selling the labor of another. That is the only way to generate a known, identifiable profit.

So not only has the IRS had to lie about what Section 61 says, it has also had to lie about what Sections 1001 et seq. say about how to determine how much, if any, of funds received in exchange for our labor is profit or gain—"income”.

CONCLUSION: The law, Section 61, does not support the IRS's argument that “gross income includes compensation for services” making that contention by the IRS frivolous, without a basis in law. In order to arrive at its frivolous conclusion the IRS has had to lie about the language of Section 61, changing it to something entirely different from what it actually states. Lying about Section 61, however, was not enough to arrive at the IRS's desired conclusion that our labor is without either cost or value, making our wages or salaries 100% profit, so it also has had to lie about the basis sections, Sections 1001 et seq. These lies constitute not only a frivolous position by the IRS, they rise to the level of fraud.

Section 1341 and the cases interpreting it require taxpayers to return funds previously reported as income before they can claim a deduction under claim of right. To have the right to a deduction, the taxpayer should appear to have an unrestricted right to the income in question. See Dominion Resources, Inc. v. United States, 219 F.3d 359 (4th Cir. 2000). It is a frivolous argument to claim a section 1341 deduction when there has been no repayment by the taxpayer of an amount previously reported as income. The Internal Revenue Service issued Revenue Ruling 2004-29, 2004-1 C.B. 627, warning taxpayers of the consequences of making this frivolous argument.

The Sixteenth Amendment provides that Congress shall have the power to lay and collect taxes on income, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration. U.S. Const. amend. XVI. Furthermore, the U.S. Supreme Court upheld the constitutionality of the income tax laws enacted subsequent to ratification of the Sixteenth Amendment in Brushaber v. Union Pacific R.R., 240 U.S. 1 (1916). Since that time, the courts have consistently upheld the constitutionality of the federal income tax. For a further discussion of the constitutionality of the federal income tax laws, see section I.D. of this outline.

The Supreme Court in the *Brushaber* case did find that the income tax is Constitutional, but not because the 16th Amendment authorized Congress to impose such a tax. That case held that the income tax was Constitutional because it is an ***indirect*** tax (a tax imposed on a privileged activity and measured by the amount of profit (income) derived from engaging in that taxable activity (See *Stanton v. Baltic Mining*, 240 U.S. 103 (1916)) and, therefore, was not subject to the requirement of apportionment among the States.

In fact, *Brushaber* held that ***the 16th Amendment did not grant Congress any additional taxing authority***, its only effect being to preclude the Supreme Court from considering the source of income in deciding whether the tax is direct, requiring apportionment, or indirect, not requiring apportionment. The Court warned Congress, though, that if the income tax were to be applied in such a way as to make it a direct tax (mandatory or imposed on person or property), it would strike it down for failure to comply with the rule of apportionment applicable to direct taxes per Constitution Article I, Section 9, Cl. 4.

Thus, the IRS is misrepresenting the holding in *Brushaber*, but with far less violence to the true holding as it will in its "further discussion" promised above. See discussion of Contentions C-2, D-5 and D-6, below.

All compensation for personal services, no matter what the form of payment, must be included in gross income. This includes salary or wages paid in cash, as well as the value of property and other economic benefits received because of services performed, or to be performed in the future.

Again, this statement, made in absolute and unqualified terms, misstates the law. To say that all compensation for services must be included in gross income is, again, to say that oranges and apples are all juice. Note, however, to the IRS's credit this time they have not purported that its ridiculous and frivolous statement is supported by any law.

However, reviewing Section 61, above, it is interesting to note that wages and salaries are not listed under "compensation for services". And when did "compensation for services" become "compensation for ***personal*** services"? Where do we find services "to be performed in the future" in Section 61? Why does the IRS constantly rephrase and misrepresent the law when it states its positions? Could it be that the law as it is actually written does not support its frivolous arguments?

"Fees, commissions, fringe benefits and similar items" are not the same as "wages and salaries", but if "compensation for services" was intended to mean "wages and salaries", wouldn't one reasonably expect that those would top the list? Why are "wages and salaries" not included in that listing? Good question and one for which the IRS has no answer.

Furthermore, criminal and civil penalties have been imposed against individuals relying upon this frivolous argument.

CAVEAT: Again, the caveat above regarding Contention A-1 is reiterated here. These people are armed and dangerous and you cannot rely on either DOJ or the courts to protect you from them.

Taxpayers who assert the position that wages are not taxable income, or other frivolous positions, may later claim that they were ignorant of or did not purposely disregard the requirements of the tax laws, such as the requirements to report wages and to withhold and pay taxes. Also, a handful of taxpayers who are criminally charged with violations of the internal revenue laws have avoided conviction.

Taxpayers should not mistake these cases for an indication that frivolous positions that lead to criminal acquittals are legitimate or that the outcome of other cases will protect a taxpayer from sanctions resulting from noncompliance. Furthermore, while a few defendants have prevailed, the vast majority are convicted. Also, even though a taxpayer may be acquitted of criminal charges of noncompliance with Federal tax laws, the Service is still free to pursue any underlying tax liability and is not barred from determining civil penalties. See Helvering v. Mitchell, 303 U.S. 391 (1938); Price v. Commissioner, T.C. Memo. 1996-204.

In November 2004, a federal district court in Ohio barred Michael A. Allamby from preparing federal tax returns and representing taxpayers before the IRS. Mr. Allamby erroneously interpreted the instructions to certain federal tax forms as requiring individuals to report their wages as income only if they invested the wages to earn income. See http://www.usdoj.gov/tax/txdv04733.htm; see also 2004 TNT 215-24 (Nov. 4, 2004). Also, in May 2005, a federal district court in Louisiana permanently barred Richard A. Fuselier and Richard J. Ortt and their organization, Compensation Consultants, from preparing tax returns and promoting tax schemes, such as the "not for profit" scheme, which was based on the premise that wages cannot be taxed. See http://www.usdoj.gov/opa/pr/2005/March/05_tax_085.htm; see also 2005 TNT 94-16 (May 16, 2005).

In January 2005, a federal district court in California permanently enjoined Joseph O. Saladino, founder of an organization known as the Freedom and Privacy Committee, from promoting two schemes: the "claim of right" program and the "corporation sole" scheme (discussed below in this outline). See http://www.usdoj.gov/tax/txdv05005.htm; see also 2005 TNT 15-22 (Jan. 24, 2005). In November 2009, Saladino and three co-defendants were convicted of conspiracy to defraud the United States by interfering with the IRS' ability to accurately assess and calculate income taxes. A fourth co-defendant was acquitted and a fifth pled guilty in September. Saladino faces up to five years in prison and $250,000 in fines. http://www.oregonlive.com/portland/index.ssf/2009/11/federal_jury_finds_three_guilt.html

Also, in January 2005, a federal district court in North Carolina permanently barred Frank D. Perkinson from selling the "claim of right" program and the "corporation sole" scheme. See http://www.usdoj.gov/opa/pr/2005/January/05_tax_005.htm; see also 2005 TNT 5-16 (Jan. 6, 2005).

In June 2006, Richard M. Blackstock was convicted on thirty-two counts of assisting in the preparation of fraudulent returns based on his involvement in filing various returns claiming deductions for wages, salaries and other compensation under the frivolous "claim of right" theory. See http://www.usdoj.gov/tax/usaopress/2006/txdv06Blackstock_USAO_OK.wpd; see also 2006 TNT129-31 (Jun. 23, 2006).

In March 2008, a federal judge in Michigan barred Donald A. Gray from preparing federal income tax returns. The court found that Gray had been preparing tax returns for his customers based on the theory that wages are not income. The court ordered that Gray be barred from counseling others about the preparation of their returns, from holding himself out as a Certified Public Accountant, and from otherwise interfering with the administration and enforcement of the internal revenue laws. See http://www.usdoj.gov/tax/txdv08163.htm.

Relevant Case Law:

Cheek v. United States, 498 U.S. 192 (1991) – the Supreme Court reversed and remanded Cheek's conviction of willfully failing to file federal income tax returns and willfully attempting to evade income taxes solely on the basis of erroneous jury instructions. The Court noted, however, that Cheek's argument, that he should be acquitted because he believed in good faith that the income tax law is unconstitutional, "is unsound, not because Cheek's constitutional arguments are not objectively reasonable or frivolous, which they surely are, but because the [law regarding willfulness in criminal cases] does not support such a position." Id. (emphasis added). On remand, Cheek was convicted on all counts and sentenced to jail for a year and a day. Cheek v. United States, 3 F.3d 1057 (7th Cir. 1993), cert. denied, 510 U.S. 1112 (1994).

This is a total misrepresentation of the holding in *Cheek*. In that case the Supreme Court held that where a defendant holds a good faith belief that he is not required to file a tax return or pay a tax he has not "willfully" violated the law and must be acquitted. The issue was whether the good faith belief was to be considered objectively (Is the belief correct or incorrect—should the defendant believe what he says he believes?) or subjectively (Is the belief, even if irrational, genuinely held?) and the Court held that the subjective standard must be applied. While one of Cheek's beliefs was that the income tax was unconstitutional, he claimed to hold other beliefs that a jury later apparently determined he did not genuinely believe. The court carved out two exceptions to the good faith belief defense, those being 1) that the law is unconstitutional, and 2) that one disagrees with the law. Why the IRS feels the need to skirt the actual issue in *Cheek* is not the subject of this discussion, but the fact is that it has misstated still another authority, choosing to pick and choose what language it wishes without regard to context or accuracy.

Commissioner v. Kowalski, 434 U.S. 77 (1977) – the Supreme Court found that payments are considered income where the payments are undeniably accessions to wealth, clearly realized, and over which a taxpayer has complete dominion.

Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 429-30 (1955) – referring to the statute's words "income derived from any source whatever," the Supreme Court stated, "this language was used by Congress to exert in this field 'the full measure of its taxing power.' . . . And the Court has given a liberal construction to this broad phraseology in recognition of the intention of Congress to tax all gains except those specifically exempted."

These cases, *Kowalski* and *Glenshaw Glass*, are both cited as relevant to the IRS's position that wages are 100% profit, 100% "gross income". The amazing thing about the IRS's citation of these cases is that **<u>neither case had anything to do with wages or salaries or any other kind of compensation for labor</u>**. ***Still another misrepresentation!***

Kowalski* had absolutely nothing to do with compensation for labor (or for services).** The controversy in *Kowalski* was whether a meal allowance for police officers, which was paid without regard to whether the officer was on or off duty, whether the officer purchased or ate a meal, or whether the officer was on vacation or sick leave, was gain . . . income. The meal allowance was paid above and beyond what the officers were paid for their time and effort . . . ***a gain that is distinct and apart from the exchange of money for labor. The citation of this case is totally erroneous, so much so that it can be said to be frivolous.

***Glenshaw Glass* is even more remote from the issue of whether wages or salaries are 100% profit.** This case dealt with a **company** that had received compensatory and punitive damages in settlement of a lawsuit against another company. The court held that the punitive damages, which were above and beyond the company's losses (damages), were GAIN . . . income. ***Glenshaw Glass* had absolutely nothing to do with wages, much less with whether wages are 100% profit or gain . . . income**, yet we find it here misrepresented as such by the IRS.

If the IRS's position is true then why does it find it necessary to lie, both about what Section 61 provides and what the basis sections, Sections 1001 et seq. provide and, now, about what these two cases hold? Because their position is not true and there is no legal support for their position making it . . . well . . . frivolous.

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

<u>United States v. Becker</u>, 965 F.2d 383, 389 (7th Cir. 1992), <u>cert. denied</u>, 507 U.S. 971 (1993) – the court found defendant's contention that wages are not income to be "ridiculous."

<u>United States v. Sloan</u>, 939 F.2d 499, 500 (7th Cir. 1991), <u>cert. denied</u>, 502 U.S. 1060 (1992) – in rejecting defendant's argument that the revenue laws of the United States do not impose a tax on income, the court recognized the "Internal Revenue Code imposes a tax on all income."

<u>United States v. Connor</u>, 898 F.2d 942, 943-44 (3d Cir. 1990), <u>cert. denied</u>, 497 U.S. 1029 (1990) – the court stated that "[e]very court which has ever considered the issue has unequivocally rejected the argument that wages are not income."

<u>Stelly v. Commissioner</u>, 761 F. 2d 1113 (5th Cir. 1985), <u>cert. denied</u>, 474 U.S. 851 (1985) – the Fifth Circuit affirmed the Tax Court's holding against the taxpayer's argument that taxing wage and salary income is a violation of the constitution because compensation for labor is an exchange, not gain. The Fifth Circuit also fined the taxpayer for bringing a frivolous appeal.

<u>United States v. White</u>, 769 F. 2d 511 (8th Cir. 1985) – the court issued a permanent injunction to prevent the promotion of the argument that there is no tax imposed on an exchange of property (labor) in an equal exchange for property (wages).

<u>United States v. Richards</u>, 723 F.2d 646, 648 (8th Cir. 1983) – the court upheld conviction and fines imposed for willfully failing to file tax returns, stating that the taxpayer's contention that wages and salaries are not income within the meaning of the Sixteenth Amendment is "totally lacking in merit."

<u>Lonsdale v. Commissioner</u>, 661 F.2d 71, 72 (5th Cir. 1981) – the court rejected as "meritless" the taxpayer's contention that the "exchange of services for money is a zero-sum transaction . . . ."

United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1981) – the court affirmed Romero's conviction for willfully failing to file tax returns, finding, in part, that "[t]he trial judge properly instructed the jury on the meaning of ['income' and 'person']. Romero's proclaimed belief that he was not a 'person' and that the wages he earned as a carpenter were not 'income' is fatuous as well as obviously incorrect."

Callahan v. Commissioner, 103 A.F.T.R.2d 2400, 2009 U.S. App. LEXIS 11342 (7th Cir. May 27, 2009) – the court rejected the petitioner's argument that only "the gain from wages" (not the wages themselves) is taxable and characterized the argument as "beyond frivolous." The court also imposed a $4,000 penalty for filing a frivolous appeal.

Abdo v. United States, 234 F.Supp.2d 553 (M.D. N.C. 2002), aff'd, 63 Fed. Appx. 163 (4th Cir. 2003), cert. denied, 540 U.S. 1120 (2004) – the tax preparer prepared returns based on the argument that labor is an exchange for wages and not taxable. The court cited Connor, supra, when finding that the tax preparer misstated the law.

McCoy v. United States, 88 A.F.T.R.2d (RIA) 7116, 2001 U.S. Dist. LEXIS 18986 (N.D. Tex. Nov. 16, 2001), appeal dismissed, 54 Fed. Appx. 406 (5th Cir. 2002) – the court rejected the taxpayer's argument that wages received were not income and described this position as meritless.

Sumter v. United States, 61 Fed. Cl. 517, 523 (2004) – the court found the taxpayer's "claim of right" argument as "devoid of any merit" and that section 1341 only applies to situations in which the claimant is compelled to return the taxed item because of a mistaken presumption that the right held was unrestricted and, thus, the item was previously reported, erroneously, as taxable income. Section 1341 was inapplicable to Ms. Sumter, because she had a continuing, unrestricted claim of right to her salary income and had not been compelled to repay that income in a later tax year.

Pugh v. Commissioner, T.C. Memo. 2009-138, 97 T.C.M. (CCH) 1791 (2009) – stating that the "petitioner advances shopworn arguments characteristic of tax defier rhetoric," the court rejected the taxpayer's argument that his wages were not taxable because of section 1341. The court imposed a $15,000 section 6673 penalty for advancing frivolous arguments.

Carskadon v. Commissioner, T.C. Memo. 2003-237, 86 T.C.M. (CCH) 234, 236 (2003)– the court rejected the taxpayer's frivolous argument that "wages are not taxable because the Code, which states what is taxable, does not specifically state that 'time reimbursement transactions,' a term of art coined by [taxpayers], are taxable." The court imposed a $2,000 penalty against the taxpayers for raising "only frivolous arguments which can be characterized as tax protester rhetoric."

Wheelis v. Commissioner, T.C. Memo. 2002-102, 83 T.C.M. (CCH) 1543-45 (2002), aff'd, 63 Fed. Appx. 375 (9th Cir. 2003) – the court rejected the taxpayer's frivolous argument that his wages were not taxable based on his belief that "[p]roperty (money) exchanged for property (labor not subject to tax)" is not subject to income taxation. The court stated that such claims have been "consistently and thoroughly rejected" by the courts and imposed a penalty against Wheelis in the amount of $10,000 for making frivolous arguments.

Cullinane v. Commissioner, T.C. Memo. 1999-2, 77 T.C.M. (CCH) 1192, 1193 (1999) – noting that "[c]ourts have consistently held that compensation for services rendered constitutes taxable income and that taxpayers have no tax basis in their labor," the court found Cullinane liable for the failure to file penalty, stating that "[his] argument that he is not required to pay tax on compensation for services does not constitute reasonable cause."

Abrams v. Commissioner, 82 T.C. 403, 413 (1984) – the court rejected the argument that wages are not income, sustained the failure to file penalty, and awarded damages of $5,000 for pursuing a position that was "frivolous and groundless . . . and maintained primarily for delay."

Reading v. Commissioner, 70 T.C. 730 (1978), aff'd, 614 F.2d 159 (8th Cir. 1980) – the court said the entire amount received from the sale of one's services constitutes income within the meaning of the Sixteenth Amendment.

2. Contention: Only foreign-source income is taxable.

Technically, ***as stated*** this contention is not correct. Even the most inept legal researcher can easily compile an inventory of what the federal government is entitled to tax and that inventory would not be limited to activities producing income from foreign sources.

This is, however, a common practice of the IRS and other law defiers in that when it is confronted with a claim or argument it cannot refute it will restate that position as something completely different and then refute its own misrepresentation of the claim. Nevertheless, the contention, as stated here, is incorrect. By stating the contention in such limited terms, however, the IRS is dodging the issue of what is or is not taxable. Why?

Whether an activity is "taxable" by the federal government is of paramount importance because the income tax is imposed only on ***"taxable"*** income (IRC § 1). Therefore, it is not imposed on income that is derived from engaging in activities that are not within reach of the federal government's taxing authority.

As seen below, however, the IRS cannot legitimately and honestly respond to the real issue without revealing the very limited scope of the federal taxing authority—the very limited list of those activities that are actually "taxable" by the federal government—and, therefore, capable of producing "taxable" income.

All activities must be either "taxable" or "exempt", beyond the taxing authority of the federal government. So how do we know which category our activities fall into? Since the IRS cannot be honest in addressing this issue without exposing just how narrow the federal taxing authority is, we will provide the Truth:

The **GENERAL** taxing authority of any sovereign, which would include the limited sovereignty of the federal government, was set out clearly in *McCulloch v. Maryland*, 17 U.S. 316 (1819), where Chief Justice John Marshall drew a clear and bright line between what is taxable and all other proposed subjects of taxation, which he called "exempt" because they are outside that authority to tax. The distinction between taxable and exempt was simply stated by Marshall in the statement that "The power to tax involves the power to destroy." The court then went on to rule that since the State of Maryland, a sovereignty, ***did not have the right to destroy, it did not have the right to tax*** that which the federal government, another sovereignty, had the right to create, and, therefore, the National Bank, created by Congress, was "exempt" from taxation by Maryland.

Chief Justice Marshall, however, did not leave the issue on those general terms, but explained exactly how to determine whether a subject is taxable or exempt, saying that ***a sovereignty's right to tax extends only*** to those subjects that either:

1) **"Exist by its authority"** (Such taxable activities would include the exercise of the privileges associated with a patent or copyright, which only exists because the federal government created, issued, the patent or copyright under its authority from Article I, Section 8, Cl. 8.); or

2) **"Are introduced by its permission"** (Examples of these activities would be those the Congress was given the right to govern, regulate, and for which it could require its permission, such as engaging in foreign or interstate trade or trade with the Indian tribes, Article I, Section 8, Cl. 3.)

Thus, according to the Supreme Court the federal government can tax only those **activities that exist by its authority or that require its permission** and that **all other activities are "exempt" from federal taxation—not "taxable". Marshall called this "self-evident"—an obvious Truth.**

In addition to the *general* taxing authority, which includes only those subjects that exist by the sovereignty's authority or are introduced by its permission, the **EXCISING** authority was invented by the Supreme Court in 1911 with its ruling in *Flint v. Stone Tracy*, 220 U.S. 107 (1911). That decision was based upon Article I, Section 8, Cl. 1, which states that Congress shall have the authority to lay and collect "excises". The Court held that by using the word "excise" the Constitution permitted the federal government to tax certain activities historically taxed by "excise taxes" even though they are not among those that exist by its authority or are introduced by its permission. The Court held that "Excises are 'taxes laid upon the **manufacture, sale or consumption of commodities** within the country, upon **licenses to pursue certain occupations**, and upon **corporate privileges**.'" *Id* at p. 151.

Once we know what is "taxable" by the federal government we can clearly see why the IRS phrased this contention about foreign source income in so limited a manner. How many Americans who are working for a living are within one of the very narrow enumeration of activities that are "taxable" by federal government? Not many. Now that we have a complete listing of what the federal government has the power to tax, we can all compare our activities to that list to easily determine whether we are engaging in a "taxable" activity or, instead, in an activity outside that reach, what Marshall calls "exempt".

Do you, your labor or your occupation exist because the federal government said so—"exist by its authority"?

Do you need the federal government's permission to practice your craft or trade?

Are you, personally (not on behalf of an employer), manufacturing, selling or consuming a commodity for profit? Does your occupation require a license from the federal government? Are you a corporation? If not, then by what authority can the IRS claim that any income, profit or gain, you might "derive" from engaging in laboring for a living is "taxable"? If your activity, laboring for a living, is not taxable then the only other category for it to be part of is "exempt".

Remember, the IRS in its regulations (26 CFR 1.861-8T) tells us that we should not even include tax-exempt income in gross income. So those of us whose activities are outside the federal taxing authority should not include our profit, much less our gross receipts (wages and salaries), received in exchange for our labor and resulting from our exercising a right, not a privilege, as any part of our "gross income". If we follow the nation's laws instead of the IRS's lies, however, the IRS will react violently.

> Some maintain that there is no federal statute imposing a tax on income derived from sources within the United States by citizens or residents of the United States. They argue instead that federal income taxes are excise taxes imposed only on nonresident aliens and foreign corporations for the privilege of receiving income from sources within the United States. The premise for this argument is a misreading of sections 861, et seq., and 911, et seq., as well as the regulations under those sections.
>
> **The Law:** As stated above, for federal income tax purposes, "gross income" means all income from whatever source derived and includes compensation for services. I.R.C. § 61.

To paraphrase President Reagan, "Well . . . there they go again." Reference is made to the discussion of this misrepresentation of Section 61 in Contention B-1.

Further, Treas. Reg. § 1.1-1(b) provides, "[i]n general, all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States." I.R.C. sections 861 and 911 define the sources of income (U.S. versus non-U.S. source income) for such purposes as the prevention of double taxation of income that is subject to tax by more than one country. These sections neither specify whether income is taxable, nor do they determine or define gross income. These frivolous assertions are clearly contrary to well-established legal precedent.

The IRS's reliance on its own misinterpretation as having the force of law is not only presumptuous, it is frivolous and misleading. Treasury regulations all fall into one of two categories, legislative and interpretive. Legislative regulations implement a statutory obligation, defining for the "taxpayer" how, when and where to comply with a duty imposed by the statute. Legislative regulations are very limited in number and are based upon a specific authorization.

All other regulations, however, are called "interpretive" and represent only the Secretary's spin on what a statute means. Interpretive regulations do not have the force of law and impose no duties. Neither type regulation, however, can exceed the scope or portent of the statute it either implements or interprets and that includes defining those who are liable for a tax. *U. S. v. Calamaro*, 354 U.S. 351 (1957). Treasury regulation § 1.1-1 is an interpretive regulation and has no binding effect on anyone. It does not have the force of law and when the IRS holds that interpretation out as "law" it is being less than honest.

Additionally, we already know from Section 6001 that only those liable are required to comply with regulations. Reasoning that a regulation, which can apply only to one who is liable, can make one liable and, therefore, subject to the regulation making him liable, is circuitous, at best, inane and frivolous, at worst.

But just for fun and illumination let's examine that regulation for a minute. 1.1-1(b) is, according to its number, 1, interpretive of Section 1 of the Internal Revenue Code (IRC) and purports to identify those liable for the income tax. There are several problems, however, with the Secretary's non-binding "spin" on Section 1. First, while 1.1-1 purports to identify those liable according to Section 1, that section does not state that anyone is liable for the income tax. How can an interpretation include something that is not there? Clearly, this interpretation exceeds the scope and portent of Section 1. *Id*.

Second, however, is the curious reference to "**<u>all</u>** citizens of the United States." That would seem to include everyone born in the USA, wouldn't it? "All" is pretty "all"-inclusive, isn't it? But if we look at the very next subsection, § 1.1-1(c), we find out that "all" does not include "all", but only those citizens described in subsection (c). Who is that? Is it you?

> (c) *Who is a citizen.*
>
> Every person born or naturalized in the United States **<u>and subject to its jurisdiction</u>** is a citizen.

Most people believe that the federal jurisdiction extends to anyone and anything in the country, but that is not correct. The extent of the federal jurisdiction is set out clearly in the Constitution and the limits of that jurisdiction were very well defined in a 1957 DOJ report to Congress on the Jurisdiction of the United States government. That report can be obtained in the law library on the Truth Attack web site, <u>www.truthattack.org</u>.

But for the purposes of this exploration into the IRS's deceptive labyrinth of lies and misdirection as demonstrated by its reference to 1.1-1(b) but without adding that "all" means only those "subject to its jurisdiction", there are two basic types of federal "jurisdiction", first, exclusive legislative jurisdiction and, second, subject matter jurisdiction.

Exclusive legislative jurisdiction extends to the District of Columbia and lands acquired by the federal government (with the State's consent) for naval yards, magazines, arsenals and the like over which the State has ceded jurisdiction, called federal "enclaves" (see Article I, Sec. 8, cl. 17) and the territories or possessions (see Article IV, Sec. 3, cl. 2). So if you live in Washington, DC, or on a federally owned facility over which the State has ceded jurisdiction to the federal government or in one of the territories, that would make you "subject to its jurisdiction", making you one of the "all" citizens described in the Secretary's spin on Section 1.

The federal government also has jurisdiction, the authority to govern, over certain activities within the States and those are enumerated in the Constitution in Article I, Section 8. Those include the power to regulate foreign commerce, trade with the tribes, trade with the territories, interstate commerce, the operation of a postal system, including post roads, and other limited powers such as bankruptcy, patents, copyrights, national defense and the coining of money. All other powers other than those enumerated in Article 1, Section 8, or in the enabling clauses of Amendments 13, 14, 15, 19 and 23, are reserved to the States and to the people (see Amendment X). Again, if you are engaging in any of those activities over which the federal government has jurisdiction, then you would be "subject to its jurisdiction", making you one of the "all" citizens described in the Secretary's gratuitous spin on Section 1. If not, however, while you may be a "citizen" for many other purposes, for the purposes of the income tax you are not.

Most of us would be very surprised to learn that while we live and work in the united States (note the lower case for "united", as used in the title of the Declaration of Independence) we are not "subject to" the jurisdiction of the United States government. Only you know where you reside and whether that is in DC, a federal enclave or territory and only you know whether you are engaging in any activity over which the Constitution grants the federal government the right to govern. Are you? If not, then you are not among the "all" citizens within the meaning of that term for the purpose of § 1, the income tax. And that is according to the Secretary's official interpretation of that section. So, if the IRS's *capo tutti capos*, the Secretary of the Treasury, says you are not liable, but the IRS says you are, whom do you believe?

In March 2005, a federal district court in Florida barred Gregory T. Mayer from preparing false or fraudulent returns and selling fraudulent tax schemes relying upon, among other things, the frivolous section 861 argument, which falsely claims that income from sources in the United States is not subject to federal income tax. See http://www.usdoj.gov/opa/pr/2005/March/05_tax_119.htm; see also 2005 TNT 49-63 (Mar. 14, 2005). In August 2005, a federal district court in Florida permanently barred Carel "Chad" Prater and Richard Cantwell from promoting tax-fraud scams relying on the section 861 argument. See http://www.usdoj.gov/opa/pr/2005/September/05_tax_505.html; see also 2005 TNT 204-51 (Aug. 30, 2005).

In May 2005, the Tenth Circuit affirmed the conviction and 108 month sentence of Ernest G. Ambort for willfully aiding and assisting in the preparation of false income tax returns. The basis of the conviction involved seminars conducted by Mr. Ambort where he falsely instructed the attendees that they could claim to be nonresident aliens with no domestic source income, regardless of place of birth, so that they were exempt from most federal income taxes. United States v. Ambort, 405 F.3d 1109 (10th Cir. 2005); see also 2005 TNT 86-10 (May 3, 2005).

In August 2005, a Philadelphia jury convicted Larken Rose on five counts of willful failure to file federal income tax returns based on the frivolous section 861 argument. Mr. Rose was sentenced in federal district court to 15 months imprisonment, and must pay a fine of $10,000, as well as all taxes, interest and penalties that he owes to the IRS. See http://www.usdoj.gov/opa/pr/2005/August/05_tax_418.htm; see also 2005 TNT 157-22 (Aug. 12, 2005); 2005 TNT 225-17 (Nov. 22, 2005).

The IRS issued Revenue Ruling 2004-28, 2004-1 C.B. 624, which discusses section 911, and Revenue Ruling 2004-30, 2004-1 C.B. 622, which discusses section 861, warning taxpayers of the consequences of making these frivolous arguments.

Relevant Case Law:

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

United States v. Thompson, 2009 WL 1531571 (E.D.Cal. May 28, 2009) – the court granted the Service's motion for a default judgment that included $2,596.46 in frivolous return penalties and interest. In a prior case, an injunction had been imposed on the taxpayer and Rule 11 sanctions assessed for making a frivolous "Section 861" argument.

Hillecke v. United States, 2009 WL 2015009 (D. Or. Jun. 30, 2009) – the district court adopted the magistrate judge's opinion and as to the taxpayers' argument that earnings do not constitute gross income because earnings are not listed as an item of income in Treas. Reg. § 1.861-8(f), found the argument frivolous.

Great-West Life Assur. Co. v. United States, 678 F.2d 180, 183 (Ct. Cl. 1982) – the court stated that "[t]he determination of where income is derived or 'sourced' is generally of no moment to either United States citizens or United States corporations, for such persons are subject to tax under I.R.C. § 1 and I.R.C. § 11, respectively, on their worldwide income."

Rodriguez v. Commissioner, T.C. Memo. 2009-92, 97 T.C.M. (CCH) 1482 (2009) – the court upheld deficiencies determined by the commissioner, and stated, "The 861 argument is contrary to established law, and for that reason, frivolous." The court also imposed a $25,000 section 6673(a)(1) penalty against the taxpayer in each of two consolidated cases.

Takaba v. Commissioner, 119 T.C. 285, 295 (2002) – the court rejected the taxpayer's argument that income received from sources within the United States is not taxable income, stating that "[t]he 861 argument is contrary to established law and, for that reason, frivolous." The court imposed sanctions against the taxpayer in the amount of $15,000, as well as sanctions against the taxpayer's attorney in the amount of $10,500, for making such groundless arguments.

Corcoran v. Commissioner, T.C. Memo. 2002-18, 83 T.C.M. (CCH) 1108, 1110 (2002), aff'd, 54 Fed. Appx. 254 (9th Cir. 2002), cert. denied, 538 U.S. 1036 (2003) – the court rejected the taxpayers' argument that his income was not from any of the sources in Treas. Reg. § 1.861-8(f), stating that the "source rules [of sections 861 through 865] do not exclude from U.S. taxation income earned by U.S. citizens from sources within the United States." The court further required the taxpayers to pay a $2,000 penalty under section 6673(a)(1) because "they . . . wasted limited judicial and administrative resources."

Williams v. Commissioner, 114 T.C. 136, 138 (2000) – the court rejected the taxpayer's argument that his income was not from any of the sources listed in Treas. Reg. § 1.861-8(a), characterizing it as "reminiscent of tax-protester rhetoric that has been universally rejected by this and other courts."

Madge v. Commissioner, T.C. Memo. 2000-370, 80 T.C.M. (CCH) 804 (2000), aff'd, 23 Fed. Appx. 604 (8th Cir. 2001), cert. denied, 537 U.S. 825 (2002) – the court labeled as "frivolous" the position that only foreign income is taxable.

Aiello v. Commissioner, T.C. Memo. 1995-40, 69 T.C.M. (CCH) 1765 (1995) – the court rejected the taxpayer's argument that the only sources of income for purposes of section 61 are listed in section 861.

Solomon v. Commissioner, T.C. Memo. 1993-509, 66 T.C.M. (CCH) 1201, 1202 (1993), aff'd, 42 F.3d 1391 (7th Cir. 1994) – the court rejected the taxpayer's argument that his income was exempt from tax by operation of sections 861 and 911, noting that he had no foreign income and that section 861 provides that "compensation for labor or personal services performed in the United States . . . are items of gross income."

3. Contention: Federal Reserve Notes are not income.

Some assert that Federal Reserve Notes currently used in the United States are not valid currency and cannot be taxed, because Federal Reserve Notes are not gold or silver and may not be exchanged for gold or silver. This argument misinterprets Article I, Section 10 of the United States Constitution.

The Law: Congress is empowered "[t]o coin Money, regulate the value thereof, and of foreign coin, and fix the Standard of weights and measures." U.S. Const. Art. I, § 8, cl. 5. Article I, Section 10 of the Constitution prohibits the states from declaring as legal tender anything other than gold or silver, but does not limit Congress' power to declare the form of legal tender. See 31 U.S.C. § 5103; 12 U.S.C. § 411. In United States v. Rifen, 577 F.2d 1111 (8th Cir. 1978), the court affirmed a conviction for willfully failing to file a return, rejecting the argument that Federal Reserve Notes are not subject to taxation. "Congress has declared federal reserve notes legal tender . . . and federal reserve notes are taxable dollars." Id. at 1112. The courts have rejected this argument on numerous occasions.

The contention that FRN's are not "income" is, obviously, not correct, since "income" can be realized in a number of forms, which would even include foreign currency, but the underlying point raised by this contention, that FRN's are not lawful money, is correct. In addition, the IRS's counter to that contention is not exactly correct, either.

No one in the legitimate Tax Honesty Movement contends that FRN's cannot be income because of Article I, Section 10, of the Constitution. "Income" can be realized in the form of FRN's, Euros or pesos, all of which are forms of currency foreign to the United States government.

Most do, however, challenge whether FRN's are "lawful money". When FRN's were "notes" because they included a "promise to pay" ("will pay to bearer on demand X dollars"), the notes clearly indicated that they were "redeemable in **lawful money** at the United Stated Treasury or at any Federal Reserve Bank." Thus, it is apparent that even when FRN's were actually notes they were not "lawful money", but merely a promise to pay one "lawful money". If one were to give his note to a bank for a loan to purchase a car or home, is that promissory note "money"?

The current version of FRN's, however, promises nothing and makes no reference whatsoever to any relationship to "lawful money".

As pointed out by the IRS in this segment Article I, Section 8, Cl. 5 of the Constitution grants the sole authority and responsibility for coining money to Congress (and Congress alone). Neither that clause, nor any other, authorizes Congress to shirk that responsibility by delegating it to another branch, much less to a privately owned bank (the Federal Reserve Bank is neither owned nor managed by the federal government), any more than it could delegate that responsibility to the Boy Scouts, General Electric or, perhaps most appropriate an example, Disney. FRN's do not meet the definition of "lawful money" and Congress' unconstitutional endowment of a private banking corporation with the power to print and distribute privately issued non-promissory "notes" as money does not legitimize the abdication.

CONCLUSION: While the contention that "income" cannot be expressed in Federal Reserve "Notes" is not valid, neither is the contention that Federal Reserve "Notes" are lawful money. Just as in Mad Magazine's "Spy vs. Spy" comic strip, this passage is a good example of "Lie vs. Lie".

Relevant Case Law:

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

Sanders v. Freeman, 221 F.3d 846, 855 (6th Cir. 2000), cert. denied, 531 U.S. 1014 (2000) – in regard to defendant's argument "that imposing sales tax on the sale of legal-tender silver and gold coins unconstitutionally interferes with Congress's exclusive power to coin money is simply untenable," the court recognized that "most, if not all, of the courts that have considered this issue have held that imposing sales tax on the purchase of gold and silver coins and bullion for cash does not infringe on Congress's constitutional power to coin and regulate currency." See also United States v. Davenport, 824 F.2d 1511, 1521 (7th Cir. 1987).

United States v. Condo, 741 F.2d 238, 239 (9th Cir. 1984), cert. denied, 469 U.S. 1164 (1985) – the court upheld the taxpayer's criminal conviction, rejecting as "frivolous" the argument that Federal Reserve Notes are not valid currency, cannot be taxed, and are merely "debts."

Jones v. Commissioner, 688 F.2d 17 (6th Cir. 1982) – the court found the taxpayer's claim that his wages were paid in "depreciated bank notes" as clearly without merit and affirmed the Tax Court's imposition of an addition to tax for negligence or intentional disregard of rules and regulations.

United States v. Rickman, 638 F.2d 182, 184 (10th Cir. 1980) – the court affirmed the conviction for willfully failing to file a return and rejected the taxpayer's argument that "the Federal Reserve Notes in which he was paid were not lawful money within the meaning of Art. 1, § 8, United States Constitution."

United States v. Daly, 481 F.2d 28, 30 (8th Cir. 1973), cert. denied, 414 U.S. 1064 (1973) – the court rejected as "clearly frivolous" the assertion "that the only 'Legal Tender Dollars' are those which contain a mixture of gold and silver and that only those dollars may be constitutionally taxed" and affirmed Daly's conviction for willfully failing to file a return.

C. The Meaning of Certain Terms Used in the Internal Revenue Code

1. Contention: Taxpayer is not a "citizen" of the United States, thus not subject to the federal income tax laws.

Again, the way this contention is stated is misleading. "Taxpayer" is a legal term defined in the IRC as any person "subject to" a tax. To say that a "taxpayer", a "person subject to the tax", is not a "person subject to the tax" makes the statement clearly wrong. (Have you noticed, yet, how much trouble the IRS goes to in order to avoid using the word "liable"?)

How many legs does a dog have if we call the tail a leg? Four, because calling a tail a leg does not make it a leg. Calling one a taxpayer does not make him subject to a tax. A law, a statute enacted by Congress, alone can make one "subject to a tax." Where is the law making the typical working American "subject to" the income tax? The IRS's admission by omission of that issue from this publication's list of "frivolous" arguments, that there is no such law, answers that question loud and clear.

And again, by carefully misstating the contention the IRS renders it insupportable. However, even according to the Secretary of the Treasury, the IRS's boss, the only citizens who are "citizens" for the purpose of the income tax are those who are "subject to the jurisdiction" of the United States government. See the discussion of that issue in the Truth about Contention B-2, above.

Some individuals argue that they have rejected citizenship in the United States in favor of state citizenship; therefore, they are relieved of their federal income tax obligations. A variation of this argument is that a person is a free born citizen of a particular state and thus was never a citizen of the United States. The underlying theme of these arguments is the same: the person is not a United States citizen and is not subject to federal tax laws because only United States citizens are subject to these laws.

The Law: The Fourteenth Amendment to the United States Constitution defines the basis for United States citizenship, stating that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." The Fourteenth Amendment therefore establishes simultaneous state and federal citizenship. Claims that individuals are not citizens of the United States but are solely citizens of a sovereign state and not subject to federal taxation have been uniformly rejected by the courts. The IRS issued Revenue Ruling 2007-22, 2007-14 I.R.B. 866, warning taxpayers of the consequences of making this frivolous argument.

This misrepresentation is one done by making a statement that appears correct enough, but fails to establish the premise, that all citizens are "citizens" "subject to" the income tax. Reread the foregoing paragraph and see if you can find any support for contending that by virtue of being a citizen one is subject to the income tax. Assuming one is a citizen who is subject to the jurisdiction of the United States government, what law then makes him "subject to the income tax"? None.

In April 2005, a federal district court in Georgia permanently barred Jonathan D. Luman blocking him from selling his "Tax Buster" program that was based on the false theory that customers can avoid paying tax by renouncing their Social Security numbers and becoming sovereign citizens. See http://www.usdoj.gov/opa/pr/2005/April/05_tax_190.htm; see also 2005 TNT 93-17 (Apr. 7, 2005).

In September 2006, a federal district court in California permanently barred James L. Tolbert from preparing income tax returns for others, because he promoted a fraudulent tax scheme based on the frivolous theory, among others, that state residents are not liable for federal income tax since they are citizens of the state and not of the United States. See http://www.usdoj.gov/opa/pr/2006/September/06_tax_602.html; see also 2006 TNT 177-31 (Sept. 8, 2006).

In January 2006, Lynn N. Ealy was sentenced in federal district court to 27 months imprisonment for his conviction on three counts of federal income tax evasion and ordered to pay restitution of $84,174 to the IRS. The evidence against Mr. Ealy demonstrated various affirmative acts of evasion, including the fact that he claimed he was not a citizen of the United States and the tax laws were unconstitutional. See 2006 TNT 18-48 (Jan. 12, 2006).

In September 2006, a California federal district court barred James L. Tolbert from preparing federal tax returns. Tolbert promoted a tax avoidance scheme representing, among other things, that residents of California or other states are not liable for federal income tax because they are citizens of California (or other state) and not the United States, and that American citizens working in the United States need not file federal income returns because "compensation for labor" is totally different in meaning and in law from "income." See http://www.justice.gov/archive/opa/pr/2006/September/06_tax_602.html.

In May 2009, a Connecticut federal district court judge granted the government's motion for a permanent injunction against Deowraj Buddhu and Sunita Buddhu, precluding them from: preparing or assisting in preparing federal tax returns; representing customers before the Internal Revenue Service; owning, working for, or volunteering for tax-return-preparation businesses; and promoting tax-fraud schemes. Sunita Buddhu and her father Deowraj Buddhu had operated a tax return preparation business in which they advised their clients that the IRS does not have authorization or jurisdiction to conduct examination of Connecticut residents' tax returns.http://www.justice.gov/opa/pr/2009/May/09-tax-474.html.

Relevant Case Law:

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United States v. Hilgeford, 7 F.3d 1340, 1342 (7th Cir. 1993) – the court rejected "shop worn" argument that defendant is a citizen of the "Indiana State Republic" and therefore an alien beyond the jurisdictional reach of the federal courts.

United States v. Sileven, 985 F.2d 962 (8th Cir. 1993) – the court rejected the argument that the district court lacked jurisdiction because the taxpayer was not a federal citizen as "plainly frivolous."

United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993), cert. denied, 510 U.S. 1193 (1994) – the court rejected the Gerads' contention that they were "not citizens of the United States, but rather 'Free Citizens of the Republic of Minnesota' and, consequently, not subject to taxation" and imposed sanctions "for bringing this frivolous appeal based on discredited, tax-protester arguments."

United States v. Sloan, 939 F.2d 499, 500 (7th Cir. 1991), cert. denied, 502 U.S. 1060, reh'g denied, 503 U.S. 953 (1992) – the court affirmed a tax evasion conviction and rejected Sloan's argument that the federal tax laws did not apply to him because he was a "freeborn, natural individual, a citizen of the State of Indiana, and a 'master' – not 'servant' – of his government."

United States v. Ward, 833 F.2d 1538, 1539 (11th Cir. 1987), cert. denied, 485 U.S. 1022 (1988) – the court found Ward's contention that he was not an "individual" located within the jurisdiction of the United States to be "utterly without merit" and affirmed his conviction for tax evasion.

O'Driscoll v. IRS, 1991 U.S. Dist. LEXIS 9829, at *5-6 (E.D. Pa. 1991) – the court stated, "despite [taxpayer's] linguistic gymnastics, he is a citizen of both the United States and Pennsylvania, and liable for federal taxes."

Rice v. Commissioner, T.C. Memo. 2009-169, 98 T.C.M. (CCH) 40 (2009) – the court affirmed the imposition of a section 6702 frivolous return penalty against the taxpayer and rejected the taxpayer's claim that he was not liable for income tax because he resided in the "American Republic of Georgia" and was not a United States citizen.

Knittel v. Commissioner, T.C. Memo. 2009-149, 97 T.C.M. (CCH) 1837 (2009) – the court imposed a $7,500 section 6673 penalty against the taxpayer for asserting the frivolous argument (among others) that he was "not a United States person as defined in I.R.C. section 7701(a)(30)."

Bland-Barclay v. Commissioner, T.C. Memo. 2002-20, 83 T.C.M. (CCH) 1119, 1121 (2002) – the court rejected taxpayers' claim that they were exempt from the federal income tax laws due to their status as "citizens of the Maryland Republic," characterized such arguments as "baseless and wholly without merit," and required taxpayers to pay a $1,500 penalty for making frivolous arguments.

Marsh v. Commissioner, T.C. Memo 2000-11, 79 T.C.M. (CCH) 1327, aff'd, 23 Fed. Appx. 874 (9th 2002), cert. denied, 537 U.S. 1029 (2002) - the court rejected the argument that the United States lacked legal standing to assess taxes because Marsh was a descendant from native Hawaiians. The court held that Marsh was a United States citizen subject to tax and not excluded as a purported member of the "Nation of Hawaii."

Solomon v. Commissioner, T.C. Memo. 1993-509, 66 T.C.M. (CCH) 1201, 1202-03 (1993), 42 F.3d 1391 (7th Cir. 1994) – the court rejected Solomon's argument that as an Illinois resident his income was from outside the United States, stating "[he] attempts to argue an absurd proposition, essentially that the State of Illinois is not part of the United States. His hope is that he will find some semantic technicality which will render him exempt from Federal income tax, which applies generally to all U.S. citizens and residents. [His] arguments are no more than stale tax protester contentions long dismissed summarily by this Court and all other courts which have heard such contentions."

2. Contention: The "United States" consists only of the District of Columbia, federal territories, and federal enclaves.

Some argue that the United States consists only of the District of Columbia, federal territories (e.g., Puerto Rico, Guam, etc.), and federal enclaves (e.g., American Indian reservations, military bases, etc.) and does not include the "sovereign" states. According to this argument, if a taxpayer does not live within the "United States," as so defined, he is not subject to the federal tax laws.

The Law: The Internal Revenue Code imposes a federal income tax upon all United States citizens and residents, not just those who reside in the District of Columbia, federal territories, and federal enclaves. In United States v. Collins, 920 F.2d 619, 629 (10th Cir. 1990), cert. denied, 500 U.S. 920 (1991), the court cited Brushaber v. Union Pac. R.R., 240 U.S. 1, 12-19 (1916), and noted the United States Supreme Court has recognized that the "sixteenth amendment authorizes a direct nonapportioned tax upon United States citizens throughout the nation, not just in federal enclaves." This frivolous contention has been uniformly rejected by the courts. Furthermore, the IRS issued Revenue Ruling 2006-18, 2006-1 C.B. 743, warning taxpayers of the consequences of making this frivolous argument.

This contention is another example of restating an issue in an incorrect form. No one other than the Tin Foil Hat Brigade, led by con artists and snake oil peddlers who take advantage of the gullible, contend that the "United States" consists only of the District of Columbia, federal territories and federal enclaves. But the real issue, just what are the limits of the federal government's jurisdiction and, hence, its authority to tax is a genuine, not frivolous, issue, particularly since the income tax is imposed only on "taxable" income. (See discussion of Contention B-2, above).

The fact is, however, that the *geographic* limits of the federal government's exclusive legislative authority, that area over which the federal government has *sole* dominion, is indeed limited to the District of Columbia, federal territories and federal enclaves (See discussion of Contention B-2 relative to Constitutional authority, both territorial and subject matter.)

The legislative authority that the federal government can exercise *within* the various States is set out in the Constitution and is very limited. Those subjects listed in Article I, Section 8 and the enabling clauses of several Amendments are the only things that the federal government has any authority over. Other than those few powers we are governed ONLY by the state governments and ourselves. See Tenth Amendment. In fact, the Supreme Court has held that inside the states except for in those limited instances listed in the Constitution it is "as though the Union were not", i.e., did not exist. *Farrington v. Tennessee*, 95 U.S. 679 (1877)

There are ***two major lies***, however, in this particular statement of "The Law" by the IRS.

First, that "The Internal Revenue Code imposes a federal income tax upon all United States citizens and residents, not just those who reside in the District of Columbia, federal territories, and federal enclaves." ***That is a lie!***

The IRC imposes a federal income tax on "taxable income" (Section 1). Do you know any citizen or resident whose name is "Taxable Income"? Nor do we. "Taxable income" is not a citizen, much less "all United Stated citizens and residents". The only person upon whom the IRC imposes liability for the income tax is the withholding agent required to withhold taxes from payments made to nonresident aliens and foreign corporations, neither of which is a citizen or resident of the United States (Section 1461).

The second lie, however, is even bigger if that is possible. Note that the IRS does not contend that "the Supreme Court held thus and so". Instead, it cites an inferior court ruling, *Collins*, that states that the Supreme Court held in *Brushaber* that the " sixteenth amendment authorizes a direct nonapportioned tax upon United States citizens throughout the nation, not just in federal enclaves." Why didn't they simply cite *Brushaber*? **The IRS does not simply cite *Brushaber* because that was not *Brushaber*'s holding! In fact, the Supreme Court has never held that the 16th Amendment authorizes a direct unapportioned tax, not in *Brushaber* nor in any other case. The IRS does not cite *Brushaber* because the holding in *Brushaber* was the *<u>exact opposite</u>* of what the IRS claims!** The *Brushaber* case did not hold what they wanted you to believe, so, instead, the IRS cites an erroneous description of *Brushaber* by an inferior court and offer that as the holding itself. This kind of legal misrepresentation is inexcusable in even the most lax of courts. ***It is a rank form of lying.*** (Is it any wonder that no one at the IRS was willing to put his name on this document?)

In *Brushaber* the government argued that the 16th Amendment granted it the power to impose a direct, unapportioned tax on incomes of any kind, but the Supreme Court expressly rejected that argument, calling it erroneous. See *Brushaber v. Union Pac. R.R.*, 240 U.S. 1, at 12 (1916)

The TRUE holding by the Supreme Court in *Brushaber* is that the 16th Amendment:

1) Did not amend the Constitution;
2) Did not authorize a direct, unapportioned income tax;
3) Did not grant Congress any additional taxing authority—none; and
4) It's sole effect is to prohibit the Supreme Court from considering the source of income in determining whether an income tax is direct or indirect.

The Supreme Court went on in that case to point out that the income tax is an *indirect* tax, "in its nature an excise", and, therefore, not subject to the requirement of apportionment, BUT that if it should be applied in such a way that it has the effect of a direct tax (either mandatory or on person or property, instead of a privileged activity), it would be subjected to the rule of apportionment. This holding was repeated in a case ruled on the very same year by the Supreme Court in *Stanton v. Baltic Mining*, 240 U.S. 103, 112-3 (1916), and by the Supreme Court, again, in *Peck & Co. v. Lowe,* 247 U.S. 165, 172-3 (1918). See also *Southern Pacific v. Lowe*, 247 U.S. 330 (1918)

The government, itself, admits that "it is clear that the income tax is an 'indirect' tax." (See "Some Constitutional Questions Regarding the Federal Income Tax Laws", by Howard Zaritsky, Congressional Research Service, Library of Congress, May 25, 1979, p. 3.)

Why does the IRS, then, lie about the *Brushaber* holding? Why did the court in *Collins* misrepresent that holding? Because they both know that a tax on the exercise of a fundamental right, as in the case of the exercise of our fundamental right to earn a living through our own labor, is not an indirect tax, which can only be imposed on *privileged* activities. A tax on the exercise of a right, which is property, can only be classified as a *direct* tax and, as the Supreme Court clearly stated in *Brushaber*, any such application of an income tax would be subject to the rule of apportionment. Additionally, the Supreme Court has repeatedly held that the exercise of a right is exempt from taxation, thus the IRS feels compelled to concoct some mythical Constitutional exception to that rule in the 16^{th} Amendment.

CONCLUSION: The IRS is lying again, misrepresenting the statutory law in claiming that the IRC imposes an income tax on citizens and residents when it does not, and misrepresenting the Supreme Court's holding in the *Brushaber* case in order to claim that the income tax is a direct tax that is immune from the Constitutional restrictions on such a tax. So while the federal government does have jurisdiction beyond its geographic limitations, that power does not extend to the destruction/taxation of our fundamental rights, nor does the 16^{th} Amendment create a third class of taxes, a direct tax immune to the requirement of apportionment.

In April 2006, a federal district court in California permanently barred Michael Muhammad (a.k.a., Michael Eugene Wall and Michael Muta Ali Muhammad) from preparing federal income tax returns for others, because he promoted a fraudulent tax scheme by preparing returns reporting no income based on the theory that only income earned in the District of Columbia and other federal territories need be reported. See http://www.usdoj.gov/opa/pr/2006/April/06_tax_224.html; see also 2006 TNT 75-34 (Apr. 18, 2006).

In May 2005, a federal district judge sentenced Wayne C. Bentson to a four year prison term to be followed by three years of probation, as well as requiring Mr. Bentson to pay restitution of over $1.1 million for falsely advising clients, among other things, that the internal revenue laws only applied to individuals residing in the Virgin Islands, Guam and Puerto Rico. See http://www.usdoj.gov/opa/pr/2005/May/05_tax_275.htm; see also 2005 TNT 97-49 (May 18, 2005).

Relevant Case Law:

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

United States v. Cooper, 170 F.3d 691, 691 (7th Cir. 1999) – the court sanctioned defendant for filing of frivolous appeal wherein he argued, in pertinent part, that only residents of Washington, D.C. and other federal enclaves are subject to the federal tax laws because they alone are citizens of the United States.

United States v. Mundt, 29 F.3d 233, 237 (6th Cir. 1994) – the court rejected "patently frivolous" argument that defendant was not a resident of any "federal zone" and therefore not subject to federal income tax laws.

In re Becraft, 885 F.2d 547, 549-50 (9th Cir. 1989) – the court, observing Becraft's claim that federal laws apply only to United States territories and the District of Columbia "has no semblance of merit," and noting that this attorney had previously litigated cases in the federal appeals courts that had "no reasonable possibility of success," imposed monetary damages and expressed the hope "that this assessment will deter Becraft from asking this and other federal courts to expend more time and resources on patently frivolous legal positions."

United States v. Ward, 833 F.2d 1538, 1539 (11th Cir. 1987), cert. denied, 485 U.S. 1022 (1988) – the court rejected as a "twisted conclusion" the contention "that the United States has jurisdiction over only Washington, D.C., the federal enclaves within the states, and the territories and possessions of the United States," and affirmed a tax evasion conviction.

Barcroft v. Commissioner, T.C. Memo. 1997-5, 73 T.C.M. (CCH) 1666, 1667, appeal dismissed, 134 F.3d 369 (5th Cir. 1997) – Barcroft claimed that he was not "a 'U.S. citizen,' subject to federal jurisdiction, such as 'officers, employees, and elected officials of the United States,'" and did not "reside within a federal territory such as Washington D.C., or a federal enclave within a State, or a U.S. possession." The court noted that Barcroft's statements "contain protester-type contentions that have been rejected by the courts as groundless," the court sustained penalties for failure to file returns and failure to pay estimated income taxes.

3. Contention: Taxpayer is not a "person" as defined by the Internal Revenue Code, thus is not subject to the federal income tax laws.

Some maintain that they are not a "person" as defined by the Internal Revenue Code, and thus not subject to the federal income tax laws. This argument is based on a tortured misreading of the Code.

The Law: The Internal Revenue Code clearly defines "person" and sets forth which persons are subject to federal taxes. Section 7701(a)(14) defines "taxpayer" as any person subject to any internal revenue tax and section 7701(a)(1) defines "person" to include an individual, trust, estate, partnership, or corporation. Arguments that an individual is not a "person" within the meaning of the Internal Revenue Code have been uniformly rejected. A similar argument with respect to the term "individual" has also been rejected. The IRS issued Revenue Ruling 2007-22, 2007-1 C.B. 866, warning taxpayers of the consequences of making this frivolous argument.

The shortfall on this declaration of the law is not so much in regards to the debate over the statutory definition of words, such as "person" or "individual". The shortfall is in making the connection between the term "person" and the term "taxpayer". This declaration fails to state what statute makes the typical "person", however defined, "subject to" the income tax, i.e., a "taxpayer".

The IRS says the IRC defines "person" and then makes the unsupported claim that it also "sets forth which persons are subject to federal taxes". While in most cases that is true, as in the case of all other taxes imposed by Title 26, the IRC, there is no statute (other than Section 1461, which makes the withholding agent for nonresident aliens and foreign corporations liable for the income tax) that "sets forth which persons are subject to the federal income tax".

By omission of that issue from this official listing of what the IRS deems "frivolous" arguments the absence of any statute imposing liability on the typical working American, the IRS has admitted that there is no such statute. If there were it would have cited it long before now and put that issue to bed. Instead, it resorts to conclusory statements like this one, that being a person makes one a "taxpayer" subject to the income tax.

CONCLUSION: While the IRS repeatedly contends that everyone is a taxpayer and that the IRC "sets forth which persons are subject to federal taxes", it cannot identify any statute in the IRC that "sets forth which persons are subject to" the income tax. To adopt a position that calling one a "person" makes him a "taxpayer" without being able to cite any statute that makes that person "subject to" the income tax is without a basis in law . . . frivolous.

Relevant Case Law:

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

United States v. Karlin, 785 F.2d 90, 91 (3d Cir. 1986), cert. denied, 480 U.S. 907 (1987) – the court affirmed Karlin's conviction for failure to file income tax returns and rejected his contention that he was "not a 'person' within meaning of 26 U.S.C. § 7203" as "frivolous and requir[ing] no discussion."

United States v. Studley, 783 F.2d 934, 937 n.3 (9th Cir. 1986) – the court affirmed a failure to file conviction, rejecting the taxpayer's contention that she was not subject to federal tax laws because she was "an absolute, freeborn, and natural individual" and went on to note that "this argument has been consistently and thoroughly rejected by every branch of the government for decades."

Biermann v. Commissioner, 769 F.2d 707, 708 (11th Cir. 1985), reh'g denied, 775 F.2d 304 (11th Cir. 1985) – the court said the claim that Biermann was not "a person liable for taxes" was "patently frivolous" and, given the Tax Court's warning to Biermann that his positions would never be sustained in any court, awarded the government double costs, plus attorney's fees.

McCoy v. Internal Revenue Service, 88 A.F.T.R.2d (RIA) 5909, 2001 U.S. Dist. LEXIS 15113, at *21, 22 (D. Col. Aug. 7, 2001), dismissed, 2002 U.S. Dist. LEXIS 8303 (D. Colo. Mar. 28, 2002) (accepting magistrate judge's recommendations and granting motions to dismiss) – the court dismissed the taxpayer's complaint, which asserted that McCoy was a nonresident alien and not subject to tax, describing the taxpayer's argument as "specious and legally frivolous."

United States v. Rhodes, 921 F. Supp. 261, 264 (M.D. Pa. 1996) – the court stated that "[a]n individual is a person under the Internal Revenue Code."

Smith v. Commissioner, T.C. Memo. 2000-290, 80 T.C.M. (CCH) 377, 378-89 (2000) – the court described the argument that Smith "is not a 'person liable' for tax" as frivolous, sustained failure to file penalties, and imposed a penalty for maintaining "frivolous and groundless positions."

4. Contention: The only "employees" subject to federal income tax are employees of the federal government.

This contention is not one endorsed by the consensus of the Tax Honesty Community, most of which are quick to point out that Section 7701(c) gives the term "includes" an expansive, not restrictive, construction.

Some argue that the federal government can tax only employees of the federal government; therefore, employees in the private sector are immune from federal income tax liability. This argument is based on a misinterpretation of section 3401, which imposes responsibilities to withhold tax from "wages." That section establishes the general rule that "wages" include all remuneration for services performed by an employee for his employer. Section 3401(c) goes on to state that the term "employee" includes "an officer, employee, or elected official of the United States, a State, or any political subdivision thereof . . . ."

The Law: Section 3401(c) defines "employee" and states that the term "includes an officer, employee or elected official of the United States . . . ." This language does not address how other employees' wages are subject to withholding or taxation. Section 7701(c) states that the use of the word "includes" "shall not be deemed to exclude other things otherwise within the meaning of the term defined." Thus, the word "includes" as used in the definition of "employee" is a term of enlargement, not of limitation. It clearly makes federal employees and officials a part of the definition of "employee," which generally includes private citizens. The Internal Revenue Service issued Revenue Ruling 2006-18, 2006-1 C.B. 743, warning taxpayers of the consequences of making this frivolous argument.

In June 2006, a federal district court in California permanently barred Christopher M. Hansen (using the business names of the "Family Guardian" and the "Sovereignty Education and Defense Ministry) from promoting a fraudulent tax scheme based on the frivolous theory, among others, that only federal workers are subject to the Internal Revenue Code. See http://www.usdoj.gov/opa/pr/2006/June/06_enrd_345.html; see also 2006 TNT 107-98 (Jun. 2, 2006).

In March 2007, a federal court in Michigan issued a temporary restraining order barring Donald A. Gray from preparing federal income tax returns for others. The court found that the Portage, Michigan, man had been preparing income tax returns for customers based on the frivolous theory that wages are not income for federal tax purposes unless the wage earner works for the government. See http://www.usdoj.gov/tax/txdv07024.htm.

In May 2007, a federal court in Michigan permanently barred Peter and Doreen Hendrickson from filing tax returns and forms on which they falsely report their income as zero. The injunction order also requires the couple to repay more than $20,000 in federal income, Social Security, and Medicare taxes that they had obtained by filing false tax returns with the IRS. The order notes that the couple based their improper conduct on a book Peter Hendrickson wrote called "Cracking the Code." The book states that federal tax withholding and income taxes on wages are applicable only for a limited class of people, primarily government employees. See http://www.usdoj.gov/tax/txdv07320.htm. In November 2008, a federal court in Michigan arraigned Hendrickson on an indictment charging him with submitting false documents to the IRS. The 10-count indictment charges that Hendrickson filed IRS Forms 1040 and/or IRS Forms 4852 stating that he had received no wages for those years. See http://www.usdoj.gov/tax/usaopress/2008/txdv08_2008-11-12_phendrickson.pdf. On October 26, 2009, a jury found Hendrickson guilty of all 10 counts. http://www.justice.gov/tax/usaopress/2009/phendrickson.pdf.

Relevant Case Law:

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

Montero v. Commissioner, 2009 WL 3929916 (5th Cir. Nov. 19, 2009) – the court affirmed a $20,000 section 6673(a) penalty against the petitioner for advancing frivolous arguments that he is not an employee earning wages as defined by sections 3121 and 3401.

Sullivan v. United States, 788 F.2d 813, 815 (1st Cir. 1986) – the court rejected Sullivan's attempt to recover a civil penalty for filing a frivolous return, stating "to the extent [he] argues that he received no 'wages'. . . because he was not an 'employee' within the meaning of 26 U.S.C. § 3401(c), that contention is meritless. . . . The statute does not purport to limit withholding to the persons listed therein." The court imposed sanctions on Sullivan for bringing a frivolous appeal.

United States v. Latham, 754 F.2d 747, 750 (7th Cir. 1985) – calling the instructions Latham wanted given to the jury "inane," the court said, "[the] instruction which indicated that under 26 U.S.C. § 3401(c) the category of 'employee' does not include privately employed wage earners is a preposterous reading of the statute. It is obvious within the context of [the law] the word 'includes' is a term of enlargement not of limitation, and the reference to certain entities or categories is not intended to exclude all others."

Peth v. Breitzmann, 611 F. Supp. 50, 53 (E.D. Wis. 1985) – the court rejected the taxpayer's argument "that he is not an 'employee' under 26 U.S.C. § 3401(c) because he is not a federal officer, employee, elected official, or corporate officer," stating, "[he] mistakenly assumes that this definition of 'employee' excludes all other wage earners."

Pabon v. Commissioner, T.C. Memo. 1994-476, 68 T.C.M. (CCH) 813, 816 (1994) – the court characterized Pabon's position – including that she was not subject to tax because she was not an employee of the federal or state governments – as "nothing but tax protester rhetoric and legalistic gibberish." The court imposed a penalty of $2,500 on Pabon for bringing a frivolous case, stating that she "regards this case as a vehicle to protest the tax laws of this country and espouse her own misguided views."

D. Constitutional Amendment Claims

1. Contention: Taxpayers can refuse to pay income taxes on religious or moral grounds by invoking the First Amendment.

This contention is not held by the Tax Honesty Community. In the *Cheek* case, cited above, the Supreme Court recognized two exceptions to the good faith beliefs that negate willfulness. One was that one believes that the income tax is unconstitutional and the other is that he disagrees with the law (i.e., some government policy or practice, government expenditures for activities that one feels are immoral or wrong, whether for religious or other reasons).

The IRS's purpose in listing this contention, which is not made by the Tax Honesty Community, is a mystery until we note that its discussion below is not aimed at those who think that refusal to pay a tax is justified by conscientious or religious reasons. The IRS's contention below is directed, instead, on the abuse of certain statutes to "gag" people, enjoining them from making certain statements that the IRS considers embarrassing.

Some argue that taxpayers may refuse to pay federal income taxes based on their religious or moral beliefs, or objection to the use of taxes to fund certain government programs. These persons mistakenly invoke the First Amendment in support of this frivolous position.

The Law: The First Amendment to the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The First Amendment, however, does not provide a right to refuse to pay income taxes on religious or moral grounds, or because taxes are used to fund government programs opposed by the taxpayer.

So far, so good. The IRS should have stopped right here. But it seems as though the IRS's contempt for the law and the Truth makes it incapable of making a correct statement of the law and leaving it at that. It has to go on and make a false statement in order to justify other illegal activities even though they are not in any way related to the issue set forth in this contention.

Nor does the First Amendment protect commercial speech or speech that aids or incites taxpayers to unlawfully refuse to pay federal income taxes, including speech that promotes abusive tax avoidance schemes.

Note first the careful wording of this statement. "Nor does the First Amendment protect . . . speech that promotes abusive tax avoidance schemes." "Abusive" does not necessarily mean "unlawful" or "illegal" and "tax avoidance", a perfectly legal activity, is not the same as "tax evasion", a crime.

The "abusive" "tax avoidance" schemes in this instance are often merely statements of Truth about the IRC or its regulations, making the IRS the actual "abuser" in this picture. For years the IRS, with the assistance of the DOJ and the inferior courts, has abused Sections 6700 et seq. (provisions intended to permit the IRS to assess penalties for the sale or promotion of illegal "tax shelters") to enjoin research and educational organizations from distributing truthful information even though the activities enjoined were not tax shelters.

In many cases the IRS has used those provisions relative to abusive "tax shelters" to attack organizations and people who dispense information that the IRS does not want dispensed, claiming it is not protected speech. The most egregious abuse, however, is in refusing to permit such persons or organizations an opportunity to prove that the statements they have made are TRUE.

The IRS has referred to many of those instances throughout this publication, such as actions against Bob Schulz and We The People Foundation. In that case Bob Schulz and WTP were distributing, without charge, a "blue folder" containing a compilation of statutes and regulations pertaining to employer withholding of taxes from employees' pay checks. The folder did not contain any tax filing "schemes" or "method" for understating a tax due, but allowed employers to see the actual statutes and regulations, rather than rely solely on the IRS's publications and brochures.

The IRS contended that the distribution of copies of statutes and its own regulations was an abusive tax shelter and sought an injunction prohibiting Schulz and WTP from distributing the "blue folder". Although Schulz and WTP objected and answered timely and although the defendants demonstrated that the copies they were distributing were true and correct the court refused to allow them any opportunity to present evidence, any opportunity to confront or call witnesses, and, ***without hearing any evidence, much less a trial***, simply issued the injunction, prohibiting Schulz from even discussing income tax issues and from distributing copies of laws and regulations.

In the case of John B. Kotmair and Save A Patriot Fellowship, the “tax shelter” consisted of statements made publicly by Mr. Kotmair that there is no law imposing liability on the typical working American. SAPF was also selling Mr. Kotmair's book, “*Piercing the Illusion*”, which raised a number of issues regarding the IRS's claims and misstatements of the law, but promoted no tax filing “scheme” or “method” whatsoever. Kotmair and SAPF, a longstanding and respected research and education foundation, were also assisting citizens who were engaged in disputes with the IRS, raising objections to IRS violations of laws and its own procedures.

Kotmair and SAPF both objected and timely responded, but neither was allowed to introduce any evidence of the truth of his statements or the accuracy of the statements in the book, even though in discovery the government admitted it had no evidence of false statements by Kotmair or SAPF. The court, ***without hearing any evidence, much less a trial***, summarily issued an injunction against Kotmair and SAPF prohibiting him from speaking about income tax laws, prohibiting him and SAPF from assisting citizens engaged in disputes with the IRS and enjoining the sale or distribution of the book, “*Piercing the Illusion*”.

There are a number of such cases where those who would dare to speak the truth or to publicize what the law actually says in contrast to the IRS's tortured version of the law. One other example is found in the case of Bill Benson, who travelled to the capitols of every contiguous state and examined the archived documentation and record on the ratification of the 16th Amendment. He compiled scores of certified records that demonstrate that the required number of states had not in fact ratified the proposed amendment. The IRS contended that the book, “*The Law That Never Was*”, is an abusive “tax shelter”. Benson filed copies of certified state records demonstrating that he had evidence proving the truth of his statements, but ***the court issued an order striking those exhibits from the record and proceeded to grant summary relief without trial or hearing any evidence***.

The fact is that the First Amendment does protect such speech and such writings, but the Constitution cannot stand up and defend itself. It relies on the People and, above all, the judicial branch, to do so and that is not happening in these cases. Thus far the Supreme Court has chosen to reject every application for review of these issues, which bear not only on First Amendment rights of free speech and a free press, but also on the right to be heard, our right to due process guaranteed by the Fifth Amendment. Until it does, however, there is no reason to expect the IRS or the inferior courts to reform their past conduct and cease their abuse of Section 6700 to quiet those who dare to discover and share the Truth.

Relevant Case Law:

United States v. Lee, 455 U.S. 252, 260 (1982) – the U.S. Supreme Court held that the broad public interest in maintaining a sound tax system is of such importance that religious beliefs in conflict with the payment of taxes provide no basis for refusing to pay, and stated that “[t]he tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief.”

This case does support the initial statement, that religious beliefs do not justify a refusal to pay taxes, but has ***absolutely nothing to do with the IRS's gratuitous claim that the First Amendment does not protect political or legal speech*** or writings that the IRS finds embarrassing or difficult to address.

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

Jenkins v. Commissioner, 483 F.3d 90, 92 (2d Cir. 2007), cert. denied, 552 U.S. 821 (2007) - the court upheld the decision of the Tax Court that the collection of tax revenues for expenditures that offended the religious beliefs of individual taxpayers did not violate the Free Exercise Clause of the First Clause, the Religious Freedom Restoration Act of 1993, or the Ninth Amendment. In addition, the court upheld the imposition of a $5,000 frivolous return penalty against Jenkins.

United States v. Indianapolis Baptist Temple, 224 F.3d 627, 629 – 631 (7th Cir. 2000), cert. denied, 531 U.S. 1112 (2001) – the court rejected defendant's Free Exercise challenge to the federal employment tax as those laws were not restricted to the defendant or other religion-related employers generally, and there was no indication that they were enacted for the purpose of burdening religious practices.

United States v. Ramsey, 992 F.2d 831, 833 (8th Cir. 1993) – the court rejected Ramsey's argument that filing federal income tax returns and paying federal income taxes violates his pacifist religious beliefs and stated that Ramsey "has no First Amendment right to avoid federal income taxes on religious grounds."

Wall v. United States, 756 F.2d 52 (8th Cir. 1985) – the court upheld the imposition of a $500 frivolous return penalty against Wall for taking a "war tax deduction" on his federal income tax return based on his religious convictions and stated the "necessities of revenue collection through a sound tax system raise governmental interests sufficiently compelling to outweigh the free exercise rights of those who find the tax objectionable on bona fide religious grounds."

United States v. Peister, 631 F2d. 658 (10th Cir. 1980), cert. denied, 449 U.S. 1126 (1981) – the court rejected Peister's argument that he was exempt from income tax based on his vow of poverty after he became the minister of a church he formed; his First Amendment right to freedom of religion was not violated.

2. Contention: Federal income taxes constitute a "taking" of property without due process of law, violating the Fifth Amendment.

Some assert that the collection of federal income taxes constitutes a "taking" of property without due process of law, in violation of the Fifth Amendment. Thus, any attempt by the IRS to collect federal income taxes owed by a taxpayer is unconstitutional.

This contention is, again, stated in terms that make the contention insupportable, primarily through the use of the term "taxpayer". The objection most often made, however, is not relative to the collection of a tax from a "taxpayer" as it is to the collection of the income tax from one who the law has not made "subject to" the tax, i.e., a *non-taxpayer*. The IRS regularly seizes and takes money and property from those whom the law has not made liable for the tax in the first place, making those collection actions something other than "to collect federal income taxes owed by a *taxpayer*."

The Law: The Fifth Amendment to the United States Constitution provides that a person shall not be "deprived of life, liberty, or property, without due process of law . . . ." The U.S. Supreme Court stated in Brushaber v. Union Pacific R.R., 240 U.S. 1, 24 (1916), that "it is . . . well settled that [the Fifth Amendment] is not a limitation upon the taxing power conferred upon Congress by the Constitution; in other words, that the Constitution does not conflict with itself by conferring upon the one hand a taxing power, and taking the same power away on the other by limitations of the due process clause." Further, the Supreme Court has upheld the constitutionality of the summary administrative procedures contained in the Internal Revenue Code against due process challenges, on the basis that a post-collection remedy (e.g., a tax refund suit) exists and is sufficient to satisfy the requirements of constitutional due process. Phillips v. Commissioner, 283 U.S. 589, 595-97 (1931).

The Internal Revenue Code provides methods to ensure due process to taxpayers: (1) the "refund method," set forth in section 7422(e) and 28 U.S.C. " 1341 and 1346(a), where a taxpayer must pay the full amount of the tax and then sue in a federal district court or in the United States Court of Federal Claims for a refund; and (2) the "deficiency method," set forth in section 6213(a), where a taxpayer may, without paying the contested tax, petition the United States Tax Court to redetermine a tax deficiency asserted by the IRS. Courts have found that both methods provide constitutional due process.

The IRS issued Revenue Ruling 2005-19, 2005-1 C.B. 819, which discusses this frivolous argument in more detail, warning taxpayers of the consequences of attempting to pursue a claim on these grounds.

For a discussion of frivolous tax arguments made in collection due process cases arising under sections 6320 and 6330, see Section II of this outline.

Relevant Case Law:

Flora v. United States, 362 U.S. 145, 175 (1960) – the United States Supreme Court held that a taxpayer must pay the full tax assessment before being able to file a refund suit in district court, noting that a person has the right to appeal an assessment to the Tax Court "without paying a cent."

Schiff v. United States, 919 F.2d 830 (2d Cir. 1990), cert. denied, 501 U.S. 1238 (1991) – the court rejected a due process claim where the taxpayer chose not to avail himself of the opportunity to appeal a deficiency notice to the Tax Court.

3. Contention: Taxpayers do not have to file returns or provide financial information because of the protection against self-incrimination found in the Fifth Amendment.

No one in the legitimate Tax Honesty Community makes any such contention.

Some argue that taxpayers may refuse to file federal income tax returns, or may submit tax returns on which they refuse to provide any financial information, because they believe that their Fifth Amendment privilege against self-incrimination will be violated.

The Law: There is no constitutional right to refuse to file an income tax return on the ground that it violates the Fifth Amendment privilege against self-incrimination. In United States v. Sullivan, 274 U.S. 259, 264 (1927), the U.S. Supreme Court stated that the taxpayer "could not draw a conjurer's circle around the whole matter by his own declaration that to write any word upon the government blank would bring him into danger of the law." The failure to comply with the filing and reporting requirements of the federal tax laws will not be excused based upon blanket assertions of the constitutional privilege against compelled self-incrimination under the Fifth Amendment.

The IRS issued Revenue Ruling 2005-19, 2005-1 C.B. 819, which discusses this frivolous argument in more detail, warning taxpayers of the consequences of attempting to pursue a claim on these grounds.

Although this is not a contention advanced by the legitimate Tax Honesty Community as applicable to filing requirements in general or in providing required financial information in particular, this universal pronouncement is not the entire picture because there are instances where the Fifth Amendment can apply to excuse one from filing an incriminating return.

Where disclosures required by the return and its filing would be incriminating the Supreme Court has recognized that one's Fifth Amendment right against self-incrimination may be exercised by silence, i.e., failing to file an incriminating tax return. See *Marchetti* v. *United States*, 390 U.S. 39 (1968); *Grosso* v. *United States*, 390 U.S. 62 (1968). See also *Mackey* v. *United States*, 401 U.S. 667 (1971). These cases involved a bookie's failure to register with the IRS and file wagering tax returns because it would have incriminated him with respect to State criminal gambling laws.

Once again the IRS is over-generalizing and omitting pertinent exceptions.

Relevant Case Law:

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

Sochia v. Commissioner, 23 F.3d 941 (5th Cir. 1994), cert. denied, 513 U.S. 1153 (1995) – the court affirmed tax assessments and penalties for failure to file returns, failure to pay taxes, and filing a frivolous return. The court also imposed sanctions for pursuing a frivolous case. The taxpayers had failed to provide any information on their tax return about income and expenses, instead claiming a Fifth Amendment privilege on each line calling for financial information.

United States v. Neff, 615 F.2d 1235, 1241 (9th Cir. 1980), cert. denied, 447 U.S. 925 (1980) – the court affirmed a failure to file conviction, noting that the taxpayer "did not show that his response to the tax form questions would have been self-incriminating. He cannot, therefore, prevail on his Fifth Amendment claim."

United States v. Schiff, 612 F.2d 73, 83 (2d Cir. 1979) – the court said that "the Fifth Amendment privilege does not immunize all witnesses from testifying. Only those who assert as to each particular question that the answer to that question would tend to incriminate them are protected . . . . [T]he questions in the income tax return are neutral on their face . . . [h]ence privilege may not be claimed against all disclosure on an income tax return."

United States v. Brown, 600 F.2d 248, 252 (10th Cir. 1979), cert. denied, 444 U.S. 917 (1979) – noting that the Supreme Court had established "that the self-incrimination privilege can be employed to protect the taxpayer from revealing the information as to an illegal source of income, but does not protect him from disclosing the amount of his income," the court said Brown made "an illegal effort to stretch the Fifth Amendment to include a taxpayer who wishes to avoid filing a return."

United States v. Daly, 481 F.2d 28, 30 (8th Cir. 1973), cert. denied, 414 U.S. 1064 (1973) – the court affirmed a failure to file conviction, rejecting the taxpayer's Fifth Amendment claim because of his "error in . . . his blanket refusal to answer any questions on the returns relating to his income or expenses."

4. Contention: Compelled compliance with the federal income tax laws is a form of servitude in violation of the Thirteenth Amendment.

This argument asserts that the compelled compliance with federal tax laws is a form of servitude in violation of the Thirteenth Amendment.

The Law: The Thirteenth Amendment to the United States Constitution prohibits slavery within the United States, as well as the imposition of involuntary servitude, except as punishment for a crime of which a person shall have been duly convicted. In Porth v. Brodrick, 214 F.2d 925, 926 (10th Cir. 1954), the Court of Appeals stated that "if the requirements of the tax laws were to be classed as servitude, they would not be the kind of involuntary servitude referred to in the Thirteenth Amendment." Courts have consistently found arguments that taxation constitutes a form of involuntary servitude to be frivolous.

No one in the legitimate Tax Honesty Community makes any such contention. Nevertheless, an interesting issue can be advanced on the basis of the principle of the abolition of slavery by the 13th Amendment. That issue, however, has not yet been determined by the Supreme Court.

When the government "excises" a portion of the fruits of one's labor without any allowance for the value of what was given in exchange—labor—it is in effect taking a portion not only of any profit that might have been realized, but of the property itself. Unlawfully depriving one of his property could be regarded as theft, but when that property is his labor it is apt to analogize that to slavery. In *Yick Wo v. Hopkins,* 118 U.S. 356 (1886), the Supreme Court said "For, the very idea that one man may be compelled to hold his life, ***or the means of living***, or any material right essential to the enjoyment of life [among which is the right to labor for a living], at the mere will of another, seems to be intolerable in any country where freedom prevails, as being ***the essence of slavery itself***." *Id*. at 370.

This would be equivalent to taxing the gross proceeds from the sale of other kinds of property as "income", which the Supreme Court has held is not an income tax because it is a tax on both the income and the capital (basis). See *State Tax on R. Gross Receipts*, 15 Wall. 284, 21 L. Ed. 164;

Philadelphia & S. Mail S. S. Co. v. Pennsylvania, 122 U.S. 326, 30 L. Ed. 1200; *Maine v. Grand Trunk R. Co.*, 142 U.S. 217, 35 L. Ed. 994

To take the point one step further, when the government unilaterally decides how much of one's labor it is going to take as its "share" or "cut" (hence, "excise"), it is also deciding how much the laborer will receive. In other words, the government is exercising control over how the entire body of labor will be distributed. Only the owner has that right, thus the government is acting as though it owns one's labor in that it is claiming the right to decide how much, if any, of what that labor is sold for will be given to the laborer. While the Tax Honesty Community does not advance such reasoning as a legal issue, it is certainly not frivolous to make the comparison.

In *Butchers' Union v. Crescent City Co.*, 111 U.S. 746 (1884), the Supreme Court recognized that a man's labor is not only his property, it is his "most sacred and inviolable property". The Supreme Court has also recognized that when generating revenues is at the expense of depletion of property, then at least part of what is received is "capital", not just income, and that taking a portion of the whole sum would not be an indirect income tax, but rather a tax on that property. *Stratton's Independence v. Howbert*, 231 U.S. 399 (1913); *Stanton v. Baltic Mining Co.*, 240 U.S. 103 (1916). But for the exercise of corporate privileges and manufacture of mining products, both taxable activities (See *Flint v. Stone Tracy* cited in discussion of Contention B-2, above), the court would have had a very difficult time upholding the tax.

This argument, that the government's taking of one's human capital is tantamount to claiming an ownership interest in one's labor, slavery, in violation of the 13th Amendment, has not been ruled on by the Supreme Court. The inferior court cases cited below cannot resolve a Constitutional issue, so the matter is not by any means settled. It does, however, present an interesting comparison, particularly taken in light of the almost perfect parallel to *Stratton's* and *Baltic Mining*, but without any taxable activity involved.

CONCLUSION: Since the issue of whether the government's taxing of gross proceeds received in exchange for labor and received at the expense of depletion of one's ability to labor is in violation of the 13th Amendment has not been decided, it is premature to categorize the argument as either well-founded or frivolous. This contention, then, will have to settle, for the time being, for a designation as an interesting subject for debate.

The IRS issued Revenue Ruling 2005-19, 2005-1 C.B. 819, which discusses this frivolous argument in more detail, warning taxpayers of the consequences of attempting to pursue a claim on these grounds.

Relevant Case Law:

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

United States v. Drefke, 707 F.2d 978, 983 (8th Cir. 1983), cert. denied, Jameson v. United States, 464 U.S. 942 (1983) – the court affirmed Drefke's failure to file conviction, rejecting his claim that the Thirteenth Amendment prohibited his imprisonment because that amendment "is inapplicable where involuntary servitude is imposed as punishment for a crime."

Ginter v. Southern, 611 F.2d 1226 (8th Cir. 1979), cert. denied, 446 U.S. 967 (1980) – the court rejected the taxpayer's claim that the Internal Revenue Code results in involuntary servitude in violation of the Thirteenth Amendment.

Kasey v. Commissioner, 457 F.2d 369 (9th Cir. 1972), cert. denied, 400 U.S. 864 (1972) – the court rejected as without merit the argument that the requirements to keep records and to prepare and file tax returns violated the Kaseys' Fifth Amendment privilege against self-incrimination and amount to involuntary servitude prohibited by the Thirteenth Amendment.

Porth v. Brodrick, 214 F.2d 925, 926 (10th Cir. 1954) – the court described the taxpayer's Thirteenth and Sixteenth Amendment claims as "clearly unsubstantial and without merit," as well as "far-fetched and frivolous."

Wilbert v. IRS (In re Wilbert), 262 B.R. 571, 578 (Bankr. N.D. Ga. 2001) – the court rejected the taxpayer's argument that taxation is a form of involuntary servitude prohibited by the Thirteenth Amendment, stating that "[i]t is well-settled American jurisprudence that constitutional challenges to the IRS' authority to collect individual income taxes have no legal merit and are 'patently frivolous.'"

5. Contention: The Sixteenth Amendment to the United States Constitution was not properly ratified, thus the federal income tax laws are unconstitutional.

This argument is based on the premise that all federal income tax laws are unconstitutional because the Sixteenth Amendment was not officially ratified, or because the State of Ohio was not properly a state at the time of ratification. This argument has survived over time because proponents mistakenly believe that the courts have refused to address this issue.

The Law: The Sixteenth Amendment provides that Congress shall have the power to lay and collect taxes on income, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration. U.S. Const. amend. XVI. The Sixteenth Amendment was ratified by forty states, including Ohio (which became a state in 1803; see Bowman v. United States, 920 F. Supp. 623 n.1 (E.D. Pa. 1995) (discussing the 1953 joint Congressional resolution that confirmed Ohio's status as a state retroactive to 1803), and issued by proclamation in 1913. Shortly thereafter, two other states also ratified the Amendment. Under Article V of the Constitution, only three-fourths of the states are needed to ratify an Amendment. There were enough states ratifying the Sixteenth Amendment even without Ohio to complete the number needed for ratification. Furthermore, the U.S. Supreme Court upheld the constitutionality of the income tax laws enacted subsequent to ratification of the Sixteenth Amendment in Brushaber v. Union Pacific R.R., 240 U.S. 1 (1916). Since that time, the courts have consistently upheld the constitutionality of the federal income tax.

See discussion of this misrepresentation of the holding in *Brushaber* in the discussion of Contention C-2)

The ironic aspect of this contention is that the ratification of the 16th Amendment, or not, is of absolutely no relevance to the imposition of an income tax. *Brushaber* did not hold that the income tax was Constitutional because of the 16th Amendment. Indeed, the Supreme Court in *Brushaber* held that the ***16th Amendment granted Congress absolutely no new taxing authority***. The reason that the income tax was upheld by *Brushaber* is that the income tax, properly imposed and applied, is an indirect tax, "in the nature of an excise".

The income tax is an indirect tax, "in the nature of an excise", because it is not imposed on the income itself (which would itself be property), but rather on a taxable privileged activity. The tax is merely measured by the amount of benefit in the form of profits derived from the privilege of engaging in that activity. See *Stanton v. Baltic Mining*, 240 U.S. 103 (1916), decided the immediately following *Brushaber*.

The Supreme Court in *Brushaber* also rejected the government's contention that the 16th Amendment permitted a direct tax on incomes that could be imposed without apportionment among the states. As a matter of fact, the Supreme Court in that case warned Congress that if it were to impose an income tax that had the effect of a direct tax (i.e., either mandatory or on person or property), it would strike it down unless such a tax were apportioned among the states.

Brushaber's holding was that ***the sole effect of the 16th Amendment was to prohibit the Supreme Court from considering the source of the income in determining whether an income tax is direct or indirect***, as it had done in the case of *Pollock v. Farmers' Loan & Trust Co.*, 157

U.S. 429 (1895). Thus ***the 16th Amendment only applies to nine people***, the nine justices of the Supreme Court.

But even after correcting the misrepresentation of *Brushaber*'s holding, one has to wonder what that has to do with the contention that the 16th Amendment was not properly ratified. That issue was never raised nor ruled upon in *Brushaber*.

As for the merits of the claims being made regarding the ratification process for the 16th Amendment, that issue has never been ruled on by the Supreme Court. The problems at issue regarding the ratification process, however, go far beyond whether Ohio had been properly made a State before 1913. Bill Benson's research shown in his two volume work "*The Law That Never Was*" (referenced below), demonstrates that in many cases there was not a quorum present in the State's legislative body, which precluded the valid adoption of a resolution of ratification. In a number of other cases the State's legislature did not ratify the proposed amendment, but merely indicated that it would ratify a modified version, but all those states were, nevertheless, counted as having ratified the proposed version.

This issue will not be resolved until the Supreme Court agrees to hear it and at this point the odds of that happening are slim and none, because although the 16th Amendment has no legal bearing on the validity or scope of the income tax, the IRS has successfully promoted a myth that has been accepted by the general public as true. That myth is that the 16th Amendment is the Constitutional authority for the IRS's contention that the income tax applies to everyone and to everything that "comes in", which the IRS misrepresents to be "income" (profit or gain). For political reasons, though, to prevent the destruction of that myth, the courts seem determined to dodge the issue. The only thing that will change that is if enough people become aware of those issues and demand they be examined and addressed.

If the 16th Amendment were to be found to have not been properly ratified and, therefore, not part of the Constitution, the legal effect would be nonexistent, but the effect on the public's perception of Congress' power to tax their "incomes" would be devastating to the IRS. The converse of the myth, that without the 16th Amendment Congress cannot impose an income tax, would cause Americans to instantly believe that the neither income tax, whether the one enacted by Congress or the IRS's misrepresented mythical version, would continue to be valid.

One additional point in this regard is that the IRS is also lying when it says that "Since that time, the courts have consistently upheld the constitutionality of the federal income tax." As promised in Brushaber, the Supreme Court has held the income tax to be unconstitutional when applied to capital or property, as in the case of *Eisner v. Macomber*, 252 U.S. 189 (1920), and, again in *Towne v. Eisner*, *245 U.S. 418* (1918). Another lie.

CONCLUSION: While the issue of the validity of the ratification of the 16th Amendment has not been judicially settled, the objections being raised (which go far beyond that described by the IRS) are certainly not without a basis in fact and law. On the other hand, the Supreme Court's holding in *Brushaber* makes the validity of that process irrelevant, since the amendment granted Congress no new powers of taxation and changed nothing other than to take "source" of income out of the Supreme Court's classification of an income tax as either direct or indirect. What makes this issue so important, however, is that the IRS has placed all its weight on the misrepresentation of the effect of that amendment, and "Oh, what a tangled web we weave . . . "

Similarly, Robert L. Schulz, along with his organizations, We the People Congress and We the People Foundation, marketed and distributed to customers a fraudulent "Tax Termination Package" supposedly providing a way for taxpayers to legally stop withholding and paying taxes. The scheme was based on a number of false premises, including the claim that the Sixteenth Amendment was not properly ratified. In August 2007, a federal court permanently enjoined Mr. Schulz and his organizations from promoting the scheme. See http://www.usdoj.gov/tax/txdv07595.htm. United States v. Schulz, 529 F.Supp.2d 341 (N.D.N.Y. 2007), aff'd 517 F.3d 606 (2nd Cir. 2008), cert. denied, 129 S.Ct. 435 (2008).

In March 2008, a federal court in California permanently barred Steven Hempfling from selling a tax fraud scheme that falsely claims to give customers a legal defense against criminal prosecutions for income tax evasion. The court found that Hempfling sold a "16th Amendment Reliance Program" that falsely promised customers that they could rely on the opinion of an Illinois tax defier, William Benson, to stop filing tax returns and to stop paying federal taxes and avoid being convicted of federal tax crimes. The court also barred Hempfling from selling "how-to" manuals that falsely tell customers that IRS tax liens and levies are invalid and that employers are not required to withhold federal income taxes from employees' pay. See http://www.usdoj.gov/tax/txdv08250.htm.

William Benson wrote the book The Law That Never Was, in which he asserts that the Sixteenth Amendment was not properly ratified. On his website, Benson sold his book, accompanied with excepts from state legislative histories, records from the National Archives, court cases, and other materials, in what he titled a "Reliance Defense Package." In January 2008, the District Court for the Northern District of Illinois granted a permanent injunction against Benson, barring him from promoting, organizing, or selling the "Reliance Defense Package" or the "16th Amendment Reliance Package" or any other tax shelter, plan, or arrangement. United States v. Benson, 2008 WL 267055 (N.D. Ill. Jan. 10, 2008). The district court, however, did not require Benson to turn over his customer list. In April 2009, the Seventh Circuit Court of Appeals upheld the permanent injunction but reversed and remanded regarding the customer list. 561 F.3d 718 (7th Cir. 2009).

The IRS issued Revenue Ruling 2005-19, 2005-1 C.B. 819, which discusses this frivolous argument in more detail, warning taxpayers of the consequences of attempting to pursue a claim on these grounds.

Relevant Case Law:

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

Socia v. Commissioner, 23 F.3d 941 (5th Cir. 1994), reh'g denied, 35 F.3d 568 (5th Cir. 1994), cert. denied, 513 U.S. 1153 (1995) – the court held that defendant's appeals which challenged Sixteenth Amendment income tax legislation were frivolous and warranted sanctions.

Miller v. United States, 868 F.2d 236, 241 (7th Cir. 1989) (per curiam) – the court stated, "We find it hard to understand why the long and unbroken line of cases upholding the constitutionality of the sixteenth amendment generally, Brushaber v. Union Pacific Railroad Company . . . and those specifically rejecting the argument advanced in The Law That Never Was, have not persuaded Miller and his compatriots to seek a more effective forum for airing their attack on the federal income tax structure." The court imposed sanctions on them for having advanced a "patently frivolous" position.

United States v. Stahl, 792 F.2d 1438, 1441 (9th Cir. 1986), cert. denied, 479 U.S. 1036 (1987) – stating that "the Secretary of State's certification under authority of Congress that the sixteenth amendment has been ratified by the requisite number of states and has become part of the Constitution is conclusive upon the courts," the court upheld Stahl's conviction for failure to file returns and for making a false statement.

United States v. Foster, 789 F.2d 457 (7th Cir. 1986), cert. denied, 479 U.S. 883 (1986) – the court affirmed Foster's conviction for tax evasion, failing to file a return, and filing a false W-4 statement, rejecting his claim that the Sixteenth Amendment was never properly ratified.

Knoblauch v. Commissioner, 749 F.2d 200, 201 (5th Cir. 1984), cert. denied, 474 U.S. 830 (1986) – the court rejected the contention that the Sixteenth Amendment was not constitutionally adopted as "totally without merit" and imposed monetary sanctions against Knoblauch based on the frivolousness of his appeal. "Every court that has considered this argument has rejected it," the court observed.

Stearman v. Commissioner, T.C. Memo. 2005-39, 89 T.C.M. (CCH) 823 (2005), aff'd, 436 F.3d 533 (5th Cir. 2006), cert. denied, 547 U.S. 1207 (2006). – the court imposed sanctions totaling $25,000 against the taxpayer for advancing arguments characteristic of tax-protester rhetoric that have been universally rejected by the courts, including arguments regarding the Sixteenth Amendment. In affirming the Tax Court's holding, the Fifth Circuit granted the government's request for further sanctions of $6,000 against the taxpayer for maintaining frivolous arguments on appeal, and the Fifth Circuit imposed an additional $6,000 sanctions on its own, for total additional sanctions of $12,000.

6. Contention: The Sixteenth Amendment does not authorize a direct non-apportioned federal income tax on United States citizens.

Some assert that the Sixteenth Amendment does not authorize a direct non-apportioned income tax and thus, U.S. citizens and residents are not subject to federal income tax laws.

The Law: The constitutionality of the Sixteenth Amendment has invariably been upheld when challenged. And numerous courts have both implicitly and explicitly recognized that the Sixteenth Amendment authorizes a non-apportioned direct income tax on United States citizens and that the federal tax laws as applied are valid. In United States v. Collins, 920 F.2d 619, 629 (10th Cir. 1990), cert. denied, 500 U.S. 920 (1991), the court cited to Brushaber v. Union Pac. R.R., 240 U.S. 1, 12-19 (1916), and noted that the U.S. Supreme Court has recognized that the "sixteenth amendment authorizes a direct nonapportioned tax upon United States citizens throughout the nation."

This contention is entirely true and the IRS's representation of the Supreme Court's holding in *Brushaber* is entirely false. See discussion of this point at Contention C-2 and D-5, above. As has been clearly established, **the Supreme Court in *Brushaber* held that the Sixteenth Amendment does not authorize a direct non-apportioned federal income tax on United States citizens.**

This is at least the third time in this singular document that the IRS has blatantly and knowingly misrepresented—lied—about the Supreme Court's holding in *Brushaber*. We know that it is knowingly attempting to deceive the public about the holding in *Brushaber* because it relies on the misstatement of that holding in *Collins*. No responsible legal discussion would ever rely on a lower court's description of a Supreme Court holding, which is capable of standing on its own.

The plain and simple Truth of the matter is that the IRS is repeatedly lying about the law. If the law supported the IRS's position there would be no need for it to fabricate, distort or engage in such deceptive measures. Thus the only conclusion that one can reach is that the IRS is lying about the law because the Truth about the law contradicts the IRS's contentions, which, having no basis in law, are frivolous.

It is apparent that the IRS cannot handle the truth, cannot be trusted to tell the truth and, therefore, is unworthy of being entrusted with the faithful execution of the law.

Relevant Case Law:

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

United States v. Collins, 920 F.2d 619, 629 (10th Cir. 1990), cert. denied, 500 U.S. 950 (1991) – the court found defendant's argument that the Sixteenth Amendment does not authorize a direct, non-apportioned tax on United States citizens similarly to be "devoid of any arguable basis in law."

In re Becraft, 885 F.2d 547 (9th Cir. 1989) – the court affirmed a failure to file conviction, rejecting the taxpayer's frivolous position that the Sixteenth Amendment does not authorize a direct non-apportioned income tax.

Lovell v. United States, 755 F.2d 517, 518 (7th Cir. 1984) – the court rejected the argument that the Constitution prohibits imposition of a direct tax without apportionment, and upheld the district court's frivolous return penalty assessment and the award of attorneys' fees to the government "because [the taxpayers'] legal position was patently frivolous." The appeals court imposed additional sanctions for pursuing "frivolous arguments in bad faith."

Broughton v. United States, 632 F.2d 706 (8th Cir. 1980), cert. denied, 450 U.S. 930 (1981) – the court rejected a refund suit, stating that the Sixteenth Amendment authorizes imposition of an income tax without apportionment among the states.

United States v. Hockensmith, 104 A.F.T.R.2d 2009-5133, 2009 WL 1883521 (M.D. Pa. Jun. 30, 2009) – the court rejected the taxpayer's arguments that no law created an income tax and that the taxpayer was outside the government's taxing authority. The court held that the Sixteenth Amendment allows for the taxation of income and eliminates the requirement for apportionment among the states.

Maxwell v. Internal Revenue Service, 2009 WL 920533, 103 A.F.T.R.2d 2009-1571 (M.D. Tenn. Apr. 1, 2009) – the court found that the taxpayer's arguments to have been "routinely rejected," principally that there is no law that imposes an income tax nor is there a non-apportioned direct tax that could be imposed on him as a supposed non-citizen.

Stearman v. Commissioner, T.C. Memo. 2005-39, 89 T.C.M. (CCH) 823 (2005), aff'd, 436 F.3d 533 (5th Cir. 2006), cert. denied, 547 U.S. 1207 (2006) – the court imposed sanctions totaling $25,000 against the taxpayer for advancing arguments characteristic of tax-protester rhetoric that has been universally rejected by the courts, including arguments regarding the Sixteenth Amendment. In affirming the Tax Court's holding, the Fifth Circuit granted the government's request for further sanctions of $6,000 against the taxpayer for maintaining frivolous arguments on appeal, and the Fifth Circuit imposed an additional $6,000 sanctions on its own, for total additional sanctions of $12,000.

E. Fictional Legal Bases

1. Contention: The Internal Revenue Service is not an agency of the United States.

No one in the legitimate Tax Honesty Community contends that the IRS is not an agency of the United States government.

Some argue that the IRS is not an agency of the United States but rather a private corporation, because it was not created by positive law (i.e., an act of Congress) and that, therefore, the IRS does not have the authority to enforce the Internal Revenue Code.

The Law: There is a host of constitutional and statutory authority establishing that the IRS is an agency of the United States. The U.S. Supreme Court stated in Donaldson v. United States, 400 U.S. 517, 534 (1971), "[w]e bear in mind that the Internal Revenue Service is organized to carry out the broad responsibilities of the Secretary of the Treasury under § 7801(a) of the 1954 Code for the administration and enforcement of the internal revenue laws."

Pursuant to section 7801, the Secretary of the Treasury has full authority to administer and enforce the internal revenue laws and has the power to create an agency to enforce such laws. Based upon this legislative grant, the IRS was created. Thus, the IRS is a body established by "positive law" because it was created through a congressionally mandated power. Moreover, section 7803(a) explicitly provides that there shall be a Commissioner of Internal Revenue who shall administer and supervise the execution and application of the internal revenue laws.

In April 2006, a federal district court in Louisiana permanently barred Eddie Ferrand, Glenda F. Elliott, and William N. Kennedy, from preparing tax returns, because they had understated income on their customers' federal income tax returns based on the frivolous premise, among others, that the IRS is an illegal organization. See http://www.usdoj.gov/opa/pr/2006/April/06_tax_226.html; see also 2006 TNT 75-36.

Relevant Case Law:

Salman v. Dept. of Treasury, 899 F.Supp. 471 (D. Nev. 1995) – the court described Salman's contention that the IRS is not a government agency of the United States as wholly frivolous and dismissed his claim with prejudice.

Young v. IRS, 596 F.Supp. 141 (N.D. Ind. 1984) – the court granted summary judgment in favor of the government, rejecting Young's claim that the IRS is a private corporation, rather than a government agency.

2. Contention: Taxpayers are not required to file a federal income tax return, because the instructions and regulations associated with the Form 1040 do not display an OMB control number as required by the Paperwork Reduction Act.

Some argue that taxpayers are not required to file tax returns because of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501, et seq. ("PRA"). The PRA was enacted to limit federal agencies' information requests that burden the public. The "public protection" provision of the PRA provides that no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved does not display a current control number assigned by the Office of Management and Budget [OMB] Director. 44 U.S.C. § 3512. Advocates of this contention claim that they cannot be penalized for failing to file Form 1040, because the instructions and regulations associated with the Form 1040 do not display any OMB control number.

The Law: The courts have uniformly rejected this argument on different grounds. Some courts have simply noted that the PRA applies to the forms themselves, not to the instruction booklets, and because the Form 1040 does have a control number, there is no PRA violation. Other courts have held that Congress created the duty to file returns in section 6012(a) and "Congress did not enact the PRA's public protection provision to allow OMB to abrogate any duty imposed by Congress." United States v. Neff, 954 F.2d 698, 699 (11th Cir. 1992). Also, the IRS issued Revenue Ruling 2006-21, 2006-1 C.B. 745, warning taxpayers of the consequences of making this frivolous argument.

The contention that "taxpayers" are not required to file tax returns due to PRA noncompliance is an unsettled issue. While the Form 1040 does display an OMB control number, the legitimacy of that number is in serious, not frivolous, dispute and the IRS's instruction manual for the Form 1040 does not seem to be in compliance with the Act's disclosure requirements.

Many have sought to obtain information regarding the IRS's application to OMB for control numbers for various forms, but have either been denied that information or the OMB has denied having such information. No one has been able to obtain a direct answer from OMB or the IRS on the IRS's compliance with the PRA, the question having been dodged in all known instances. In addition, there are a number of internal contradictions and conflicts between the internal tables and other materials published by the IRS regarding its compliance which seem to suggest that the IRS is being less than candid in regard to its compliance or not with the PRA.

One group of researchers did uncover OMB/IRS records in the National Archives that seemed to prove that the IRS had failed to qualify for an OMB control number for the Form 1040 but when that discovery was leaked to the public those records mysteriously disappeared from the archives.

This contention will remain unsettled until the actual documentation and verified information regarding the IRS's submissions to OMB and OMB's official actions in regard to those submissions can be obtained for inspection. Unsettled, however, does not equate to frivolous.

Relevant Case Law:

THE FOLLOWING CASES CITED BY THE IRS ARE ALL INFERIOR COURT CASES. SEE THE NOTE ABOVE REGARDING THE NON-BINDING EFFECT OF INFERIOR COURT CASES

Dodge v. Commissioner, 317 Fed. Appx. 581 (8th Cir. 2009) – the court treated the taxpayer's argument that the Form 1040 does not comply with the Paperwork Reduction Act as frivolous.

Wolcott v. Commissioner, *103 A.F.T.R.2d 2009-1300 (6th Cir. 2008) – the court affirmed the Tax Court's decision and rejected the taxpayer's argument that the Form 1040 does not comply with the Paperwork Reduction Act. The court also granted respondent's motion for sanctions under 12 U.S.C. § 1912 for frivolous appeal in the amount of $4,000.*

United States v. Patridge, 507 F.3d 1092 (7th Cir. 2007), cert. denied, 128 S.Ct. 1721 (2008), reh'g denied, 128 S.Ct. 2496 (2008) – in the course of upholding the taxpayer's conviction for tax evasion, the court addressed and rejected the taxpayer's contention that the Paperwork Reduction Act foreclosed his conviction.

Salberg v. United States, 969 F.2d 379 (7th Cir. 1992) – the court affirmed Salberg's conviction for tax evasion and failing to file a return, rejecting his claims under the PRA..

United States v. Holden, 963 F.2d 1114 (8th Cir. 1992), cert. denied, 506 U.S. 958 (1992) – the court affirmed Holden's conviction for failing to file a return and rejected his contention that he should have been acquitted because tax instruction booklets fail to comply with the PRA.

United States v. Hicks, 947 F.2d 1356, 1359 (9th Cir. 1991) – the court affirmed Hicks' conviction for failing to file a return, finding that the requirement to provide information is required by law, not by the IRS. "This is a legislative command, not an administrative request. The PRA was not meant to provide criminals with an all-purpose escape hatch."

Lonsdale v. United States, 919 F.2d 1440, 1445 (10th Cir. 1990) – the court held that the Paperwork Reduction Act does not apply to summonses and collection notices.

United States v. Wunder, 919 F.2d 34 (6th Cir. 1990) – the court rejected Wunder's claim of a PRA violation, affirming his conviction for failing to file a return.

Saxon v. United States, T.C. Memo. 2006-52, 91 T.C.M. (CCH) 914 (2006) – the court, in imposing $5,000 sanctions against Saxon, found claims that violation of the Paperwork Reduction Act excuses a taxpayer from filing returns or paying taxes have been universally rejected as meritless.

3. Contention: African Americans can claim a special tax credit as reparations for slavery and other oppressive treatment.

No one in the legitimate Tax Honesty Community makes any such contention.

Proponents of this contention assert that African Americans can claim a so-called "Black Tax Credit" on their federal income tax returns as reparations for slavery and other oppressive treatment suffered by African Americans. A similar frivolous argument has been made that Native Americans are entitled to a credit on their federal income tax returns as a form of reparations for past oppressive treatment.

The Law: There is no provision in the Internal Revenue Code which allows taxpayers to claim a "Black Tax Credit" or a credit for Native American reparations. It is a well settled principle of law that deductions and credits are a matter of legislative grace. See, e.g., Wilson v. Commissioner, T.C. Memo. 2001-139, 81 T.C.M. (CCH) 1745 (2001). Unless specifically provided for in the Internal Revenue Code, no deduction or credit may be allowed.

The IRS indicated in News Release IR-2002-08, 2002 I.R.B. LEXIS 30, that it will crack down on promoters of "slavery reparation tax credit" and "Native American reparations" scams. See 2002 TNT 17-15 (Jan. 24, 2002). Also, according to the News Release, the IRS will implement a new policy under which these reparation claims will be treated as a frivolous tax return which could result in a potential $500 penalty. Id. The IRS issued Revenue Ruling 2004-33, 2004-1 C.B. 628, warning taxpayers of the consequences of making this frivolous argument. Also, with respect to a somewhat similar argument, the IRS issued Revenue Ruling 2006-20, 2006-1 C.B. 746, warning taxpayers from claiming an exemption for Native Americans from federal income tax liability based upon an unspecified "Native American Treaty."

Persons who claim refunds based on the slavery reparation tax credit or assist others in doing so are subject to prosecution for violation of federal tax laws. In July 2003, Robert L. Foster and Crystal D. Foster, father and daughter, were convicted of conspiracy to defraud the United States with respect to such claims and of filing false, fictitious and fraudulent claims. On October 23, 2003, Robert Foster was sentenced to 13 years in prison and Crystal Foster was sentenced to 3 years and 1 month in prison. See 2003 TNT 206-31 (Oct. 23, 2003). In September 2005, the Third Circuit affirmed Robert Foster's conviction, but remanded the case for resentencing. See 2005 TNT 187-18 (Sept. 23, 2005).

Furthermore, the United States has a cause of action for injunctive relief against a party suspected of violating the tax laws. Sections 7407 and 7408 provide for injunctive relief against income tax preparers and promoters of abusive tax shelters, respectively, in these types of cases. For example, on March 31, 2003, a federal district court permanently barred tax return preparer, Andrew W. Wiley, from preparing federal income tax returns claiming refunds based on a non-existent tax credit for slavery reparations finding that Wiley engaged in "deceptive conduct which has interfered substantially with the proper administration" of the tax laws. United States v. Wiley, No. 3:02-cv-209WS (S.D. Miss. 2002); see 2003 TNT 62-18 (March 31, 2003).

In August 2007, a federal court in Georgia permanently barred Derrick Sanders from promoting a tax fraud scheme involving false claims. Sanders, in promoting the scheme, repeatedly made false statements that the Yamassee group is a Native American tribe whose members are exempt from federal income tax. Sanders also prepared forms for customers to use improperly to instruct their employers to stop withholding taxes from wages. See http://www.usdoj.gov/tax/txdv05494.htm and http://www.usdoj.gov/tax/txdv06095.htm

Relevant Case Law:

United States v. Bridges, 86 A.F.T.R.2d (RIA) 5280 (4th Cir. 2000) – the court upheld Bridges' conviction of aiding and assisting the preparation of false tax returns, on which he claimed a non-existent "Black Tax Credit."

United States v. Foster, 2002-2 U.S.T.C. (CCH) ¶ 50,785 (E.D. Va. 2002) – the court held that no provision of the Internal Revenue Code allows for a tax credit for slavery reparations and entered an injunction against Foster (an income tax return preparer) prohibiting him from preparing returns or refund claims based on fabricated tax credits.

United States v. Haugabook, 2002 U.S. Dist. LEXIS 25314 (M.D. Ga. 2002) – the court entered a permanent injunction against Haugabook prohibiting him from preparing returns or other documents to be filed with the IRS claiming a tax credit or refund for reparations for slavery or other fabricated tax credits or refunds.

United States v. Mims, 2002 U.S. Dist. LEXIS 25291 (S.D. Ga. 2002) – the court entered a permanent injunction against the defendants prohibiting them from preparing returns or other documents with the IRS claiming a credit or refund for reparations for slavery or any other fabricated tax credit or refund.

United States v. Foster, 2002 U.S. Dist. LEXIS 3092, 2002-1 U.S.T.C. (CCH) ¶ 50,263 (E.D. Va. 2002), aff'd, 51 Fed. Appx. 915 (4th Cir. 2002) – the court held that the United States clearly established its right to recover an erroneously paid refund in the amount of $500,000, plus interest, where the claim for refund was based on the slavery reparation tax credit.

Taylor v. United States, 57 Fed. Cl. 264, 266 (2003) – the court upheld Service's denial of Taylor's refund claim, which was based on "being reduced to a second class citizen, but billed first class citizenship taxes for over 60 years," holding that the Internal Revenue Code does not contain a provision allowing slavery reparation claims.

George v. Commissioner, T.C. Memo. 2006-121 – the court rejected George's frivolous argument that he is an "Indian not paying taxes" finding that Native Americans are subject to the same federal income tax laws as are other United States citizens, unless there is an exemption created by treaty or statute.

Gunton v. Commissioner, T.C. Memo. 2006-122 – the court rejected Gunton's frivolous arguments finding that Native Americans are subject to the same federal income tax laws as are other United States citizens, unless there is an exemption created by treaty or statute.

Wilkins v. Commissioner, 120 T.C. 109 (2003) – the court found that the Internal Revenue Code does not provide a tax deduction, credit, or other allowance for slavery reparations.

4. Contention: Taxpayers are entitled to a refund of the Social Security taxes paid over their lifetime.

No one in the legitimate Tax Honesty Community makes any such contention.

Proponents of this contention encourage individuals to file claims for refund of the Social Security taxes paid during their lifetime, on the basis that the claimants have sought to waive all rights to their Social Security benefits. Additionally, some advise taxpayers to claim a charitable contribution deduction as a result of their "gift" of these benefits or of the Social Security taxes to the United States.

The Law: There is no provision in the Internal Revenue Code, or any other provision of law, which allows for a refund of Social Security taxes paid on the grounds asserted above. In Crouch v. Commissioner, T.C. Memo. 1990-309, 59 T.C.M. (CCH) 938 (1990), the Tax Court sustained an IRS determination that a person may not claim a charitable contribution deduction based upon the waiver of future Social Security benefits.

The IRS issued Revenue Ruling 2005-17, 2005-1 C.B. 823, which discusses this frivolous argument in more detail, warning taxpayers of the consequences of attempting to pursue a claim on these grounds.

5. Contention: An "untaxing" package or trust provides a way of legally and permanently avoiding the obligation to file federal income tax returns and pay federal income taxes.

No one in the legitimate Tax Honesty Community makes any such contention.

Advocates of this idea believe that an "untaxing" package or trust provides a way of legally and permanently "untaxing" oneself so that a person would no longer be required to file federal income tax returns and pay federal income taxes. Promoters who sell such tax evasion plans and supposedly teach individuals how to remove themselves from the federal tax system rely on many of the above-described frivolous arguments, such as the claim that payment of federal income taxes is voluntary, that there is no requirement for a person to file federal income tax returns, and that there are legal ways not to pay federal income taxes.

The Law: The underlying claims for these "untaxing" packages are frivolous, as specified above. Furthermore, the Internal Revenue Service issued Revenue Ruling 2006-19, 2006-1 C.B. 749, warning that taxpayers may not eliminate their federal income tax liability by attributing income to a trust and claiming expense deductions related to that trust.

Promoters of these "untaxing" schemes as well as willful taxpayers have been subjected to criminal penalties for their actions. Taxpayers who have purchased and followed these "untaxing" plans have also been subjected to civil penalties for failure to timely file a federal income tax return and failure to pay federal income taxes.

Section 7408 provides a cause of action for injunctive relief to the United States against a party suspected of violating the tax laws. On November 15, 2001, the United States filed complaints for permanent injunctions pursuant to section 7408 against three individuals (David Bosset, Thurston Bell, and Harold Hearn) for failing to sign tax returns, promoting schemes that they knew were false or fraudulent, and engaging in the preparation of documents that understate tax liability. United States v. Bosset, No. 8:01-cv-2154-T-26TBM (M.D. Fla. 2001); United States v. Bell, No. 1:CV-01-2159 (M.D. Penn. 2001); United States v. Hearn, No. 1:01-CV-3058 (N.D. Ga. 2001).

On January 29, 2002, a consent order was entered in United States v. Hearn in favor of the United States. The order permanently enjoined Mr. Hearn and his representatives from, among other things, promoting or selling tax shelter plans, including but not limited to the section 861 argument. (See Section I.B.2 of this outline concerning a section 861 argument.) In the order, Mr. Hearn agreed that he relied upon the frivolous section 861 argument in making false or fraudulent statements on federal income tax returns regarding the excludability of wages and other items from income. A permanent injunction order was entered in United States v. Bosset on February 27, 2003, barring Mr. Bosset from promoting the frivolous section 861 argument. A permanent injunction order was entered in United States v. Bell on January 29, 2004, enjoining Mr. Bell from promoting frivolous positions for fraudulent tax schemes. The Third Circuit affirmed the permanent injunction against Bell in July 2005. United States v. Bell, 414 F.3d 474 (3d Cir. 2005).

In September 2004, a federal district court granted a preliminary injunction against James Binge and Terrence Bentivegna enjoining them from promoting abuse tax shelters and preparing federal tax returns. The court found that the plan promoted by these two individuals (doing business as Accounting & Financial Services) encouraging others to form various trusts without a legitimate legal basis in order to avoid federal taxes was an abusive tax scheme. United States v. Binge, No. 5:04-CV-01419 (N.D. Ohio Sept. 27, 2004); see http://www.usdoj.gov/tax/txdv04658.htm; see also 2004 TNT 218-12 (Sept. 27, 2004). In March 2005, a federal district court in Florida permanently barred Fred J. Anderson, Deborah A. Martin, and Richard A. Walters from promoting sham trust tax schemes that assisted customers in establishing trusts, foundations, and corporations that the customers used to illegally eliminate or reduce their federal tax liabilities by claiming improper deductions. See http://www.usdoj.gov/opa/pr/2005/March/05_cdr_105.htm; see also 2005 TNT 45-46 (Mar. 8, 2005).

In April 2005, a federal district court in Georgia permanently enjoined Jonathan D. Luman from promoting and selling his “Tax Buster Guide” which falsely instructs customers they can refuse to file tax returns or pay federal taxes based on various frivolous arguments. See http://www.usdoj.gov/opa/pr/2005/April/05_tax_190.htm; see also 2005 TNT 93-17 (Apr. 7, 2005).

In June 2005, a federal district court judge in Los Angeles sentenced five individuals (including the leader of the operation, Lynne Meredith) associated with a tax fraud group known as “We the People” to prison terms ranging from 20 months to 121 months. The convictions were based on evidence that the group conducted seminars falsely instructing attendees, among other things, that they could shield income and assets from federal income taxation by using bogus “pure trusts.” See, 2005 TNT 109-30 (Jun. 7, 2005).

In November 2005, a federal district court judge in Dallas sentenced Daniel A. Fisher to nearly 20 years imprisonment and ordered him to pay a $1,000,000 fine. The conviction was based, in part, on evidence that Fisher prepared, or aided in preparing, income tax returns that were fraudulent because they involved the creation of sham business entities and transactions aimed at eliminating taxes owed by the taxpayers. See; 2005 TNT 222-27 (Nov. 16, 2005).

In May 2006, a federal district court judge in Washington sentenced David Carroll Stephenson to 8 years in prison and ordered him to pay more than $8.5 million in restitution to the IRS. The conviction was based on evidence that Stephenson assisted hundreds of taxpayers in forming and operating sham trusts designed to evade paying income taxes. See 2006 TNT 97-27 (May 18, 2006).

Furthermore, persons making frivolous arguments may be denied the ability to practice before the IRS. In July 2004, the Treasury Department denied a request for reinstatement to practice before the IRS made by Joseph R. Banister, now a CPA but formerly an IRS Criminal Investigations agent. Mr. Banister made various frivolous arguments, including the contention that only foreign-source income is taxable and the contention that the Sixteenth Amendment was not ratified, which led to the decision to deny his request. See 2004 TNT 145-3 (July 14, 2004).

Relevant Case Law:

United States v. Andra, 218 F.3d 1106 (9th Cir. 2000) – in affirming the conviction of a promoter of an untaxing scheme for tax evasion and conspiracy, the court found that it was proper to include the tax liabilities of persons Andra recruited into a tax fraud conspiracy when calculating the effect of his actions for sentencing.

United States v. Raymond, 228 F.3d 804, 812 (7th Cir. 2000), cert. denied, 533 U.S. 902 (2001) – the court affirmed a permanent injunction against taxpayers who promoted a “De-Taxing America Program,” forbidding them from engaging in certain activities that incited others to violate tax laws. The court said, “[W]e conclude that the statements the appellants made in the Just Say No advertisement were representations concerning the tax benefits of purchasing and following the De-Taxing America Program that the appellants reasonably should have known were false.”

United States v. Clark, 139 F.3d 485 (5th Cir. 1998), cert. denied, 525 U.S. 899 (1998) – the court upheld convictions of defendants involved with The Pilot Connection Society for conspiracy to defraud the United States and aiding and abetting the filing of fraudulent Forms W-4.

United States v. Scott, 37 F.3d 1564 (10th Cir. 1994), cert. denied, Skinner v. United States, 513 U.S. 1100 (1995) – the court concluded the true grantor of the trusts was in substance the purchaser, who was also the trustee, as well as the beneficiary. It was as if there were no transfers at all. Therefore the purchaser was subject to tax on all the income of the various trusts. The defendants were the promoters of a multi-tiered trust package marketed to purchasers as a device to eliminate tax liability without losing control over their assets or income.

United States v. Meek, 998 F.2d 776 (10th Cir. 1993) – the court upheld Meek's conviction of willfully failing to file an income tax return and willfully attempting to evade taxes. Meek's trust had been formed through his membership in an organization (a "warehouse bank") that provided its members the opportunity to warehouse their funds until directed to disburse them. The warehouse bank's numbering system for conducting transactions protected its members' privacy, thus hiding their assets and income.

United States v. Kaun, 827 F.2d 1144 (7th Cir. 1987) – the court affirmed the district court's injunction prohibiting the taxpayer from inciting others to submit tax returns based on false income tax theories.

United States v. Krall, 835 F.2d 711 (8th Cir. 1987) – the court held that the trusts used were shams. The defendant, an optometrist, exercised the same dominion and control over the corpus and income of the trusts as he had before the trusts were executed. The court further found the defendant illegally attempted to assign his earned income to the various trusts.

Lizalek v. United States, T.C. Memo. 2009-122, 97 T.C.M. (CCH) 1639 (2009) – the taxpayer claimed that the Lizalek Trust was created when the Social Security Administration issued a Social Security card to the taxpayer. The taxpayer further claimed it was the trust that earned wages and other income, not the taxpayer. The court held that a valid trust did not exist and that the taxpayer earned the wages and other income includable in gross income.

Robinson v. Commissioner, T.C. Memo. 1995-102, 69 T.C.M. (CCH) 2061, 2062 (1995) – the court quoted language from Hanson v. Commissioner, 696 F.2d 1232, 1234 (9th Cir. 1983) that "[n]o reasonable person would have trusted this scheme to work."

King v. Commissioner, T.C. Memo. 1995-524, 70 T.C.M. (CCH) 1152 (1995) – the court found King, who had followed the Pilot Connection's "untaxing" techniques, liable for penalties for failure to file returns and for failing to make sufficient estimated tax payments.

6. Contention: A "corporation sole" can be established and used for the purpose of avoiding federal income taxes.

No one in the legitimate Tax Honesty Community makes any such contention.

Advocates of this idea believe they can reduce their federal tax liability by taking the position that the taxpayer's income belongs to a "corporation sole" (these have also been referred to as "ministerial trusts"), an entity created for the purpose of avoiding taxes. A valid corporation sole is a corporate form that enables religious leaders to hold property and conduct business for the religious entity. Participants in this scheme apply for incorporation under the pretext of being an official of a church or other religious organization. Participants contend that their income is exempt from taxation because the income allegedly belongs to the corporation sole, which is claimed to be a tax exempt organization described in section 501(c)(3).

The Law: A valid corporation sole enables a bona fide religious leader, such as a bishop or other authorized religious official, to incorporate under state law, in his capacity as a religious official. See, e.g., Berry v. Society of Saint Pius X, 69 Cal. App. 4th 354 (1999). A corporation sole may own property and enter into contracts as a natural person, but only for the purposes of the religious entity and not for the individual office holder's personal benefit. A legitimate corporation sole is designed to ensure continuity of ownership of property dedicated to the benefit of a legitimate religious organization.

A taxpayer cannot avoid income tax or other financial responsibilities by purporting to be a religious leader and forming a corporation sole for tax avoidance purposes. The claims that such a corporation sole is described in section 501(c)(3) and that assignment of income and transfer of assets to such an entity will exempt an individual from income tax are meritless. Courts have repeatedly rejected similar arguments as frivolous, imposed penalties for making such arguments, and upheld criminal tax evasion convictions against those making or promoting the use of such arguments.

The IRS issued Revenue Ruling 2004-27, 2004-1 C.B. 625, which discusses this frivolous argument in more detail, warning taxpayers of the consequences of attempting to use this scheme.

In December 2004, a federal district court in Oregon permanently barred Judy Harkins from selling a fraudulent tax scheme promoting the use of "corporation sole." The court found that Harkins falsely told customers the plan could be used to avoid federal income tax and that Harkins knew or had reason to know the statements were false. See http://www.usdoj.gov/tax/txdv04777.htm; see also 2004 TNT 234-65 (Dec. 3, 2004). In April 2005, a federal district court in Washington entered a preliminary injunction order barring Glen Stoll from selling a fraudulent "corporation sole" and "ministerial trust" scheme on the Internet. The court found that Stoll did not create the fraudulent entities for religious reasons, but instead created them to operate businesses, such as pest-control and carpet-cleaning companies. See http://www.usdoj.gov/tax/txdv05065.htm; see also 2005 TNT 81-29 (Apr. 27, 2005).

In March 2008, a federal court in Arizona permanently barred Elizabeth A. Gardner and her husband, Frederic A. Gardner, from promoting a tax fraud scheme involving a "corporation sole" program that they had sold to over 300 people. The court found that the Gardners falsely told customers they could use an entity called a "corporation sole" to avoid paying federal income taxes. See http://www.usdoj.gov/tax/txdv08230.htm.

Relevant Case Law:

United States v. Heineman, 801 F.2d 86 (2d Cir. 1986), cert. denied, 479 U.S. 1094 (1987) – the court upheld the conviction and three year prison sentence imposed against the defendants for promoting use of purported church entities to avoid taxes.

United States v. Adu, 770 F.2d 1511 (9th Cir. 1985), cert. denied, 475 U.S. 1030 (1986) – the court upheld the conviction against Adu for aiding and assisting in the preparation and presentation of false income tax returns with respect to false charitable deductions to purported church entities.

Svedahl v. Commissioner, 89 T.C. 245 (1987) – the court sanctioned Svedahl under section 6673 in the amount of $5,000 for using contributions to purported church entities to shield income and pay personal expenses.

7. Contention: Taxpayers who did not purchase and use fuel for an off-highway business can claim the fuels tax credit.

No one in the legitimate Tax Honesty Community makes any such contention.

Proponents of this idea assert that taxpayers can claim the section 6421 fuels tax credit without regard to whether they qualify for the credit through the purchase and use of gasoline for an off-highway business. In addition, certain purveyors of fraudulent tax schemes have claimed on behalf of clients (usually on IRS Form 4136, Credit for Federal Tax Paid on Fuels) the tax credit under section 6427 for nontaxable uses of fuel when the taxpayers clearly are not entitled to the credit based on the facts, such as the taxpayers' occupation and income level, type of motor vehicle and how it is used, and the volume of fuel claimed.

The Law: These claims are frivolous. Section 6421(a) allows a tax credit for gasoline purchased and used in an off-highway business. Similarly, section 6427 provides a tax credit to certain purchasers of undyed diesel fuel used in an off-highway business. The diesel fuel credit is allowable both for off-highway business use or any use other than in a registered diesel-powered highway vehicle (e.g., in a private home for personal heating purposes). The circumstances in which the credits are available are specific and limited. The principal requirement is that the fuel be used in an off-highway business. Off-highway business use is the use of fuel in a trade or business or in an income-producing activity other than as a fuel in a vehicle registered for use on public highways. IRS Publication 225 (2008), Farmer's Tax Guide, gives as examples of the off-highway business use of fuels: (1) use in stationary machines like generators, compressors, power saws, and similar equipment; (2) use in forklifts, bulldozers, and earthmovers; and (3) use in cleaning. Also, Publication 510 (2008), Excise Taxes, explains that, with some exceptions, a highway vehicle is one "designed to carry a load over a public highway," including federal, state, county, and city roads and streets. Passenger cars, motorcycles, buses, highway trucks, tractor trailers, etc., generally are highway vehicles. The fuels tax credits, however, are being claimed without regard to these requirements and often in absurdly huge amounts that cannot possibly be for the quantity of fuel expended for off-highway purposes. Notice 2008-14, 2008-4 I.R.B. 310, lists such positions as frivolous.

In November 2007, a federal district court judge in North Carolina permanently barred Nicole Baine from preparing federal income tax returns. According to the government's civil injunction complaint, Baine prepared federal income tax returns for customers fraudulently claiming the fuel tax credits. The court in September entered a similar injunction order against Baine's co-defendant, Anthony Green. See http://www.usdoj.gov/tax/txdv07893.htm.

In January 2008, a federal court in Charlotte, North Carolina, entered a preliminary injunction against Kodjovi Raphael Totou who operates Queen City Tax Services. The order bars Totou from preparing or filing federal income tax returns until August 2008. The government complaint alleges that Totou claimed fraudulent fuels tax credits on customers' returns. See http://www.usdoj.gov/tax/txdv08062.htm. Subsequently, in May 2008, Totou was permanently barred from preparing federal income tax returns. See http://www.usdoj.gov/tax/txdv08430.htm.

In April 2008, a federal judge in Michigan barred Eric D. Parrish from preparing federal income tax returns. The complaint alleged that Parrish's Detroit business, E Professionals, claimed bogus deductions and credits on customers' federal income tax returns. Specifically, Parrish falsely claimed federal fuel tax credits on customers' returns. The court found that Parrish repeatedly engaged in misconduct subject to penalties under federal tax laws, thus warranting the permanent ban on return preparation. See http://www.usdoj.gov/tax/txdv08295.htm.

In May 2008, a federal court in Texas permanently barred Grace Machoko from preparing federal income tax returns for anyone other than herself. The court held that Machoko, whose business is called First Income Tax Services, repeatedly prepared fraudulent tax returns claiming false fuels tax credits. See http://www.usdoj.gov/tax/txdv08452.htm.

In September 2008, a federal court in Dallas barred Farai Chihota from preparing federal income tax returns for others. According to the government's complaint, Chihota's Quick Tax Service prepared returns claiming fraudulent fuel tax credits. See http://www.usdoj.gov/tax/txdv08852.htm.

In 2009, federal courts continued to grant injunctions against those who fraudulently claiming fuel tax credits for their clients. In April, for example, the Chicago-based tax preparation firm El Caminante Inc. and its principal operator Maric Colica were barred from preparing federal income tax returns claiming false fuels tax credits. http://www.justice.gov/opa/pr/2009/April/09-tax-330.html. In May, Georgia return preparer Ophelia Kelley, who operated two tax return preparation firms, was permanently barred from preparing tax returns for others, in part because of false fuel tax credits. http://www.justice.gov/opa/pr/2009/May/09-tax-435.html. In June another Georgia-based tax return preparer

Derrick Jackson and his business, Tax Wisdom and International Tax Accounting Services, were permanently barred from preparing federal tax returns for others. http://www.justice.gov/opa/pr/2009/June/09-tax-577.html.

In July, a federal district court in Florida permanently barred J's Corporation, which was operated by Carole Exantus, from preparing federal tax returns. The court determined that J's Corporation repeatedly prepared federal tax returns that claimed false tax credits, including false fuel tax credits, and deductions. http://www.justice.gov/opa/pr/2009/July/09-tax-695.html.

8. Contention: A Form 1099-OID can be used as a debt payment option or the form or a purported financial instrument may be used to obtain money from the Treasury.

No one in the legitimate Tax Honesty Community makes any such contention.

Advocates of this contention encourage individuals to use a Form 1099-OID, Original Issue Discount, or a bogus financial instrument such as a bonded promissory note as what purports to be a debt payment method for credit cards or mortgage debt. This scheme has evolved somewhat from an earlier frivolous position under which a secret bank account (sometimes referred to as a "straw man" account) was supposedly created at the Treasury Department for each U.S. citizen that individuals could use to pay tax and non-tax debts and claim withholding credits. Those who put forth this theory often argue that the proper way to redeem or draw on the account is to use some form of made-up financial instrument. This has frequently involved what looks like a check drawn on the United States Treasury or other similar paper instruments, e.g., bonded promissory notes.

More recently, this redemption theory asserts that persons can draw on the secret or "straw man" Treasury account by sending a Form 1099-OID to a creditor and the creditor can present the form to the Treasury Department and receive full payment of the debt. The proponents appear to assert that the Form 1099-OID permits them to access their secret Treasury Account for an amount equal to the face amount of the Form 1099-OID in the form of a tax refund.

Proponents of this theory appear to additionally argue that they have sold or transferred their debt or obligation to the person to whom they issued the Form 1099-OID in a transaction subject to sections 1271 through 1275 and that the debt or obligation is transferred with a discount of the full face amount. The issuer of the Form 1099-OID then treats the face amount of the Form 1099-OID as "other income" on the individual's return. The "other income" amount, however, is not included in the taxable income line.

Persons asserting this theory often significantly overstate withholding and claim an excessive refund in an amount close or identical to the inflated withholding.

The Law: As the instructions to the Form 1099-OID indicate, the purpose of the form is to report the original issue discount of holders of OID obligations, like certificates of deposit, time deposits, bonds, debentures, bonus saving plans, and Treasury inflation-indexed securities, having a term of more than one year. OID is simply the excess of the stated redemption of the deposit, bond, or other financial obligation at maturity over its issue price. Under section 1272, OID is taxable as interest over the life of the obligation and must be included in the holder's gross income each taxable year that the obligation is held. Certain obligations are excepted, including United States savings bonds and short-term (less than one year) and tax-exempt obligations.

The Form 1099-OID is in no way a financial instrument. It is not a legitimate method of payment of any public or private debt, and it is not a means to withdraw or redeem money from the Treasury. Furthermore, as the federal Court of Appeals for the Sixth Circuit stated in United States v. Anderson, 353 F.3d 490, 500 (6th Cir. 2003), cert. denied, 541 U.S. 1068 (2004), the Treasury Department does not maintain depository accounts against which an individual can draw a check, draft, or any other financial instrument. The notion of secret accounts assigned to each citizen is pure fantasy.

In addition to potential civil and criminal tax penalties for misuse of the Form 1099-OID, persons who fraudulently use false or fictitious instruments may be guilty of federal criminal offenses, such as under sections 287 and 514(a) of title 18.

The IRS has issued Revenue Ruling 2005-21, 2005-1 C.B. 822 ("straw man") and Revenue Ruling 2004-31, 2004-1 C.B. 617 (commercial redemption) warning taxpayers of the consequences of making such frivolous arguments.

In November 2008, a federal jury convicted Winfield Thomas and Jeanne Herrington, who promoted bogus financial instruments called "Bills of Exchange," of conspiracy to impede the IRS. Herrington was also convicted of corruptly interfering with the administration of the internal revenue laws. Thomas and Herrington claimed taxpayers could use the "Bills of Exchange" to pay their tax liabilities. Thomas was sentenced to 30 months imprisonment and three years of supervised release. Herrington was sentenced to 96 months imprisonment and three years of supervised release. http://www.justice.gov/opa/pr/2009/May/09-tax-532.html.

In August 2009, Rodney K Justin, a North Carolina doctor was convicted of four counts of corruptly obstructing the administration of the internal revenue laws for sending "Bills of Exchange," fictitious financial instruments, to the IRS as payment for over $350,000 in taxes. http://www.justice.gov/opa/pr/2009/August/09-tax-879.html.

Recently, the Department of Justice has successfully brought several injunction cases against tax return preparers who utilize the 1099-OID scheme. In August 2009, the District Court for the Eastern District of California granted a preliminary injunction against Teresa Marty individually and through her return preparation business Advance Financial Services, LLC, barring Marty and her business from acting as a federal return preparer. United States v. Marty, 09-cv-006000, 2009 WL 3111823 (E.D. Cal. Aug. 31, 2009); http://www.justice.gov/opa/pr/2009/September/09-tax-937.html. The court found that Marty prepared and filed fraudulent tax returns with false federal tax withholding. The court ordered Marty to provide the United States with a customer list and to notify her customers of the court's order.

In November 2009, injunctions were granted against three tax returns preparers who used Form 1099-OID to claim inflated refunds for their clients. Specifically, a preliminary injunction was granted against Tennessee tax return preparer Karen Liane Miller. Miller v. Commissioner, 2009 WL 4060274 (M.D. Tenn. Nov. 23, 2009); http://www.justice.gov/opa/pr/2009/November/09-ag-1260.html. And permanent injunctions were granted against California tax return preparers Susan Guan, individually and through her company SRN Financial Services Inc., and Jacqueline Cornejo, individually and through her company J.C. Income Tax Services, barring them from preparing tax returns. http://www.justice.gov/opa/pr/2009/November/09-tax-1261.html; United States v. Guan, 2009 WL 4609654, 104 A.F.T.R.2d 2009-7471 (C.D.Cal. 2009); http://www.justice.gov/opa/pr/2009/November/09-tax-1276.html; United States v. Cornejo, 2009 WL 4609602 (C.D.Cal. 2009).

Relevant Case Law:

United States v. Heath, 525 F.3d 451 (6th Cir. 2008) - defendant was convicted of presenting a fictitious financial instrument under 18 U.S.C. § 514(a) for sending to the IRS a so-called "Registered Bill of Exchange" that appeared to be a certified check but for which there was no actual account.

United States v. Anderson, 353 F.3d 490, 500 (6th Cir. 2003), cert. denied, 541 U.S. 1068 (2004) - upholding criminal convictions relating to a conspiracy involving the creation and offering of almost 200 fictitious sight drafts purporting to be drawn on the United States Treasury with an aggregate face value of more than $550 million.