INVESTIGATING

THE

FEDERAL INCOME TAX:

A PRELIMINARY REPORT

1st Edition

By

Joseph R. Banister

This report is intended to assist citizens and public servants alike in understanding the U.S. Constitution, specifically as that document relates to the federal tax, banking, and monetary systems. No assurance is given by the author that this report is comprehensive in its coverage of the subject matter or that it provides a complete analysis of the subject matter presented. This report is offered as a vehicle for discussion and debate and for general informational purposes only. It does not constitute legal or professional advice, it is not meant to induce anyone to break any laws, and it should not be relied upon as a substitute for proper research and inquiries into original sources of authority.

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CONTENTS

Introduction **1**

Background **2**

Allegation 1 - Due to Limitations Imposed By The U.S. Constitution, Filing of Federal Income Returns and Payment of Federal Income Tax Is Voluntary, Not Mandatory **3**

Allegation 2 - The 16th Amendment To The U.S. Constitution, The Amendment Which Precipitated The Federal Income Tax, Was Never Legally Ratified **35**

Allegation 3 - The U.S. Government Finances Its Operations From The Unconstitutional Creation of Fiat Money, not With Revenue From Income Taxes **61**

Conclusion **81**

Appendix **83**

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INTRODUCTION

In late 1996, the author of this preliminary report was listening to a radio program in which a woman alleged a number of serious flaws, both constitutional and otherwise, with the federal income tax system as well as the federal banking and monetary systems. Since the author had made his living in the accounting and tax professions for over 10 years, he believed that, at a minimum, the ethics of his profession and his duty as a citizen and law enforcement officer required that he investigate the allegations further. This preliminary report documents the process taken and the evidence examined during a two year investigation into the validity of these allegations.

The investigation concentrated on three primary allegations:

- **Allegation 1:** Due to Limitations Imposed By The U.S. Constitution, Filing of Federal Income Returns and Payment of Federal Income Tax Is Voluntary, Not Mandatory
- **Allegation 2:** The 16th Amendment To The U.S. Constitution, The Amendment Which Precipitated The Federal Income Tax, Was Never Legally Ratified
- **Allegation 3:** The U.S. Government Finances Its Operations From The Unconstitutional Creation of Fiat Money, not With Revenue From Income Taxes

The reader will notice that this report is referred to as "preliminary." This reference is intentional. These allegations are very serious. However, during the investigation, the author encountered a recurring reluctance on the part of individual officials from each of the three branches of both the federal and state governments to investigate or address these allegations. The purpose of this preliminary report is to bring these allegations to the attention of American citizens and government officials alike in order to generate discussion and debate.

This report was prepared by Joseph R. Banister, who graduated in 1986 from San Jose State University with a Bachelor's Degree in Accounting. He spent three years at *KPMG Peat Marwick* on their professional staff as a senior tax specialist and staff auditor. He then spent nearly two years in the venture capital industry during which time he became a licensed Certified Public Accountant (CPA) in the State of California. Mr. Banister left public practice as a CPA in 1993 when he accepted appointment as a Special Agent (criminal investigator) in the Department of the Treasury, IRS Criminal Investigation Division (IRS-CID).

Mr. Banister began this investigation as an attempt to satisfy his curiosity about certain allegations regarding the federal income tax – allegations that he initially considered outrageous and unbelievable. The investigation was conducted on his own time and at his own expense. Based on his many years of experience with the federal income tax from both the compliance and enforcement perspectives, he fully expected that these allegations would prove to be false. However, after gathering and evaluating all of the evidence, Mr. Banister learned that most, if not all, of the allegations had merit. This report will explore the process that led Mr. Banister to this evidence as well as the evidence itself.

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BACKGROUND

How These Allegations Came To My Attention

One day in December 1996, I was listening to a talk radio program on KSFO "Hot Talk 560," a San Francisco based radio station. The host of the program, Geoff Metcalf, was interviewing a guest named Devvy Kidd. Mrs. Kidd spoke about a number of different topics but she made some allegations about the federal income tax that astonished me. Kidd alleged, among other things, that the federal income tax was voluntary. Since I made my living investigating criminal violations of the federal tax laws, I listened very intently to what she had to say.

Up to that point, I had always considered Geoff Metcalf to be a very reputable and honest talk show host who could back up everything he broadcasted with facts and evidence. I found it odd that he would invite a guest like Kidd on his show and allow her to make such an outrageous claim. At the end of the show, Mrs. Kidd gave out an address where listeners could send for more information. My belief in Metcalf's credibility coupled with incredible curiosity prompted me to write to Kidd for the information she offered.

In January 1997, I received a package from Mrs. Kidd that contained two books approximately 50 pages in length. One was entitled *Blind Loyalty* and the other was entitled *Why A Bankrupt America?*. The books were filled with very shocking claims about the United Nations, the federal income tax system, and the federal banking and monetary systems, among other topics. I read both of Kidd's booklets thoroughly and I found a more detailed explanation of the allegations she had made on the radio. There were three allegations that I found the most profound and unbelievable:

- **Allegation 1:** Due to Limitations Imposed By The U.S. Constitution, Filing of Federal Income Tax Returns and Payment of Federal Income Tax Is Voluntary, Not Mandatory
- **Allegation 2:** The 16th Amendment To The U.S. Constitution, The Amendment Which Precipitated The Federal Income Tax, Was Never Legally Ratified
- **Allegation 3:** The U.S. Government Finances Its Operations From The Unconstitutional Creation of Fiat Money, not With Revenue From Income Taxes

Kidd's allegations were so shocking and contrary to everything I had been taught that I spent many months simply thinking and meditating about what I had read. In the latter part of 1997, I read the book, *The Creature From Jekyll Island*, authored by G. Edward Griffin. Griffin's book shared some of the same subject matter as Kidd's books, which prompted me to pick them up a second time. During this second review, I noticed an unusual aspect about Kidd's books that I had paid little attention to the first time through. Kidd had a practice of including telephone numbers of the people responsible for the evidence she provided. It was at this point that I realized I could simply telephone these men and make direct inquiries about the evidence supporting their allegations. In December 1997, I decided to contact them personally in order to determine the truth.

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Allegation 1

Filing Federal Income Tax Returns and Paying Federal Income Tax Is Voluntary, Not Mandatory

As I said previously, I had read and re-read Devvy Kidd's booklets and found the contents beyond belief. Still, I couldn't be sure until I found out for myself, and personally telephoning the people who made these allegations seemed like the best approach. I was tempted to call Kidd first but I decided that since the income tax issue was my area of expertise, I would start with those directly responsible for the allegations regarding the federal income tax.

I took some time off work and called the first man on my list - a man named Bill Conklin who claimed that no one was required to file federal income tax returns. Kidd had included in her book, *BLIND LOYALTY*, a press release issued by Conklin on December 10, 1994, in which he announced a decision by the 10th Circuit Court of Appeals. The appeals court ruled in *Conklin v. United States* that filing federal income tax returns was not required. Conklin included his telephone number on the press release.

You have to understand that at this point I was not only skeptical about Conklin's allegation that filing federal income tax returns was voluntary but I was also skeptical about being able to discuss his allegations in a logical manner. The reason for this skepticism was based on a belief largely influenced by my previous IRS training - a belief that people like Conklin, commonly referred to as "illegal tax protestors" by the IRS, were not to be taken seriously. According to what I had been taught in training, *illegal tax protestors* were kooks whose arguments against the federal income tax made no sense and had no basis in fact or law. Perhaps the animosity between so-called *tax protestors* and IRS agents has resulted, in part, because these two factions regularly meet face to face as they somehow reconcile our American income tax laws with our American tradition of liberty. When the two factions collide, sparks often fly.

During my criminal investigator training, the Internal Revenue Service emphasized that there were two types of tax protestors - *legal* and *illegal*. *Legal* protesters were the largest group because they consisted of just about everybody - from the complainers, marchers, and sign waivers to loophole seekers and those who tried to effect changes in the tax law. *Illegal* protestors were a much smaller category of those who, according to the IRS, refused to obey the law or had corrupted its meaning. Protestors in the *illegal* category were known to risk jail for their beliefs.

There is no doubt that *some* so-called *tax protestors* have corrupted the meaning of the federal income tax law to swindle innocent people. For example, some groups, for a large up front fee, have convinced others to join a tax scheme which eventually led to heavy penalties, interest, and, for some, jail time. These groups promised a "silver bullet" approach that would do away with income taxes forever. I wasn't sure whether Conklin would offer the silver bullet approach or some other alternative.

Conklin could not have had a more skeptical caller. When I first decided to call him directly, I thought that perhaps the phone number on the press release would have been disconnected or no longer in service. After all, the press release was dated December 1994 and I was calling three years later. I honestly did not expect anyone to

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WILLIAM T. CONKLIN

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December 10, 1994

NEWSRELEASE FOR IMMEDIATE RELEASE

The Tenth Circuit Court of Appeals has ruled in Conklin v. U.S.A. (94-1213) that filing tax returns is not required.

Their decision is unpublished.

I discovered about fifteen years ago that a requirement to file 1040 tax returns would be unconstitutional to the extent that it requires individuals to waive their Fifth Amendment Rights.

About 10 years ago I started offering a $50,000 reward to anyone who could show me:

(1) What Statute in the Internal Revenue Code makes me liable to pay the income tax?

(2) How I can file a 1040 tax return without waiving my Fifth Amendment Rights?

Although many people have applied for the reward; no one has answered the question. The famous attorney Melvin Belli applied for the reward and he backed down when I explained the law to him. Another man in Seattle sued me in Federal Court for the reward and I won and got costs against him.

About eight years ago I raised this issue and filed suit in Federal Court. The judge sat on the case for five years before ruling against me. He told me in open court that if he ruled in my favor he would overturn the income tax system. He ruled that the Fifth Amendment does not apply because filing returns is not required. The Tenth Circuit upheld his decision.

By the way, the Fifth Amendment to the United States Constitution is the Amendment that says that citizens do not have to give the government information that can be used in criminal cases. The IRS consistently uses information on tax returns in criminal cases. I have worked on many criminal cases with different attorneys and I have witnessed this phenomenon many times, myself.

I have won six published wins against the IRS on my case alone. The cites are:

U.S. v. Church of World Peace, 878 F.2d 1281.
Tavery v. United States, 897 F.2d 1032.
Conklin v. C.I.R., 897 F.2d 1027.
Church of World Peace, Inc. v. IRS, 715 F.2d 492.
United States v. Church of World Peace, 775 F.2d 265.
Conklin v. United States, 812 F.2d 1318.

If you type my name into any legal data base computer, you will see dozens of cites to my cases. As you can see, I am quite serious and successful in my challenge to the Internal Revenue Service and the Federal Income Tax.

My story is very interesting and I can prove beyond the shadow of a doubt that the IRS has been lying to the American public about the Nature of the Federal Income Tax for eighty years.

It is time to bring the truth to the American Public and let them decide what to do with the Income Tax. For the last ten years I have traveled this Nation speaking about this problem. People like to hear what I have to say.

I have written a book that has been published about this issue. The book is: The Freedom Book: A Manual in Fighting the Usurpation of Unconstitutional Government.

I hope to hear from you.

Sincerely,

Bill Conklin

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answer but I dialed the number anyway. After a few rings, I connected to an answering machine and a voice identifying itself as "Bill Conklin" gave a short greeting and invited the caller to leave a message. I left a message telling Conklin my name and that I was looking for information regarding voluntary tax returns. In order to increase the chances of a returned call, I also told Conklin that he might be a little surprised at what I did for a living.

Within an hour, Conklin called me and I proceeded to tell him that although I was calling as a private citizen, on my day off and from my home telephone, I was employed as a Special Agent in the IRS Criminal Investigation Division. I then told him that his allegation that no one is required to file federal income tax returns seemed too incredible to be believed and I was admittedly skeptical. After talking a little more about what I did for a living, I sensed that Conklin believed I really was an IRS Special Agent (after all, I had no way of proving it over the telephone.

I told Conklin that I did not have an ax to grind nor did I have a hidden agenda. I told him his allegations and court victories genuinely intrigued me and I wanted to learn more. I further told him that I was interested only in the truth, and that I intended to call others in Devvy Kidd's booklets about the federal income tax issue. Conklin admitted to me that he had never received a call from an IRS criminal investigator attempting to satisfy his curiosity and he considered my telephone call a pleasant surprise.

We spoke for a while and Conklin restated much of what I had read in Devvy Kidd's materials but he also filled in additional details. Conklin offered to send me some additional information, including his book, *WHY NO ONE IS REQUIRED TO FILE TAX RETURNS and what you can do about it.* He also made a unique gesture by offering to send me $50.00 to offset long distance charges that I might incur as I investigated the issue further. Since it was a thoughtful gesture to begin with, and since I was doing this little investigation on my own time and at my own expense, I accepted his $50.00 offer. Conklin suggested that I speak with one of his trusted friends, a man named Peymon Mottahedeh. Within a half-hour, I received a call from Peymon (pronounced *pay-mon*).

Like Conklin, Peymon was surprised that an IRS agent was calling to research these tax issues for himself instead of simply taking the agency's word for it. I repeated to Peymon that I was still very skeptical about these allegations but that I was willing to receive any evidence he could provide. Peymon went on to explain how he was a patriotic American who had emigrated to the U.S. from Iran. He also told me his family was something of a rarity in Iran - they were Jews. So much for the myth that patriots and so-called *illegal tax protestors* are anti-Semitic! We traded telephone numbers and Peymon said he would send me some additional information.

Within a few days, I received a *Priority Mail* package from Conklin. In it I found a $50.00 bill and a 66 page booklet entitled, *WHY NO ONE IS REQUIRED TO FILE TAX RETURNS and what you can do about it.* Also inside were various flyers and announcements including one for a $50,000 reward payable to anyone who could show Conklin what statute makes him liable to pay federal income tax and how he could file a tax return without waiving his 5th Amendment rights. As soon as I found some time, I began reading Conklin's book *WHY NO ONE IS REQUIRED . . .* which described the process by which Americans waive their 5th Amendment rights when they file federal income tax returns. Conklin explains the process as follows:

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> Since the population is generally ignorant as to the nature of their rights and their constitutional protections, the federal government continues to get away with the biggest scam in United States history; they've done so for over 80 years. The government of the United States of America, through its agency the Internal Revenue Service, supported by a court system that deliberately ignores the law in tax cases, is requiring individuals to waive their Fifth Amendment protected rights to provide information on April 15, that may be used against them criminally. Such a situation makes a complete mockery of the Fifth Amendment. Through the IRS and the Department of Justice the government, by carefully orchestrated trials and outrageous fines and criminal penalties, instills fear and thus perpetuates a tax system which is not only un-American in that it taxes an individual's industriousness and productivity, but unconstitutional in that Americans must waive their constitutionally protected rights in order to comply with it. In this manner, they essentially beat confessions out of 100 million Americans each year, and make a mockery of our Bill of Rights. It is time for us to wake up, assert our rights again, and reveal the truth to others.

In order to provide a better understanding of Conklin's court victory, a review of the 5th Amendment to the U.S. Constitution is appropriate:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; **nor shall be compelled in any criminal case to be a witness against himself**, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. (Emphasis added)

Conklin court victories focused my attention on the fact that American taxpayers, without realizing it, apparently waive their 5th Amendment rights every time they submit information on their federal income tax returns. I was fairly familiar with the 5th Amendment since, as a criminal investigator, I was required to read criminal suspects their *Miranda* [5th Amendment] rights whenever I questioned them. I never considered that the information submitted on an income tax return could just as readily be used against someone. I never considered that when a taxpayer files an income tax return or is audited, they "answer questions" and "submit information" to IRS agents just as they might do when talking to me after I had given them the warning below. I am sure few Americans realize that as they bare their financial souls on their federal income tax returns, they are volunteering information that can be and will be used against them in criminal prosecutions.

I thought about the *Miranda* style warnings given to those questioned by IRS Special Agents prior to questioning. The following statement was required to be read before speaking to <u>anyone</u> who was the potential subject of an investigation:

> As a special agent, one of my functions is to investigate the **possibility** of criminal violations of the Internal Revenue Laws, and related offenses. In connection with my investigation of your **tax liability** (or other matter) I would like to ask you some questions. However, first I advise you that under the **5th Amendment** to the Constitution of the U.S. I **cannot compel** you to answer any **questions** or to **submit any information** if such answers or information might **tend to incriminate you in any way**. I also advise you that **anything** which you **say** and **any documents** which you **submit**

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> may be **used against you** in any criminal proceeding **which may be undertaken**. I advise you further that you may, if you wish, seek the assistance of any attorney before responding. (Emphasis added)

If federal income tax return filers realized they were voluntarily waiving a very precious 5th Amendment right each time they filed, I expect they might consider doing what many people did when I read them their rights - keep their mouths shut and not hand me any documents or financial information. But why is it that citizens who file income tax returns and those subjected to an income tax audit aren't warned that anything which they say and any documents which they submit can, and do, end up being used against them in a criminal investigation?

Is there any difference, as far as your 5th Amendment rights are concerned, between an IRS special agent (criminal investigator) asking you questions and an IRS auditor asking you questions? Answers to questions from an IRS auditor or information you provide on your federal income tax return can be used against you in a criminal case just as readily as answers to questions from a special agent. I know this from personal experience. When I assisted prosecutors from the U.S. Department of Justice in preparing to prosecute a taxpayer who had been charged with an income tax crime, it was accepted and quite common for the prosecutor to use statements that the taxpayer had made on their income tax return, as well as any statements the taxpayer made to the IRS auditor, against them.

The preamble to the U.S. Constitution's Bill of Rights, which includes the 5th Amendment, says the following about why these rights are so important:

> The conventions of a number of the States having at the time of their adopting the Constitution, expressed a desire, **in order to prevent misconstruction or abuse of its powers**, that further declaratory and restrictive laws should be added: And as extending the ground of **public confidence in the Government**, will best insure the beneficent ends of its institution. (Emphasis added)

This preamble clearly indicates that the 5th Amendment and the rest of the Bill of Rights were created to curb government abuse, not to provide some loophole for criminals to escape punishment.

The courts also recognize the meaning and importance to the average citizen of the 5th Amendment. In *Counselman v. Hitchcock*, 142 U.S. 547; the U.S. Supreme Court said:

> . . . We are clearly of opinion that no statute which leaves the party or witness subject to prosecution after he answers the criminating question put to him can have the effect of supplanting the privilege conferred by the constitution of the United States . . .In view of the constitutional provision, a statutory enactment, to be valid, must afford absolute immunity against future prosecution for the offense to which the question relates.

In *United States v. Sharp*, 920 F.2d 1167, the 4th Circuit Appeals Court said:

> . . . The fifth amendment's protection against self-incrimination applies *in any type of proceeding* whether civil, criminal, administrative, investigatory, or adjudicatory . . .

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> And it applies not only to evidence which may directly support a criminal conviction, but to information which would furnish a link in the chain of evidence that could lead to prosecution, **as well as evidence which an individual reasonably believes could be used against him in a criminal prosecution**. . . . Accordingly, it may apply in the context of an IRS investigation into civil tax liability, **given the recognized potential that such investigations have for leading to criminal prosecutions**. (Emphasis added)

In *United States v. Argomaniz*, 925 F.2d 1349, the 11th Circuit Court of Appeals said:

> ...There can exist a **legitimate fear of criminal prosecution** while an IRS investigation remains in the civil stage, before formal transfer to the criminal division...

Another example is *Garner v. United States*, 424 U.S. 648, 96 S.Ct. 1178 (1976), in which the U.S. Supreme Court held that the information in an income tax return is the "testimony of a witness." Since the 5th Amendment guarantees that a citizen can not be compelled in any criminal case to be a witness against himself, and information on a return is routinely shared with prosecutors in the Department of Justice and other law enforcement agencies in the United State and around the world, wouldn't any law requiring a citizen to file a return be unconstitutional?

Many of us probably have some familiarity with the 5th Amendment to our U.S. Constitution, but we're clearly not as familiar with it as we should be. During my five years in law enforcement, it was quite common for me to read someone their *Miranda* rights (see above) before questioning them. However, as I said before, I often thought of the 5th Amendment as a protection used by *criminals*. I have come to appreciate my 5th Amendment and other constitutional rights a lot more than I used to. I' know many citizens have grown weary of the government telling them that they have to give up more and more of their rights so that they can be better taken care of. Unfortunately, it's as if more and more of our rights are given up year after year and the government never keeps its end of the bargain!

Bill Conklin has had his own battles with the IRS about whether or not filing tax returns is required and whether or not our 5th Amendment rights are waived every time we file an income tax return. But what specifically did Conklin learn that made him realize that filing income tax returns was voluntary? Here's a brief summary:

> Conklin has determined three flaws with the federal income tax:
>
> First, there is no statute that makes a person liable or responsible to pay the income tax. Individuals only become liable to pay the income tax when they voluntarily file a tax return, or when the IRS follows its assessment procedures as outlined in the Internal Revenue Code.
>
> Second, If there were a statute which clearly and unequivocally required the filing of tax returns, such a statute would be unconstitutional under the present income tax system to the extent that it would require individuals to give the government information which could be used against them criminally.

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> Third, The Internal Revenue Service, under our U.S. Constitution, cannot legally require information on 1040 returns from individuals-that is why the IRS continually refers to the income tax as "voluntary."

In 1986, Conklin filed an unsigned federal income tax return with a cover letter pointing out that he had discussed with several attorneys his perceptions of the 5th Amendment conflict with the requirements of filing returns, and none of the attorneys had been able to show Conklin how he could file a return without waiving his 5th Amendment rights. Conklin included copies of the opinion letters drafted by the attorneys with his unsigned return. Conklin even gave the Internal Revenue Service a power of attorney to sign the return for him if they could do so without waiving his 5th Amendment rights. According to Conklin, the IRS never filed his return for him.

However, the IRS, after receiving Conklin's unsigned return and attachments, did fine him $500 for filing a "frivolous return." Conklin fought back by suing the IRS in federal court over the issue. After five years of battle in federal court, Judge Nottingham of the 10th Circuit U.S. District Court told Conklin that <u>if he were to rule in Conklin's favor, he was afraid that he would overturn the federal tax system</u>. Notice that the judge didn't say Conklin was wrong, he just said he couldn't rule in Conklin's favor because it would overturn the federal tax system.

Judge Nottingham did eventually rule against Conklin, but the predicament Conklin put Judge Nottingham in was readily apparent. Nottingham took the position that Conklin's 5th Amendment rights were not at issue because in order for the 5th Amendment to be applicable, Conklin's testimony (on the income tax return) would have had to be "compelled." Since filing returns is voluntary, ruled the judge, Conklin's testimony (on the tax return) was not compelled and 5th Amendment protection is not available when the testimony is volunteered. Unfortunately, Judge Nottingham's ruling was in direct contradiction with the U.S. Supreme Court's 1976 *Garner* decision mentioned above. In *Garner*, the Supreme Court also said:

> . . . [I]t cannot fairly be said that taxpayers are "volunteers" when they file their tax returns. The Government compels the filing of a return much as it compels, for example, the appearance of a "witness" before a grand jury...

Are you thoroughly confused about whether filing returns is required or not? Don't be too hard on yourself. As you can see, the income tax law and the way it is administrated and enforced appears to have a confounding effect on the judiciary too!

Conklin commented on Judge Nottingham's ruling in his book *WHY NO ONE IS REQUIRED TO FILE INCOME TAX RETURNS*:

> As the judge had mused out loud earlier during one of the hearings, either way he ruled, I win! For example, if he were to have ruled that the $500 fine be abated, he would have to decide that the unsigned return and my contentions were not frivolous. But he couldn't do that, because then other folks might start submitting unsigned returns. That would pull the IRS' teeth--they could no longer fine folks for submitting a "frivolous" return, but more importantly, how then could the IRS use anyone's return information against them criminally if they hadn't signed it "...under the pains and penalties of perjury?"

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> On the other hand, his upholding the $500 fine would mean that he was ruling against the written, professional opinions of six attorneys whom I was relying on, and would underscore the uncomfortable fact that their opinions brought into sharp focus; namely, that the IRS could use the club of a fine to force me to sign and submit a return, forcing me to waive my rights not to be a witness against myself.
>
> Either the 5th Amendment applies because filing returns is compelled, or the 5th Amendment does not apply because filing returns is voluntary...The IRS, in an obvious attempt to deal with the problem, continually refers to the income tax system as voluntary.

Is The Federal Income Tax Voluntary?

Conklin provided other information that expanded on Kidd's allegation that the federal income tax system is voluntary as opposed to mandatory. Conklin's analysis was so compelling that it prompted me to conduct my own personal investigation. Conklin pointed out a number of examples contained in actual IRS documents that show that the IRS *does* continually refer to the federal income tax system as *voluntary*. Despite five years spent working for the IRS and eight years complying with the income tax law, I never realized how much the IRS used the word *voluntary* when referring to the federal income tax and the filing of returns.

Conklin sent me a copy of portions of the *Internal Revenue Manual* (IRM) that he received via a Freedom of Information Act (FOIA) request. Notice the use of the word *voluntary* in the following IRM passages and see for yourself:

> Section 4022.65
> Place and Time for Appearance
> (3) When a person indicates he/she will **voluntarily** comply but requests that he/she be served with a summons as evidence of his/her legal duty to produce records or testify . . . (Emphasis added)

> Section 5535.4
> (b) BMF accounts-
> 1. Advise taxpayers that the return(s) may be processed under IRC 6020(b) if not filed **voluntarily**...(Emphasis added)

> Section 4022.41
> (2) Notwithstanding the privilege against self-incrimination, information or evidence furnished **voluntarily** by a person summoned **may be used even though of an incriminatory nature**. (Emphasis added)

As you can see from actual passages from the IRS's own manual above, the IRS clearly emphasizes that information given on tax returns and information given subject to an IRS summons is done *voluntarily*. Conklin says the IRS purposely uses the word *voluntary* because the IRS knows that for it to *require* information (legally referred to as "testimony") would be illegal and unconstitutional. Is filing a tax return voluntary? Read the following passages from the Internal Revenue Manual as written and then read them again removing the word voluntary to see how *voluntary* is included over and over again without it being necessary to the meaning of the sentence:

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IRS POLICY STATEMENTS: P-4-84 (Approved 7-6-83)

The purpose of criminal tax investigations is to enforce the tax laws and to encourage **voluntary** compliance. (Emphasis added)

Chapter 100 - Purpose and Instructional Use of Handbook
Section 110
INTRODUCTION
(1) The primary mission of Taxpayer Service is to promote **voluntary** compliance through education and assistance to taxpayers. (Emphasis added)

Section 13(91) (8-15-89)
INTRODUCTION
(1)....
(2).... The purpose of this program is to assess the correct tax liability by either:
(a) securing a valid **voluntary** income tax return from the taxpayer and/or
(b) Computing...(Emphasis added)

Part VI - Taxpayer Service
(13)31 (8-15-89)
INTERVIEW PROCEDURES
(1) (f) In walk-in areas, accept and/or assist in preparation of delinquent tax returns **voluntarily** submitted by taxpayers...(Emphasis added)

Now take a close look at the preceding Internal Revenue Manual sections. Why does the IRS manual use the word *voluntary* in these phrases and sentences when the word serves no apparent purpose? If filing tax returns, reporting income, and paying income taxes is mandatory, why the constant use of the word voluntary? Or *does* the word voluntary serve a purpose? The purpose being that, as Conklin and others allege, the IRS knows that they can not *require* you to file income tax returns and give them information because the 5th Amendment prevents them from doing so. It is something to think about. Why does the IRS instruct its employees to "promote **voluntary** compliance through education and assistance?" Why doesn't the IRS just instruct its employees to "promote compliance?" Why does the IRS instruct its employees in "securing a valid **voluntary** income tax return from the taxpayer?" Why doesn't the IRS just instruct its employees in "securing a valid income tax return?"

The standard explanation the IRS gives for their use of the word "voluntary" (as in *voluntary* compliance) is that, due to limited personnel and budgets, it is necessary for taxpayers to bear the responsibility of *voluntarily* complying with the federal income tax laws. This explanation makes little sense when one considers the ridiculous way other laws would be written if the same logic was applied.

For example, how often have you heard your local police department asking for you to *voluntarily* comply with the laws outlawing murder? There are certainly a limited number of homicide detectives and the budgets to pay for them. These budgetary limits make it crucial that people *voluntarily* comply with laws outlawing murder, don't they? Well, maybe murder is too harsh a crime to be compared with paying income taxes. What about a crime which more people commit? How about speeding? Have you ever been pulled over and told that you failed to *voluntarily* comply with the speed limit? No?

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Surely the state highway patrol personnel budget is limited. Does the state highway patrol rely on drivers *voluntarily* complying with the speed laws or do they simply rely on drivers complying with the speed laws? The point is that you have a mandatory duty to comply with every law prohibiting murder, speeding, or any other illegal activity – you can not be forced to comply with a voluntary duty. Maybe now you have a better idea of why the IRS explanation regarding their use of the word *voluntary* doesn't make any sense, unless, of course, it serves another purpose.

Homeowners across the country know what paying property taxes is all about. Surely the various counties across the country have "limited personnel and budgets." Yet, I have never heard of a county advising its residents to *voluntarily* comply with the property tax laws because of *limited personnel and budgets* to administer the tax. Instead, the county assessor assesses (fixes the amount of) your property, making you liable for the tax, and sends you a bill. You pay the bill you are made liable for or the county will place a lien (legal claim) on your house until it is paid.

The use of the word *voluntary* is very prevalent whenever the federal income tax is described or discussed by government officials. For example, Dwight E. Avis, Head, Alcohol and Tobacco Tax Division (today's A.T.F.) of the Bureau of Internal Revenue (today's I.R.S.) testified before the House Ways & Means Committee in 1953 regarding administration of the internal revenue laws:

> Let me point this out now. Your income tax is 100 percent voluntary tax, and your liquor tax is 100 percent enforced tax. Now, the situation is as different as day and night. Consequently, your same rules just will not apply, and therefore the alcohol and tobacco tax has been handled here in this reorganization a little differently, because of the very nature of it, than the rest of the overall tax problem.

There are many other examples. In *A Note From The Commissioner* in the 1991 *Instructions For Form 1040* booklet, IRS Commissioner Fred T. Goldberg, Jr. stated:

> As countries around the world embrace our way of life, it is a reminder that government in a free country can only be financed through **voluntary** compliance . . .(Emphasis added)

In *A Note From The Commissioner* in the 1992 *Instructions For Form 1040* booklet, IRS Commissioner Shirley D. Peterson stated:

> You are among the millions of Americans who comply with the tax law **voluntarily**. (Emphasis added)

In *A Note From The Commissioner* in the 1993 *Instructions For Form 1040* booklet, Margaret Milner Richardson, in *A Note From The Commissioner*, stated

> Thank you for making this nation's tax system the most effective system of **voluntary** compliance in the world. (Emphasis added)

Senator Bob Kerrey co-chaired the National Commission on Restructuring the IRS. In an interview conducted by Anne Willette published in *USA Today* on March 5, 1997, the following exchange took place:

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> **Q:** The commission's goal is to "ensure the American public's faith in its government to collect revenue in a fair and courteous manner." Why does being fair and courteous matter?
>
> **Kerrey:** It's a **voluntary** system. If people don't perceive it to be fair, people will not **voluntarily** comply. We are struggling to maintain ground on **voluntary** compliance. (Emphasis added)

Why The Repeated Use Of The Word Voluntary?

During my investigation into why the word *voluntary* is repeatedly used in conjunction with the federal income tax, I discovered a large volume of constitutional research supporting the conclusion that the creators and curators of the federal income tax system have been forced to construct it and administer it as a so-called "voluntary" system, in order to avoid running afoul of the U.S. Constitution. In other words, a way had to be found to pound the "square peg" known as the federal income tax into the "round hole" of the U.S. Constitution. The research shows that this forcing of a "square peg" into a "round hole" has plagued administration and enforcement of the federal income tax since the day it was born. The problem is that the implication of this research is not known or understood by the vast majority of American taxpayers.

The Evolution of Our Contemporary Federal Income Tax

Most Americans are probably unaware that a federal income tax similar to our contemporary system was passed by Congress and became law in 1894. In 1895, that income tax was declared unconstitutional by the U.S. Supreme Court in the case, *Pollock v. Farmers' Loan & Trust Co.* , 157 U.S. 429, 15 S.Ct. 673, aff. ref., 158 U.S. 601, 15 S.Ct. 912 (1895). The *Pollock* Court said:

> . . . The tax imposed by sections 27 to 37, inclusive, of the act of 1894, so far as it falls on the income of real estate, and of personal property, being a direct tax, within the meaning of the constitution, and therefore unconstitutional and void, because not apportioned according to representation, all those sections, constituting one entire scheme of taxation, are necessarily invalid. (Emphasis added)

Not only did this decision by the U.S. Supreme Court invalidate the 1894 income tax act, it re-emphasized the meaning of the constitutional restrictions on direct taxation, namely that direct taxes must be *apportioned according to representation* to be legal. Supporters of the 1894 income tax act had been defeated in the highest court in the land. Less than 20 years later, supporters of the federal income tax attempted to neutralize the *Pollock* decision by amending the U.S. Constitution. Their efforts to institute such an income tax culminated in the passage and alleged ratification of the 16th Amendment.

Although the 16th Amendment has clearly been used as both the basis for implementation and basis for continuance of our contemporary federal income tax system, the truth is that the 16th Amendment, by the U.S. Supreme Court's own admission, did not eliminate constitutional limitations of federal taxing power (i.e. *representational apportionment* of direct taxes or *uniformity* of indirect taxes). In

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Brushaber vs. Union Pacific R.R., 240 US 1, 36 S.Ct. 236, decided on January 24, 1916, the Supreme Court said:

> [T]he proposition and the contentions under it [the 16th Amendment], if acceded to, would cause one provision of the Constitution to destroy another; that is, they would result in bringing the provisions of the Amendment exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned. Moreover, the tax authorized by the [16th] Amendment, being direct, would not come under the rule of uniformity applicable under the Constitution to other than direct taxes, and thus it would come to pass that the result of the Amendment would be to authorize a particular direct tax not subject either to apportionment or to the rule of geographical uniformity, thus giving power to impose a different tax in one state or states than was levied in another state or states. This result, instead of simplifying the situation and making clear the limitations on the taxing power, which obviously the [16th] Amendment must have been intended to accomplish, **would create radical and destructive changes** in our constitutional system and multiply confusion. (Emphasis added)

In other words, the *Pollock* decision, decided prior to the 16th Amendment, clearly and unequivocally stated that direct taxes (such as an income tax) are unconstitutional unless apportioned according to representation. The *Brushaber* decision, decided subsequent to the 16th Amendment, reinforced the earlier *Pollock* decision. A direct tax not apportioned would still be unconstitutional and void. But if the *Brushaber* decision, which occurred after the 16th Amendment, supported the *Pollock* decision, which occurred before the 16th Amendment, why hasn't the truth about the constitutionality of the federal income tax become apparent to the average American? Not surprisingly, the reason seems to be that, as courts have been known to do, traditional interpretations of words and law were lost or misinterpreted. But how did this occur?

Before this question is answered, it is necessary to provide a more detailed explanation about what forms of taxation are legal under the U.S. Constitution. There are only two types of taxation authorized by the U.S. Constitution - indirect taxes and direct taxes. Indirect taxes such as excise taxes, which are required by the U.S. Constitution to be uniform (Article 1, Section 8, clause 1), are generally added to the price of a product and included in the price of that product (like wine, beer, distilled spirits, cigarettes, and gasoline) or when an event takes place (like gambling/wagering or the purchase or ownership of certain firearms). One of the most important characteristics of an indirect tax, such as an excise tax on whiskey, cigarettes, or gasoline, is that it is avoidable. If you don't buy whiskey, for example, you don't have to pay the tax. Direct taxes, which the U.S. Constitution requires to be apportioned according to representation (Article 1, Section 2, clause 3 and Article 1, Section 9, clause 4), are generally paid directly by the taxpayer to the government and are unavoidable. Income taxes have traditionally fallen into the category of direct taxes.

During my investigation into these issues, I contacted a Huntsville, Alabama attorney named Lowell H. (Larry) Becraft, Jr. It turned out that Becraft also knew Devvy Kidd and Geoff Metcalf, the KSFO radio talk show host who first exposed me to these various income tax allegations.

Becraft is incredibly knowledgeable about the legal and constitutional issues surrounding the federal income tax. I was fortunate to have been introduced to him

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because, not surprisingly, the legal and constitutional issues relating to the federal income tax are very complex. Like a master sleuth, Becraft has pierced that complexity and maneuvered his way through complex and often contradictory laws, court rulings, and other documentation. He has documented evidence which not only supports the contention that the federal income tax system is *voluntary*, but calls into question the very constitutionality of the way the federal income tax is administered, especially the legality of fining or prosecuting taxpayers who refuse to *volunteer*.

On the issue of prosecuting taxpayers for violating the federal income tax laws, Becraft points out that, legally, a citizen can not be found guilty of violating a law that is so **unsettled** and/or **complex** that the taxpayer could not possibly have formulated the intent to violate it. In other words, one can not be held responsible for violating an unclear legal duty. The primary reason one can not and should not be found guilty of violating an unclear legal duty is that the 5th Amendment to the U.S. Constitution, in addition to those protections discussed previously, also protects us from "be[ing] deprived of life, liberty, or property, without due process of law."

Becraft points to at least a dozen court cases which illustrate this point, but one case is particularly good at defining alleged violations of unclear legal duties. The case is United States v. Critzer, 498 F.2d 1160 (4th Cir. 1974). The Critzer case addressed whether or not the conviction of Mrs. Critzer for income tax evasion was proper. Mrs. Critzer had been informed by the Bureau of Indian Affairs that money she had received from some property located on a reservation was not taxable. Mrs. Critzer relied on the advice of the Bureau officials and did not report the income. The Internal Revenue Service took the opposite position of both the Bureau of Indian Affairs and Mrs. Critzer, had her indicted and prosecuted, and she was later convicted of income tax evasion. The appeals court reversed her conviction because of the complexity of the law Mrs. Critzer was alleged to have violated. The court said:

> While the record amply supports the conclusion that the underreporting was intentional, the record also reflects that, concededly, whether defendant's unreported income was taxable is problematical and the government is in dispute with itself as to whether the omitted income was taxable . . .
>
> We hold that defendant must be exonerated from the charges lodged against her. As a matter of law, defendant cannot be guilty of willfully evading and defeating income taxes on income, the taxability of which is so uncertain that even co-ordinate branches of the United States Government plausibly reach directly opposing conclusions. As a matter of law, the requisite intent to evade and defeat income taxes is missing. The obligation to pay is so problematical that defendant's actual intent is irrelevant. Even if she had consulted the law and sought to guide herself accordingly, she could have had no certainty as to what the law required.
>
> It is settled that when the law is vague or highly debatable, a defendant - actually or imputedly - lacks the requisite intent to violate it.

The court clearly comprehended the severe *due process* problems of expecting a person to comply with a law so complex and contradictory.

Although the history of the income tax is complicated, Becraft's analysis is very helpful in understanding it better. It is not possible to replicate the entire complicated

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legal history here in these pages. However, suffice it to say that the courts, both federal and state, are divided over what kind of tax the federal income tax even is. Becraft has made the following comments on this inability of the courts to agree:

> The problems created by the failure of American courts to determine what is the nature of an income tax are very broad. Any particular federal tax must fit within one of the two constitutional tax categories and once the category is known, it may be determined whether the tax in question complies with the constitutional regulation for imposition of that type of tax. A direct tax which is uniformly imposed would still be unconstitutional as one imposed in the absence of apportionment. An indirect tax imposed via apportionment would likewise be unconstitutional since it would not be uniform. But if it is impossible to determine which class any given tax falls within, then it is likewise impossible to determine which constitutional regulation, if any, applies to that tax. If the courts of this nation hold that an income tax is both an excise tax and a direct one, it cannot with any degree of certainty be determined what constitutional restrictions might or might not apply to this tax or what is even the meaning of the 16th Amendment.

Mr. Becraft has described a profound problem with our federal system of income taxation. Remember the analogy of forcing a square peg into a round hole?

The contradictory opinions of the courts in this country and their inability to place the federal income tax into one of two proper constitutional categories only reinforces the argument that the federal income tax must be, in fact, *voluntary*. Once the evidence has been reviewed, no other explanation seems possible. During the early days of the income tax, I think it is entirely possible that legislative and bureaucratic attorneys were fully aware of the constitutional problems with the federal income tax and knew they had to craft the income tax laws in a way that did not violate the U.S. Constitution. Hence, it is entirely plausible that they wrote the law with language that did not indicate mandatory compliance yet didn't explicitly indicate voluntary compliance either in order to avoid constitutional problems.

In fact, in 1920, seven years after the alleged ratification of the 16th Amendment, the U.S. Supreme Court gave an early warning to lawmakers to use caution in exercising their ability to tax in its case, *Eisner v. Macomber*, 252 U.S. 189, 40 S.Ct. 189, where the court said,

> The Sixteenth 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. (Emphasis added)

Government officials were certainly on notice from that day forward that they had to steer clear of violating the U.S. Constitution. One way of doing so would be to write the income tax laws in a non-mandatory way. After all, it is not possible to violate a person's constitutional rights if they *voluntarily* waive them. It is clear that through decades of gradualism, the non-mandatory nature of the income tax laws has obviously been obscured.

The Internal Revenue Service, which administers the federal income tax laws, and the U.S. Department of Justice which prosecutes violations of the federal income tax laws, have relied on Supreme Court cases such as *Brushaber v. Union Pacific R.R. Co.*, among other cases, to justify the constitutionality of the federal income tax. However, it

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appears these agencies have used the "green light" given them by the Supreme Court permitting them to collect an *excise* tax on "income" while ignoring the "red light" restrictions by the same court as to what "income" consists of and how much of it is subject to an *excise* tax.

As stated above, the *Brushaber* case and a related case called *Stanton v. Baltic Mining Co.*, 240 U.S. 103, 112-13, 36 S.Ct. 278 (1916), considered the income tax we have today to be an *excise* tax. Therefore, the next logical step would be to find out how that same U.S. Supreme Court defines an *excise tax*. In its decision *Flint vs. Stone Tracy Co.*, 220 US 107, the Supreme Court defined *excise taxes* as "taxes laid upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges."

Therefore, if the Supreme Court placed the federal income tax in the category of an indirect/excise tax, and the same Supreme Court defined an excise tax as "taxes laid upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupations, and corporate privileges," and few of the millions of Americans who pay income taxes actually fall into any of the categories listed by the Supreme Court, then how can the Internal Revenue Service justify collecting income taxes on, for example, wages earned by a mechanic, grocery store clerk, engineer, teacher, or police officer?

Interestingly enough, I discovered that the Internal Revenue Service uses the same terminology as the U.S. Supreme Court. In their very own manuals, the IRS defines excise taxes the same way the Supreme Court does.

For example, in Internal Revenue Manual section 9781, subsection 451, The IRS defines an excise tax as follows:

> An excise tax is a duty or impost levied upon the manufacture, sale, or consumption of commodities within the country, and upon certain occupations (Emphasis added)

and at subsection 452.1, the IRS states . . .

> Income taxes **are based on net income or net profits**, and are graduated. Excise taxes are **not graduated**, and they can be based upon any of the following factors: selling price of merchandise or facilities; services sold or used; number, weight, or volume of units sold, and nature of occupation (Emphasis added)

and at subsection 453.2, the IRS states . . .

> The excise tax categories of interest to Criminal Investigation include:
> a) manufacturers excise taxes [gasoline, recreational equipment, coal]
> b) occupational taxes [wagering, brewers of beer]
> c) facilities and services [toll telephone service]
> d) heavy truck and trailers
> e) miscellaneous excise taxes [seabed mining, liquor, and tobacco]

and at subsection 457.2, the IRS states...

> ...excise tax is based on specifically enumerated articles or services, whereas income tax is based strictly on income

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As you can see from the above excerpts in the IRS's very own procedures manual, the IRS is very clear on what an excise tax is. In short, the Supreme Court knows exactly what an excise tax is, and has defined it accordingly, and the IRS knows exactly what an excise tax is, and has defined it accordingly. If the constitutional justification for retention of our contemporary federal income tax was to place it in the excise category, and both the U.S. Supreme Court and the Internal Revenue Service are very clear about what excise taxes are and who is subject to them, then it seems abundantly clear that most Americans, unless they fall into the narrow categories listed above, are not subject to the federal income tax, that is, of course, unless they *voluntarily* comply.

Put another way, if the U.S. Supreme Court had to classify the federal income tax as an excise tax in order for it to remain constitutional, and, by the Supreme Court's own definition, excise taxes are "laid upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupations, and corporate privileges," then how can the IRS require that people not engaged in these activities pay federal income tax? This is the reason why those who have studied the issue believe that despite the penalties, fines, seizures, and jail sentences, the federal income tax system truly is *voluntary*. The publicity of those enforcement actions leads people to believe that the federal income tax is mandatory even though, on closer inspection, all indications are that it is *voluntary*. Apparently, the reason the U.S. Government continues to operate the system in its present form is because of a lack of understanding about basic constitutional rights on the part of government officials and the American people. In summary, the reasons the federal income tax had to evolve as a *voluntary* system are because:

1) Despite many contradictory court decisions throughout the years, our contemporary federal income tax most closely resembles a direct tax - a direct tax not apportioned by population as required by the U.S. Constitution.

2) Our contemporary federal income tax, as administered, is really not an indirect excise tax. Even if it were an excise tax, by the U.S. Supreme Court and the Internal Revenue Service's own definition of an excise tax, most Americans are not subject to it.

3) Since the federal income tax, as currently implemented, does not fall into either the direct/apportioned or indirect/uniform categories delineated in our U.S. Constitution as legally acceptable taxes, it must fall into some other class of taxation which is not even mentioned in the U.S. Constitution.

4) The federal income tax is therefore being administered and collected outside of constitutional authority and must therefore be *voluntary* in order to pass constitutional muster.

What happens to those who refuse to *volunteer*? Things can get very difficult for them. Later, Devvy Kidd will describe her own experience with the Internal Revenue Service.

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Any Volunteers?

As you read further, keep in mind that whenever I describe a particular law, regulation, practice, or procedure, I am not gratuitously "bashing" the Internal Revenue Service or any other government agency or official. I am simply trying to emphasize the potential danger in having citizens, professionals, and government officials alike who are ignorant of the requirements of the U.S. Constitution and the law. It is elected and appointed officials who are responsible for creating, interpreting, and enforcing these laws. Ultimately, however, the citizens of this country are responsible for the existence of this maze of laws and regulations because they have, and have always had, the power to change them. First, however, citizens must understand them.

In all of the years I have spent complying with and enforcing the federal tax laws, I never would have imagined that those laws are limited to promoting voluntary rather than mandatory actions by payers of the income tax. For instance, I applied for a social security number when I was a teenager just like millions of other Americans. I applied for it because I was led to believe I was required to have one in order to work. Based on my research, I have discovered that I was wrong. I filled out a *Form W-4* so that taxes would be withheld from my check because I was led to believe I was required to have one in order to work. Based on my research, I was wrong about that also. I filed an income tax return not so much because I was told to file one but because everyone else was filing one and because each year the bottom of my tax return showed that the federal government owed me money (a tax refund).

And so it went, year after year. Like millions of Americans, I joined the federal income tax system not knowing what I was getting into. Rather, I relied on others to show me the way. It appears that the "others" on whom I relied were relying on others who were relying on still others. Apparently, few, if any, researched which law required them to submit these forms and pay this money - it's as if they did it because everyone else was doing it. It would be a shame if the federal income tax system turns out to be like a herd of cattle led to the cliff by a few confused bulls in the front of the herd - those in back have no idea where they are going – they are simply following the herd.

With those thoughts in mind, it is time to explain the process by which people are lead to believe they (and their tax return preparer if they use one) think they are required to withhold federal income taxes from their paychecks, file a U.S. Individual Income Tax Return, and pay federal income tax. The process used to seize bank accounts, cars, and houses without the apparent legal authority to do so will also be described.

Withholding

During World War II, a man named Beardsley Ruml, one-time chairman of the Federal Reserve Bank of New York, devised a system of withholding for a temporary "Victory Tax" to pay the expenses of the war effort. Americans felt it was their duty to support soldiers during the war and were apparently content with this temporary measure to collect federal taxes. Unfortunately, contemporary Americans can testify to the fact that the withholding system begun over 50 years ago with the "Victory tax" has been anything but temporary.

The average American might think that there must be a good reason to have kept

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the *temporary* withholding system in place *permanently*. Many of us have been conditioned to think that for the good of our nation and for the smooth running of our country's revenue stream, withholding of income taxes at the source is a necessary task. Unfortunately, those so conditioned would be wrong. Wrong, in part, because Mr. Ruml, the man who created the system in the first place, admitted that the reasons for withholding of taxes have nothing to do with the good of our nation or the smooth running of the country's revenue stream. On the contrary, Ruml, in an article entitled *Taxes for Revenue Are Obsolete*, which he read in a speech before the American Bar Association and which was published on pages 35-39 of the January 1946 issue of *American Affairs*, said:

> The necessity for a government to tax in order to maintain both its independence and its solvency is true for state and local governments, **but it is not true for a national government**. Two changes of the greatest consequence have occurred in the last twenty-five years which have substantially altered the position of the national state with respect to the financing of its current requirements. (Emphasis added)
>
> The first of these changes is the gaining of vast new experience in the management of **central banks**.
>
> The second change is the **elimination**, for domestic purposes, of the convertibility of the currency into gold.

Later in the report, I will explain more about what Ruml meant by "elimination, for domestic purposes, of the convertibility of the currency into gold." But, for purposes of this section, suffice it to say that the withholding system he devised was <u>not</u> meant to permit the smooth running of a revenue stream to fund federal government operations.

There is another myth about the contemporary federal tax withholding system. The myth is that the withholding of federal taxes from most people's paychecks is mandatory. Yes, I know people are fined and sometimes even jailed for not withholding taxes but, just as with the federal income tax system as a whole, the capacity of our government to point guns at us or put us in jail can not be the sole justification for compliance with these laws - that is, unless we live in a police state and the government does whatever it pleases. The simple fact is that when one researches the laws and regulations relating to the withholding of taxes from our paychecks, the language clearly indicates that, except for a small class of taxpayers, the withholding of taxes is a voluntary exercise.

How do citizens get caught up in this voluntary tax withholding system? The following scenario will help illustrate the process. Be aware that the following explanation refers to many sections of the Internal Revenue Code and federal regulations and can be very confusing. If you have trouble following the explanation, try presenting it to a friend or advisor with more experience and training in this area of the law.

Let's say that in January 1998, Mr. Tommy Smith, a high school student and resident of San Francisco, California, decides he is going to find his first job. He already has a social security number because his parents were falsely led to believe that such a number was required in order to claim a dependency exemption for him on their own tax return and applied for a number on his behalf years ago. Little did Tommy's parents know that they could have still taken an exemption for Tommy even without a social security number. Tommy's parents, by getting their son a social security number,

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unknowingly took the first step in *volunteering* their son into the federal taxing system.

Tommy learns that ABC Company is looking for a dependable office clerk and is given an interview. Tommy does well in the interview and is hired. ABC Company's personnel manager, having been dutifully informed by the company's tax advisor that one is "required," gives Tommy a *Form W-4, Employee's Withholding Allowance Certificate* to fill out. Tommy, who assumes the form is "required" for employment, fills out the *Form W-4*. What he doesn't realize is that completion of the *Form W-4* is not "required" for his employment at ABC Company. Further, Tommy does not realize that the *Form W-4* represents a voluntary agreement between Tommy and his employer to have income tax withheld from his paycheck.

Now if ABC Company's tax advisor had researched the actual law and regulations governing withholding income tax from Tommy's paycheck, rather than simply *following the herd*, the advisor may have been able to advise ABC Company of an alternative treatment for Tommy's withholding. Guidance for the treatment of Tommy's withholding can be found in the Internal Revenue Code, Subtitle C, Chapter 24 - *Collection of Income Tax at Source on Wages.*

Section 3403 of Chapter 24 reads, in part, as follows:

> **SEC. 3403. Liability for tax**
>
> The employer **shall be liable** for the payment of the tax **required to be deducted** and withheld under this chapter, and shall not be liable to any person for the amount of any such payment. (Emphasis added)

As with most sections of the Internal Revenue Code, the language of Section 3403 is very confusing. Section 3403 is not only confusing but it seems to be a contradiction in terms. It gives little guidance as to what amount, if any, should be withheld from Tommy's paycheck. Rather, it only directs that for those taxes "required to be deducted," "the employer shall be liable." Perhaps Section 3402 of Chapter 24, entitled *Income Tax Collected At Source* will help determine Tommy's withholding situation. It reads, in part:

> **SEC. 3402. Income tax collected at source**
>
> **(a) Requirement of withholding. –**
>
> (1) In general. – Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary. Any tables or procedures prescribed under this paragraph shall-
>
> (A) apply with respect to the amount of wages paid during such periods as the Secretary may prescribe, and
>
> (B) be in such form, and provide for such amounts to be deducted and withheld, as the Secretary determines to be most appropriate to carry out the purposes of this chapter and to reflect the provisions of chapter 1 applicable to such periods.

At first glance, one might think that Section 3402 is the law that requires withholding of income taxes from Tommy's paycheck. After all, Section 3402(a)(1) specifically states that "every employer making payment of wages shall deduct and

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withhold upon such wages a tax . . ." Does "every employer" mean every employer? Does "wages" mean the money most Americans receive in their paychecks? Fortunately, Chapter 24 also includes Section 3401 – *Definitions*. Let's see if Section 3401 will shed some light on what amounts, if any, are required to be withheld from Tommy's paycheck. Section 3401 reads as follows:

> **SEC. 3401. Definitions**
> **(a) Wages.-**For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an **employee** for his **employer** . . .(Emphasis added)

Section 3401(a) describes what we all can understand to be wages, namely "all remuneration for services performed." But Section 3401(a) also says that the "remuneration" comes from services performed by an "employee" for his "employer." At Section 3401 (c) and (d), the terms "employee" and "employer" are defined:

> **(c) Employee.-**For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the **United States**, a **State**, or any political subdivision thereof, or the **District of Columbia**, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation. (Emphasis added)
> **(d) Employer.-**For purposes of this chapter, the term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person . . .

One would think that the terms "United States" or "State" wouldn't have to be defined but, again, because we are dealing with the Internal Revenue Code, nothing should be taken for granted. There is no definition of "United States" or "State" in Chapter 24 of the Internal Revenue Code. However, those terms are defined in Chapter 79 – *Definitions*, as follows:

> **SEC. 7701 Definitions**
> **(a)** When used in this title [Title 26, The Internal Revenue Code], where not otherwise distinctly expressed or manifestly incompatible with the intent thereof- . . .
> **(9) United States.-**The term "United States" when used in a geographical sense includes **only** the States and the District of Columbia. (Emphasis added)
> **(10) State.-**The term "State" shall be construed to **include** the District of Columbia, where such construction is necessary to carry out the provisions of this title. (Emphasis added)

Tommy was hired as an office clerk for ABC Company in San Francisco. He is clearly not an "officer, employee, or elected official of the United States" "or any political subdivision thereof" especially if, according to Section 7701(a)(9), the United States includes "only the States and the District of Columbia. Tommy clearly is not an "officer, employee, or elected official" of a "State" or "any political subdivision thereof" if, according to Section 7701(a)(10), a State "shall be construed to include the District of Columbia."

Many people might assume that the term "include," as used in Section 7701(a)(9) and (10), is used to better define which employers and employees are subject to federal

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income tax withholding. In other words, which specific employers are required by law to withhold federal income taxes and which specific employees are required to have federal income tax money withheld. Unfortunately, the opposite is true.

Whenever the words "include" or "includes" appear in the Internal Revenue Code (IRC), extreme caution should be exercised. The reason for caution is that there is a consistent pattern of confusion, murkiness, and lack of specifics whenever "include" or "includes" is used. Here are a couple of examples.

Remember Section 7701(a)(9) above? It says:

> **United States.**-The term "United States" when used in a geographical sense **includes only** the States and the District of Columbia. (Emphasis added)

Although our friend Tommy doesn't live in the District of Columbia, he might have assumed that his home state of California was one of the "States" in the definition. As I said, however, extreme caution should be used and nothing should be assumed. As I explained above, Section 7701(a)(10) isn't much help in clarifying Section 7701(a)(9) since it refers right back to the District of Columbia:

> **State.**-The term "State" shall be construed to include the District of Columbia, where such construction is necessary to carry out the provisions of this title.

Tommy, let alone the average taxpayer, should be concerned with this lack of clarity in the withholding law. They should be even more concerned that the IRC seems to get murky and confusing when the subject of income taxes comes up yet the IRC **is very clear when the subject of excise or other clearly constitutional taxes is addressed**. For example, notice how "United States" is defined in Chapter 38, Section 4612 of the IRC – *Environmental Taxes*:

> **SEC. 4612 Definitions and special rules**
> **(a) Definitions**.-For purposes of this subchapter-
> **(4) United States.**-
> **(A) In general.**-The term "United States" **means** the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. (Emphasis added)

Notice how the term "United States" is defined in Section 4612(a)(4)(A) with crystal clarity when it relates to an environmental excise tax that is beyond constitutional question. It is plainly evident from this section that lawmakers considered it necessary and prudent to clearly define "United States" as "the 50 States" in this section about definitions and special rules. However, as the first few words from Section 4612 advise, this definition of "United States" is only "for purposes of this subchapter." Why didn't those same lawmakers think it was necessary and prudent to clearly define "United States" in Section 7701(a)(9), which helps define who is required to have federal income taxes withheld from their check under Section 3402?

Another example is the definition of the word "State." Notice how the term "State" is defined in Chapter 61, Section 6103 of the IRC – *Information and Returns*:

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> **SEC. 6103 Confidentiality and disclosure of returns and return information**
>
> **(b) Definitions**.-For purposes of this section-
>
> **(5) State.**-The term "State" **means** (A) any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands . . . (Emphasis added)

It is plainly evident from this section that lawmakers considered it necessary and prudent to clearly define a "State" as "any of the 50 States" in this section about confidentiality and disclosure of returns. However, as the first few words from Section 6103 advise, this definition of "State" is only "for purposes of this section." Why didn't those same lawmakers think it was necessary and prudent to clearly define "States" in Section 7701(a)(10), which helps define who is required to have federal income taxes withheld from their check under Section 3402?

Based on this analysis, it is clear that none of the sections mentioned so far require that income taxes be withheld from Tommy's paycheck. I searched through all of Chapter 24 of the IRC - *Collection of Income Tax at Source on Wages*, for any other law, which might require Tommy to have income taxes withheld from his paycheck. I only found Section 3402(q), that dealt with withholding of gambling winnings, and Section 3405 that dealt with pensions, and Section 3406 that dealt with interest and dividends. None of these sections applied to Tommy employment situation, an employment situation replicated millions of times across the United States by people who have money withheld from their own checks.

I also found Section 3402(f)(2)(A), which, at first glance, looked like it might have been the section that required Tommy to have income taxes withheld from his paycheck. It reads, in part:

> **(2) Exemption certificates.-**
>
> **(A) On commencement of employment.**-On or before the date of the commencement of employment with an employer, the employee shall furnish the employer with a signed withholding exemption certificate relating to the number of withholding exemptions which he claims, which shall in no event exceed the number to which he is entitled.

However, this section suffers from the same problem as the others. It refers to an "employee" and an "employer" which I have already shown you should not be applicable to Tommy's situation because he does not reside in the District of Columbia and therefore does not fall within the definition of "employee."

The only section that I did find which would apply to Tommy's situation is Section 3402(p) *Voluntary Withholding Agreements*, which states:

> **Voluntary Withholding Agreements.** - The Secretary [of the Treasury] is authorized by regulations to provide for withholding -
>
> (**1**) from remuneration for services performed by an employee for his employer which (without regard to this subsection) does not constitute wages, and
>
> (**2**) from any other type of payment with respect to which the Secretary finds that withholding would be appropriate under the provisions of this chapter, **if** the employer and the employee, or in the case of any other type of payment the person

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> making and the person receiving the payment, **agree to such withholding. Such agreement shall be made** in such form and manner as the Secretary may **by regulations** provide. (Emphasis added)

The applicable Federal regulation 31.3402(p)-(1)(a), provided by the Secretary of the Treasury, further explains the withholding agreement:

> (a) **In general.** An employee and his employer **may** enter into an **agreement** under section 3402(b) to provide for the withholding of income tax upon payments of amounts described in paragraph (b)(1) of 31.3401(a)-3, made after December 31, 1970. An agreement **may** be entered into under this section only with respect to amounts which are includible in the gross income of the employee under section 61, and must be applicable to all such amounts paid by the employer to the employee. The amount to be withheld pursuant to an agreement under **section 3402(p)** shall be determined under the rules contained in **section 3402** and the regulations thereunder. (Emphasis added)

Since no one told Tommy that completing and signing this *agreement* with his employer to have income taxes withheld from his paycheck was *voluntary*, Tommy filled out the Form W-4 *agreement*, signed it, and joined millions of other wage earners who witness the ever increasing gap between their gross pay and their net pay, believing he had no other choice.

In late January or early February of 1999, ABC Company sends Tommy a *Form W-2, Wage and Tax Statement*, which shows how much gross pay Tommy received during 1998 and how much taxes were withheld from his paycheck. Tommy, an "A" student in math, is amazed at how much money has been taken out of his paycheck throughout 1998. When Tommy complains to his parents about how much has been taken, his parents tell him not to worry. They tell him that if he files a federal income tax return, he will probably get a "refund" of some of the taxes he paid. Liking the sound of getting some of his money back, Tommy takes the next step down the yellow brick road of the voluntary income tax system without even realizing the consequences of his actions. Understandably, all this teenager is thinking about is the few hundred dollars he will get refunded to him. Unfortunately, young Tommy has no idea what he will have to give up in order to get his money back. The following sections will illustrate just what Tommy and millions like him get themselves into as they are drawn deeper and deeper into the *voluntary* system.

Filing of Federal Income Tax Returns

Previously, I explained the issues relating to the 5th Amendment to the U.S. Constitution and how it relates to the filing of federal income tax returns. But what specific law does the Internal Revenue Service (as well as most CPAs, attorneys, and judges) rely on to make the American people believe they are required to file federal income tax returns? Exhibit 1 illustrates the three Internal Revenue Code (IRC) sections which purport to require the average American to file U.S. Individual Income Tax Returns - Internal Revenue Code, Subtitle F, Chapter 61 - *Information and Returns*, Sections 6001, 6011, and 6012. The Internal Revenue Service refers to these sections in the income tax booklet sent to taxpayers in the mail each year. You will find it under the section entitled *Privacy Act and Paperwork Reduction Act Notice*.

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Note that Section 6001 begins, "Every person liable for any tax imposed under this title . . . shall keep such records . . . make such returns . . . and comply with such rules and regulations as the Secretary may prescribe." [be aware that whenever the law refers to the "Secretary," it is referring to the U.S. Secretary of the Treasury, who delegates his power and authority down the chain of command to the employees of the Treasury agencies - therefore, when the law says "The Secretary," simply substitute "IRS"].

At first glance, you might assume that Section 6001 is the section that requires you to file a U.S. Individual Income Tax Return, but is that a correct assumption? Section 6001 says that "every person liable . . . shall . . . make such returns." It is clear from the language of the law that only persons *made liable* must file returns pursuant to Section 6001. Who is *every person liable*? Unfortunately, the Internal Revenue Code (IRC) isn't very helpful in telling us who *every person liable* is, at least when it comes to

EXHIBIT 1

SEC. 6001 Notice or regulations requiring records, statements, and special returns

Every person liable for any tax imposed by this title, or for the collection thereof**,** shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgement of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts, records necessary to comply with section 6053(c), and copies of statements furnished by employees under section 6053(a).

SEC. 6011 General requirement of return, statement, or list

(a) General rule.-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.

SEC. 6012 Persons required to make returns of income

(a) General rule.-Returns with respect to income taxes under subtitle A shall be made by the following:

(1)(A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount, except that a return shall not be required of an individual-

(i) who is not married (determined by applying section 7703), is not a surviving spouse (as defined in section 2(a)), is not a head of household (as defined in section 2(b)), and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such individual,

(ii) who is a head of household (as so defined) and for the taxable year has

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gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such individual,

(iii) who is a surviving spouse (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such individual, or

(iv) who is entitled to make a joint return and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than the sum of twice the exemption amount plus the basic standard deduction applicable to a joint return, but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

EXHIBIT 2 (1993 RATES)

Section 1. Tax imposed

(a) Married individuals filing joint returns and surviving spouses.-There is hereby imposed on the taxable income of-
(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and **(2)** every surviving spouse (as defined in section 2(a)), a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $36,900	15% of taxable income
Over $36,900 but not over $89,150	$5,535, plus 28% of the excess over $36,900
Over $89,150 but not over $140,000	$20,165, plus 31% of the excess over $89,150
Over $140,000 but not over $250,000	$35,928.50, plus 36% of the excess over $140,000
Over $250,000	$75,528.50, plus 39.6% of the excess over $250,000

(b) Heads of households.-There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $29,600	15% of taxable income
Over $29,600 but not over $76,400	$4,440, plus 28% of the excess over $29,600
Over $76,400 but not over $127,500	$17,544, plus 31% of the excess over $76,400
Over $127,500 but not over $250,000	$33,385, plus 36% of the excess over $127,500
Over $250,000	$77,485, plus 39.6% of the excess over $250,000

(c) Unmarried individuals (other than surviving spouses and heads of households).-There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $22,100	15% of taxable income

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Over $22,100 but not over $53,500	$3,315, plus 28% of the excess over $22,100
Over $53,500 but not over $115,000	$12,107, plus 31% of the excess over $53,500
Over $115,000 but not over $250,000	$31,172, plus 36% of the excess over $115,000
Over $250,000	$79,772, plus 39.6% of the excess over $250,000

(d) Married individuals filing separate returns.-There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $18,450	15% of taxable income
Over $18,450 but not over $44,575	$2,767.50, plus 28% of the excess over $18,450
Over $44,575 but not over $70,000	$10,082.50, plus 31% of the excess over $44,575
Over $70,000 but not over $125,000	$17,964.25, plus 36% of the excess over $70,000
Over $125,000	$37,764.25, plus 39.6% of the excess over $125,000

the average American taxpayer. The IRC defines a "person" not as "people" but rather as "partnerships," "trusts," "corporations," and "individuals." You would think that the millions of Americans who file U.S. *Individual* Income Tax Returns and pay income taxes every year are the "individuals" who are liable, right? This is not necessarily so. Not only does the IRC never define what an *individual* is but it also does not specify how, when, where, or why an *individual* becomes *liable* for the income tax. Look at Internal Revenue Code, Subtitle A, Chapter 1, Subchapter A - *Determination of Tax Liability*, Section 1 (Exhibit 2). First, notice that the title of the Subchapter says "*Determination of Tax Liability.* Keep in mind, however, that the title of the subchapter is not the law. The law is the words contained in Section 1, which never uses the word "liable" or any word resembling it. Second, notice how Section 1 says it "imposes" a tax on "taxable incomes" of certain listed *individuals*, not *persons.*

Not only does the IRC never define what an *individual* is, it never defines what *income* is. In *U.S. v. Ballard*, 535 F2d 400, 404 (1976); cert. denied, 429 U.S. 918 (1977), the 8th Circuit Court of Appeals said, "The general term income is not defined in the Internal Revenue Code." Therefore, if Section 6001 states that *every person liable* must file a return but there exists no IRC section which specifically makes you liable for the income tax, then Section 6001 certainly can't be the section that requires you to file a U.S. Individual Income Tax Return.

What about the next section - Section 6011? Section 6011 has the same type of problems. It says in part, ". . .When required . . . by the Secretary any person *made liable* for any tax imposed by this title . . . shall make a return." As I explained above, there are no IRC sections specifying that the average American citizen is a person who has been *made liable*. If the law doesn't tell you *when* you are *required* and *when or how* or *where* you are *made liable*, then Section 6011 certainly can't be the section that requires you to file a federal income tax return.

What about the final section - Section 6012? Again, the same type of problems exist. Section 6012 says in part, "Returns with respect to income taxes . . . *shall* be made . . ." Did you know that the word *shall* means *must* if it refers to duties of the government but *shall* means *may* when used to define the legal duties of a "natural person" such as the average American taxpayer when their constitutionally protected rights are involved?

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Again, we can turn to the courts for guidance:

> The word "shall" will be made to read as the equivalent of "may" if such construction is necessary to avoid the unconstitutionality of an act . . . As against the government, it has been held that "shall" is not mandatory unless the Legislature clearly intended it so to be . . . If a different interpretation is sought, it must rest upon something in the character of the legislation or in the context which will justify a different meaning.
>
> *Gow v. Consolidated Coppermines Corp.*, 165 Atlantic 136

> It is true that the mandatory word "shall" is used rather than the permissive word "may" or "has authority to" commit the relator. But the instances are many in which courts have treated the mandatory word as merely permissive when necessary to sustain an act or accomplish the purpose which was clearly intended.
>
> *People ex rel. Barone v. Fox*, 129 N.Y.S. 646; App.Div. 611

> As against the government, the word "shall," when used in statutes, is to be construed as "may," unless a contrary intention is manifest.
>
> *Cairo and Fulton R.R. Co. v. Hecht*, 95 US 170

Steffan M. Bertsch, an attorney from Washington State who has researched this issue thoroughly, describes the legal meaning of the word *shall* in Section 6012 this way:

> A reading of Section 6012 seems to say that every individual with "gross" income in excess of a certain amount "shall" make a return. Herein lies the real constitutional stickler. If "shall" is mandatory, the IRC [Internal Revenue Code] is a frontal assault upon the Bill of Rights. To avoid this constitutional inconsistency, "shall" is properly used to mean "may." . . . Section 6012(a) says that every individual shall make a return. If "shall" means "must," then Congress by passing 6012(a), has superseded the Constitution of the United States. If shall is obligatory in this case, then people are required to file returns that may be later used against them in court as evidence to convict them of crimes. This cannot be the case and it is not the case. In order for Congress to get around this nasty item attached as the fifth article of the amendment to the Constitution, they give the job to their faithful agent, the IRS. The IRS then either tricks people into entering contracts of obligation, such as 1040 returns, or forces the people to pay through raw power even though the IRS lacks the lawful authority to make them. The deception occurs when the IRS then provides "alleged taxpayers" with a Privacy Notice that is a veiled Miranda warning. The tax filer is supposed to interpret this notice to say, "Anything you tell us could land you in jail, so make certain that what you tell us is true." However, it requires a most strained reading of the notice to glean this from it.

As Mr. Bertsch so eloquently points out, Section 6012 also can not be the section that requires you to file a U.S. Individual Income Tax Return.

Now that a brief explanation has been presented as to the language of the law itself and whether or not those laws require you to file U.S. Individual Income Tax Returns or make you "liable" for the federal income tax prior to filing, it is important to understand the process by which taxes of any kind become your legal obligation to pay.

Assessment Of And Liability For Federal Taxes

Taxes must be assessed by a tax collector before a taxpayer becomes liable for (owes) the taxes. For example, anyone who owns a house or votes in local elections

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should be familiar with the "county assessor." The county assessor is responsible for determining the "assessed value" of real property (real estate) and certain personal property in order to *assess* (fix the amount of) a property tax on the property. Property taxes are not due and payable (owed) until that assessment has been made and a liability has been established.

The U.S. Supreme Court defined the process of taxation, assessment, and amounts due and payable in *Bull v. United States*, 295 US 247, 55 S.Ct. 695, 79 L.Ed. 1421, as follows:

> A tax is an exaction by the sovereign [government], and necessarily the sovereign has an enforceable claim against every one within the taxable class for the amount lawfully due from him. The statute [law] prescribes [defines] the rule of taxation. Some machinery must be provided for applying the rule to the facts in each taxpayer's case, in order to ascertain the amount due. The chosen instrumentality for the purpose is an administrative agency **whose action is called an assessment**. The **assessment may be a valuation of property subject to taxation**, which valuation is to be multiplied by the statutory rate to ascertain the amount of tax. **Or it may include the calculation and fix the amount of tax payable**, and assessments of federal **estate** and **income taxes are of this type**. **Once** the tax is **assessed**, the taxpayer **will owe** the sovereign the amount when the date fixed by law for payment arrives. (Emphasis added)

As you can see by the opinion of the U.S. Supreme Court, a tax can not be owed by a taxpayer until it has been assessed.

Just as a county assessor is given statutory authority to *assess* local property taxes, the U.S. Secretary of the Treasury is given statutory authority to *assess* federal taxes. How does the Secretary of the Treasury *assess* federal taxes? Statutes (laws) giving the Secretary authority to *assess* and collect payment of federal taxes are found in the Internal Revenue Code, Subtitle F, Chapter 63 - *Assessment*, Sections 6201 and 6203, and Chapter 64 - *Collection*, Section 6303 (see Exhibit 3).

Let's look at the statutes (laws) the Secretary of the Treasury uses to assess *excise* taxes and *income* taxes, and then look at enforcement measures he is authorized to take when those taxes (both *excise* and *income*) are not paid. Exhibit 3 shows the actual language of the laws the Secretary of the Treasury uses to assess federal taxes. Notice in Section 6201(a) that "The Secretary is authorized and required to make . . . assessments of all taxes which have not been duly paid by stamp at the time and in the manner provided by law." Alcohol and tobacco taxes are *paid by stamp* but I have never encountered an income tax that was *paid by stamp*.

The law continues at Section 6201(a)(1),

> **Taxes shown on return.**-The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title. (Emphasis added)

What do most Americans do by April 15th of each year? They "determine" their own taxes by filling out a Form 1040 U.S. Individual Income Tax Return, signing it under penalty of perjury, and sending it in to the Internal Revenue Service. Once the IRS has those returns, they accept the taxpayer's "determination" of federal income taxes due, unless, of course, there is a subsequent audit or other re-determination.

Now look back at Exhibit 3, "Section 6203 *Method of Assessment*." It says, "The

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assessment shall be made by recording the liability of the taxpayer in the office of the Secretary..." Then look at "Section 6303 *Notice and Demand for Tax.*" It says, "the Secretary shall . . . after making of an assessment of tax pursuant [according] to section 6203, give notice to each person liable for the unpaid tax, stating the amount and demanding payment thereof . . ." Have you or any of your friends or relatives ever received a notice or federal income tax bill from the Secretary of the Treasury or any of his agencies telling you that you are liable for the federal income tax? I haven't. In fact, in all my years in the tax profession, I never witnessed anyone else receiving such a notice either. Could it be that there is no need for the Secretary/IRS to send us such a notice because he simply waits for us to determine our own federal income tax "liability" voluntarily?

Is it possible for the Secretary to *assess* an income tax on someone who hasn't filed an income tax return? There is a code section (law) that the Secretary sometimes uses when taxpayers don't file a U.S. Individual Income Tax Return - it is found at Section 6020(b) of the Internal Revenue Code (IRC). Whether that section is used in appropriate circumstances is another matter. Section 6020(b) reads as follows:

(b) Execution of return by Secretary.-
(1) Authority of Secretary to execute return.-If any **person** fails to make any return **required** by any internal revenue law or regulation made thereunder at the time

EXHIBIT 3

SEC. 6201 Assessment authority

(a) Authority of Secretary.

The Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:

(1) Taxes shown on return. The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title.

(2) Unpaid taxes payable by stamp. (A) Omitted stamps.- Whenever any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof or whenever any transaction or act upon which a tax is required to be paid by means of a stamp occurs without the use of the proper stamp, it shall be the duty of the Secretary, upon such information as he can obtain, to estimate the amount of tax which has been omitted to be paid and to make assessment therefor upon the person or persons the Secretary determines to be liable for such tax. **(B) Check or money order not duly paid.**-In any case in which a check or money order received under authority of section 6311 as payment for stamps is not duly paid, the unpaid amount may be immediately assessed as if it were a tax imposed by this title, due at the time of such receipt, from the person who tendered such check or money order.

SEC. 6203 Method of assessment

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> The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary. Upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of the assessment.

SEC. 6303 Notice and demand for tax

> **(a) General rule.**-Where it is not otherwise provided by this title, the Secretary shall, as soon as practicable, and within 60 days, after the making of an assessment of a tax pursuant to section 6203, give notice to each person liable for the unpaid tax, stating the amount and demanding payment thereof. Such notice shall be left at the dwelling or usual place of business of such person, or shall be sent by mail to such person's last known address.

> prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise. (Emphasis added)

Notice how the language of the law refers to "any return required." As discussed previously, there is no law requiring American citizens (natural persons) to file a U.S. Individual Income Tax Return. Thus, the Secretary's authority to "make such return" for a taxpayer should exist only for those who are "required" to file. If you are not "required" to file a U.S. Individual Income Tax Return in the first place, as I have repeatedly shown you to be the case, the Secretary should not legally be able to use section 6020(b) to file a return for you.

As described above, the Secretary of the Treasury, after making an assessment of tax according to section 6203, is required to give notice to each person liable for the unpaid tax, stating the amount and demanding payment thereof. You may have noticed the term "liability" used over and over again. *Liability* is a very important word because, legally, you can not be made *liable* for a tax unless some law specifically imposes a tax and makes *you liable* for it. Read what the following appellate court decision has said on the subject of liability:

> Moreover, even the collection of taxes should be exacted only from persons upon whom a tax **liability** is imposed **by some statute**. (Emphasis added)
>
> *Botta v. Scanlon*, 288 F2d. 504 (1961)

Is it possible there is some mistake? Do the words written in the various sections of the Internal Revenue Code (IRC) mean something different than what they appear to

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mean? Is there something implied in the language of the law that is not readily apparent? Well, again, let's look at what the courts say. In connection with the federal bankruptcy laws, the U.S. Supreme Court said:

> The task of resolving the dispute over the meaning of [section] 506(b) begins where all such inquiries must begin: with **the language of the statute itself** . . . In this case, it is also where the inquiry should end, for where, as here, the statute's language is plain, "the sole function of the courts is to enforce it according to its terms." (Emphasis added)
>
> *United States v. Ron Pair Enterprises, Inc. (1989)*, 489 U.S. 235 at 241, 103 L.Ed.2d 290

In connection with the liability of a beneficiary for federal estate taxes, the Eighth Circuit Court of Appeals said:

> In such a situation the beneficiary is entitled to a favorable construction because **liability for taxation** must **clearly** appear. (Emphasis added)
>
> *Higley v. Commissioner*, 69 F2d. 160

In connection with liability for federal income taxes, the U.S. Supreme Court said:

> In the interpretation of statutes levying taxes it is the **established rule not** to extend their provisions, **by implication**, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters **not specifically pointed out**. In case of doubt they are construed most strongly **against the government,** and in favor of the citizen. (Emphasis added)
>
> *Gould v. Gould*, 245 U.S. 151 (1917)

The courts have very clearly ruled that Americans have every right to read the clear language of the law and conclude that unless they are specifically made *liable* for a tax, any tax, they have no legal requirement to pay it.

Collection of Federal Income Taxes

There are also some questionable issues relating to the collection of federal income taxes in that collection actions are carried out with laws that have no connection to the income tax. I first learned about these issues from Devvy Kidd, who had personal experience with income tax collection activity.

After Devvy and her husband John satisfied themselves regarding the actual requirements of the law, for example, that filing a federal income tax return is not required, they wrote a letter to the IRS requesting that they provide the statute (law) in Title 26 of the U.S. Code (the Internal Revenue Code) that made it mandatory to file an

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income tax return. That letter, sent April 15, 1993, in lieu of an income tax return, received no response from the IRS. Since the Kidds had done their homework regarding tax return filing requirements, they felt it wasn't asking too much for the IRS to answer a simple question - were the Kidds required to file U.S. Individual Income Tax Returns?

The Kidds sent follow-up letters requesting clarification on filing requirements that the IRS also did not respond to. On April 15, 1994, the Kidds again did not file an income tax return. By September of 1994, they had received numerous "Notices of Deficiency" for a tax they contended they did not owe under any federal law. With the assistance of attorney Bernard Baker, a retired Colorado district judge, the Kidds filed an *Order To Show Cause* in Federal District Court in Denver, Colorado.

After some legal maneuvering by the U.S. Attorney, the District Court dismissed the Kidd's case. This dismissal prevented the government from having to answer, in open court, whether or not the Kidds were required to file an income tax return. Soon after dismissal of the Kidd's case, the IRS sent them a "Notice of Federal Tax Lien."

The tax lien stated that Sections 6321, 6322, and 6323 of Title 26 (the Internal Revenue Code) provided justification for the lien. The following is an excerpt from Devvy Kidd's September 1995 newsletter *The Power Educator*:

> ...Since Title 26, the IRS Code is prima facie law, I had to go to the Index to the Code of Federal Regulations (CFR), Parallel Table of Authorities, to find out what's called the implementing regulations, that is, the regulations created by the agency in charge of implementing the statute(s) passed by the Congress. This [Parallel Table of Authorities] told me that those previously identified sections of the IR Code [6321,6322,6323] were implemented by Title 27, Part 70. What did I discover?
>
> I discovered that John and I had a lien placed against us by the IRS for not paying an *excise tax* allegedly owed for engaging in the sale and manufacture of alcohol, tobacco, and firearms! That's right. John is a retired bird-Colonel, U.S. Army, currently a construction-management engineer and I have had no income since 1991. My efforts in the movement to Take Back America are given freely without financial compensation.
>
> I next looked in the IRS Special Agents Handbook, Sections 451 & 452 [see above]. An excise tax is levied for certain commercial activities, none of which my husband and I are or ever have been involved with.
>
> Now Mr. Walker and Mr. Jones of the IRS placed a lien against us for not paying an excise tax on the manufacture and sale of certain commodities - for which we do not have any involvement with at all. They demanded money from us for a debt we did not owe. They threatened with this legal document to freeze our assets if we did not give in to this fraud. As I said, this lien document is a form that goes out to millions of Americans...
>
> Did we pay this extortion money? Yes. Have they lifted the lien? Not as of this date. Why should they bother, they'll get around to it in their own sweet time. A free nation with open, honest government? Where? Do we have any legal recourse? None, and the reason why is the nauseating corruption in our federal and state judiciary...
>
> Does Congress know what's going on? Yes...I have written, begging members of Congress - including the current presidential candidates - to allow hearings. I will bring in retired judges. Experts and I will prove beyond a shadow of a doubt that there is no law that requires anyone to file a 1040. The whole system is based on fraud, period.

Steffan Bertsch, the attorney I quoted previously who has exhaustively studied the Internal Revenue Code, told me that he has many clients who have been treated similarly by the Internal Revenue Service - classified as coal miners or distillers or firearms dealers

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in order to be subject to collection of the federal income tax. Kidd, Bertsch, and Bertsch's clients have been unable to determine what legal authority the Internal Revenue Service has in classifying them as coal miners, distillers, or firearms dealers when they have never engaged in those activities. Further, they have been unable to determine why collection and enforcement laws relating to fuel, distilled spirits, and firearms, which clearly fall into the category of excise taxes and which have nothing to do with federal income taxes, are used to take their money and property.

Allegation 2

The 16th Amendment to the U.S. Constitution Was Never Ratified

The next unbelievable allegation that Devvy Kidd included in her book was that a man named Bill Benson had proven that the 16th Amendment to the U.S. Constitution, the amendment that purportedly legalized the federal income tax, was fraudulently ratified, making the federal income tax null and void. Is it any wonder such an allegation wouldn't catch my eye? Benson was alleging that the very basis for today's federal income tax was a fraud. As I have previously stated, the people who brought this issue to my attention had enough credibility to encourage me to at least listen to what Benson had to say. After all, I gave Bill Conklin a chance to convince me and he presented compelling evidence. I believed I had nothing to lose by checking to see what Bill Benson had to say.

As with Conklin, I took Benson's telephone number directly out of Kidd's book and gave him a call. I greeted Benson, told him my name, and told him I had read about his allegation that the 16th Amendment had never been ratified in Devvy Kidd's book, *Why A Bankrupt America?*. I also told him that, although I was calling him as a private citizen on my day off, I was employed as a Special Agent in the IRS Criminal Investigation Division. I further told Benson that I wanted to find out more about his

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Name: Steffan Bertsch
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Information available: Expert on the Internal Revenue Code, has made numerous attempts to inform the Washington State Bar and Washington State Attorney General of questionable/illegal collection practices of taxing authorities, publshed a book in 1992 about the 5th Amendment entitled *Crisis In Our Courts*.

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Information available: Conklin's book *Why No One Is Required To File Income Tax Returns and what you can do about it!*, Conklin's book the *Anti-IRS Technical Manual*, opinion letters

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I am aware of a few members of the U.S. House of Representatives who have expertise in the area of constitutional law, taxation, banking, and the monetary system. Discussion of the issues addressed in this report with these representatives as well as your own personal congressional representative may assist you in learning more about their understanding of the law and your obligations under the law. They are

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Stahl CR-85-9-BLG, U.S. District Court for the District of Montana, Billings Division

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