

Greetings;

Here is a transcript I made of a presentation by Bobby Lowman (New York) from the Internet radio program: Mel's "Bar & Grill" broadcast on Sunday, 27th of July 2008, by World Wide First Amendment Radio (<http://www.wvfar.com/>). The subject relates to who is required to file IRS returns as defined by Title 26 U.S.C. and 26 C.F.R. (Code of Federal Regulations) and 27 CFR.

I believe you may have a serious interest in this subject and that's why you are getting it. Requires some careful reading and consideration and personal research of all cites. Everything in this depends on the definition of "United States," "person," "United States citizen," "resident" and perhaps a few other words/terms.

Be aware that none of the parties to presenting this material is an Attorney, and the material is presented only for educational purposes, and you the reader should take sole responsibility for how you use it. May I suggest that you consult with knowledgeable and friendly counsel as there are some tricks of the legal "trade" that may be good to know.

Have fun,
Klaus Becker, Speaker,
We the People of Nebraska network
wtpn@cox.net

**Presentation by Bobby Lowman on IRS requirement to file
Mel's Bar & Grill Radio Program on First Amendment Radio
Hour 1, on 27th of July, 2008, with Melodie Gillespie
<http://www.wvfar.com/>**

BL = Bobby Lowman / MG = Melodie Gillespie

MG: You have some important information to share.

BL: I was starting to study the charge of felony tax evasion 26 U.S.C. 7201 – attempt to evade or defeat tax. Must close the loopholes for the rats. Looking at lack of assessment which is required by the code. Supreme Court has ruled that it is an essential element before IRS can commence collection activity. Lately courts saying assessment is not necessary to sustain a conviction for attempting to defeat or evade the tax. But other courts cases say an assessment is a necessary element to sustain a conviction for evading or defeating **payment of the tax.**

26 U.S.C. Sec 7201: There are two different and distinct crimes in 7201: (Felony Tax Evasion). Attempt to evade/defeat tax: "Any person who willfully attempts in any manner to evade or (1) defeat any tax imposed by this title or (2) the payment thereof shall in addition to other penalties provided by law be guilty of a felony and upon conviction thereof shall be fined not more than \$100,000 (\$500,000 for corp.) or imprisoned not more than 5 years, or both, together with cost of prosecution." There are 2 crimes here:

(1) Any person who willfully attempts in any manner – that’s the intent – right there – to evade or defeat any tax imposed by this title –that’s one crime. OR (2) the payment thereof – that’s the second crime.

Now, when I understood this, I looked at several felony-tax-evasion indictments. And they are not real specific. They actually charge both crimes in the indictment – and I’ll explain why later on. So I began to look at the case law and I don’t have the cites [here]. One says assessment is essential to sustain conviction for evading payment of the tax. Another says no assessment is necessary - because the deficiency arises by operation of law on the date that the return is required to be filed. (seems contradictory).

Put it in context with the crimes being charged – here’s the trick: in order to sustain conviction for evading or defeating the “payment” they must have an assessment. It could be your voluntary assessment where you fill out a return – and then you do something to evade or defeat paying the amount assessed on the return or could be evading the tax which is basically evading the assessment. And that’s what the courts have said. So they don’t need the assessment to sustain the conviction for charging you with attempting to defeat or evade the assessment because the tax deficiency occurs by operation of law on the date the return is required to be filed.

So they are charging both crimes in the indictment – saw a case where, yes, they can do that. Reason they’re doing it is that most people including the attorneys never catch on to what’s going on. If you start challenging the lack of an assessment, they’ll roll right forward because they are taking silent notice that by operation of law the deficiency occurs on the date the returns is required to be filed. And if you challenge the lack of requirement to file the return a lot of times they’re saying it’s frivolous (explain why later).

Excerpts from a case in eastern district of Pennsylvania which hasn’t been published yet – guy named Farnsworth, beat them in the district court on the lack of an assessment, but the Gov’t appealed and it went to appellate division, Circuit court. I believe they reversed and remanded to the district court. “Essential to conviction under Sec. 7201 is (1) the existence of a tax deficiency, (2) an affirmative act constituting an attempt to evade or defeat payment of the tax: using a trust, corporation, off shore business entity, whether legitimate or not, whatever you do, and (3) willfulness – citing a case: US v Boyd, 89 F3d 1050-1089, 3rd Circuit, 1996. In one of the footnotes – talking about a book by Ian M. Comisky, Lawrence S. Field, and Steven M. Harrison – called “Tax Fraud and Evasion – Offenses, Trials, Civil Penalties.” Paragraph 2.03 (1) 2 to 6, Note 20, 6th Edition, 2003: “Although a prior valid assessment may be used to show a tax deficiency under IRC Sec 7201 the gov’t is not required to present evidence of an assessment unless the charge involves the evasion of the payment of tax.”

Goes on to say: “There is no requirement however, that an administrative assessment of the tax be made or filed before there can be a criminal prosecution for the offenses described in IRC 7201 through 7207.” Found in IRC where assessment is not required to commence a criminal prosecution. So the courts try to whittle away your protection

and what is required to convict you of a crime. Look at requirement to file: the deficiency occurs by operation of law on the date the return is required to be filed. See *Voorhees v. U.S.* (or vice versa). He said he never received the assessment. They said it is not necessary to receive it, all that's necessary is to show they sent it. Goes on to talk about the assessment in there – a good one to study.

This is from 26 U.S.C. sec 6001: “Every person liable for any tax imposed by this title or for the collections thereof, shall keep such records, render such statement, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person – this is important – by notice served upon such “person” or by regulation to make such return, render such statements, or keep such records as the Secretary deems sufficient to show whether or not such person is liable for the tax under this title.”

What they're telling you is: in order for you to be required to make a return they either have to serve you a notice or publish a regulation. When you look at the implementing regs for 26 U.S.C. Sec 6001, go to parallel table of authorities (PTA) and I was unable to find any regulations listed under 26 U.S.C. Sec 6001 that required any body to make returns. However, this is the statutory authority for the Secretary to serve notice or publish regulations requiring people to make returns. Are you with me so far?

MG: Yes.

BL: OK. Don't mean to be boring on this – it took me quite a while to think this through and sort it out and I'm trying to present this to the listeners to show how important it is on Status Correction. Now, the regulation they did cite for this 6001 is under 26 C.F.R. part 301.6001-1. “Notice or regulations requiring records, statements, and special return.” “For provisions requiring records, statements, and special returns, see the regulations relating to the particular tax.” Well, there's no regulations for sub-title A income tax, now is there?

MG: No, there isn't.

BL: Right. Now, I believe 26 C.F.R. Sec 1 was listed – when I did the search for this 26 U.S.C. 6001, and this is 26 C.F.R. Sec 1.6001-1. You can go right to Cornell Law's web site and download it. Real easy – and copy and paste. “Records” this is “d”. There's a, b, and c before it, but for the purposes of our conversation “d” is the important one. Notice by District Director requiring returns, statements, or the keeping of records. The District Director may require any person by notice served upon them to make such return, render such statements, or keep such specific records as will enable the District Director to determine whether or not such person is liable for tax under Sub-Title A of the code including qualified state individual income taxes which are treated pursuant to section 6361a as if they were imposed by Chapter One of subtitle A. So there is your tie in to your state tax return. OK?

Now, right there, it requires them, the District Director to serve you a notice, if they want to require you to make a return – and they never do it. The only other way – remember – is by implementing regulations. Keep that in mind – I’m going to go through this some more. Now – a lot of times people challenge the gov’t and say: oh there’s no requirement for me to make a return – or to file a return – which are two different things, by the way.

26 U.S.C. Sec 6011: “When required by regulations prescribed by the Secretary, any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.”

Now, where’s the regulation that requires you to make a return? Well, according to the PTA the reg for 6011 is under – well it’s one of them, one of the regs is 26 CFR, part 301.6011-1: General requirement of return, statement, or list. “(a) For provisions requiring returns, statements, or lists, see the regulations relating to the particular tax.” Now – do they ever identify what tax you owe? Absolutely not !! They won’t do it in the indictment. They just say income tax – and they refuse to provide a reg, no matter how much you squawk about it. But this one right here – both of the C.F.R. parts which are listed in the PTA as the implementing regulations for 26 U.S.C. 6001, 6011 – neither one of them require you – they just refer you to the regs for the type of tax.

Now let’s get down a little bit further and see 26 U.S.C. sec 6012: Persons required to make returns of income. (a) general rule. Returns with respect to income tax under subtitle A shall be made by the following: (1a) Every individual having for the taxable year gross income which equals or exceeds the exemption amount and then goes into all these formulas. OK? But you know what? There is no reg for this – there’s no C.F.R. part listed that I could find for 26 U.S.C. sec 6012. And remember the statutory authority to require the return is 6001 and 6011 either by notice served or by regulation – according to their own law. Still with me??

MG: Yes.

BL: OK, if I’m confusing you stop and I’ll explain where I’m heading with this or what’s going on.

MG: Now when they send out the notice of levy, it’ll have on there the tax owed. It’ll say “1040.”

BL: It’s not the notice to make returns and it’s not the assessment. It is They’re not permitted to send that out without an assessment. OK? Unless the deficiency arises by operation of law on the date the return is required to be filed. Now keep in mind, what we’ve just read is generally what the Gov’t claims is the requirement to make the returns, right?

MG: uh huh.

BL: 6001 and 6011 under 26 USC. Now one of the implementing regs [under that . . .in] that's in the PTA is 26 C.F.R. part 301.6012-1. Now that's not really listed the PTA that I could find as the implementing reg for 26 U.S.C. 6012. But it refers you to 26 C.F.R. 1.6012-1. All right?

Now this is a mind blower: from 26 C.F.R. OK, let's go back to part 301.6012-1. "Persons required to make returns." It says: for provisions with respect to persons required to make returns of income see section 1.6012-1 to -4 inclusive of this chapter. (income tax regulation). Now, here's the one, and absolutely a killer: 26 C.F.R. 1.6012-1: Individuals required to make returns of income (a) individual citizens or resident: (1) in general, except as provided in sub par 2 of this paragraph, an income tax return must be filed by every individual for each taxable year beginning before Jan 1, 1973 during which you received \$600 or more of gross income and for each taxable year beginning after 31 Dec 72, during which you received \$750 or more of gross income, if such individual is: (i) a citizen of the United States whether residing at home or abroad, (ii) a resident of the United States even though not a citizen thereof, or (iii) an alien bona fide resident of Puerto Rico or any section 931 possession, as defined in Section 1.931-c1 during the entire taxable year..

Now, for these people who say there is no requirement to make a return, there's no regulation requiring them: there it is, right out of the CFR. It may not line up – be listed in the PTA with the other ones, but there they are telling you who is required to make the return by the regulations.

MG: So you have to be a resident of the United States.

(Program Break). And we're back; this is Mel's Bar and Grill Talking about why you are required to file and why they can snag you for it.

BL: Here's what I discovered is really going on: We know they rarely do an assessment - OK? - which could sustain a conviction for attempting to defeat or evade the payment of the tax. But if you confront them on that they just switch into the other mode because they're charging two crimes in the indictment. If they are not exactly specifying it – and they won't limit them selves, they'll charge both crimes to cover all their bases. And the unsuspecting defendant in the case, if he hasn't got a clue of what's going on, he'll never understand how to win his case.

And what complicates it for most people almost to the point of hopelessness, is they fail to challenge the presumption that there is a person who is required to file by that 26 C.F.R. section 1.6012-1. In other words they're not correcting any erroneous presumptions as to their status, their political status being a citizen of the United States or a resident of the United States, or an alien bona fide resident of Puerto Rico (et.al.). Because, that right there, is the only requirement by regulation that I can find in the C.F.R. that requires you to make a return. The only other way that they can impose that

requirement is by the Secretary serving you a notice to make returns – and they never do it.

MG: Bobby, can a regulation actually rule over the people and not a statute?

BL: If they publish it in the Federal Register!! Let me put it this way: the rule is from what I've seen the way the courts rule is that anything that has general applicability and legal effect has to be published in the Federal Register. That's why they're required to have a statute and an implementing regulation. The fact that they're not listing this particular C.F.R. in the PTA as the implementing regs for 6001 or 6011 of 26 U.S.C. – I don't know – I have no answer to that – or why the numbers don't match. The other one [6011 I believe it was] -- oh no 6001, 26 U.S.C. is the statutory authority granted by the Congress to the Secretary to require people to make returns either by notice served or by regulation. Well, if the Secretary published this regulation requiring people to make returns – there you go.

MG: Which Secretary? Do you know who the Secretary of [for] the IRS is?

BL: Well no; but, who is it? The Secretary of the Intl Monetary Fund? Secretary of the Treasury? Secretary of the Alcohol, Tobacco Tax and Trade Bureau? I don't know. I'm not going to argue that. What I'm going to do is yank the rug right out from under them, because there is only two ways they can show a tax deficiency – either by a bona fide assessment under 26 U.S.C. – which, by the way, as we discussed earlier – all the implementing regulations for assessments are in 27 C.F.R. – OK? OR they can have the deficiency arise by operation of law on the date that the return is required to be filed and you failed to file it.

MG: Well, which forms are we supposed to file, then? According to the regulations?

BL: Well, they tell you – see the regulations for the type of tax – they leave it up to you to figure that one out. Now don't they? Right!! But am I going to argue about what kind of form I'm required to file? NO !! What if you are not required to file? There's only two ways they can do it –either by notice or by implementing regulation. And if you're not a United States citizen or a resident of the United States, or an alien bona fide resident of Puerto Rico, the Secretary better send you a notice to make returns. Because that's the only two ways that they can require you to make the return.

MG: But then they have the regulation that you're supposed to be regulated by. But if you decide which return you're supposed to make then they go after you for filing a frivolous return.

BL: That could be - I don't know – here's the deal – if I'm not a citizen of the United States, I'm not a resident of the United States, and I'm not an alien bona fide resident of Puerto Rico (et.al), then this regulation can not require me to file a return. OK? So that leaves one other regulation [either – well actually two .. well no, one] that is the regulation for the type of tax. Now if they want to say sub-title A income tax – FINE!!

Show me the regulation for the tax because there is none!! They refer you to the implementing regulations for the type of tax. It's what I'm saying – it's like they do this circular reasoning thing. The only other way they can require you to make the return is by a notice served upon you by the Secretary.

So, the first thing I want to do is get rid of any erroneous presumption as to my political status. I'm NOT a United States citizen, and I'm not a resident of the United States. And here's the beauty of it: the only one who can determine your political status is you?? NOT THE COURT!! I believe it's also the reason that in their indictments – the ones I've seen – never do they say that the acts occurred in the “city of”, “the county of ___”, the “state of ___”. They always say “Western district of Florida, or Northern district of Ohio” or whatever, OK? They never allege the specific location and I believe its because they're trying to cover their basis here on being a resident of the United States or showing that it happened within “the United States” because if it didn't then you are not in the right venue. And how many of these people try to challenge venue - not very many – and the ones that do are not successful because they don't say it in the correct manner. So, it's absolutely critical to get rid of any erroneous presumption as to your political status if you ever hope to avoid being convicted of income tax evasion felony charges – or even willful failure to file.

And I know how important this is because I know some people who got a notice from the IRS where they were told we are going to recommend you for felony-tax-evasion and willful-failure-to-file charges. And as soon as they wrote in and said, “well, wait a minute, where is the notice served on my [by the secretary] to make the return? They dropped the willful-failure-to-file charges recommendation.

MG: Wow!

BL: Yeah! But most people don't understand including attorneys – that if you want to defeat that – let me put it this way: the only way you can establish that there is no tax deficiency by operation of law on the date the return is required to be filed is to show that you are not one of the “persons” required to file. In other words –you've got to be doing your administrative process long before you head into court. Getting rid of the presumption you are a United States citizen or a resident or an alien bona fide resident of Puerto Rico. If you're not doing it and you're not challenging those bogus activity codes in your IMF showing you're engaged in an activity in Puerto Rico or Virgin Islands or whatever, you're messing up. You're going after the wrong issues in the case and your chances of winning are slim to none.

MG: I had a question.

BL: Sorry to hog up all the talking Mel, but

MG: It slipped my mind – and was kind of important one too -- OK, so, let me get this straight. The Secretary of the . . . has to notify you, but we don't know which Secretary it is....

BL: Who cares?? Whichever one is required is required to notify you.

MG: There's something very interesting about that I noticed yesterday. As I was scanning the Secretary of the Treasury – well – we usually tie the Secretary of Treasury with the IRS. So maybe it's the Secretary of Treasury. But . . . what I found out is that the BATF is no longer part of the underneath the Secretary of Treasury. No longer under that office. And yet IRS remains there. But . .

BL: Oh, NO !! (lol) I think the IRS show up under banking – I'm not sure. But, I remember a while back on one of the shows that we did, where I showed the history of the IRS and how they changed the name to ATF or BATF and then they changed it to Alcohol, Tobacco Tax and Trade Board? Well, there you go – that's what's happened, OK? They're just not named BATF any more.

MG: The IRS still is going after people with . . . Secretary of Treasury on the IRS notices. And they're going after you under "6000" executors [notices??] – cause under 6000 is where they get to make the false assessment.

BL: Well – that could be

MG: And then, but, that directly comes under – I think its 5000. Starts in the 5000 [series?] directly under Part 70 of Title 27, under Alcohol, Tobacco, and Firearms.

BL: Yeah!! Those are where the implementing regs are found – Yeah you bet!

MG: So that means it can't be the Secretary of Treasury that notifies you.

BL: Well – which ever Secretary is required, better do it. I don't care which one it is. One of them is required to do. If they don't do it, they're screwed. So I don't care if it was the Secretary of Moon Dancing.

MG: But – in order to abate what the IRS does in making an assessment - when they are going to make a false assessment, you've got to write to the Secretary and demand an abatement.

BL: BUT THEY NEVER ASSESS, MEL !! That's my whole point. They send out a notice of deficiency – that's NOT an assessment!! When you look at the definition in 27CFR, part 70 about what an assessment is; that's not it. There's two guys: the district director, I think, and someone elsethat can appoint an assessment officer. He's the one who's got to sign the summary record of assessment and file it in the office of the Secretary and it's not until he signs it does the assessment arise. And then, the only time they have to give you a copy is when you ask for it. And when you look through the code and you look at the notice of deficiency and everything else for demand of tax due and owing, they're not even authorized to do that without the assessment according to the regs. But they're doing it because if you're one of the people who's required to make

a return and you don't make it the deficiency arises by operation of law on the date the return was required to be filed. It's that simple, Mel. They've just hidden it, they've disguised it, and people really are not picking up on this.

MG: Yes they sure did, didn't they?

BL: Yup. Well, I've been at this a number of years and I just realized it here the other week and it was like WOW!! I knew United States citizens and residents were the ones liable for the tax. And I knew status correction - or presumption killing, a better way to put it - was important, but I didn't have the full understanding of how important it was until I reasoned this out the other week and it hit me like a ton of bricks. When I understood how they're doing this to people in prosecuting them in court. Yup - charging two separate crimes. People don't catch on. Most people never challenge the lack of an assessment or the lack of venue - and the ones that do, they still have the back up thing where if they didn't file the return it arises by operation of law.

And if you try to challenge "you are not a United State citizen" and not a resident in the middle of a court case it's like an exercise in futility. You better have it done before you get to court and even better yet - is the very first letter you get from these clowns you better be telling them you are not a US citizen or resident - IF THAT'S TRUE - and better be asking them to provide you the assessment. Because those are the two things right there which they need to sustain a conviction for felony-tax-evasion or even for willful-failure-to-file.

MG: So what is the proper way to attack the venue issue?

BL: Demand that they allege the specific location where the acts took place - challenge the lack of venue. That would be the first step. Look in the US Attorney's Manual: and they tell you right in there if they [you] don't challenge lack of venue before trial they [you] waive it. And even cite a case telling them the division of a district is not a unit of venue but you [they] just allege that it happened in the District of whatever and if they [you] don't challenge it . . . oh, well. It pretty much says that right in the US Attorney's Manual.

MG: So you want to attack that first thing

BL: You better raise it and don't let go of it. Raise it at every opportunity.

MG: That's a real important issue.

BL: Yup. As well as presenting the certified copies of your administrative process (i.e.), getting rid of the presumption that you're a US citizen or resident. Because that's the evidence that you want to them administratively and you demanded a hearing on it and they refused to do it and they still moved forward knowing it was a complete fraud. Because -- and I gave you the sections and the regs - there's only a few manners in which they can require you to file a return. That is either by regulation or by serving

notice upon you. And if they fail to identify the type of tax they claim you are liable for with its implementing regulations then they must serve upon you notice to make a return OR they must show you are a US citizen or a US resident. And that they responded to your administrative paperwork and determined you weren't and this is why, etc. etc. But, it's critical for people to quit messing around if you want to beat these clowns.

MG: I can see that. They're pretty sneaky. They hide the regulation and whenever you ask them: where's the regulation requiring me to file, they stay silent.

BL: Yeah, I know they do

MG: Isn't there some kind of maxim that says that they can't go after harm for something – when they should have spoken up and refused to do so??

BL: Yeah – it's called equitable estoppel – the doctrine of equitable estoppel. US v Tweel, and Carmine vs Bowen. Both discuss that doctrine and when there's a legal and moral duty to speak and you remain silent it is equated with fraud – and yes they are. But, here's the thing: everybody's got it now, or every listener has it now. So tell everybody!! Get them a copy of this show, make 'em listen to it. You want to start winning? Take this information and use it.

MG: Good idea! And the IRS is not – everybody thought that since the Secretary of Treasury claimed that there is [are] no more field offices that somehow the IRS would go away.

BL: Yeah! Right!!

MG: So people stop filing everything and now they've come out with bigger budgets to go after people and they are really having a field day with what they are doing, and, it really looks like it has to be under some kind of treaty or other law because it's really hard to find where they have the authority to do what they are doing at all.

BL: Well, the history I gave of the IRS, of the internal revenue service, to the IRC, really being Title 3 as amended as a national prohibition act and – when you read all these internal revenue codes - I think it was '39, '54, '86 and probably more in between those – when you read them they involve things like the Guam Tax Treaty, The China Tax Treaty, all these treaties – this and that. And it's all true. I mean its according to what I understand. President Taft even made it clear on the Congressional record that the IRC basically only applied to government agents and employees. Well, this is all true but here's the problem: if you are a “person” required to make a return and you don't do it there's a tax deficiency – now you're screwed – there is no where to go.

So you have to get rid of that presumption that you're one of the “persons” required. Because that's the hardest one to kill. Getting rid of the charge on the lack of an assessment: that's easy. You demand they produce the assessment and the charge of defeating/evading payment is gone. Cause that's an essential element according to

what the courts are saying. However, in attempting to evade/defeat the assessment you better not be required to make a return. So how do you show that?? Well, there's no implementing regulation for me: I am not a US citizen, or a resident or alien bona fide resident of Puerto Rico and I never got served a notice. And here it is, right in these code sections that requires these things and none are present, so . . .

Barry: Bobby! This is Barry Smith. Been listening to the show on Skype. I just want to interject something here. Have you ever heard the story of Eric WhoRU? Who went into court with these kinds of issues: "I am not a US citizen"?

BL: No.

Barry: What he did is he appeared before the judge and he says: I don't think I should even be here. I think it was a criminal charge. And he [judge] says why not? He says, cause I don't think I'm a US citizen. Judge says: where were you born? He says: I have no idea. I wasn't really there, you know. Well where did your mother tell you where you were born? He says, I don't know if she's really my mother, because I couldn't have picked her out of a line up of one. And then, the last thing, he just wasn't qualified and the judge says: Well, OK, then, if you're not a US citizen you are free to go.

BL: Thanks for tuning in. Bye. [All, bye.]

Transcribed by Klaus Becker, 3 Aug 08, wtpn@cox.net

Found at:

<http://www.freedom-school.com/tax-matters/bobby-lowman-07-27-2008.pdf>

Bobby Lowman, Klaus Becker, Mel's "Bar & Grill", and World Wide First Amendment Radio (<http://www.wvfar.com/>) are not affiliated with Freedom-School.com

NOTICE: Information served herein is for educational purposes only, no liability assumed for use. The information you obtain in this presentation is not, nor is it intended to be, legal advice. Author does not consent to unlawful action. Author advocates and encourages one and all to adhere to, support and defend all law which is particularly applicable. If anything in this presentation is found to be in error a good faith effort will be made to correct it in timely fashion upon notification.
VOID where prohibited by law.