Re-record to Add Legal

William Wallace Lear, 1264 Montgomery, Muskegon, Michigan

Constructive Notice of Demand
For
Direct Challenge to Personal Authority

September 23, 2004

Mark Everson
Commissioner
Internal Revenue Service
1111 Constitution Ave., NW
Washington, DC

Certified Mail # 7003 1010 0000 3514 9880

Larry Leder, Operations Manager
Internal Revenue Service
ACS Support - STOP 813G
P.O. Box 145566
Cincinnati, OH 45250-5566

Certified Mail # 7003 1010 0000 3514 9897

To Include: Any and All agents and/or employees of the IRS.

PURPOSE: Constructive Notice of Demand for Verification of authenticity of authority.
RE: Letter 3228 (LT-39) and Letter 1058 (LT-11),
Reg. Mail # 7103 9819 9170 2256 3308, Originating with Larry Leder,
Operations Manager of ACS Support - purposed notice of Intent to Levy for tax year 1992. This Notice of Demand shall include Any and All past, present or future actions, criminal or civil, by ANY and ALL IRS agents or employees.

Dear Mr. Everson and Mr. Leder,

After considerable review of the Internal Revenue Code, Treasury regulations, published Internal Revenue Service policy, Administrative Procedure Act requirements and Supreme Court decisions upholding these requirements, it appears that you are operating outside of venue and subject matter jurisdiction of the Internal Revenue Service.

Let me start with the Internal Revenue Manual 4.10.7.2.9.8 (05-14-99). It states:

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

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

Per **RYDER v. UNITED STATES**, 115 S.Ct. 2031, 132 L.Ed.2d 136, 515 U.S. 177, I am required to initiate a direct challenge to authority of anyone representing himself or herself as a government officer or agent prior to the finality of any proceeding in order to avoid implications of *de facto* officer doctrine. When challenged, those posing as government officers and agents are required to affirmatively prove whatever authority they claim. In the absence of proof, they may be held personally accountable for loss, injury and damages.

To claim ignorance of the law is not an excuse to disobey the law as written. It is the responsibility of every person to know what the law says and to stay within the limitations of said law. The courts have upheld this time and time again as these cases will show.

CONTINENTAL CASUALTY CO. v. UNITED STATES, 113 F2d 284 (5th Cir. 1940):

"Public officers are merely the agents of the public, whose powers and authority are defined and limited by law. Any act without the scope of the authority so defined does not bind the principal, and all persons dealing with such agents are charged with knowledge of the extent of their authority."

TRUAX v. CORRIGAN, 275 U.S. 312, 332 (1921)

"Thus the guarantee was intended to secure equality of protection not only for all but against all similarly situated. Indeed, protection is not protection unless it does so. **Immunity granted to a class however limited, having the effect to deprive another class however limited of a personal or property right, is just as clearly a denial of equal protection of the laws to the latter class** as if the immunity were in favor of, or the deprivation of right permitted worked against, a larger class."

"It, of course, tends to secure equality of law in the sense that it makes a required minimum of protection for everyone's right to life, liberty, and property, which the Congress or the Legislature may not withhold. Our whole system of law is predicated on the general fundamental principle of equality of application of the law. 'All men are equal before the law,' 'This is a

government of laws and not of men,' 'No man is above the law,' are all maxims showing the spirit in which Legislatures, executives and courts are expected to make, execute and apply laws."

In **FEDERAL CORP INSURANCE v. MERRILL, 332 U.S. 380, The Supreme Court ruled:**

"Whatever the form in which the government functions, anyone entering into an arrangement with the government takes a risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority, even though the agent himself may be unaware of the limitations upon his authority."

And again in **FROST & FROST TRUCKING CO. v. RAILROAD COMM'N OF CALICORNIA, 271 U.S. 583** the court ruled:

"It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution."

HARMAN v. FORSSENIUS, 380 U.S. 528, 540 (1965) the Supreme Court ruled:

"...constitutional deprivations may not be justified by some remote administrative benefit to the State. Pp. 542-544."

This is only the beginning of the many Supreme Court rulings that the IRS and it's agents and employees seem to ignore in spite of the IRS's own manual stating:

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

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

In reviewing the Administrative Procedure Act, it has come to my attention that the IRS does not publish all of their regulations in accordance to the Act. For instance, codification of Part 600, except § 600.1(b) have been discontinued. This was published in the Federal Register in October, 1948 and reads: (See Exhibit A)

Federal register, 13 Fed. Reg. 7710:

1. The headnote of Subchapter F is amended to read "Records and Procedure."

2. Codification of Part 600, except § 600.1 (b), is discontinued. Future amendments to the statement of organization of the Bureau of Internal Revenue will appear in the Notices section of the FEDERAL REGISTER.

If you will consult § [5.1] 11.9 of the Internal Revenue Manual, you will find the IRS personnel do not have delegated authority to execute Form 1040 (individual), 1041 (trust) & 1120 (corporation/business) substitute returns under provisions of 26 U.S.C. § 6020(b). It follows that if IRS personnel do not have delegated authority to unilaterally execute these returns, Form 1040, 1041 and 1120 returns are not mandatory.

Further investigation of assignment of OMB control numbers reveals for example, 26 C.F.R. § 20.6091-1 (estate tax) was assigned control number "1545-0015," which is the number for estate tax Form 706. Number 1545-0020 was assigned to 26 C.F.R. §§ 25.6091-1 and 25.6091-2 (gift tax); this is the number for gift tax Form 709. Clearly, the IRS cannot deny that it knows that any regulations implementing § 6091 require the assignment of control numbers.

Upon review of Form 1040 NR, 26 C.F.R § 1.6091-3 ("International") displays a control number, which is 1545-0089. (See Exhibit B) However, Form 1040 Individual Income Tax Return does not display a control number. (See Exhibit C)

So again, we must turn to the courts and see what rulings have been made on this issue.

UNITED STATES v. TWO HUNDRED THOUSAND DOLLARS ($200,000) IN UNITED STATES CURRENCY, 590 f. Supp. 866 (S. D. Fla. 1984)

> "However, the regulations are incomplete in this case without the forms, because the regulations do not set forth the information a traveler will be required to furnish on the forms, specifically form 4790," Id. at 869.

The Court found that the form itself constituted an agency "rule" and not "law".

> "Interpretative rules are 'statements as to what the administrative officer thinks the statute or regulation means', ... whereas substantive rules, such as Form 4790, are issued by an agency pursuant to statutory authority which have the force and effect of law ... It is also apparent that Form 4790 is not a 'general statement of policy' as would be exempted from the publication requirement under 5 U.S.C section 553(b). That Form 4790 is a 'legislative' rule rather than an interpretive one or a general statement of policy is apparent from the fact that the form was clearly intended to implement the pertinent statute ... and the regulation...; section 551(4) of the APA (Administrative Procedure Act) distinguishes agency statements designed to implement a law from these designed to interpret it," Id., at 870, 871.
>
> "Given the scope of the information which customs Form 4790 requires a traveler to furnish, as well as the Form's role as an implementing mechanism for the reporting regulations, Form 4790 is a substantive and implementing rule which falls within none of the acceptable exemptions under the APA and should have been published in the Federal Register," Id., at 871, 872.

You will find this ruling consistent with **GONZALEZ v. FREEMAN, 334 F.2D 570 (D.C. Cir. 1964)** where the court ruled:

"The command of the Administrative Procedure Act is not a mere formality. Those who are called upon by the government for a countless variety of goods and services are entitled to have notice of the standards and procedures which regulate these relationships. Neither appellants nor others similarly situated can turn to any official source for guidance as to what acts will precipitate a complaint of misconduct, how charges will be made, met or refuted, and what consequences will flow from misconduct if found," Id., at 578.

"Considerations of basic fairness require administrative regulations establishing standards for debarment and procedures which will include notice of specific charges, opportunity to present evidence and to cross-examine adverse witness, all culminating in administrative findings and conclusions based upon the record so made," Id., at 578

"[W]e cannot agree that Congress intended to authorize such consequences without regulations establishing standards and procedures and without notice of charges, hearings, and findings pursuant hereto. Absent such procedural regulations and absent notice, hearing and findings in this case, the debarment is invalid," Id., at 579

Again in **HOTCH v. UNITED STATES, 212 F.2D 280, 283 (9th Cir 1954)**, the court again ruled:

"The acts set up the procedure which must be followed in order for agency rulings to be given the force of law. Unless the prescribed procedures are complied with, the agency (or administrative) rule has not been legally issued, and consequently is ineffective."

As well as in **BERENDS v. BUTZ, 357 F.Supp. 144 (D. Minn. 1973).**

"In adopting the directive of December 27, 1972, defendants did not comply with even one of these mandatory requirements, despite the fact that the directive would have a substantial impact on those regulated, and hence is a 'rule' as contemplated in the statute," Id., at 154.

"Inherent in these provisions is the concept that the public is entitled to be informed as to the procedures and practices of a government agency, so as to be able to govern their actions accordingly. The termination of the emergency loan program was without any notice, and was in violation of the statute," Id., at 155.

And yet again in **CHEEK v. UNITED STATES, 498 U.S. 192 (1991)** the **Supreme Court** established that, inter alia, persons could be held accountable and liable in accordance to the long established practice of the common law. **"...that when it came to tax law, because of the complexity of tax law, that the rights of such persons were different, were not the same as with the common law, but were gerater as to the right to know and understand the tax laws on a more through basis."**

The Internal Revenue Service, successor of the bureau of Internal Revenue, was not created by Congress, as required by Article I § 8, clause 18 of the Constitution of the United States; so cannot

legitimately enforce internal revenue laws of the United States in States of the Union. (See Statement of IRS organization at 39 Fed. Reg. 11572, 1974-1 Cum. Bul. 440, 37 Fed.Reg. 20960, and the Internal Revenue Manual 1100 through the 1997 edition;

Article I § 8, clause 18 vests Congress with complete responsibility for facilitating power of Government of the United States via legislation: [The Congress shall have Power] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by the Constitution in the Government of the United States, or in any Department or Officer thereof."

In the historical statement, the Commissioner of Internal Revenue admitted that Congress did not create a Bureau of Internal Revenue via the 1862 act in which the office of Commissioner of Internal Revenue was created, but alleged that Congress intended to create a bureau. In reality, the 1862 legislation created the offices of "assessor" and "collector", in addition to the office of Commissioner of Internal Revenue. Assessors and collectors were appointed for each revenue district somewhat as U.S. Attorneys are appointed today. Those appointed to these offices continued to collect internal revenue within States of the Union until the Internal Revenue Code of 1954 was implemented. The two offices were administratively abolished via Reorganization Plan No. 26 of 1950. The name of the Bureau of Internal Revenue was changed to Internal Revenue Service via Treasury Order #150-27, which was not published in the Federal Register in compliance with requirements of the Federal Register Act. (See 44 U.S.C. §§ 1501 et seq., particularly § 1505(a))

UNITED STATES v. GERMAINE, 99 U.S. 508 (1879); **NORTON v. SHELBY COUNTY**, 118 U.S. 425, 441, 6 S. Ct. 1131 (1886), and numerous other cases that reinforce the determination "there can be no officer, either *de jure* or *de facto*, if there be no office to fill.")

The Internal Revenue Service operates in an ancillary or other secondary capacity under contract, memorandum of agreement or some comparable device to provide services under original authority delegated to the Treasury financial Management Service or some other bureau of the Department of the Treasury; the contracted or otherwise authorized services extend only to government employees and employers, as defined at 26 U.S.C. §§ 3401(c) & (d). The authorization is essentially intagovernmental in nature; it does not extend to private sector enterprise in States of the Union.

The pocket Commission Handbook, located in Chapter 3 of Internal Revenue Manual § 1.16.3 Authorized Pocket Commission Holders, lists IRS personnel who are authorized to have pocket commissions. By cross-referencing to the delegation of authority to issue summonses, it appears that all IRS personnel authorized to issue summonses are under the assistant Commissioner (International). If the authorities are accurate, your proposed examination would constitute a sham preceding under color of authority of the United States. To the best of my knowledge, I have never received income from sources and activities subject to jurisdiction of the Assistant Commissioner (International).

Further, if you will consult Part 14 of the Internal Revenue Manual, "International", at § 114.1, "Compliance and Customer Service Managers Handbook", you will find that examination, collection, criminal investigation and customer service functions are all categorized under the Assistant Commissioner (International). There is no corresponding categorization that might qualify as "domestic" operations.

If you will consult 26 CFR § 601.101, you will find that IRS personnel have jurisdiction for examination and collection only within internal revenue districts; all other functions fall under jurisdiction of the foreign district director, now the Assistant Commissioner (International). The Secretary of the Treasury has never established internal revenue districts in States of the Union, as required by 26 U.S.C. § 7621 AND Executive Order #10289. Therefore, you must be operating under presumption of Assistant Commissioner (International) jurisdiction.

Federal income tax returns are allegedly required to be filed at IRS service centers. But the Administrative Procedures Act demands that any part of an agency's field structure which affects the domestic American public must be published in the Federal Register. The absence of publication in the Federal Register of these extremely important parts of the IRS field structure further indicates that the service centers do not legally affect the domestic American public and can, therefore, be ignored by the ordinary American wage earner living and working at home. However the IRS claims that the 16th Amendment places a liability on my labor but continues to ignore the fact that I am not or have ever been a corporation, resident Alien, or working abroad. The courts settled the issue of the 16th Amendment as the cases below will show but again, the IRS refuses to follow it's own rules and abide by the courts rulings.

Internal Revenue Manual 4.10.7.2.9.8 (05-14-99).

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

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

   BRUSHABER V. UNION PACIFIC R. CO., 240 US 1.11 (1916):
   "...the confusion is not inherent, but rather arises from the conclusion that the 16th Amendment provides for a hitherto unknown power of taxation; that is, a power to levy an income tax which, although direct, should not be subject to the regulation of apportionment applicable to all other direct taxes. And the far reaching effect of this erroneous assumption will be made clear by generalizing the many contentions advanced in argument to support it..."

STANTON V. BALTIC MINING CO., 240 US 103, 112 (1916):
"...it manifestly disregards the fact that by the previous ruling it was settled that the provisions of the 16th Amendment conferred no new power of taxation.."

BOWERS V. KERBAUGH-EMPIRE CO., 271 U.S. 170, 174 (1926):
"The Sixteenth Amendment declares that Congress shall have power to levy and collect taxes on income, 'from whatever source derived' without apportionment among the several states, and without regard to any census or enumeration. It was not the purpose or effect of that amendment to bring any new subject within the taxing power."

PECK V. LOWE, 247 U.S. 165, 173 (1918):
"The Sixteenth Amendment, although referred to in argument, has no real bearing and may be put out of view. As pointed out in recent decisions, it does not extend the taxing power to new or excepted subjects,..."

DOYLE V. MITCHELL BROS., 247 U.S. 179, 183 (1918):
"An examination of these and other provisions of the Act (The 16th Amendment) make it plain that the legislative purpose was not to tax property as such, or the mere conversion of property, but to tax the conduct of the business of corporations organized for profit upon the gainful returns from their business operations."

EISNER V. MACOMBER, 252 U.S. 189, 205, 206 (1920):
"The 16th Amendment must be construed in connection with the taxing clauses of the original Constitution and the effect attributed to them before the amendment was adopted."
"As repeatedly held, this did not extend the taxing power to new subjects..."

EVANS V. GORE, 253 U.S. 245, 259 (1920):
"Does the Sixteenth Amendment authorize and support this tax and the attendant diminution; that is to say, does it bring within the taxing powers subjects theretofore excepted? The court below answered in the negative; and counsel for the government say: 'It is not, in view of recent decisions, contended that this amendment rendered anything taxable as income that was not so taxable before'."

Just as the issue of wages was settled in countless Supreme Court decisions, the IRS chooses to look the other way What the Supreme Court established in **EVANS v. GORE** was that not only did the16th Amendment **NOT**confer new taxing powers to Congress to tax the American Citizen living and working within the United States of America, but it also acknowledged the definition of **INCOME** as defined by the **Supreme Court in FLINT vSTONE TRACY CO.**

FLINT v. STONE TRACY CO., 220 U.S. 107, 144 (1911)
"A reading of this portion of the statute (1909 corporation tax act) shows the purpose and design of Congress in its enactment and the subject-matter of its operation. It is at once

apparent that its terms embrace corporations and joint stock companies or associations which are organized for profit, and have a capital stock represented by shares. Such joint stock companies, while differing somewhat from corporations, have many of their attributes and enjoy many of their privileges."

MERCHANTS' LOAN & TRUST CO. v. SMIETANKA, 255 U.S. 509, 519 (1921)
"There would seem to be no room to doubt that the word 'income' must be given the same meaning in all of the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act, and what that meaning is has now become definitely settled by decisions of this Court."

BOWERS vs. KERBAUGH-EMPIRE, 271 U.S. 170 (1926)
"Income has been taken to mean the same thing as used in the Corporation Excise Tax Act of 1909, in the 16th Amendment, and in the various revenue acts subsequently passed."

HELVERING v. EDISON BROTHERS' STORES, 8 Cir. 133 F2d 575 (1943)
"The Treasury cannot by interpretive regulation make income of that which is not income within the meaning of the revenue acts of Congress, nor can Congress, without apportionment, tax that which is not income within the meaning of the 16th Amendment."

SOUTHERN PACIFIC CO. v. LOWE, 247 U.S. 330, 335 (1918)
"We must reject in this case, as we have rejected in cases arising under the Corporation Excise Tax Act of 1909, the broad contention submitted on behalf of the government that all receipts, everything that comes in, are income within the proper definition of the term 'gross income'. Certainly the term 'income' has no broader meaning in the Income Tax Act of 1913 than in that of 1909, and for the present purpose we assume there is no difference in its meaning as used in the two acts."

BUTCHER'S UNION CO. v. CRESENT CITY CO., 111 U.S. 746, 757 (1814)
"The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all communities from time immemorial, must therefore be free in this country to all alike upon the same applied to all persons of the same age, sex and condition, is a distinguishing privilege claim as their birthright. It has been well said that 'the property which every man has in his own labor, as it is the original foundation of all other property, so it is the most of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property. It is a manifest encroachment upon the just liberty both of the workman and of those who might be disposed to employ him."

There are essentials to any case or controversy, whether administrative or judicial, arising under the Constitution and laws of the United States (Article III § 2, U.S. Constitution, "arising under" clause). See **Federal Maritime Commission v. South Carolina Ports Authority, 535 U.S. (2002)**

The following elements are essential:

1. When Challenged, **standing**, venue and all elements of subject matter jurisdiction, including compliance with substantive and procedural due process requirements, must be established in record.

2. Facts of the case must be established in record.

3. Unless stipulated by agreement, facts must be verified by competent witnesses via testimony (affidavit, deposition or direct oral examination).

4. The LAW of the case must affirmatively appear in record, which in the instance of a tax controversy necessarily includes taxing and **liability statutes** with attending **regulations** (See **United States of America v. Menk, 260 F. Supp. 784 at 787** and **United States of America v. Community TV. Inc., 327 F.2d 79 (10th Cir., 1964)**:

5. The advocate of a position must prove application of law to stipulated or otherwise provable facts.

6. The trial court, whether administrative or judicial, must render a written decision that includes findings of fact and conclusions of law.

As you have not complied with these elements, I am duty bound to ask that you now prove your Personal
Authority as an authorized government agent.

Please provide me with certified copies of the following:

1. Your precise title ("revenue officer", "revenue agent", "appeals officer", "special agent", etc.) and cite the section of the act of Congress that created the office you occupy;

2. Your constitutional oath of office, as required by Article VI, Paragraph 3 of the Constitution of the United States and 5 U.S.C. § 3331;

3. Your civil commission as agent or officer of Government of the United States, as required by Article II § 3 of the Constitution of the United States and attending legislation;

4. Your affidavit declaring that you did not pay for or otherwise make or promise consideration to secure the office (5 U.S.C. § 3332);

5. Your personal surety bond; and

6. Documentation that establishes your complete line of delegated authority, including all intermediaries such as the Assistant Commissioner (International), beginning with the President of the United States.

These documents should all be filed as public records. See 5 U.S.C.§ 2906 for requirements concerning filing oaths of office. In the event you do not have a personal surety bond, you may provide a copy of your financial statement, which you are required to file annually. Your financial statement will be construed as a private treaty surety bond in the event that you exceed lawful authority.

Collateral issues other than the above requests intended to document your personal standing will be addressed separately from this request.

You may provide the requested items within a reasonable period of **twenty (20) calender days** from receipt of this request. See the Administrative Procedures act for deadlines. In the event you do not formally answer this demand, you may be considered a party to any past or subsequent adverse action. You may withdraw, **in writing**, any and all claims, demands and/or encumbrances issued directly or indirectly within the scope of your alleged administrative authority.

Failure to comply with this constructive notice of demand to verify authenticity of your authority will be an admission that all parties are willfully, with evil intent, engaging in criminal activity against me.

NOTICE: I reserve the right to enter this demand and all evidence attached within, to be preserved as evidence under Rule 902 (4), (5), (8), (9) and (10) of the Federal Rules of Evidence, upon the records of such public recorder's office at such place or places as I alone determine, which as a matter of public record shall be subject to submission and use in any legal proceeding thereafter as utilized by any person having cause to rely thereupon for evidence purpose, under the aforesaid Federal Rules of Evidence, and as for any other reasons that a public record of debt may be used, accordingly.

Re-record with Legal Description: CITY OF MUSKEGON REVISED PLAT OF 1903 BLK 495 PART OF LOTS 3+14 BEG AT A POINT ON NWLY LINE MONTGOMERY AVE 14 FT SWLY FROM MOST ELY COR LOT 14 Then SWLY ALG MONTGOMERY AVE 48.5 FT NWLY AT RT ANG 112 FT NELY PAR MONTGOMERY 48.5 FT SELY AT RT ANG 112 FT TO BEG WWL.

William Wallace Lear, 1264 Montgomery, Muskegon, Michigan

Record Notice Act: When an instrument of conveyance or a mortgage is recorded in the appropriate public office, it is constructive notice of its contents to the whole world.
Black's Law, Sixth Edition, Page 1275

Affidavit

I, William Wallace Lear, attest to the facts stated on this Constructive Notice of Demand for Direct Challenge to Personal Authority to be ture and accurate to the best of my knowledge, including Exhibits A, B and C, attached.

Sincerely Yours in Our Lord Jesus Christ

William Wallace Lear /EOE/

William Wallace Lear

In the state of Michigan, county of Muskegon

~~SUBSCRIBED AND SWORN~~ TO before me this 23rd day of September 2004

Patricia C. Schlaack Notary Public

PATRICIA C. SCHLAACK
Notary Public, Muskegon County, MI
My Commission Expires 04/20/2007

State Michigan County Muskegon

CC:

U.S. Representative Peter Hoekstra
1124 Longworth House Bldg.
Washington, DC 20515