

REASONABLE BELIEF ABOUT INCOME TAX LIABILITY

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1 **1 Introduction**

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

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

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

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

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

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

30 **2 Legal Definition of "willfulness"**

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

32 **2.1 Black's Law Dictionary, Sixth Edition**

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

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

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

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

1 A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse,
2 as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. A willful act differs
3 essentially from a negligent act. The one is positive and the other negative.

4 [Black's Law Dictionary, Sixth Edition, p. 1599]

5 **2.2 U.S. Supreme Court**

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

7 "The Court, in fact, has recognized that the word "willfully" in these statutes generally connotes a
8 voluntary, intentional violation of a known legal duty. It has formulated the requirement of willfulness as
9 "bad faith or evil intent," *Murdock*, 290 U.S., at 398 , or "evil motive and want of justification in view of all
10 the financial circumstances of the taxpayer," *Spies*, 317 U.S., at 498 , or knowledge that the taxpayer
11 "should have reported more income than he did." *Sansone*, 380 U.S., at 353 . See *James v. United States*,
12 366 U.S. 213, 221 (1961); *McCarthy v. United States*, 394 U.S. 459, 471 (1969).

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

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

30 [*United States v. Bishop*, 412 U.S. 346 (1973), *Emphasis added*]

31 **2.3 Department of Justice, Criminal Tax Manual**

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

34 <http://famguardian.org/Publications/DOJTDCTM/DOJTDCTM.htm>

38 40.11 WILLFULNESS

39 40.11[1] **Generally**

40
41 Willfulness in protestor cases involves the same underlying principles as it does in any criminal tax case.
42 Accordingly, reference should be made to the discussion of willfulness in the Sections of the *Manual* pertaining to the other
43 various tax offenses. See Section 8.06, *supra*.

44 Willfulness is the voluntary, intentional violation of a known legal duty. *Cheek v. United States*, 498 U.S. 192, 201
45 (1991); *United States v. Pomponio*, 429 U.S. 10, 12 (1976); *United States v. Bishop*, 412 U.S. 346, 360 (1973); *United States*
46 *v. Johnson*, 893 F.2d 451, 453 (1st Cir. 1990); *United States v. Schiff*, 801 F.2d 108, 110 (2d Cir. 1986), *cert. denied*,
47 480 U.S. 272 (1987); *United States v. Snyder*, 766 F.2d 167, 170-71 (4th Cir. 1985); *United States v. Masat*, 948 F.2d 923,
48 931 (5th Cir. 1991); *United States v. Sassak*, 881 F.2d 276, 280 (6th Cir. 1989); *United States v. Benson*, 941 F.2d 598, 613
49 (7th Cir. 1991); *United States v. Dykstra*, 991 F.2d 450, 453 (8th Cir. 1993); *United States v. Kellogg*, 955 F.2d 1244, 1248
50 (9th Cir. 1992); *United States v. Willie*, 941 F.2d 1384, 1392 (10th Cir. 1991). It has the same meaning in both the felony and
51 misdemeanor statutes of the Internal Revenue Code. See Section 8.06[1], *supra*.

1 Proof of willfulness may be based totally on circumstantial evidence. *United States v. Schiff*, 612 F.2d 73, 77-78
2 (2d Cir. 1979); *Hellman v. United States* 339 F.2d 36, 38 (5th Cir. 1964); *United States v. Grumka*, 728 F.2d 794, 797
3 (6th Cir. 1984); *United States v. Gleason*, 726 F.2d 385, 388 (8th Cir. 1984); *United States v. Fingado*, 934 F.2d 1163, 1167
4 (10th Cir.), *cert. denied*, 112 S. Ct. 320 (1991). Because proof of willfulness usually must be established by circumstantial
5 evidence:

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

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

10
11 Circumstantial evidence, in protestor cases, held competent to establish willfulness includes:

- 12 1. Tax protest activities and philosophies. *United States v. Turano*, 802 F.2d 10, 11-12 (1st Cir. 1986); *United States v.*
13 *Eargle*, 921 F.2d 56, 58 (5th Cir. 1991); *United States v. Grosshans*, 821 F.2d 1247, 1252 (6th Cir. 1987);
- 14 2. Filing of blatantly false W-4 forms in one year relevant to show willfulness and absence of mistake in filing false
15 Schedule C forms in earlier years. *United States v. Johnson*, 893 F.2d 451, 453 (1st Cir. 1990);
- 16 3. Prior taxpaying history, such as the prior filing of valid tax returns followed by the filing of a protest return and a letter
17 from the Internal Revenue Service telling the defendant that his return "did not comply with tax laws and might subject
18 him to criminal penalties." *United States v. Shivers*, 788 F.2d 1046, 1048 (5th Cir. 1986); *United States v. Daniel*,
19 956 F.2d 540, 543 (6th Cir. 1992); *United States v. DeClue*, 899 F.2d 1465 (6th Cir. 1990); *United States v. Green*,
20 757 F.2d 116, 123-24 (7th Cir. 1985); *United States v. Upton*, 799 F.2d 432, 433 (8th Cir. 1986); *United States v.*
21 *Poschwatta*, 829 F.2d 1477, 1483 (9th Cir. 1987), *cert. denied*, 484 U.S. 1064 (1988);
- 22 4. Subsequent taxpaying conduct. *United States v. Upton*, 799 F.2d 432, 433 (8th Cir. 1986); *United States v. Richards*,
23 723 F.2d 646, 649 (8th Cir. 1983);
- 24 5. Filing false Forms W-4. *United States v. Connor*, 898 F.2d 942, 945 (3d Cir. 1990), *cert. denied*, 110 S. Ct. 3284
25 (1990); *United States v. Shivers*, 788 F.2d 1046, 1048 (5th Cir. 1986); *United States v. Carpenter*, 776 F.2d 1291,
26 1295 (5th Cir. 1985); *United States v. Ferguson*, 793 F.2d 828, 831 (7th Cir.), *cert. denied*, 479 U.S. 933 (1986);
27 *United States v. Schmitt*, 794 F.2d 555, 560 (10th Cir. 1986);
- 28 6. The amount of a defendant's gross income. *United States v. Payne*, 800 F.2d 227 (10th Cir. 1986) [*i.e.*, the higher the
29 defendant's gross income, the less likely the defendant was unaware of the filing requirement and the more likely the
30 defendant's failure was intentional rather than inadvertent];
- 31 7. Proof that knowledgeable persons warned the defendant of tax improprieties. *United States v. Collorafi*, 876 F.2d 303,
32 305 (2d Cir. 1989); *United States v. Dack*, 987 F.2d 1282, 1285 (7th Cir. 1993).

33 34 40.11[2] *Good Faith Belief*

35
36 A defendant's conduct is not willful if the jury finds that the defendant's conduct resulted from "ignorance of the law
37 or a claim that because of a misunderstanding of the law, he had a good faith belief that he was not violating any of the
38 provisions of the tax laws." *Cheek v. United States*, 498 U.S. 192, 202 (1991). Cheek claimed that he did not file tax returns
39 because he believed that he was not a taxpayer within the tax laws, that wages are not income, that the Sixteenth Amendment
40 did not authorize the taxation of individuals and that the Sixteenth Amendment was unenforceable. *Cheek*, 498 U.S. at 195.
41 The Court explained that:

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

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

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

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

1 The trial court did not err, however, in instructing the jury not to consider Cheek's claims that the tax laws are uncon-
2 stitutional:

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

7 **Cheek**, 498 U.S. at 206. See also **United States v. Saussy**, 802 F.2d 849, 853 (6th Cir. 1986), *cert. denied*, 480 U.S. 907
8 (1987); **United States v. Kraeger**, 711 F.2d 6, 7 (2d Cir. 1983); **United States v. Burton**, 737 F.2d 439, 442 (5th Cir. 1984);
9 **United States v. Latham**, 754 F.2d 747, 751 (7th Cir. 1985); **United States v. Moore**, 627 F.2d 830, 833 n.1 (7th Cir. 1980),
10 *cert. denied*, 450 U.S. 916 (1981); **United States v. Karsky**, 610 F.2d 548, 550 (8th Cir. 1979), *cert. denied*, 444 U.S. 1092
11 (1980); **United States v. Mueller**, 778 F.2d 539, 541 (9th Cir. 1985); **United States v. Payne**, 800 F.2d 227 (10th Cir. 1986);
12 **United States v. Pilcher**, 672 F.2d 875, 877 (11th Cir.), *cert. denied*, 459 U.S. 973 (1982).

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

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

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

19
20 In determining whether a subjective good faith belief was held, a jury should not be precluded from considering the
21 reasonableness of the taxpayer's interpretation of the law.

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

25 **Cheek**, 498 U.S. at 203-04. After remand, the Seventh Circuit upheld Cheek's conviction, **United States v. Cheek**, 3 F.3d
26 1057 (7th Cir. 1993), *cert. denied*, 114 S. Ct. 1055 (1994), finding that the trial court's instruction that the jury could "consider
27 whether the defendant's stated belief about the tax statutes was reasonable as a factor in deciding whether he held that belief in
28 good-faith" was proper. **Cheek**, 3 F.3d at 1063. See also **United States v. Becker**, 965 F.2d 383, 388 (7th Cir. 1992), *cert.*
29 *denied*, 112 S. Ct. 1411 (1993); **United States v. Powell**, 955 F.2d 1206, 1212 (9th Cir. 1992) (jury may consider "the
30 reasonableness of the interpretation of the law in weighing the credibility" of defendants' subjective belief that they were not
31 required to file tax returns).

32 Tax protestors often claim that their beliefs that they are not required to file returns or pay taxes are based upon a
33 careful study of legal decisions, statutes, legal treatises, and the like, and seek to have such materials admitted into evidence.
34 See, e.g., **United States v. Bonneau**, 970 F.2d 929, 931 (1st Cir. 1992); **United States v. Willie**, 941 F.2d 1384, 1391 (10th Cir.
35 1991), *cert. denied*, 112 S. Ct. 1200 (1992). However, before such materials may be admitted, the taxpayer must lay a suffi-
36 cient foundation of reliance. Nevertheless, the laying of such a foundation does not guarantee admissibility. Although legal
37 and tax protestor materials upon which the defendant claims to have relied may be relevant to a good faith defense, there are
38 competing interests which militate against the unrestricted admission of this type of evidence. The admission of such materials
39 may confuse the jury as to the law, see **United States v. Barnett**, 945 F.2d 1296, 1301 (5th Cir. 1991), *cert. denied*, 112 S. Ct.
40 1487 (1992); **Willie**, 941 F.2d at 1395-97; **United States v. Kraeger**, 711 F.2d 6, 7-8 (2d Cir. 1983); **United States v. Stafford**,
41 983 F.2d 25, 28 n.14 (5th Cir. 1993); **United States v. Gleason**, 726 F.2d 385, 388 (8th Cir. 1984); **United States v. Payne**,
42 978 F.2d 1177, 1181-82 (10th Cir. 1992), *cert. denied*, 112 S. Ct. 2441 (1993), and may assist a defendant who wishes to
43 undermine the authority of the court and turn his trial into a tax protestor circus, see **Willie**, 941 F.2d at 1395 & n.8. The
44 exclusion of such materials from evidence does not prevent a defendant from conveying the core of his defense to the jury: the
45 defendant may still testify as to his asserted beliefs and how he supposedly arrived at them. See **Barnett**, 945 F.2d at 1301;
46 **United States v. Hairston**, 819 F.2d 971, 973 (10th Cir. 1987). It is for the district court to weigh the various competing
47 interests and determine, in its discretion, whether, to what extent, and in what form, legal materials upon which a defendant
48 claims to have relied should be admitted in any given case. See **Willie**, 941 F.2d at 1398; Fed. R. Evid. 403.¹

49 A prosecutor should not seek to exclude such evidence in all situations. See **United States v. Gaumer**, 972 F.2d 723,
50 725 (6th Cir. 1992) (error not to allow defendant to read relevant excerpts of court opinions and Congressional Record upon
51 which he assertedly relied in determining that he was not required to file tax returns); **United States v. Powell**, 955 F.2d 1206,
52 1215 (9th Cir. 1992) ("In § 7203 prosecutions, statutes or case law upon which the defendant claims to have *actually relied* are
53 admissible to disprove that element [willfulness] if the defendant lays a proper foundation which demonstrates such reliance.").

1 Restraint should be exercised where appropriate so as not to jeopardize convictions on appeal. This is particularly true where
2 the defendant has made a specific claim of reliance on a relatively limited amount of material. See *Barnett*, 945 F.2d at 1301
3 n.3 (noting that exclusion of specific proffer of one or two sentences from an IRS handbook may have been error, albeit
4 harmless, and contrasting this specific proffer with the "voluminous,'cover the waterfront' exhibits" that defendant had
5 originally offered). In such a situation, the prosecutor should consider requesting a limiting instruction rather than opposing
6 the admission of such evidence.¹

7 For examples of jury instructions on willfulness and the good faith defense that have been upheld, see *United States*
8 *v. Droge*, 961 F.2d 1030, 1037-38 (2d Cir.), cert. denied, 113 S. Ct. 609 (1992); *Stafford*, 983 F.2d at 27; *United States v.*
9 *Masat*, 948 F.2d 923, 931-32 (5th Cir. 1991); *United States v. Dack*, 987 F.2d 1282, 1285 (7th Cir. 1993); *United States v.*
10 *Becker*, 965 F.2d 383, 388 (7th Cir. 1992), cert. denied, 113 S. Ct. 1411 (1993); *United States v. Dykstra*, 991 F.2d 450,
11 452-53 (8th Cir. 1993); *United States v. Fingado*, 934 F.2d 1163, 1166-67 (10th Cir.), cert. denied, 112 S. Ct. 320 (1991);
12 *United States v. Collins*, 920 F.2d 619, 622-23 (10th Cir. 1990), cert. denied, 111 S. Ct. 2022 (1991).

13 **2.4 Tax Procedure and Tax Fraud Book**

14 The book *Tax Procedure and Tax Fraud*, Patricia Morgan, West Publishing further defines willfulness in the context of
15 taxation as follows:

16 *willfulness.* The Supreme Court's first attempt to define willfulness came in its 1933 decision of *Murdock*,
17 *supra*. The Court first observed that the term "denotes an act which is intentional, or knowing, or voluntary, as
18 distinguished from accidental." In language that would bedevil the courts for years thereafter, the *Murdock*
19 Court further stated that "willfully" usually means "an act done with a bad purpose; without justifiable excuse;
20 stubbornly, obstinately, perversely * * * or with bad faith or evil intent." Ten years later, the Court in *Spies v.*
21 *United States* (S.Ct.1943) stated that the term willfulness connotes "evil motive and want of justification."
22 Thirty years after *Spies*, in 1973, the Supreme Court was still referring to the willfulness requirement in terms
23 of bad purpose or evil motive. IN *United States v. Bishop* (S.Ct.1973), the Court stated that it "shall continue to
24 require, in both tax felonies and tax misdemeanors that must be done 'willfully,' the bad purpose or evil motive
25 described in *Murdock*."

26 Finally, in 1976, the Supreme Court ended the confusion caused by these early continuing references to bad
27 purpose and evil motive. Simply put, the issue was whether proof of a specific intent to violate the law was
28 sufficient, or whether the jury was required to find that the taxpayer acted with bad purpose or evil motive. In
29 *United States v. Pomponio* (S.Ct.1976), a per curiam decision, the Court seemed surprised that lower courts
30 were requiring a finding of bad purpose or evil motive. The Court stated that the lower courts "incorrectly"
31 assumed that the reference to an 'evil motive' in *United States v. Bishop* and earlier cases meant something
32 more than the specific intent to violate the law***." The Court then stated the meaning of the term in language
33 that remains standard definition: willfulness "simply means a voluntary, intentional violation of a known legal
34 duty."

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

42 As *Bishop*, *supra*, makes clear, the term willfulness means the same thing in tax felonies as it does in tax
43 misdemeanors. There is no lesser standard of intent for the willful failure to file misdemeanor than for the
44 felony of attempted tax evasion: both require a voluntary, intentional violation of a known legal duty.
45 Carelessness or mistake is insufficient in both the felony and the misdemeanor context.

46 [*Tax Procedure and Tax Fraud*, Patricia Morgan, West Publishing, pp. 310-312, ISBN 0-314-06586-5, 1999]

47 **3 Choice of Law in Tax Trials**²

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

¹ The prosecutor may be able to utilize the proffered evidence to demonstrate the implausibility of a defendant's claim of good-faith reliance.

² Adapted from *Tax Fraud Prevention Manual*, Chapter 5.

1 **IV. PARTIES > Rule 17.**

2 Rule 17. Parties Plaintiff and Defendant: Capacity

3 (b) Capacity to Sue or be Sued.

4 *The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be*
5 *determined by the law of the individual's domicile. The capacity of a corporation to sue or be sued shall be*
6 *determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be*
7 *determined by the law of the state in which the district court is held, except (1) that a partnership or other*
8 *unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its*
9 *common name for the purpose of enforcing for or against it a substantive right existing under the Constitution*
10 *or laws of the United States, and (2) that the capacity of a receiver appointed by a court of the United States to*
11 *sue or be sued in a court of the United States is governed by [Title 28, U.S.C., §§ 754 and 959\(a\)](#).*

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

15 <http://sedm.org/Forms/MemLaw/Domicile.pdf>

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

18 <http://famguardian.org/Subjects/Taxes/ChallJurisdiction/Definitions/freemaninvestigation.htm>

19 Therefore, by implication, the I.R.C. may not be cited against a person domiciled in a state of the Union. The only
20 exception to this requirement is the case of a person who is either a federal "employee" or a federal contractor or benefit
21 recipient. This is alluded to in Rule 17(b) above, when it says:

22 *"The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be*
23 *determined by the law of the individual's domicile. **The capacity of a corporation for its officers or employees***
24 *acting as its agent to sue or be sued shall be determined by the law under which it was organized."*

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

28 *American Jurisprudence, 2d*
29 *United States*
30 *§ 42 Interest on claim [77 Am Jur 2d UNITED STATES]*

31 *The interest to be recovered as damages for the delayed payment of a contractual obligation to the United*
32 *States is not controlled by state statute or local common law. In the absence of an applicable federal statute, the*
33 *federal courts must determine according to their own criteria the appropriate measure of damages. State law*
34 *may, however, be adopted as the federal law of decision in some instances.*

35 [*American Jurisprudence, 2d, United States, Section 42: Interest on Claim*]

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

36 Requirement for Consent, Form #05.003

37 <http://sedm.org/Forms/FormIndex.htm>

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

3 “Even if the judgment is deemed to be colored by the nature of the obligation whose validity it establishes, and
4 we are free to re-examine it, and, if we find it to be based on an obligation penal in character, to refuse to
5 enforce it outside the state where rendered, see *Wisconsin v. Pelican Insurance Co.*, 127 U.S. 265, 292, et seq.
6 8 S.Ct. 1370, compare *Fauntleroy v. Lum*, 210 U.S. 230, 28 S.Ct. 641, **still the obligation to**
7 **pay taxes is not penal. It is a statutory liability, quasi**
8 **contractual in nature, enforceable, if there is no exclusive**
9 **statutory remedy, in the civil courts by the common-law action**
10 **of debt or indebitatus assumpsit.** *United States v. Chamberlin*, 219 U.S. 250, 31 S.Ct.
11 155; *Price v. United States*, 269 U.S. 492, 46 S.Ct. 180; *Dollar Savings Bank v. United States*, 19 Wall. 227;
12 **and see Stockwell v. United States, 13 Wall. 531, 542; *Meredith v. United States*, 13 Pet. 486, 493. This was**
13 **the rule established in the English courts before the Declaration of Independence.** *Attorney General v. Weeks*,
14 *Bunbury's Exch. Rep.* 223; *Attorney General v. Jewers and Batty*, *Bunbury's Exch. Rep.* 225; *Attorney General*
15 *v. Hatton*, *Bunbury's Exch. Rep.* [296 U.S. 268, 272] 262; *Attorney General v. _ _*, 2 Ans.Rep. 558; see
16 *Comyn's Digest* (Title 'Det,' A, 9); 1 *Chitty on Pleading*, 123; cf. *Attorney General v. Sewell*, 4 M.&W. 77. “
17 [*Milwaukee v. White*, 296 U.S. 268 (1935)]

18 Below is the meaning of “quasi-contract” from the above quote:

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

26 The trouble is, the federal courts refuse to acknowledge the requirement to prove written or even constructive consent to the
27 contract, and by ignoring the requirement for written, explicit consent, they have in effect made participation in this
28 “scheme” to defraud the people involuntary and enforced. The result is racketeering and extortion, in violation of 18
29 U.S.C. §1951. We can easily see how being party to this contract makes us into “domiciliaries” and “residents” of the
30 District of Columbia by examining the older implementing regulations for Section 7701 of the Internal Revenue Code
31 below. Note that a party becomes a “resident” by virtue of whether they are engaged in a “trade or business”, which means
32 federal contracts and employment. In effect, consenting to the federal employment contract by engaging in a “trade or
33 business” contractually shifts one’s domicile to the District of Columbia. Here is the regulation which proves this, which
34 by the way was conveniently REMOVED from the code right after we published this finding in order to hide the true nature
35 of the income tax from the average American:

36 [26 CFR §301.7701-5 Domestic, foreign, resident, and nonresident persons.](#)

37 A domestic corporation is one organized or created in the United States, including only the States (and during
38 the periods when not States, the Territories of Alaska and Hawaii), and the District of Columbia, or under the
39 law of the United States or of any State or Territory. A foreign corporation is one which is not domestic. A
40 domestic corporation is a resident corporation even though it does no business and owns no property in the
41 United States. **A foreign corporation engaged in trade or business within the United States is referred to in**
42 **the regulations in this chapter as a resident foreign corporation, and a foreign corporation not engaged in**
43 **trade or business within the United States, as a nonresident foreign corporation.** A partnership engaged in
44 trade or business within the United States is referred to in the regulations in this chapter as a resident
45 partnership, and a partnership not engaged in trade or business within the United States, as a nonresident
46 partnership. **Whether a partnership is to be regarded as resident or nonresident is not determined by the**
47 **nationality or residence of its members or by the place in which it was created or organized.**
48 [26 CFR §301.7701-5, Amended by T.D. 8813, *Federal Register*: February 2, 1999 (Volume 64, Number 21),
49 Page 4967-4975]

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

53 [26 CFR § 31.3402\(p\)-1](#)

1 26 CFR Sec. 31.3402(p)-1
2 Title 26
3 CHAPTER I
4 SUBCHAPTER C
5 PART 31
6 Subpart E

7 [Sec. 31.3402\(p\)-1 Voluntary withholding agreements.](#)
8

9 (a) In general. An employee and his employer may enter into an **agreement** under section 3402(b) to provide
10 for the withholding of income tax upon payments of amounts described in paragraph (b)(1) of Sec. 31.3401(a)-
11 3, made after December 31, 1970. **An agreement may be entered into under this section only with respect to**
12 **amounts which are includible in the gross income of the employee under section 61, and must be applicable**
13 **to all such amounts paid by the employer to the employee.** The amount to be withheld pursuant to an
14 agreement under section 3402(p) shall be determined under the rules contained in section 3402 and the
15 regulations thereunder. (b) Form and duration of agreement. (1)(i) Except as provided in subdivision (ii) of this
16 subparagraph, an employee who desires to enter into an agreement under section 3402(p) shall furnish his
17 employer with Form W-4 (withholding exemption certificate) executed in accordance with the provisions of
18 section 3402(f) and the regulations thereunder. The furnishing of such Form W-4 shall constitute a request for
19 withholding.

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

- 22 1. Makes you into a "Trustee" over federal property. See:
23 <http://famguardian.org/TaxFreedom/Forms/Emancipation/SSTrustIndenture.pdf>
- 24 2. Makes you into a federal "employee", or at least an agent or fiduciary for a federal trust which is wholly owned by the
25 mother corporation, the "United States", as defined in [28 U.S.C. §3002\(15\)\(A\)](#).
- 26 3. Makes you into an "officer of a corporation", who is liable under [26 U.S.C. §6671\(b\)](#) for all I.R.C. penalties and liable
27 for all criminal provisions of the I.R.C. under [26 U.S.C. §7343](#).
- 28 4. Shifts your legal domicile to the District of Columbia, because that is the domicile of the trust that you now represent.
- 29 5. Makes the Social Security Number into a "Taxpayer Identification Number" and a license number for the Trustee,
30 which is now you. See:
31 <http://sedm.org/LibertyU/WhoAreTaxpayers.pdf>
- 32 6. Makes your earnings into federal revenues and you into a "transferee" and "fiduciary" over federal payments. See [26](#)
33 [U.S.C. §§6901](#) to 6903.
- 34 7. Makes you into a federal subcontractor or "Kelley girl".
- 35 8. Makes the 1040 form into a profit and loss statement for a federal business trust.
- 36 9. Makes you into a withholding agent who is liable under [26 U.S.C. §1461](#) to "return" federal payments to your new
37 employer, the federal government.

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

- 39 1. *Great IRS Hoax* book, sections 5.6.11 and 5.6.16:
40 <http://famguardian.org/Publications/GreatIRSHoax/GreatIRSHoax.htm>
- 41 2. Resignation of Compelled Social Security Trustee document:
42 <http://famguardian.org/TaxFreedom/Forms/Emancipation/SSTrustIndenture.pdf>

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

- 46 1. Federal courts are administrative courts which have jurisdiction only over the following:
 - 47 1.1. Plenary/General jurisdiction over federal territory: Implemented primarily through "public law" and applies
48 generally to all persons and things. This is a requirement of "equal protection" found in [42 U.S.C. §1981](#).
49 Operates upon:
 - 50 1.1.1. The District of Columbia under [Article 1](#), Section 8, Clause 17 of the U.S. Constitution.
 - 51 1.1.2. Federal territories and possessions under [Article 4](#), Section 3, Clause 3 of the U.S. Constitution.
 - 52 1.1.3. Special maritime jurisdiction (admiralty) in territorial waters under the exclusive jurisdiction of the
53 general/federal government.

1 1.1.4. Federal areas within states of the Union ceded to the federal government. Federal judicial districts consist
2 entirely of the federal territory within the exterior boundaries of the district, and do not encompass land not
3 ceded to the federal government as required by 40 U.S.C. §255 and its successors, 40 U.S.C. §3111 and
4 3112. See section 6.4 of the [Tax Fraud Prevention Manual](#) et seq for further details.

5 1.2. Subject matter jurisdiction:

6 1.2.1. “Public laws” which operat throughtout the states of the Union upon the following subjects:

7 1.2.1.1. Postal fraud. See [Article 1](#), Section 8, Clause 7 of the U.S. Constitution..

8 1.2.1.2. Counterfeiting under [Article 1](#), Section 8, Clause 6 of the U.S. Constitution.

9 1.2.1.3. Treason under [Article 4](#), Section 2, Clause 3 of the U.S. Constitution.

10 1.2.1.4. Interstate commercial crimes under [Article 1](#), Section 8, Clause 3 of the U.S. Constitution.

11 1.2.2. “Private law” or “special law” pursuant to Article 4, Section 3, Clause 2 of the U.S. Constitution. Applies
12 only to persons and things who individually consent through private agreement or contract. Note that this
13 jurisdiction also includes contracts with states of the Union and private individuals in those states. Includes,
14 but is not limited exclusively to the following:

15 1.2.2.1. Federal employees, as described in Title 5 of the U.S. Code.

16 1.2.2.2. Federal contracts and “public offices”.

17 1.2.2.3. Federal chattel property.

18 1.2.2.4. Subtitle A of the Internal Revenue Code.

19 1.2.2.5. Social Security, found in 42 U.S.C. Chapter 7.

20 2. Internal Revenue Manual, section 4.10.7.2.9.8 says that the IRS cannot cite rulings below the Supreme Court to apply
21 to more than the specific person who litigated:

22 [4.10.7.2.9.8 \(05-14-1999\)](#)
23 *Importance of Court Decisions*

24 1. *Decisions made at various levels of the court system are considered to be interpretations of tax laws and*
25 *may be used by either examiners or taxpayers to support a position.*

26 2. *Certain court cases lend more weight to a position than others. A case decided by the U.S. Supreme Court*
27 *becomes the law of the land and takes precedence over decisions of lower courts. The Internal Revenue Service*
28 *must follow Supreme Court decisions. For examiners, Supreme Court decisions have the same weight as the*
29 *Code.*

30 3. *Decisions made by lower courts, such as Tax Court, District Courts, or Claims Court, are binding on the*
31 *Service only for the particular taxpayer and the years litigated. Adverse decisions of lower courts do not*
32 *require the Service to alter its position for other taxpayers.*
33 *[Source: <http://www.irs.gov/irm/part4/ch10s11.html>]*

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

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

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

1 “**Common law.** As distinguished from statutory law created by the enactment of legislatures, the common law
2 comprises the body of those principles and rules of action, relating to the government and security of persons
3 and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the
4 judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs and, in this
5 sense, particularly the ancient unwritten law of England. In general, it is a body of law that develops and
6 derives through judicial decisions, as distinguished from legislative enactments. The “common law” is all the
7 statutory and case law background of England and the American colonies before the American revolution.
8 *People v. Rehman*, 253 C.A.2d 119, 61 Cal.Rptr. 65, 85. It consists of those principles, usage and rules of
9 action applicable to government and security of persons and property which do not rest for their authority upon
10 any express and positive declaration of the will of the legislature. *Bishop v. U.S., D.C.Tex.*, 334 F.Supp. 415,
11 418.

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

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

18 “*For federal common law, see that title.*

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

- 22 4. The [Rules of Decision Act, 28 U.S.C. §1652](#), requires that the laws of the states of the Union are the only rules of
23 decision lawfully permissible in federal courts. This means that EVERY federal court MUST cite state law and not
24 federal law in all INCOME tax cases and MAY NOT cite federal caselaw.
25 5. The [Federal Rules of Civil Procedure, Rule 17\(b\)](#) say that the capacity to sue or be sued is determined by the law of the
26 individual’s domicile. This means that if a person is domiciled in a state and not within an enclave, then state law are
27 the rules of decision rather than federal law. Since state income tax liability in nearly every state is dependent on a
28 federal liability first, this makes an income tax liability impossible for those domiciled outside the federal zone.
29 6. [28 U.S.C. §2679\(d\)\(3\)](#) indicates that any action against an officer or employee of the United States, if he was not acting
30 within his lawful delegated authority or in accordance with law, must be removed to State court and prosecuted
31 exclusively under state law.
32 7. Any government representative, and especially one who is from the Dept. of Justice or the IRS, who cites a case below
33 the Supreme Court in the case of a person who is a “national” but not a “citizen” under federal law as described in this
34 book, is abusing caselaw for political purposes, usually with willful intent to deceive the hearer. Such devious tactics
35 can only be described as abuse of caselaw for political, rather than lawful, purposes. Federal courts, incidentally, are
36 NOT allowed to involve themselves in such “political questions”, and therefore should not allow this type of abuse of
37 caselaw, but judges who are fond of increasing their retirement benefits often will acquiesce if you don’t call them on it
38 as an informed American. This kind of bias on the part of federal judges, incidentally, is highly illegal under [28 U.S.C.](#)
39 [§144](#) and [28 U.S.C. §455](#).

40 The book [Conflicts in a Nutshell](#) confirms some of the above conclusions by saying the following:

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

46 “*The result is that the federal court in a diversity case sits in effect as just another state court, seeking out*
47 *forum state law for all substantive issues. The Rules of Decision Act does not apply to procedural matters,*
48 *however; for matters of procedure a federal court, sitting in a diversity or any other kind of case, applies its*
49 *own rules. This has been so since 1938, when , coincidentally (Erie was also decided in 1938), the Federal*
50 *Rules of Civil Procedure arrived on the scene.”* [\[Conflicts in a Nutshell, David D. Seigel, West Publishing,](#)
51 *1994; ISBN 0-314-02952-4, p. 317]*

1 See section 5.1.4 of the *Tax Fraud Prevention Manual* for further details on how the DOJ, IRS, and the Federal Judiciary
 2 abuse case law for political rather than legitimate or Constitutional legal purposes in order to encourage and foster false
 3 “presumption”. Consequently, as you read the cites provided in this chapter, all of which derive from federal courts, you
 4 must take them with a grain of salt and a healthy bit of discretion.

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

6 **Table 1:Choice of law in tax trials**

#	Description	Choice of law	
		Persons domiciled in states of the Union with no federal contracts, benefits, agency, or employment	Federal employees, contractors, benefit recipients, and agents
1	Subject matter constituting authority federal jurisdiction	None	Federal employment, contracts, agency
2	Authorities on source of jurisdiction	FRCP Rule 17(b) Rules of Decision Act, 28 U.S.C. §1652 Erie Railroad v. Tompkins, 304 U.S. 64 (1938)	FRCP Rule 17(b) 5 U.S.C. §552(a)(1) 5 U.S.C. §553(a)(2) 26 CFR §601.702(a)(1) 31 CFR §1.3(a)(4) 44 U.S.C. §1505(a).
3	Only authorized place to litigate	State court (See Alden v. Maine, 527 U.S. 706 (1999))	Federal court (See Alden v. Maine, 527 U.S. 706 (1999))
4	Law to be applied	State revenue codes (Internal Revenue Code is <i>excluded</i>) State judicial precedents (stare decisis) ONLY	Internal Revenue Code Federal District and Circuit Court precedents (stare decisis) ONLY
5	“Presumption” in court	Prohibited by U.S. Constitution because violates “due process” of law	Not prohibited, because Bill of Rights (first ten Amendments to the United States Constitution) do not apply in the “federal zone”
6	Taxable activity	None	“trade or business” as defined in 26 U.S.C. §7701(a)(26) . See: http://fanguardian.org/Subjects/Taxes/Articles/TradeOrBusinessScam.htm
7	Earnings are	Devoted to a private use	Devoted to a “public use” to procure “privileges” such as tax deductions under 26 U.S.C. §162, Earned income credits under 26 U.S.C. §32, and reduced liability, graduated rate under 26 U.S.C. §1.
8	Legal domicile of Defendant	State of the Union	District of Columbia (see 26 U.S.C. §7701(a)(9) and (a)(10))
9	Agency (role) of Defendant	Natural person (self) (See Hale v. Henkel, 201 U.S. 43 (1906))	1 “Transferee” under 26 U.S.C. §6901 2 “Fiduciary” under 26 U.S.C. §6903 3 Federal “employee” under 26 CFR §31.3401(c)-1 4 “Officer of a corporation” under 26 U.S.C. §6671(b) and 26 U.S.C. §7343 5 “Public office”. See Osborn v. Bank of U.S., 22 U.S. 738 (1824) for definition meaning of “public office”
10	Contract which created federal agency/employment	None	Social Security form SS-5 IRS form W-4 IRS form 1040

#	Description	Choice of law	
		Persons domiciled in states of the Union with no federal contracts, benefits, agency, or employment	Federal employees, contractors, benefit recipients, and agents
11	What you have to do to terminate federal agency/employment	Nothing	Send in "Resignation of Compelled Social Security Trustee" document at: http://famguardian.org/TaxFreedom/Forms/Emancipation/SSTrustIndenture.pdf
12	Admissible evidence in a tax trial	State law Statutes at Large after 1939. See 53 Stat. 1, Section 4 . Rulings of the Supreme Court and not lower courts. See IRM 4.10.7.2.8	Whatever the judge wants. There can be no violation of due process for people who are not protected by the Constitution.
13	Enforcement of federal law requires ALL of the following	Positive law (see 1 U.S.C. §204 legislative notes for list of titles that are positive law). See: http://sedm.org/Forms/MemLaw/Consent.pdf Implementing regulations published in the Federal Register	Proof of consent/contract Statutes only. Implementing regulations published in the Federal Register are NOT required under 44 U.S.C. §1505(a)(1) and 5 U.S.C. §553(a)(2) .

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

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

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

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

31 If you would like to know all the many additional reasons why federal courts are presuming you to be a federal "employee"
32 or "public official" if they prosecute you for income tax crimes, penalties, or other infractions under Subtitle A of the
33 Internal Revenue Code, please consult our other informative memorandum of law entitled "*Why Your Government is Either*

1 *A Thief or You Are a “Public Official” for Income Tax Purposes*” available free on the internet at the link below. If you
2 still doubt what we have said in this section, please also rebut the evidence and questions at the end of link below:

3 <http://sedm.org/Forms/MemLaw/WhyThiefOrEmployee.pdf>

4 **Lack of Accuracy, Credibility, Reliability, & Truthfulness of IRS Statements and** 5 **Publications**³

6 When people read this pamphlet, they frequently ask:

7 “What about the IRS Publications? What you are saying conflicts with what they say and what the IRS tells me
8 on the telephone. Who should I listen to?”

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

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

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

21 Table 2: Things IRS is NOT responsible or accountable for

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

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

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

³ From *Federal and State Tax Withholding Options for Private Employers*, section 9.

Lecroy's proposition that the statements in the handbook were binding is inapposite to the accepted law among the circuits that publications are not binding.^{*fn15} We find that the Commissioner did not abuse his discretion in promulgating the challenged regulations. First, *Farms and International* did not justifiably rely on the Handbook. Taxpayers who rely on Treasury publications, which are mere guidelines, do so at their peril. *Caterpillar Tractor v. United States*, 589 F.2d 1040, 1043, 218 Ct. Cl. 517 (1978). Further, the Treasury's position on the sixty-day rule was made public through proposed section 1.993-2(d)(2) in 1972, before the taxable years at issue. *Charbonnet v. United States*, 455 F.2d 1195, 1199- 1200 (5th Cir.1972). See also *Wendland v. Commissioner of Internal Revenue*, 739 F.2d 580, 581 (11th Cir.1984). Second, whatever harm has been suffered by *Farms and International* resulted from a lack of prudence. As even the *Lecroy* 751 F.2d at 127. See also 79 T.C. at 1069. "[*CWT Farms Inc. v. Commissioner of Internal Revenue*, 755 F.2d 790 (11th Cir. 03/19/1985)]

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

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

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

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

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

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

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

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

If the IRS isn't held accountable in a court of law for what they say or even what they write, then they are, by implication, totally unaccountable to the public that they were put into existence to "serve". The Internal Revenue SERVICE, therefore, only SERVES the interests of itself and not the public at large. Furthermore, we believe the same rules should apply to Americans submitting their tax returns as those that apply to the IRS: not liable or responsible for what is written on the return. For instance, the "I declare under penalty of perjury" should be replaced with "I declare that this return as accurate and trustworthy as the advice and writings of the IRS". That is equivalent to saying that it is untrue and NOT trustworthy, and that will get you off the hook and also point out the hypocrisy and lawlessness of the IRS! What is good for the goose

1 is good for the gander. Any other approach would be to condone hypocrisy and lawlessness and tyranny on the part of our
2 government. Why aren't IRS agents required to sign their correspondence under penalty of perjury like all of the
3 communication coming from the "taxpayer" so they CAN be held accountable? Here is what the U.S. Supreme Court had
4 to say about this kind of hypocrisy and lawlessness. You be the judge!:

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

11 **5 Credibility of Federal Court Rulings on tax issues**⁴

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

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

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

18 4.10.7.2.9.8 (05-14-1999) 19 Importance of Court Decisions

20 1. "Decisions made at various levels of the court system are considered to be interpretations of tax laws and
21 may be used by either examiners or taxpayers to support a position.

22 2. Certain court cases lend more weight to a position than others. A case decided by the U.S. Supreme Court
23 becomes 2the law of the land and takes precedence over decisions of lower courts. The Internal Revenue
24 Service must follow Supreme Court decisions. For examiners, Supreme Court decisions have the same
25 weight as the Code.

26 3. Decisions made by lower courts, such as Tax Court, District Courts, or Claims Court, are binding on the
27 Service only for the particular taxpayer and the years litigated. Adverse decisions of lower courts do not
28 require the Service to alter its position for other taxpayers."
29 [IRM, 4.10.7.2.9.8 (05/14/99)]

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

- 32 1. Certainly not following the IRS' own rules on the subject.
- 33 2. Falsely presuming that the person who is the subject of the controversy is a federal employee, federal agent, or federal
34 contractor acting in a representative capacity under the laws of the parent corporation, which is the United States
35 government. 28 U.S.C. §3002(15)(A) defines the term "United States" to mean a federal corporation.
- 36 3. Falsely presuming that federal district and circuit caselaw is relevant to the average American.

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

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

⁴ Adapted from *Federal and State Tax Withholding Options for Private Employers*, section 14.

1 <http://sedm.org/Forms/MemLaw/PoliticalJurisdiction.pdf>

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

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

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

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

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

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

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

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

34 Fourth, the book *What Happened to Justice* thoroughly analyzes all the historical enactments of Congress relating to the
35 federal judiciary and proves that Congress has never specifically or properly invoked Article III of the Constitution in
36 creating any of the federal district, circuit, or Supreme Courts. Consequently, all of these courts are Article IV territorial
37 legislative Courts that are not part of the Judicial Branch of the government. This means they are part of one of the political
38 branches of the government and all of their rulings are political and administrative rather than judicial. They are incapable
39 of exercising the "judicial power" of the United States contemplated in Article III of the Constitution. As a member of one
40 of the political branches, every penalty they might attempt to impose amounts essentially to a bill of attainder and none of
41 their rulings are trustworthy. Read the truth for yourself:

[What Happened to Justice?: Why You Can't Get Justice in Federal Court and What to Do About It](http://sedm.org/ItemInfo/Ebooks/WhatHappJustice/WhatHappJustice.htm)
<http://sedm.org/ItemInfo/Ebooks/WhatHappJustice/WhatHappJustice.htm>

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

45 *"The Government may carry on its operations through conventional executive agencies or through corporate*
46 *forms especially created for defined ends. See Keifer & Keifer v. Reconstruction Finance Corp., [306 U.S. 381,](#)*
47 *[390](#), 518. **Whatever the form in which the Government functions, anyone entering into an arrangement with***
48 ***the Government takes the risk of having accurately ascertained that he who purports to act for the***
49 ***Government stays within the bounds of his authority. The scope of this authority may be explicitly defined by***

1 Congress or be limited by delegated legislation, properly exercised through the rule-making power. And this
2 is so even though, as here, the agent himself may have been unaware of the limitations upon his authority. See,
3 e.g., *Utah Power & Light Co. v. United States*, 243 U.S. 389, 409, 391; *United States v. Stewart*, 311 U.S. 60,
4 70, 108, and see, generally, *In re Floyd Acceptances*, 7 Wall. 666.”
5 [*Federal Crop Ins. V. Merrill*, 332 U.S. 380 (1947)]

6
7 Justice Holmes wrote: “Men must turn square corners when they deal with the Government.” *Rock Island, A. &*
8 *L. R. Co. v. United States*, 254 U.S. 141, 143 (1920). This observation has its greatest force when a private
9 party seeks to spend the Government’s money. Protection of the public fisc requires that those who seek public
10 funds act with scrupulous regard for the requirements of law; respondent could expect no less than to be held to
11 the most demanding standards in its quest for public funds. This is consistent with the general rule that those
12 who deal with the Government are expected to know the law and may not rely on the conduct of Government
13 agents contrary to law. 17 [467 U.S. 51, 64]

14 [. . .]

15 The appropriateness of respondent’s reliance is further undermined because the advice it received from
16 Travelers was oral. It is not merely the possibility of fraud that undermines our confidence in the reliability of
17 official action that is not confirmed or evidenced by a written instrument. Written advice, like a written judicial
18 opinion, requires its author to reflect about the nature of the advice that is given to the citizen, and subjects that
19 advice to the possibility of review, criticism, and reexamination. The necessity for ensuring that governmental
20 agents stay within the lawful scope of their authority, and that those who seek public funds act with scrupulous
21 exactitude, argues strongly for the conclusion that an estoppel cannot be erected on the basis of the oral advice
22 that underlay respondent’s cost reports. That is especially true when a complex program such as Medicare is
23 involved, in which the need for written records is manifest.
24 [*Heckler v. Comm Health Svc*, 467 U.S. 51 (1984)]

25
26 In their answers some of the defendants assert that when the forest reservations were created an understanding
27 and agreement was had between the defendants, or their predecessors, and some unmentioned officers or
28 agents of the United States, to the effect that the reservations would not be an obstacle to the construction or
29 operation of the works in question; that all rights essential thereto would be allowed and granted under the act
30 of 1905; that, consistently with this understanding and agreement, and relying thereon, the defendants, or their
31 predecessors, completed the works and proceeded with the generation and distribution of electric energy, and
32 that, in consequence, the United States is estopped to question the right of the defendants to maintain and
33 operate the works. Of this it is enough to say that the United States is neither bound nor estopped by acts of
34 its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law
35 does not sanction or permit. *Lee v. Munroe*, 7 Cranch, 366, 3 L. ed. 373; *Filor v. United States*, 9 Wall. 45,
36 49, 19 L. ed. 549, 551; *Hart v. United States*, 95 U.S. 316, 24 L. ed. 479; *Pine River Logging Co. v. United*
37 *States*, 186 U.S. 279, 291, 46 S. L. ed. 1164, 1170, 22 Sup. Ct. Rep. 920.
38 [*Utah Power and Light*, 243 U.S. 389 (1917)]

39
40 “It is contended that since the contract provided that the government ‘inspectors will keep a record of the work
41 done,’ since their estimates were relied upon by the contractor, and since by reason of the inspector’s mistake
42 the contractor was led to do work in excess of the appropriation, the United States is liable as upon an implied
43 contract for the fair value of the work performed. But the short answer to this contention is that since no
44 official of the government could have rendered it liable for this work by an express contract, none can by his
45 acts or omissions create a valid contract implied in fact. The limitation upon the authority to impose contract
46 obligations upon the United States is as applicable to contracts by implication as it is to those expressly
47 made.”
48 [*Sutton v. U.S.*, 256 U.S. 575 (1921)]

49
50 Undoubtedly, the general rule is that the United States are neither bound nor estopped by the acts of their
51 officers and agents in entering into an agreement or arrangement to do or cause to be done what the law
52 does not sanction or permit. Also, those dealing with an agent of the United [294 U.S. 120, 124] States
53 must be held to have had notice of the limitation of his authority. *Utah Power & Light Co. v. United States*,
54 243 U.S. 389, 409, 37 S.Ct. 387; *Sutton v. United States*, 256 U.S. 575, 579, 41 S.Ct. 563, 19 A.L.R. 403.

55 How far, if at all, these general rules are subject to modification where the United States enter into transactions
56 commercial in nature (*Cooke v. United States*, 91 U.S. 389, 399; *White v. United States*, 270 U.S. 175, 180, 46
57 S.Ct. 274) we need not now inquire. The circumstances presented by this record do not show that the assured

1 was deceived or misled to his detriment, or that he had adequate reason to suppose his contract would not be
2 enforced or that the forfeiture provided for by the policy could be waived. *New York Life Insurance Co. v.*
3 *Eggleston*, 96 U.S. 572; *Phoenix Mut. Life Insurance Co. v. Doster*, 106 U.S. 30, 1 S.Ct. 18. The grounds upon
4 which estoppel or waiver are ordinarily predicated are not shown to exist.
5 [*Wilbur Natl Bank v. U.S.*, 294 U.S. 120 (1935)]

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

10 <http://famguardian.org/TaxFreedom/Forms/Discovery/Deposition/WhyCourtsCantAddressQuestions.htm>

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

14 *United States Attorney Manual*

15 **666 Proof of Territorial Jurisdiction**

16 *There has been a trend to treat certain "jurisdictional facts" that do not bear on guilt (mens rea or actus reus)*
17 *as non-elements of the offense, and therefore as issues for the court rather than the jury, and to require proof by*
18 *only a preponderance that the offense was committed in the territorial jurisdiction of the court to establish that*
19 *venue has been properly laid. See United States v. Bowers, 660 F.2d 527, 531 (5th Cir. 1981); Government of*
20 *Canal Zone v. Burjan, 596 F.2d 690, 694 (5th Cir. 1979); United States v. Black Cloud, 590 F.2d 270 (8th Cir.*
21 *1979) (jury question); United States v. Powell, 498 F.2d 890, 891 (9th Cir. 1974). The court in Government of*
22 *Canal Zone v. Burjan, 596 F.2d at 694-95, applied the preponderance test to determinations of whether or not*
23 *the offenses took place within the Canal Zone which established not merely proper venue but subject matter*
24 *jurisdiction as well. Other cases, however, hold that the issue of whether the United States has jurisdiction*
25 *over the site of a crime is a judicial question, see United States v. Jones, 480 F.2d 1135, 1138 (2d Cir. 1973),*
26 *but that the issue of whether the act was committed within the borders of the Federal enclave is for the jury*
27 *and must be established beyond a reasonable doubt. See United States v. Parker, 622 F.2d 298 (8th Cir.*
28 *1980); United States v. Jones, 480 F.2d at 1138. The law of your Circuit must be consulted to determine which*
29 *approach is followed in your district.*

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

38 *Proof of territorial jurisdiction may be by direct or circumstantial evidence, and at least at the trial level may*
39 *be aided by judicial notice. See United States v. Bowers, 660 F.2d at 530-31; Government of Canal Zone v.*
40 *Burjan, 596 F.2d at 694. Compare Government of Canal Zone v. Burjan, 596 F.2d 690 with United States v.*
41 *Jones, 480 F.2d 1135, concerning the role judicial notice may play on appeal.*

42 [http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/crm00666.htm]

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

47 **6 Credibility of advice of tax professionals and tax industry trade publications**

48 During the 1970s and early 1980s, the widespread proliferation of tax shelters, usually bearing the official stamp of
49 approval of a lawyer's tax opinion, fostered the negative public perception of lawyers as "hired buns" whose help in
50 evading income taxes could be bought for the right price. One direct and unfortunate result was an erosion of our system of

1 self-assessment. As the public increasingly believed that most people cheated on their taxes, and that most wealthy
2 individuals and corporations were assisted in doing so by crafty tax professionals, the stigma attached to “cheating” or
3 “fudging” began to disappear. The Treasury Department, Congress, the organized bar, and the accounting profession have
4 all attempted to address the problem.

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

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

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

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

26 **6.1 Admissibility of statements of Counsel as evidence of a good faith belief**

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

28 *This finding of a continuing investigation, which forms the foundation of the majority opinion, comes from*
29 *statements of counsel made during the appellate process. As we have said of other unsworn statements which*
30 *were not part of the record and therefore could not have been considered by the trial court: “Manifestly, [such*
31 *statements] cannot be properly considered by us in the disposition of [a] case.”* *Adickes v. Kress & Co.*, [398](#)
32 [U.S. 144, 157](#)-158, n. 16. *While I do not question the good faith of Government counsel, it is not the business of*
33 *appellate courts to make decisions on the basis of unsworn matter not incorporated in a formal record.*

34 *[United States v. Lovasco, 431 U.S. 783, 97 S. Ct. 2044, 52 L. Ed. 2d 752 (1977); Justice Stevens, Dissenting]*

35 **6.2 The U.S. Supreme Court’s opinion on expert advice**

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

37 **This case is not one in which a taxpayer has relied on the erroneous advice of counsel concerning a**
38 **question of law. Courts have frequently held that “reasonable cause” is established when a taxpayer**
39 **shows that he reasonably relied on the advice of an accountant or attorney that it was**
40 **unnecessary to file a return, even when such advice turned out to have been mistaken.** See, e.g.,
41 *United States v. Kroll*, 547 F.2d 393, 395396 (CA7 1977); *Commissioner v. American Assn. of*
42 *Engineers Employment, Inc.*, 204 F.2d 19, 21 (CA7 1953); *Burton Swartz Land Corp. v. Commissioner*, 198
43 *F.2d 558, 560 (CA5 1952); Haywood Lumber & Mining Co. v. Commissioner*, 178 F.2d at 771; *Orient*
44 *Investment & Finance Co. v. Commissioner*, 83 U.S.App.D.C. at 75, 166 F.2d at 603; *Hatfried, Inc. v.*
45 *Commissioner*, 162 F.2d at 633-635; *Girard Investment Co. v. Commissioner*, 122 F.2d at 848;
46 *Dayton Bronze Bearing Co. v. Gilligan*, 281 F. 709, 712 (CA6 1922). **This Court also has implied that,**
47 **in such a situation, reliance on the opinion of a tax adviser may constitute reasonable cause for**
48 **failure to file a return.** See *Commissioner v. Lane-Wells Co.*, 321 U.S. 219 (1944) (remanding for

1 determination whether failure to file return was due to reasonable cause, when taxpayer was advised that filing
2 was not required).

3 **When an accountant or attorney advises a taxpayer on a matter of tax law, such as whether a liability**
4 **exists, it is reasonable for the taxpayer to rely on that advice. Most taxpayers are not competent to**
5 **discern error in the substantive advice of an accountant or attorney. To require the taxpayer to**
6 **challenge the attorney, to seek a "second opinion," or to try to monitor counsel on the**
7 **provisions of the Code himself would nullify the very purpose of seeking the advice of a presumed**
8 **expert in the first place.** See Haywood Lumber, supra, at 771. "Ordinary business care and prudence" do
9 not demand such actions."

10 [*United States v. Boyle*, 469 U.S. 241, 250-01 (1985)]

11 **6.3 The "Reasonable Basis" Standard**

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

17 Opinion 314 characterized the giving of tax advice and the representation of clients under tax audit as adversarial, and
18 concluded that the lawyer's role in each should be governed by the same ethical rules governing litigation. The failure to
19 distinguish between advising with respect to a return, and representing the client under audit, prompted many to question
20 the Opinion and to predict serious erosion of the voluntary compliance system. Nonetheless, the reasonable basis standard
21 prevailed, perhaps because it mirrored the tax system's standard for taxpayer behavior: the no-fault penalty of section
22 6662(d) was not introduced until 1982, so that only the negligence penalty was available to curtail taxpayer manipulation of
23 the system. A reasonable basis for the return position thus shielded both the client and the lawyer from sanctions.

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

29 *"Surely it would be unfair to judge the client's criminal liability on a stricter standard than his lawyer's ethical*
30 *obligation. [. . .]*

31 *The scheme in the instance case is a very aggressive one. The Court is somewhat shocked that it was approved*
32 *by competent counsel. [. . .]The planning, particularly the A.B.A. opinion, tends to take a rather cavalier*
33 *attitude towards obviously questionable schemes. [United States v. Yorke, unpublished opinion, D.Md. July 19,*
34 *1976]*

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

39 Meanwhile, the Congress decided in 1982 to enact the no-fault penalty of section 6662(d), under which a taxpayer (but not
40 his advisor) could be penalized for understatements of income even in the absence of negligence. Enactments of section
41 6662(d) created a disturbing anomaly: lawyers and accountants apparently could freely advise clients to take a position on a
42 return if there was any reasonable basis for it; taxpayers who reported such positions, without disclosing them, would be
43 liable for the penalty unless there was substantial authority for the position or the position was "red-flagged" on the return.
44 The legislative history of section 6662(d) reveals that Congress intended the "substantial authority" standard to be stricter
45 than the "reasonable basis" standard. On the other hand, the "substantial authority" standard is less strict than, and requires
46 less authority than, a "more likely than not to succeed" standard, which section 6662(d) applies to tax shelter items.

6.4 ABA Opinion 85-352

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

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

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

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

6.5 Treasury Circular 230

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

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

As part of the 1998 Taxpayer Bill of Rights Act 3, Congress extended the common-law privilege of confidentiality of communication historically enjoyed by attorneys and clients to tax advice furnished to a taxpayer-client by any individual who is authorized to practice before the Treasury. This new uniform privilege, contained in Code section 7525, applies to tax advice given after July 22, 1998. The new privilege applies only in non-criminal tax matters before the IRS and non-criminal tax proceedings in federal court brought by or against the United States. The privilege does not apply to communications concerning tax shelters (as defined in section 6662(d)(2)(c)(iii)) between a federally-authorized tax practitioner and a corporation or any of its shareholders or agents. The legislative history cautions that the new privilege applies only in circumstances in which the attorney-client privilege would exist, and notes that information disclosed to an attorney for the purpose of preparing the client’s tax return is not privileged.

Thus, not everyone is entitled to practice before the IRS, and the Treasury Department is obligated by statute to regulate the practice of tax law before the IRS. Because the organized bar does not enforce its standard of conduct, such enforcement is

1 left to the states, which show little interest in tax related issues. Thus, if there is to be a uniform standard for all who
2 practice before the Service, and if the enforcement of the standard is to result in disciplinary action against offenders, the
3 Treasury Department, through Circular 230, must establish and enforce the standards.

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

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

15 **7 So what exactly is the basis for a reasonable belief about tax liability?**

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

19 [TITLE 1 > CHAPTER 3 > § 204](#)
20 [§ 204. Codes and Supplements as evidence of the laws of United States and District of Columbia; citation of](#)
21 [Codes and Supplements](#)

22 *In all courts, tribunals, and public offices of the United States, at home or abroad, of the District of Columbia,*
23 *and of each State, Territory, or insular possession of the United States—*

24 *(a) United States Code.— The matter set forth in the edition of the Code of Laws of the United States current*
25 *at any time shall, together with the then current supplement, if any, establish prima facie the laws of the*
26 *United States, general and permanent in their nature, in force on the day preceding the commencement of*
27 *the session following the last session the legislation of which is included: Provided, however, That whenever*
28 *titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the*
29 *laws therein contained, in all the courts of the United States, the several States, and the Territories and*
30 *insular possessions of the United States*

31 An examination of the [legislative notes under 1 U.S.C. 204](#) then reveals which titles of the U.S. Code are “[positive law](#)”
32 and which are not. Title 26 is not listed as being positive law. Therefore, it constitutes “prima facie” evidence of law.
33 “prima facie” is defined in Black’s Law Dictionary as “presumed to be evidence”:

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

38 Therefore, the [Internal Revenue Code](#) is simply “presumed” to be law. The [Great IRS Hoax](#) book thoroughly analyzes the
39 concept of Constitutional “[due process](#)” in sections 5.9 through 5.9.9 and concludes the following about “presumption”:

- 40 1. All “presumption” is a violation of due process.
- 41 2. The reason that “presumption” is a violation of “due process” is that it prejudices one’s rights absent supporting
42 evidence.
- 43 3. “Statutory presumption”, which is a statute that creates a presumption that could operate to prejudice one’s
44 constitutional rights, is a violation of due process.
- 45 4. The only case where “presumption” can be lawfully employed without violating the Constitution is against parties who
46 are not protected by the Constitution. Therefore, “presumption” cannot be used against a person domiciled in a state of
47 the Union and can only be used against “U.S. persons” domiciled in the federal zone, which is not protected by the Bill
48 of Rights.

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

- 2 1. “[presumption](#)” may not be employed by any reader of this pamphlet without violating the Constitution.
- 3 2. The [Internal Revenue Code](#) does not constitute a reasonable basis for belief about tax liability, because it requires
- 4 presumption.
- 5 3. The only thing that can be cited is positive law from the Statutes At Large. Everything published in the Statutes At
- 6 Large is admissible as non prima-facie evidence of law. The current version of 1 U.S.C. §204 doesn’t say that but
- 7 earlier versions do.

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

12 **1939 Internal Revenue Code, 53 Stat. 1, Section 4**

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

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

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

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

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

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

41 We also showed earlier in section 5 that Internal Revenue Manual (IRM) section 4.10.7.2.9.8 says that court decisions
42 below the Supreme Court may not be cited to sustain a reasonable belief.

43 **4.10.7.2.9.8 (05-14-1999)**
44 **Importance of Court Decisions**

45 1. “Decisions made at various levels of the court system are considered to be interpretations of tax laws and
46 may be used by either examiners or taxpayers to support a position.

47 2. Certain court cases lend more weight to a position than others. **A case decided by the U.S. Supreme Court**
48 **becomes 2the law of the land and takes precedence over decisions of lower courts. The Internal Revenue**
49 **Service must follow Supreme Court decisions. For examiners, Supreme Court decisions have the same**
50 **weight as the Code.**

3. Decisions made by lower courts, such as Tax Court, District Courts, or Claims Court, are binding on the Service only for the particular taxpayer and the years litigated. Adverse decisions of lower courts do not require the Service to alter its position for other taxpayers.”
 [IRM, 4.10.7.2.9.8 (05/14/99)
<http://www.irs.gov/irm/part4/ch10s11.html>]

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

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

Table 3: Sources of belief

Prec- edence #	Authority	Author	Force of Law? (Yes/No)	Evidentiary weight	Authorities
1	Constitution	“We the People”	Yes	Real	
2	Statutes at Large	Congress	Yes. See Note 3	Real	
3	U.S. Code	Congress	Yes in most cases. See Note 1	Titles that are positive law are “evidence”. Titles that are not are “prima facie evidence”.	Titles 26, 42, and 50 do not have the force of law and are not “positive law”. See 1 U.S.C. §204 legislative notes.
4	Code of Federal Regulations (CFR)	Various	Yes in most but not all cases. See Note 2	Titles that are positive law are “evidence”. Titles that are not are “prima facie evidence”.	Titles 26, 42, and 50 do not have the force of law and are not “positive law”. See 1 U.S.C. §204 legislative notes.
4.1	26 CFR Part 1 : Income taxes	Treasury	Yes	Not evidence	
4.2	26 CFR Part 31 : Employment taxes	Treasury	Yes	Not evidence	
4.3	26 CFR Part 301 : Secretary of Treas. Regs	Treasury	Yes	Not evidence	1. 26 U.S.C. §7805(a) . 2. 5 U.S.C. §553 . 3. <i>Rowan Co., Inc. v. U.S.</i> , 452 U.S. 247 , 101 S.Ct. 2288, 68 L.Ed.2d 814 (1981)
4.4	26 CFR Part 601 : Procedural Regs	IRS	No* See Note 4	Not evidence	1. <i>Einhorn v. Dewitt</i> , 618 F.2d 347 (5th Cir. 06/04/1980) 2. <i>Luhring v. Glotzbach</i> , 304 F.2d 560 (4th Cir. 05/28/1962)
5	Internal Revenue Manual (IRM)	IRS	No* See Note 4	Not evidence	1. <i>U.S. v. Will</i> , 671 F.2d 963 (1982). Also click here 2. Internal Revenue Manual, Section 4.10.7.2.8.
6	Supreme Court Rulings	Supreme court	Yes	Not evidence	Internal Revenue Manual 4.10.7.2.9.8
7	Circuit Court Rulings	Circuit court	No	Not evidence	Internal Revenue Manual 4.10.7.2.9.8
8	District Court Rulings	District court	No	Not evidence	Internal Revenue Manual 4.10.7.2.9.8
9	IRS Publications	IRS	No	Not evidence	<i>U.S. v. Will</i> , 671 F.2d 963 (1982). Also click here
10	Treasury Decisions and Orders	Treasury	No	Not evidence	Internal Revenue Manual, Section 4.10.7.2.8.
11	IRS Telephone or agent advice	IRS	No	Not evidence	Click here

NOTES:

- Only have the force of law if enacted into [positive law](#). The [Internal Revenue Code](#) is *not* enacted into positive law, and therefore it is only "prima facie evidence" of law. The Statutes at Large from which the I.R.C. is written are the only real "law" you can cite as an authority or evidence in tax litigation.
- Only have the force of law if published and promulgated by the Secretary of the Treasury in the [Federal Register](#) in accordance with the [Administrative Procedures Act](#), [5 U.S.C. §553](#). All regulations promulgated in the [Federal Register](#) are “legislative regulations”.

- 1 3. The federal Statutes at Large are not available online from the government for any year after 1874. Our link above to
 2 the [Statutes at Large](#) is for the period 1789-1873. The ONLY source of these statutes covering all years is a federal
 3 depository library (free) or Potomac Publishing (fee service):
 4 <http://www.potomacpub.com/>
 5 4. The internal procedures of the federal agency MUST be followed in any agency action that adversely affects the rights
 6 of individuals. See Morton v. Ruiz, shown below. Consequently, all enforcement actions attempted by the IRS must
 7 be in strict accordance with the Internal Revenue Manual and part 601 of 26 CFR, or the revenue agents can be held
 8 personally liable for deprivations of rights under [42 U.S.C. §1983](#).

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

- 18 5. The IRS [Internal Revenue Manual, in section 4.10.7.2.8](#) indicates that all IRS publications, and by implication all their
 19 forms as well, "may not be cited to sustain a position". You will note that several documents fall in this category,
 20 including the IRM itself, IRS publications, and all of their forms.

21 *Internal Revenue Manual*
 22 [4.10.7.2.8 \(05-14-1999\)](#)
 23 *IRS Publications*

24 *IRS Publications, issued by the Headquarters Office, explain the law in plain language for taxpayers and their*
 25 *advisors. They typically highlight changes in the law, provide examples illustrating Service positions, and*
 26 *include worksheets. Publications are nonbinding on the Service and do not necessarily cover all positions for a*
 27 *given issue. While a good source of general information, publications should not be cited to sustain a position.*

28 *[Source: <http://www.irs.gov/irm/part4/ch10s11.html>]*

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

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

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

35 **Table 4: Legitimate sources of belief**

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

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

2 "All persons in the United States are chargeable with knowledge of the Statutes-at-Large.... It is well
3 established that anyone who deals with the government assumes the risk that the agent acting in the
4 government's behalf has exceeded the bounds of his authority"
5 [*Bollow v. Federal Reserve Bank of San Francisco*, 650 F.2d 1093, 9th Cir., (1981)]
6 SOURCE: [http://famguardian.org/Subjects/Taxes/CourtCases/BollowVFedResBankOfSanFran-
7 560F2d1093\(9thCir1981\).pdf](http://famguardian.org/Subjects/Taxes/CourtCases/BollowVFedResBankOfSanFran-560F2d1093(9thCir1981).pdf)

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

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

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

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

23 We find the above predicament that our representatives and lawmakers have put us in to be a scandal of monumental
24 proportions that must be fixed before there is ever any hope of returning to a Constitutionally administered tax system. In
25 the meantime, while we are waiting for reforms of the above deficiencies, we believe it constitutes malicious abuse of legal
26 process and conspiracy against rights to hold the average American accountable to obey enacted laws that he can't even
27 read and doesn't have access to. HYPOCRISY!

28 **8 Building a strong reliance defense⁵**

29 A criminal defendant may offer evidence during trial regarding certain statements and representations made by government
30 if those statements relate to his intent and understanding of the law, and many of such statements may qualify as admissions
31 made by the government; see *United States v. Van Griffin*, 874 F.2d 634, 638 (9th Cir. 1989)(government manuals
32 admissible as party admissions under Fed.R.Evid. 801(d)(2)(D)); and *United States v. GAF Corp.*, 928 F.2d 1253 (2nd Cir.
33 1991). In *Arizona Grocery Co. v. Atchison, T. & S.F. Ry. Co.*, 284 U.S. 370, 52 S.Ct. 183 (1932), it was held that a party
34 could rely upon the representations made by a government agency, and in *Moser v. United States*, 341 U.S. 41, 71 S.Ct. 553
35 (1951), the Court held that such reliance could constitute a defense to actions taken by the government. These decisions are
36 buttressed by others such as *Raley v. Ohio*, 360 U.S. 423, 79 S.Ct. 1257 (1959), *Cox v. Louisiana*, 379 U.S. 559, 85 S.Ct.
37 476 (1965), *United States v. Laub*, 385 U.S. 475, 487, 87 S.Ct. 574 (1967), and *United States v. Penn. Industrial Chemical*
38 *Corp.*, 411 U.S. 655, 674, 93 S.Ct. 1804, 1816 (1973). In *Penn. Industrial*, supra, a company being criminally prosecuted
39 for water pollution sought to assert a defense of reliance upon certain applicable agency regulations, but the trial court
40 precluded the admission of that evidence. In reversing, the Supreme Court held that this reliance did constitute a defense
41 and that the agency representations, the subject regulations, should be given as jury instructions.

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

⁵ Adapted from the article at: <http://famguardian.org/Subjects/Taxes/Articles/reliance.htm>

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

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

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

22 Several state courts also acknowledge this defense. In *Schiff v. People*, 111 Colo. 333, 141 P.2d 892 (1943), the defendant
23 had received stolen property and informed the police about such, who instructed him to simply retain possession; his
24 conviction for possessing stolen property was reversed. In *People v. Markowitz*, 18 N.Y.2d 953, 223 N.E.2d 572 (1966), a
25 defendant who was told by certain public officials that he did not need a license to sell merchandise at Yankee Stadium had
26 his conviction vacated through use of this defense. In *State v. Ragland*, 4 Conn. Cir. 424, 233 A.2d 698 (1967), a
27 defendant's conviction for driving without a license was vacated based upon the fact that he drove the car on the occasion in
28 question at the order of police officers. In *Connelly v. State*, 181 Ga.App. 261, 351 S.E.2d 702 (1987), a defendant who had
29 relied upon a misleading driver's license form had his conviction for driving offenses reversed. In *State v. Chiles*, 569 So.2d
30 45 (La.App. 4 Cir. 1990), a pawn shop owner who relied upon the practices of the local sheriff's office had her conviction
31 for failure to abide by record keeping laws reversed. See also *Commonwealth v. Twitchell*, 617 N.E.2d 609, 616-620 (Mass.
32 1993), and *State v. McKown*, 475 N.W.2d 63, 68 (Minn. 1991). The refined essence of these cases is that a criminal
33 defendant does have available to him the defense of reliance upon representations made to him by government officials,
34 whether judges or executive department officers and agents.

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

38 **9 Resources for further study and rebuttal**

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

- 40 1. *Our government has become idolatry and a false religion*: Article which describes why the federal courts have become
41 churches and our government has become a false god and a religious cult:
42 <http://famguardian.org/Subjects/Taxes/Articles/Christian/GovReligion.htm>
43 2. *Tax Deposition Questions*: sound legal evidence upon which to base a reasonable belief
44 <http://famguardian.org/TaxFreedom/Forms/Discovery/Deposition/Deposition.htm>

1 **10 Questions that Readers, Grand Jurors, and Petit Jurors Should be Asking the Government**

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

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

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

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

26 [Black's Law Dictionary, Sixth Edition, page 500]

27 YOUR ANSWER: ___ Admit ___ Deny

28 CLARIFICATION: _____
29
30

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

33 *“Statutes creating permanent irrebuttable presumptions have long been disfavored under the Due Process
34 Clauses of the Fifth and Fourteenth Amendments. In *Heimer v. Donnan*, [285 U.S. 312](#) (1932), the Court was
35 faced with a constitutional challenge to a federal statute that created a conclusive presumption that gifts made
36 within two years prior to the donor's death were made in contemplation of death, thus requiring payment by his
37 estate of a higher tax. In holding that this irrefutable assumption was so arbitrary and unreasonable as to
38 deprive the taxpayer of his property without due process of law, the Court stated that it had “held more than
39 once that a statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due
40 process clause of the Fourteenth Amendment.” *Id.*, at 329. See, e. g., *Schlesinger v. Wisconsin*, [270 U.S. 230](#)
41 (1926); *Hooper v. Tax Comm'n*, [284 U.S. 206](#) (1931). See also *Tot v. United States*, [319 U.S. 463, 468 -469](#)
42 (1943); *Leary v. United States*, [395 U.S. 6, 29 -53](#) (1969). Cf. *Turner v. United States*, [396 U.S. 398, 418 -419](#)
43 (1970).*

44 *The more recent case of *Bell v. Burson*, [402 U.S. 535](#) (1971), involved a Georgia statute which provided that if
45 an uninsured motorist was involved in an accident and could not post security for the amount of damages
46 claimed, his driver's license must be suspended without any hearing on the question of fault or responsibility.
47 The Court held that since the State purported to be concerned with fault in suspending a driver's license, it
48 [\[412 U.S. 441, 447\]](#) could not, consistent with procedural due process, conclusively presume fault from
49 the fact that the uninsured motorist was involved in an accident, and could not, therefore, suspend his driver's
50 license without a hearing on that crucial factor.*

51 *Likewise, in *Stanley v. Illinois*, [405 U.S. 645](#) (1972), the Court struck down, as violative of the Due Process
52 Clause of the Fourteenth Amendment, Illinois' irrebuttable statutory presumption that all unmarried fathers are
53 unqualified to raise their children. Because of that presumption, the statute required the State, upon the death of
54 the mother, to take custody of all such illegitimate children, without providing any hearing on the father's
55 parental fitness. It may be, the Court said, “that most unmarried fathers are unsuitable and neglectful parents. .*

1 . . . But all unmarried fathers are not in this category; some are wholly suited to have custody of their children."
2 *Id.*, at 654. Hence, the Court held that the State could not conclusively presume that any individual unmarried
3 father was unfit to raise his children; rather, it was required by the Due Process Clause to provide a hearing on
4 that issue. According to the Court, Illinois "insists on presuming rather than proving Stanley's unfitness solely
5 because it is more convenient to presume than to prove. Under the Due Process Clause that advantage is
6 insufficient to justify refusing a father a hearing . . ." *Id.*, at 658. 4 [412 U.S. 441, 448] "

7 [Vlandis v. Kline (1973) 412 U.S. 441, 449, 93 S.Ct 2230, 2235; Cleveland Bd. of Ed. v. LaFleur (1974) 414
8 US 632, 639-640, 94 S.Ct. 1208, 1215-presumption under Illinois law that unmarried fathers are unfit violates
9 process]

10
11 YOUR ANSWER: ___ Admit ___ Deny

12
13 CLARIFICATION: _____

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

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

20
21 YOUR ANSWER: ___ Admit ___ Deny

22
23 CLARIFICATION: _____

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

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

27
28 YOUR ANSWER: ___ Admit ___ Deny

29
30 CLARIFICATION: _____

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

33
34 YOUR ANSWER: ___ Admit ___ Deny

35
36 CLARIFICATION: _____

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

39 TITLE 1 > CHAPTER 3 > § 204

40 § 204. Codes and Supplements as evidence of the laws of United States and District of Columbia; citation of
41 Codes and Supplements

42 *In all courts, tribunals, and public offices of the United States, at home or abroad, of the District of Columbia,*
43 *and of each State, Territory, or insular possession of the United States—*

44 *(a) United States Code.— The matter set forth in the edition of the Code of Laws of the United States current at*
45 *any time shall, together with the then current supplement, if any, establish prima facie the laws of the United*
46 *States, general and permanent in their nature, in force on the day preceding the commencement of the session*
47 *following the last session the legislation of which is included: Provided, however, **That whenever titles of such***
48 ***Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein***
49 ***contained, in all the courts of the United States, the several States, and the Territories and insular***
50 ***possessions of the United States.***
51

1 YOUR ANSWER: ___ Admit ___ Deny

2
3 CLARIFICATION: _____

4 7. Admit that “prima facie” means “presumed” to be law without the requirement for actual proof.

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

9
10 YOUR ANSWER: ___ Admit ___ Deny

11
12 CLARIFICATION: _____

13 8. Admit that because the [Internal Revenue Code](#) is not “[positive law](#)” but only “presumed” to be law, then all regulations
14 written to implement it have the same status.

15
16 YOUR ANSWER: ___ Admit ___ Deny

17
18 CLARIFICATION: _____

19 9. Admit that the I.R.C. may not be cited in any tax trial in which the accused is protected by the Constitution and the Bill
20 of Rights and has not surrendered these protections in any way without violating due process of law and the
21 Constitution.

22
23 YOUR ANSWER: ___ Admit ___ Deny

24
25 CLARIFICATION: _____

26 10. Admit that under [Federal Rule of Civil Procedure Rule 17](#)(b), the law of the individual’s domicile determines the rules
27 of decision and the choice of law in civil tax matters.

28 **[IV. PARTIES > Rule 17.](#)**
29 [Rule 17. Parties Plaintiff and Defendant; Capacity](#)

30 (b) Capacity to Sue or be Sued.

31 *The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be*
32 *determined by the law of the individual's domicile. The capacity of a corporation to sue or be sued shall be*
33 *determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be*
34 *determined by the law of the state in which the district court is held, except (1) that a partnership or other*
35 *unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its*
36 *common name for the purpose of enforcing for or against it a substantive right existing under the Constitution*
37 *or laws of the United States, and (2) that the capacity of a receiver appointed by a court of the United States to*
38 *sue or be sued in a court of the United States is governed by [Title 28, U.S.C., §§ 754 and 959\(a\)](#).*

39 [<http://www.law.cornell.edu/rules/frcp/Rule17.htm>]

40
41 YOUR ANSWER: ___ Admit ___ Deny

42
43 CLARIFICATION: _____

44 11. Admit that Constitutional protections, including those prohibiting presumptions, do not apply to federal “employees”
45 on official duty

46 *“The restrictions that the Constitution places upon the government in its capacity as lawmaker, i.e., as the*
47 *regulator of private conduct, are not the same as the restrictions that it places upon the government in its*
48 *capacity as employer. We have recognized this in many contexts, with respect to many different constitutional*
49 *guarantees. Private citizens perhaps cannot be prevented from wearing long hair, but policemen can. Kelley v.*
50 *Johnson, [425 U.S. 238, 247](#) (1976). Private citizens cannot have their property searched without probable*

1 cause, but in many circumstances government employees can. *O'Connor v. Ortega*, [480 U.S. 709, 723](#) (1987)
2 (plurality opinion); *id.*, at 732 (SCALIA, J., concurring in judgment). Private citizens cannot be punished for
3 refusing to provide the government information that may incriminate them, but government employees can be
4 dismissed when the incriminating information that they refuse to provide relates to the performance of their job.
5 *Gardner v. Broderick*, [[497 U.S. 62, 95](#)] [392 U.S. 273, 277-278](#) (1968). With regard to freedom of speech
6 in particular: Private citizens cannot be punished for speech of merely private concern, but government
7 employees can be fired for that reason. *Connick v. Myers*, [461 U.S. 138, 147](#) (1983). Private citizens cannot be
8 punished for partisan political activity, but federal and state employees can be dismissed and otherwise
9 punished for that reason. *Public Workers v. Mitchell*, [330 U.S. 75, 101](#) (1947); *Civil Service Comm'n v. Letter*
10 *Carriers*, [413 U.S. 548, 556](#) (1973); *Broadrick v. Oklahoma*, [413 U.S. 601, 616-617](#) (1973)."
11 [*Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990)]
12

13 YOUR ANSWER: ___ Admit ___ Deny

14 CLARIFICATION: _____
15

- 16 12. Admit that based on the answer to the previous question, a person who is regarded by the court as a federal "employee"
17 is "presumed" to have forfeited his/her Constitutional rights, for the most part, as a condition of his/her employment
18 contract/agreement.

19 YOUR ANSWER: ___ Admit ___ Deny

20 CLARIFICATION: _____
21

- 22 13. Admit that a federal "[employee](#)" is exercising "agency" on behalf of the federal government when operating within the
23 confines of his lawful authority.

24 YOUR ANSWER: ___ Admit ___ Deny

25 CLARIFICATION: _____
26

- 27 14. Admit that under [4 U.S.C. §72](#), all those exercising a "public office" within the federal government are presumed to
28 have a legal "domicile" in the District of Columbia.

29 [TITLE 4 > CHAPTER 3 > § 72](#)
30 [§ 72. Public offices; at seat of Government](#)

31 *All offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere,*
32 *except as otherwise expressly provided by law.*
33 [http://www4.law.cornell.edu/uscode/html/uscode04/uscode04usc_sec_04_00000072----000-.html]

34 YOUR ANSWER: ___ Admit ___ Deny

35 CLARIFICATION: _____
36

- 37 15. Admit that those acting as federal "employees" on official duty, even if otherwise domiciled within a state of the
38 Union, must be regarded under [Federal Rule of Civil Procedure Rule 17\(b\)](#) as having a legal "domicile" in the District
39 of Columbia.

40 YOUR ANSWER: ___ Admit ___ Deny

41 CLARIFICATION: _____
42

- 43 16. Admit that a person engaged in a "trade or business" holds a "public office" in the United States and qualifies as a
44 federal "employee".

45 [26 U.S.C. §7701](#): Definitions

46 "(a)(26) The term 'trade or business' [includes](#) the performance of the functions of a [public office](#)."

1 YOUR ANSWER: ___ Admit ___ Deny

2
3 CLARIFICATION: _____

4 17. Admit that it is a violation of due process during any judicial proceeding to “presume” that a person is a federal
5 “employee” without proof appearing on the record of same, in cases where such presumption is challenged by either
6 party.

7 YOUR ANSWER: ___ Admit ___ Deny

8
9
10 CLARIFICATION: _____

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

13 See 4 earlier.

14 YOUR ANSWER: ___ Admit ___ Deny

15
16
17 CLARIFICATION: _____

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

20 YOUR ANSWER: ___ Admit ___ Deny

21
22
23 CLARIFICATION: _____

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

25 See [1 U.S.C. §204](#) and its predecessors.

26 YOUR ANSWER: ___ Admit ___ Deny

27
28
29 CLARIFICATION: _____

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

32 [Internal Revenue Code of 1939, Section 9, 53 Stat. 2](#)

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

36 [\[Internal Revenue Code of 1939, Section 9, 53 Stat. 2](#)

37 [http://www.famguardian.org/Disks/LawDVD/Federal/RevenueActs/Revenue%20Act%20of%201939.pdf\]](http://www.famguardian.org/Disks/LawDVD/Federal/RevenueActs/Revenue%20Act%20of%201939.pdf)

38
39 YOUR ANSWER: ___ Admit ___ Deny

40
41 CLARIFICATION: _____

42 22. Admit that because the I.R.C. is not positive law, and because it was published in the Statutes at Large, then not all
43 enactments published in the Statutes at Large are necessarily “positive law” and therefore “law” in the absence of
44 unchallenged presumption.

45 YOUR ANSWER: ___ Admit ___ Deny

1 CLARIFICATION: _____

2 23. Admit that presumption in the legal realm operates as the equivalent of “faith” in the religious realm, in that it is the
3 embodiment of a belief that is not substantiated by admissible evidence.

4 “Now faith is the substance of things hoped for, the evidence of things not seen [or examined or admitted
5 into evidence].”
6 [[Heb. 11:1](#), Bible, NKJV]

7 YOUR ANSWER: ___Admit ___Deny

8
9 CLARIFICATION: _____

10 24. Admit that the federal government may not create a church, and especially not one which includes the payment of
11 “taxes” as a requirement.

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

21
22 “[T]he Establishment Clause is infringed when the government makes adherence to religion relevant to a
23 person’s standing in the political community. Direct government action endorsing religion or a particular
24 religious practice is invalid under this approach, because it sends a message to nonadherents that they are
25 outsiders, not full members of the political community, and an accompanying message to adherents that they
26 are insiders, favored members of the political community”. [Wallace v. Jaffree, [472 U.S. 69](#) (1985)]

27 YOUR ANSWER: ___Admit ___Deny

28
29 CLARIFICATION: _____

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

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

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

34 YOUR ANSWER: ___Admit ___Deny

35
36 CLARIFICATION: _____

37 26. Admit that membership in a “state” is consummated by a combination of two voluntary choices of an individual:
38 allegiance and domicile.

39 Please rebut the questions at the end of the pamphlet: “Why Domicile and Income Taxes are Voluntary”:

40 <http://sedm.org/Forms/MemLaw/Domicile.pdf>

41 YOUR ANSWER: ___Admit ___Deny

42
43 CLARIFICATION: _____

1 **Jurat:**

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

7 Name (print): _____

8 Signature: _____

9 Date: _____

10 Witness name (print): _____

11 Witness Signature: _____

12 Witness Date: _____

13

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