MEMORANDUM REGARDING SFR'S

INTRODUCTION

This Memorandum is being written to explain to those who have not studied what the law really says regarding the proper and legal use of 26 U.S.C. § 6020(b) **Execution of return by Secretary**, but instead they have relied on hearsay evidence and presumptions, and have failed to obtain firsthand knowledge and understanding of what the law says.

The US Supreme Court has ruled that the creation of false presumption does not mean that they escape from restrictions placed on them by the Constitution.

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

There can be no doubt, that after reading this memorandum and confirming the information provided, the United States government and it's agency the IRS are promoting ignorance, and the false presumption that they have the legal authority to create a SFR for Defendant on income tax, and that such claim or presumption is without merit under the law, or is a frivolous argument.

That the statutes they use § 6020 Returns prepared for or executed by The Secretary; § 6201 Assessment Authority; § 6203 Method of Assessment; § 6301 Collection Authority; § 6303 Notice and Demand for Tax; § 6321 Liens for Taxes; §§ 6331 - 6343 Levy and Distraint; § 6651 Failure to File Tax Return or Pay Tax; §§ 6671 – 6672 Penalty Assessed as Tax, and many others, only have enforcement regulations in Title 27, and not Title 26. That none of these regulations listed above, which the IRS claims gives them their authority, have Part 1 regulations written and published in the Federal Tax Regulations book. As an officer of the Court, you should know and understand that Part 1 regulations are written for, and apply only to Subtitle A (Income Tax). However, the constant misuse of these statutes for Income Tax is a clear indication that the IRS is intentionally operating under color of law.

There can be no doubt that the IRS, when using created legal ignorance as a means of instilling fear within the public, is all the while making claims of authority where there is none. This fear is then used to motivate people to declare constitutionally exempt earnings as "income" on a tax return, and to file an IRS Form 1040 Tax Return, thus making themselves subject to Title 26 which is not enacted positive law.

Then, if a person does not conform or become compliant, they use the high cost of an out-of-control and corrupted legal system as a means of punishing those who refuse to cooperate, just as they are doing in this case. Litigation can be more expensive than just paying an illegally enforced tax to begin with, and the IRS knows this, and uses it to their advantage.

This memorandum will present irrefutable facts and evidence to show that what the IRS is doing here is wrong, illegal, without legal authority, and fraudulent. Once you read this Memorandum you will have been legally informed of this fraud. As a citizen, and an Officer of the Court, you have a legal duty to report crimes which you are aware of per 18 U.S.C. § 4 Misprision of felony.

Certainly your actions after learning about this fraud will be prima facie evidence of the position you have taken. To continue forward means that you are no longer a by stander, but you may be an accessory after the fact, and possibly you may have committed a crime defined in 18 U.S.C. 3 Accessory after the fact. If you work with the Court, or the IRS to move forward with this case, then your actions may suggest that you are conspiring with others to violate Defendant's Constitutional right to enjoy the fruit of his labor. This of course is a crime according to 18 USC § 241 Conspiracy against rights.

Certainly, you took an Oath of Office to uphold the Constitution of the United States, and I can assure you that your failure to keep that Oath and uphold the Constitution, would mean that you are not worthy of holding the title of Officer of the Court. It also may mean that you have committed treason against the United States

Cooper v. Aaron, **358 U.S. 1, 78 S.Ct. 1401 (1958).**

> "No state legislator or executive or **judicial officer** can war against the Constitution without violating his undertaking to support it."
>
> *Owen v. Independence*, **100 S.C.T. 1398, 445 US 622**
> "Officers of the court have no immunity, **when violating a Constitutional right**, from liability. For they are deemed to know the law."

Defendant has claimed in just about every document submitted to the Court, that the Substitute For Returns or SFR's created by the Plaintiff's agency (hereafter IRS) for the years 2001 & 2002, were done under the "**color of law**". Although it is a standard operating procedure within the IRS, that does not make it legal. Procedures or policies are not law, and should never be considered law. This is because procedures and policies can be written by anyone, but laws are written by Congress. Unfortunately most people and employees are ignorant enough to follow them because someone told them that it is the policy.

It was these fraudulently created documents (SFR's) which created the alleged tax deficiency for the years 2001 & 2002, from which the alleged tax deficiencies grew, and an assessment was done. This then started a collection action of a levy which was placed upon Defendant's Social Security retirement account, and Notices of Federal Tax Liens were filed claiming that the United States had a legitimate claim for back taxes. There can be no doubt that if there is a claim that a debt is owed, one must first confirm if that fact is correct, and the amount owed is correct, before issuing a judgment by the Court.

The IRS has not and will not prepare a verified assessment, even though 15 U.S.C. § 1692 requires them to do so. The IRS will prepare a group report known as a RACS 006 report, based on computer contents showing millions in liability, and claim that Defendant's specific tax liability is included in that report. The IRS Employee will write a certification that the printout constitutes an accurate transcript of what the computer contains, but will not certify it under penalties of perjury, by an assessment officer duly authorized by the district director, who has firsthand knowledge that one owes the tax, as required by law. In fact no one at the IRS will do this. So, where is the witness against Defendant?

It is presumed that everyone knows, that US Supreme Court rulings are the law of the land, and once made, they apply to everyone. This of course is because the US Supreme Court interprets the law in relation to the US Constitution, the supreme law which all other laws may not contradict or clash with.

> *Marbury v. Madison,* **5 US 137**
> " Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written Constitutions, that a law repugnant to the Constitution is void, and that courts, as well as other departments, are bound by that instrument.."
>
> *Murdock v. Penn.*, **319 US 105**
> The Court determined that; No state shall convert a liberty into a privilege, license it, and attach a fee to it.
>
> *Shuttlesworth v. Birmingham,* **373 US 262**
> The Court determined that; If the state converts a liberty into a privilege, the citizen can engage in the right with impunity.
>
> *Norton v. Shelby County*, **118 U.S. 425**
> The Court determined that; An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed.

All other court decisions are inferior to US Supreme Court decisions, because all other courts are inferior courts. Inferior Courts are those inferior to the Supreme Court, and consist of Tax and Claims Courts, Bankruptcy Courts, District Courts and Courts of Appeal, all of which are created by Congress. The IRS acknowledges in its Internal Revenue Manual IRM 4.10.7.2.9.8 (01-01-2006) Importance of Court Decisions, and Defendant agrees with them on this point, that inferior court's holdings are **not law,** and **are binding only on the parties to the suit in question**, and even then, only as to the years litigated. According to the IRM, only Supreme Court cases are binding on it, and considered the law of the land, "equivalent to the code".

So at the end of the day, if the US Supreme Court has ruled many times that what Defendant receives in exchange for his labor is not "income" and is non-taxable, and the IRS claims it is, who is correct? This is a no brainer… The US Supreme Court is correct. Therefore this brings

up the questions; *Is the Internal Revenue Code wrong*? *If so, why has it not been corrected*? Defendant's research has concluded that the Internal Revenue Code as written and properly construed using the correct and proper legal definitions of key words, is in harmony with the US Supreme Court rulings.

Could it be then that the Internal Revenue Code is not wrong and is legally correct as written, but is being applied incorrectly by IRS, and the lower courts have been convinced to go along with these rouge interpretations and applications of the code? Hopefully this Memorandum will show you the truth. The only question is, once you see the truth for yourself, are you going to then follow the truth or continue to support the fraud?

> *McNally v. U.S.*, **483 U.S. 350, 371-372**, Quoting *U.S. v Holzer, 816 F.2d. 304, 307*
> "Fraud in its elementary common law sense of deceit includes the deliberate concealment of material information in a setting of fiduciary obligation. A public official is a fiduciary toward the public, and if he deliberately conceals material information from them he is guilty of fraud".

TAX LAWS SUBJECT TO STRICT CONSTRUCTION

Tax laws are clearly in derogation of personal rights and property interests, and are therefore, subject to strict construction, and any ambiguity must be resolved against imposition of the tax. In *Billings v. U.S.*, 232 U.S. 261, 34 S. Ct. 421 (1914), the Supreme Court clearly acknowledged this basic and long-standing rule of statutory construction:

> "**Tax statutes . . . should be strictly construed, and, if any ambiguity be found to exist, it must be resolved in favor of the citizen.** *Eidman* v. *Martinez*, 184 U.S. 578, 583; *United States* v. *Wigglesworth*, 2 Story, 369, 374; *Mutual Benefit Life Ins. Co*. v. *Herold*, 198 F. 199, 201, aff'd 201 F. 918; *Parkview Bldg. Assn*. v. *Herold*, 203 F. 876, 880; *Mutual Trust Co*. v. *Miller*, 177 N.Y. 51, 57." (Id at p. 265, emphasis added)

Again, in *United States v. Merriam*, 263 U.S. 179, 44 S.Ct. 69 (1923), the Supreme Court clearly stated at pp. 187-88:

> "On behalf of the Government it is urged that taxation is a practical matter and concerns itself with the substance of the thing upon which the tax is imposed rather than with legal

> forms or expressions. **But in statutes levying taxes the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used**. **If the words are doubtful, the doubt must be resolved against the Government and in favor of the taxpayer**. *Gould* v. *Gould*, 245 U.S. 151, 153." (emphasis added)

This rule of strict construction against the taxing authority was reiterated in *Tandy Leather Company v. United States*, 347 F.2d 693 (5th Cir. 1965), where Judge Hutcheson of our 5th Circuit eloquently and unequivocally proclaimed at p. 694-5:

> ". . . In ruling as he did, that the *taxpayer had the obligation to show that sales of the articles in suit were not subject to the excise taxes collected,* the district judge was misled by the erroneous contention of the tax collector into misstating the rule of proof in a tax case. This is: **that the burden in such a case is always on the collector to show, in justification of his levy and collection of an excise tax, that the statute plainly and clearly lays the tax; that, in short, the fundamental rule is that taxes to be collectible must be clearly laid.** (emphasis added)

"The Government's claim and the judge's ruling come down in effect to the proposition that the state of construction of appellants' kits had reached such an advanced level that the tax levied on the finished products could be collected on their sale, though none had been clearly laid thereon by statute. Shades of Pym and John Hampden, of the Boston tea party, and of Patrick Henry and the Virginians! There is no warrant in law for such a holding. *Gould v. Gould,* 245 U.S. 151, at p. 153, 38 S.Ct. 53, 62 L.Ed. 211. In 51 American Jurisprudence, "Taxation", Sec. 316, "Strict or Liberal Construction", supported by a great wealth of authority, it is said:

> 'Although it is sometimes broadly stated either that tax laws are to be strictly construed or, on the other hand, that such enactments are to be liberally construed, this apparent conflict of opinion can be reconciled if it is borne in mind that the correct rule appears to be that where the intent of meaning of tax statutes, or statutes levying taxes, is doubtful, they are, unless a contrary legislative intention appears, to be construed ***most strongly against the government and in favor of the taxpayer or citizen***. Any doubts as to their meaning are to be resolved against the taxing authority and in favor of the taxpayer.
> "The judgment was wrong. It is, therefore, reversed and the cause is remanded with directions to enter judgment for plaintiffs and for further and not inconsistent proceedings." (emphasis is the Court's)
> See also: *Gould v. Gould*, 245 U.S. 151, 38 S.Ct. 53, 153 (1917); *Royal Caribbean Cruises v. United States*, 108 F.3d 290 (11th Cir. 1997); *B & M Company v. United States*, 452 F.2d 986 (5th Cir. 1971); *Kocurek v. United States*, 456 F. Supp. 740 (1978)*; Norton Manufacturing Corporation v. United States*, 288 F. Supp. 829 (1968)*; Grays Harbor Chair and Manufacturing Company v. United States*, 265 F. Supp. 254 (1967); *Russell v. United States*, 260 F. Supp. 493 (1966).

Thus, as we enter into the labyrinth of the Internal Revenue Code and its related regulations, we must do so mindful of the hornbook rule that tax laws are strictly construed, and that when the letter of the law is subject to more than one interpretation, it must be construed against the imposition of the tax, the rule of interpretation of taxes being:

> ***"that the burden in such a case is always on the collector to show, in justification of his levy and collection of an excise tax, that the statute plainly and clearly lays the tax; that, in short, the fundamental rule is that taxes to be collectible must be clearly laid."*** *Tandy Leather Company, supra,* at 694. (emphasis added)

ANALYSIS OF 26 U.S.C. § 6020

The statute which the IRS claims gives them the authority to create a tax return for Defendant is **26 U.S.C. § 6020(b) Returns prepared for or executed by The Secretary.** It can be found in Title 26 Subtitle F Procedures and Administration of the Internal Review Code, and reads as follows:

> **26 U.S.C. § 6020. Returns prepared for or executed by Secretary**
> (a) **Preparation of return by Secretary**
> If any person **shall fail to make** a **return required** by this title or by regulations prescribed there under, **but shall consent to disclose all information necessary for the preparation thereof,** then, and in that case, the Secretary may prepare such return, **which, being signed by such person**, may be received by the Secretary as the return of such person.
> (b) **Execution of return by Secretary**
> (1) **Authority of Secretary to execute return**
> If any **person fails to make any return required by any internal revenue law or regulation made there under** at the time prescribed therefor, or makes, **willfully or otherwise, a false or fraudulent return**, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.
> (2) **Status of returns**
> Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

Like many statutes written in Title 26, this statute is a conditional statute, which means certain condition(s) must be met for the statute to apply. As you can see this statute has two parts. Part

(a) **Preparation of return by The Secretary** and Part (b) **Execution of return by The Secretary**. Clearly they are not the same, and are written for different purposes.

Let's look at Part (a) first;

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

Conditions that must be met before the statute applies;

1. You must be a "**person**".
2. This "**person**" must **fail to make a return**.
3. The return must be **required by the title or by regulations**.
4. The person **must consent to disclose all information necessary.**
5. The return prepared **must be signed by the "person".**

Regarding 6020(a)

Condition # 1: You must be a "**person"**. **This is very important otherwise the statute does not apply.**

Condition # 3: The return must be **required by the title or by regulations**. This is very important since it clearly establishes a type of return, and a clear condition of this statute.

Condition # 5: The return prepared **must be signed by the "person".** This is very important, since it implies consent, and agreement.

Since the IRS does not claim that they used this statute § 6020(a) as their authority to create the returns they did for the years 2001 and 2002 for the Defendant, we can presume that they were not created under this authority, and therefore the return does not have to meet the conditions outlined in § 6020(a).

So let's move on to Part (b) 26 U.S.C. § 6020(b) **Execution of return by The Secretary** since this is the statute the IRS claims gives them the authority, and stated so on the 6020(b) Certifications.

> 26 U.S.C. § 6020(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 there under** at the time prescribed therefor, or makes, **willfully or otherwise, a false or fraudulent return**, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise."

Conditions that must be met before the statute applies;

1. You must be a "**person**"
2. This "**person**" must **fail to make a return, OR willfully or otherwise, file a false or fraudulent return.**
3. The return must be **required by the title or by regulations**.
4. The **Secretary shall make such return.**

Regarding 6020(b)

Condition # 1: You must be a "**person"**. **This is very important otherwise the statute does not apply.** There is some doubt that Defendant is a "**person**" as defined by § 7701(a)(1). This is explained later in this Memorandum.

Condition # 2: This "**person"** must fail to make a return, or willfully or otherwise, file a false or fraudulent return. In this case no return was made by the Defendant for the years 2001 and 2002.

However, it has not been established that the Defendant is a "**person".** If in fact he is not, then this condition would not have been met and the use of this statute would have been under color of law. All conditions must be met for the statute to be applied legally.

Condition # 3: There is some serious doubt that an Individual Income Tax Return 1040 is required by statute or regulation to be created or filed. Defendant has no evidence and believes that none exists that there is a statute or regulation which requires the IRS form 1040 to be filed. **The tenth Circuit Court of Appeals has ruled in Conklin v. U.S.A. (94-1213) that the filing of tax returns is not compelled or required.** Their decision is unpublished. Defendant believes that this is because a mandatory requirement to file a 1040 Return would be unconstitutional to the extent that it would require a Citizen to waive their Fifth Amendment rights.

Condition # 4: This authority it granted to the Secretary and only the Secretary. It does not state that the IRS may do this. Therefore, there must be **properly signed chain of Delegation Orders from the Secretary** all the way down to the person who creates the SFR in order to make this lawful and legal for the IRS Employee to create the SFR.

We have looked at § 6020(b). There should be no doubt after reading this statute, that it clearly states that the Secretary is authorized under special conditions to make a return from his own knowledge, and from such information as he can obtain through testimony or otherwise. **What this statute does not tell you, is which types of returns may be created under the authority of this statute.** The IRS likes to presume that it is any return, but the statute places a restrictive condition of "***required by any internal revenue law or regulation made there under at the time prescribed therefor;***" **or** "***makes, willfully or otherwise, a false or fraudulent return***."

The older versions of Delegations Orders 182 clearly showed which returns are authorized to be created, and the 1040 Individual Tax Return is not listed. In addition, the Internal Revenue Manual clearly shows which returns are authorized to be created under the authority of 6020(b). Again the 1040 Individual Tax Return is not listed.

IS DEFENDANT A "PERSON"

The statute which defines "**person**" as it is used in § 6020 can be found codified at;

> *26 U.S.C. § 7701(a)(1)*
> *(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—*
> *(1)* ***Person***
> *The term "person" shall be construed to mean and include* ***an individual****, a trust, estate, partnership, association, company or corporation.*

Certainly a reasonable person can presume that the Defendant is not a trust, estate, partnership, association, company or corporation, which only leaves one other possibility. Is Defendant "**an individual**"?

The term "**individual**" is used in sections 26 U.S.C. § 1, and is also used in 26 U.S.C. § 6012(a) two important statutes, but it is ***never*** defined ***anywhere*** in the Internal Revenue Code. The reason it is not defined is that doing so, would expose the government's secret weapon, which is the abuse of words in order to expand the jurisdiction of the federal government beyond it's Constitutional limitations.

Since "**individual**" is not defined in the statutes, we have to look in the legal dictionary for the definition. Below is the definition found in Black's Law Dictionary;

> **INDIVIDUAL**. *As a noun, this term denotes a single person as distinguished from a group or class, and also, very commonly, a private or natural person as distinguished from a partnership, corporation, or association;* ***but it is said that this restrictive signification is not necessarily inherent in the word, and that it may, in proper cases, include [be limited to] artificial persons.***
> *[Black's Law Dictionary, Sixth Edition, page 773]*

That did little or nothing to establish if Defendant is an "**individual**". It only added to reasonable doubt that a "**person**" is a natural living human being as most would presume. Note that this definition above does not necessarily imply a natural (biological) person. Therefore, the Internal Revenue Code cannot be said to necessarily apply to natural persons, but only entities. It is amusing that the Individual Master File or IMF which the IRS created for Defendant for the years 2001 and 2002 has a section called ENTITY MODULE PORTION, in which they record Defendant's information about him.

Here is the proper definition of "**individual**" in the context of the IRS form 1040, and within the meaning of the code, as Defendant understands it:

> ***Individual***
> ***An artificial federally-chartered entity, meaning a federal (but not state) chartered corporation or partnership or trust. Also, an alien or nonresident alien who is an elected or appointed officer of the United States government with income originating from the federal United States government.*** *This "individual" is NOT a natural person with income from outside the district (federal) United States who is living and working for a private employer in the 50 united States of America because of the restrictions on direct taxes imposed by Article 1, Section 9, Clause 4, and Article 1, Section 2, Clause 3 of the U.S. Constitution..55*

The term "**an individua**l" is referenced in 26 U.S.C. § 7701(a)(1) under the definition of "**person**" as follows:

> ***TITLE 26 > Subtitle F > CHAPTER 79 > Sec. 7701.***
> *Sec. 7701. - Definitions*
> *(a)(1) Person*
> *The term "person" shall be construed to mean and include **an individual**, a trust, estate, partnership, association, company or corporation.*

Note the very important phrase an individual, rather than all individuals. This is a VERY important clue that the Internal Revenue Code applies only to a very specific type of "individual" who is involved in a taxable activity and not to all individuals generally. A law that only applies to a special subset of "individuals" is called a "special law". The IRS has admitted that Title 26 is Special Law. See Exhibit X - Disclosure Letter IRC Not Positive Law.

Although this is not Defendant's main reason or reasons which show that the IRS is operating under "**color of law**" when they use and apply 26 U.S.C. § 6020(b), it certainly should raise some doubt in a reasonable person's mind, and clearly shows that the words used in the statute have specific legal meanings, and a reader would have to understand the meanings of these words to truly understand the statute. Applying the incorrect legal definition of a word used in a statute would change the meaning of the statute.

The Supreme Court instructs the IRS and Defendant to disregard the "dictionary definition" of a term being **statutorily defined,** when construing the term:

> "When a **statute includes an explicit definition, we must follow that definition,** even if it varies from that term's ordinary meaning." *Stenberg v. Carhart*, 530 U.S. 914 (2000),
>
> "It is **axiomatic that the statutory definition of the term excludes unstated meanings of that term**." *Meese v. Keene*, 481 U.S. 465 (1987); see also *Western Union Telegraph Co. v. Lenroot*, 323 U.S. 490 (1945)).

Conclusion: Based on the information Defendant has gathered, it appears that Defendant is not an "**Individual**", and therefore could not be a "**Person**" as defined by 26 U.S.C. § 7701(a)(1), and therefore the statute § 6020 may not be applied or used to create a return for the Defendant since it is a conditional statute which applies to a "person". There is an abundance of

information to support this conclusion, including lack of regulation for enforcement under Title 26, and many IRM provisions which show that the only returns authorized are for entities and never a real human being.

WHO IS AN INDIVIDUAL

"**Individual**" is the only entity listed as a "person" under 26 U.S.C. 7701(a) (1) that could possibly apply to the Defendant. Interestingly, the word "**individual**", used in the definition of "**person**", is never defined anywhere in the Internal Revenue Code. Therefore, we must look at the legal definition of the word "individual", to discover any clues as to who this is.

> **INDIVIDUAL -** As a noun, this term denotes a single person as distinguished from a group or class and also, very commonly, a private or natural person as distinguished from a partnership, corporation, or association; **but it is said, that this restrictive signification is not necessarily inherent in the word, and that it may, in proper cases, include artificial persons**. See Bank of U. S. v. State, 12 Smedes & M. (Miss.) 460; State v. Bell Telephone Co., 36 Ohio St. 310, 38 Am. Rep. 583; Pennsylvania R. Co. v. Canal Com'rs, 21 Pa. 20. As an adjective, "individual" means pertaining or belonging to or characteristic of, one single person, either in opposition to a firm, association, or corporation or considered in his relation thereto. Black's Law Dictionary 6th Edition page 773.

This definition states that an "**individual**" can mean a <u>real person,</u> **or** <u>an artificial person</u> (entity). So it is not clear by the wording, that Defendant is a "person" as defined by 26 U.S.C. § 7701(a)(1), and that this statute applies. Maybe there are other clues to help understand the Congressional intent of this statute.

Let's go back to the definition found in 26 U.S.C. § 7701(a)(1) Person. "*The term "person" shall be construed to mean and include* ***an individual****, a* ***trust, estate, partnership, association, company or corporation***." Clearly every other item listed, trust, estate, partnership, association, company or corporation is an entity. Does this mean that the word "individual" as used in this statute means an entity?

Congress had the power to define "individual" within Title 26, **but did not do this**. Could it be because the use of the word "include" has provided the limited meaning of the word "individual", by the association of the other words which are all entities?

The terms "includes" and "including" when used in statutory construction, are placed in the statute to **LIMIT** the definition to those other things WITHIN the genus of the words being defined – **NOT to expand** "outside of" the defined terms. This is because there is an important principle of statutory construction, which states that, anything not mentioned in a law, statute, code, or regulation is "**excluded by implication.**"

*"**Expressio unius est exclusio alterius**. A maxim of statutory interpretation, meaning that **the expression of one thing, is the exclusion of another.*** Burgin v. Forbes, 293 Ky. 456, 169 S.W.2d 321, 325; Newblock v. Bowles, 170 Okl. 487, 40 P.2d 1097, 1100. Mention of one thing implies exclusion of another.

When **certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred**. Under this maxim, if a statute specifies one exception to a general rule, or assumes to specify the effects of a certain provision, other exceptions or effects are excluded." [Black's Law Dictionary, Sixth Edition, page 581]

Based on these facts alone, it appears that the word "individual", which is not defined in the Internal Revenue Code, must be an entity rather than a real person. Let's continue to look for other evidence to back this conclusion.

The IRM 5.1.11.6.8 (03-01-2007) specifically points out which returns may be created under the authority of 6020(b). Let's look at those to see which ones they are.
Employment - Form 940, Form 941, Form 943, Form 944, Form CT–1;
Excise - Form 720, Form 2290; Employer's Annual Railroad Retirement Tax Return;
US Partnership - Form 1065.

That IRM provision certainly supports the conclusion that the statute 6020(b) was written to authorize the Secretary to create a tax return for **certain entities** who failed to complete a return mandated by law. Each form listed as authorized to be created under 6020(b) is a form completed by an artificial person, or an entity under the law such as **trust, estate, partnership, association, company or corporation**.

Notice that the IRM does not even mention a form 1040 tax return. The fact is, that since the IRM provision does not authorize an Individual Income Tax 1040 Return to be created under the authority of 6020(b), any SFR created by the IRS to substitute for a 1040 tax return, would be in direct violation of this IRM provision, and the Congressional intent of statute.

IRM 5.1.11.6.8 (03-01-2007) **IRC 6020(b), Authority**, certainly supports the conclusion that the statute 6020(b) was written to authorize the Secretary to create a tax return for certain entities who failed to complete a return mandated by law. See attached Exhibit X - IRM 5.1.11.6.8 (03-01-2007) IRC 6020(b) Authority.

A review of IRM 5.1.11.6.8.1 (05-27-1999) Taxpayer Contact Part 1 gives four examples, and not one is an Individual Income Tax Return 1040, but instead they are examples of the returns authorized in IRM 5.1.11.6.8 (03-01-2007) IRC 6020(b) Authority. See attached Exhibit X - IRM 5.1.11.6.8.1 (05-27-1999) Taxpayer Contact. Also note Part 8 which says; "***If the taxpayer fails to file employment, excise and partnership tax returns by the specified date, prepare the returns under the authority of IRC 6020(b).***

Then of course there is IRM 5.1.11.6.8.2 (05-27-1999) Preparation and Approval of 6020(b) Returns. Again, this gives examples which only talk about employee taxes, partnership returns, and never an example or hint that a 1040 Individual Income Tax Return can be created.

DELEGATION ORDERS

Let's read 26 U.S.C. § 6020 on more time.

> **6020. Returns prepared for or executed by Secretary**
> (a) **Preparation of return by Secretary**
> If any person shall fail to make a return required by this title or by regulations prescribed there under, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person.
> (b) **Execution of return by Secretary**
> (1) **Authority of Secretary to execute return**
> If any **person** fails to make any return required by any internal revenue law or regulation made there under at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.
> (2) **Status of returns**
> Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

Does § 6020(b) authorize the IRS to execute a return? If you said yes, you are making a presumption, and not reading exactly what the statute says. The statute says that The Secretary is authorized to prepare and execute certain returns. Of course The Secretary refers to The Secretary of the Treasury, as defined by 26 U.S.C. § 7701(a)(11)(B), **not the IRS**.

There is no provision in the Internal Revenue Code giving any authority to IRS employees to enforce the payment of income taxes. Indeed there is no mention of the IRS or the Commissioner anyplace in Subtitle A, which talks about enforcement. The IRS Commissioner was specifically given authority to enforce the payment of income taxes in the 1939 Code; however, Congress eliminated all such references and all such authority from the 1954 Code. *Why?* Obviously, it was Congress' intent not to give any enforcement authority over income taxes to the IRS. All such enforcement authority was given ***ONLY*** to The Secretary of the Treasury.

If you believe this above statement is not correct, then please by all means, show Defendant that he is wrong. One non-refuted piece of evidence of this is that there is no Part 1 regulation for many of the statutes that the IRS claims and uses routinely to enforce Income Tax. Had Congress intended for the IRS to enforce and use 26 U.S.C. § 6020 for income tax, then they

would have clearly written it in the statute. Had they written it in the statute, then the Secretary of Treasury would have the authority to create a regulation to enforce the statute. Since there is no 26 CFR § 1.6020, there is no authority for the IRS to use this to create an Individual Tax Return for Income Tax.

Clearly therefore, the **law requires** that before any "officer, employee, or agency of the Treasury Department" can have any enforcement authority with respect to **any provision** of the Internal Revenue Code, there must be a delegation order from the Secretary of Treasury delegating to that agency (from which "re-delegations" of authority can be made), the authority to enforce any provision of the Internal Revenue Code. However, Section 44 USC 1505 requires "every document **or order** which proscribes a penalty has general applicability, and **legal affect**". (Emphasis added) must be published in the Federal Register.

Could this explain 26 U.S.C. § 7851 which reads in part;

> **7851. Applicability of revenue laws**
> (a) **General rules**
> **Except as otherwise provided in any section of this title—**
> (1) **Subtitle A**
> (A) Chapters 1, 2, 4, and 6 of this title shall apply only with respect to taxable years beginning after December 31, 1953, and ending after the **date of enactment of this title**, and with respect to such taxable years, **chapters 1 (except sections 143 and 144) and 2, and section 3801, of the Internal Revenue Code of 1939 are hereby repealed**.

Maybe this is an explanation as to why just about all Part 1 regulations are not found in the Book of Federal Regulations giving the Secretary the enforcement regulations for income tax under § 6020 Returns prepared for or executed by Secretary; § 6201 Assessment Authority; § 6203 Method of Assessment; § 6301 Collection Authority; § 6303 Notice and Demand for Tax; § 6321 Liens for Taxes; §§ 6331 - 6343 Levy and Distraint; § 6651 Failure to File Tax Return or Pay Tax; §§ 6671 – 6672 Penalty Assessed as Tax, and many others?

The Secretary can delegate authority to others such as the Commissioner of the IRS. Defendant believes that Delegation Order 150-37 is the single delegation order which all others rely on to obtain their authority. Delegation Order 150-37 is not filed in the Federal Register as required by law in order to make if effective upon the general public.

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

If there is none as Defendant has shown, then the IRS is in fact not authorized as they claim, and they are operating under "**color of law**". *Why is the IRS misrepresenting the law claiming they have the authority, when in fact they do not? Are those in the IRS simply compulsive liars? Are those in the IRS just poorly trained, incorrectly trained, or are they trying to conceal something else from us?* I am sure that you will reach your own conclusions to those questions as you continue to read this Memorandum, and verify the information provided.

There must be a proper unbroken chain of Delegation Orders to show the authority. If the Delegation Order that the Secretary wrote to the IRS Commissioner is not published in the Federal Register, then there is no authority for any other Delegation Order from the IRS Commissioner to the District Director, or to the Acting Chief Compliance Officer, or to the manager who created Defendant's SFR.

Could this be the reason why the IRS will not provide the proper chain of Delegation Orders showing their legal authority? They certainly have no problem claiming that the last Delegation Order 182 in the chain gives them the authority to act as the Secretary and execute returns under the authority of 26 U.S.C. § 6020(b). *However, it this true*? They refuse to provide the Delegation Orders showing a complete and unbroken delegation chain of authority.

There must be a Delegation Order which authorizes the IRS employee to create the SFR for Income Tax for the Defendant. The IRS claims that Delegation Order 182 is that Delegation

Order. However, a review of that Delegation Order or even previously written versions will clearly show that the Individual Income Tax Return 1040 is not listed.

Does the IRS have the legal right to presume that the Secretary made a mistake and left this tax return off the list, and created an Individual Income Tax Return under the authority even though the Delegation Order 182 previously did not list it as a return authorized? Of course the answer is NO. The IRS is not allowed to do anything without specific authorization by Congress via statutes, by the Treasury Department via regulations, by the Secretary via Delegation Orders, or by the IRS via IRM Provisions. If the statute does not say it, they may not do it.

As explained previously in the analyst of a "**person**" or individual. The use of the word "person" appears to be used as an entity (a person created under the law) created by government. Therefore, in each case they may create a tax return since the entity is required by law to file a tax return.

For years, Delegation Order 182 listed the returns on the Delegation Order that were authorized to be created under § 6020(b). Defendant has provided a copy of Delegation Order # DD-OKC-150 Rev 5 created by the Oklahoma District Director dated Nov. 27, 1987. It references Commissioner Delegation Order # 182. See Exhibit X DD-OKC-150 Rev 5. This Delegation Order lists the returns authorized by § 6020(B), and states clearly that the order may not be re-delegated, and is signed by the District Director.

As additional evidence Defendant presents an excerpt from the IRS Revenue Officers training document, which lists Delegation Order # 182 Rev 3 effective 12-14-83, and this Delegation Order lists the specific returns which may be created under the authority of § 6020(b). As you can see, there is no version of any Form 1040 listed as authorized to be created. See Exhibit X Delegation Order Rev 3.

However, more importantly on this training document there is a note, which states; "***The IRM restricts the broad delegation shown in figure 23-2 for revenue officers, to employment, excise and partnership tax returns <u>because of constitutional issues</u>."*** This clearly is a warning to the

revenue officers not to attempt to create a SFR for any other type tax returns for fear of violating Constitutional rights. Maybe this is why Revenue Officers no longer create SFR's and the IRS now uses lower grade employees like tax auditors to violate the law.

As evidence of the extremes to which the IRS has gone to hide the truth from the public and even their own employees, they have written Delegation Order 182 (Rev 7) which doesn't even list the return types any longer on the Delegations Order. This type of deceptive behavior shows the extent to which the IRS will go. This is FRAUD.

> **FRAUD -** An **intentional perversion of the truth** for the **purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right**; a **false representation of a matter of fact**, whether by words or by conduct, by **false or misleading allegations**, or **by concealment of that which should have been disclosed**, which deceives and is intended to deceive another so that he shall act upon it to his legal injury….. Black Law Dictionary 6th Edition page 660

Understanding that the removal of the list of tax returns authorized, from the Delegation Order 182 does not change a thing, since the IRM 5.1.11.6.8 (03-01-2007) limits which returns may be created under Delegation Order 182 (Rev 7), and **who is authorized to issue them.**

5.1.11.6.8 (03-01-2007) IRC 6020(b) Authority

1. The following returns may be prepared, signed and executed by revenue officers under the authority of IRC 6020(b):
    A. Form 940, Employer's Annual Federal Unemployment Tax Return;
    B. Form 941, Employer's Quarterly Federal Tax Return;
    C. Form 943, Employer's Annual Tax Return for Agricultural Employees;
    D. Form 944, Employer's Annual Federal Tax Return;
    E. Form 720, Quarterly Federal Excise Tax Return;
    F. Form 2290, Heavy Vehicle Use Tax Return;
    G. Form CT–1, Employer's Annual Railroad Retirement Tax Return;
    H. Form 1065, U.S. Return of Partnership Income.

2. **Pursuant to IRM 1.2.44.5, Delegations of Authority, Order Number 182 (rev. 7)**, dated 5/5/1997, revenue officers GS-09 and above, and Collection Support Function managers GS-09 and above, have the authority to prepare and execute returns under IRC 6020(b).

As additional evidence that the only returns authorized under § 6020(b) are **employment**, **excise** and **partnership tax returns,** the following IRM sections are presented from the IRM Section 5.1.11 Delinquent Return Accounts

- IRM 5.1.11.6.8.1 (05-27-1999) Taxpayer Contract. This states; If the taxpayer fails to file **employment**, **excise** and **partnership tax returns** by the specified date, prepare the returns under the authority of IRC § 6020(b).
- IRM 5.1.11.6 (05-07-2002) No Return Secured Preparation and processing of **employment, excise tax and partnership returns** under § 6020(b) of the Internal Revenue Code, see Section 11.6.8 of this IRM;
- IRM 5.1.11.6.1.2 (03-01-2007) Pursue Enforcement: Preparation and processing of **employment, excise tax and partnership returns** under § 6020(b) of the Internal Revenue Code, see Section 11.6.10 of this IRM;
- IRM 5.1.11.9.1 (05-27-1999) which states in part; "… if the taxpayer fails to file **employment, excise and partnership tax returns** by the specified date, prepare the returns under the authority of IRC § 6020(b)."
- IRM 5.1.11.9.1 (05-27-1999) Use the taxpayer's records or other reliable sources to determine the amount of wages paid, the amount of income tax and FICA tax withheld, and other necessary information. Use the following to prepare Forms 940, 941, 942 and 943:

If you review these IRM provisions you will also see that the 1040 is not listed. This certainly indicates that even the IRS understood which returns could be created under the authority of § 6020. Notice that these provisions are all from IRM Section 5.1.11 **Delinquent Return Accounts.** Nowhere in this IRM Section 5.1.11 Delinquent Return Accounts**,** will you find the words Form 1040 used. Not one example provided in this section refers to an Individual Income Tax Return. *Could this be because by law there is no requirement for Defendant to file a 1040 Tax Return*? *Therefore Congress, by the clear wording of § 6020, does not authorize an Individual Income Tax Return to be created?*

Simply put, there is no statute that requires Defendant to file a tax return for income tax. The only place which might indicate that persons are required to make or file a tax return would be

found in § 6001, § 6011 and § 6012 (a), and their regulations. However, these are conditional statutes, and the conditions must be met first before the statute applies.

The IRS's own Disclosure Officer admits that; "**Delegation orders which authorize Internal Revenue Service employee to create substitution for returns do not exist. This is part of a processing procedure located on an Internal Revenue Manual**." See attached Exhibit N - No Delegation Order Authorizes SFR.

> **Treasury Department Order 150-42, dated 7/27/56, 21 Fed. Reg. 5852 delegated the following limited authority to the Commissioner:**
> *"The Commissioner shall, to the extent of the authority vested in him, proved for the administration of United States internal revenue laws in the Panama Canal Zone Puerto Rico the Virgin Islands.~*
>
> **On Feb. 27, 1986 the Federal Register (51 Fed. Reg. 9571) published the following Treasury Department Order No. 150-0l:**
> *'The commissioner shall, to the extent of authority otherwise vested in him, provide for the administration of the United States internal revenue laws in the US. Territories and insular possessions and other authorized areas of the world." [These areas include countries with which the U.S. has Tax Treaties in force and DO NOT include the 50 Republic states.]*

CONCLUSION: Section 6020(b) does not authorize anyone other than the Secretary himself to execute a return when a person (an entity) is required to file, then fails to do so. The IRS has attempted to conceal the true limitation placed on them by removing the list of authorized returns from later versions of Delegation Order 182. However, the statute, by proper use of the legal definition of "person" and the Internal Revenue Manual, does limit the returns authorized to be created under the authority of Delegation Order 182 Rev 7, and the 1040 or Individual Income Tax Return is not authorized.

The IRS is operating under "**color of law**" when they claim that Delegation Order 182 gives them the authority. They cannot expand beyond the clear wording of the statute, regulations, or Delegation Orders. They must follow the IRM which clearly limits the type of returns authorized by this statute.

WHERE IS THE STATUTE THAT MAKES DEFENDANT LIABILE?

Defendant contends that there is no statute, which plainly and clearly makes Defendant liable for income tax. For the simple verification of this see attached Exhibit X Liability Index. You will not find Income Tax or Self-Employment tax listed in the 43 plus other statutes in which Congress does make someone liable to pay. This along with the simple fact that the IRS will refuse to provide the statute that makes Defendant liable for the tax they are attempting to collect, shows the fraud being committed in this collection. These facts show that the Plaintiff's Agency the IRS had no authority to create the SFR's for the years 2001 and 2002. If there is no statute which makes Defendant liable, then there is also no statute that would require Defendant to file a tax return for income tax. If there is no statute requiring Defendant to file a tax return, then a return under the alleged authority of 26 U.S.C. § 6020(b) would not be authorized under the law.

Only Congress has the authority to create a statute which makes someone or an entity liable for a tax. This of course is why the Courts have ruled that a liability must be found in the statutes.

> *Bente v. Bugbee* 137 A. 552, 553, 103 N. J. Law 608 . In that case the court held:
> A tax is a **legal imposition exclusively of statutory origin** (37 Cyc.724, 725), and, naturally, liability to taxation must be read in the statute, or it does not exist. (Emphasis added).
>
> In *State v. Chicago & N.W.R. Co*., 112 N.W. 515, 520; 132 Wis. 345, quoting and adopting the definition in State v. Certain Lands in Redwood County, 42 N.W. 473, 40 Minn. 512, the court held: "That a tax is **a liability created by statute** we think admits of no doubt, either upon principle or authority." (Emphasis added)
>
> *Boathe v. Terry*, 713 F.2d 1405, at 1414 (1983)
> "The taxpayer must be liable for the tax. Tax liability is a condition precedent to the demand. Merely demanding payment, even repeatedly, does not cause liability".

In addition, the US Supreme Court said in *Regal Drug Co v. Wardell*, 260 US 386 (1922): "**Congress may not, under the taxing power, assert a power not delegated to it by the Constitution**." (Bold emphasis)

Of course the IRS has by presumption and use of interpretive regulations attempted to convince the public and their employees that everything that comes in (receipts) is “income”, and therefore taxable. However, the 8th Circuit Court says in;

> *Helvering v. Edison Brothers' Stores*, 8 Cir. 133 F2d 575 17 (1943}
> "**The Treasury cannot by interpretive regulations**,**make income of that which is not income within the meaning of the revenue acts of Congress**, **nor can Congress, without apportionment, tax as income that which is not income within the meaning of the 16th Amendment.**" (Bold emphasis)

The Internal Revenue Code does not "Plainly and Clearly Lay" any liability for an income tax on Defendant.

The Income Tax Law, Subtitle A of Title 26, United States Code, imposes a tax on the taxable income of certain individuals in § 1:

> "***26 U.S.C. § 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:
> . . .
> "(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:
> . . .
> "(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:

. . .

"(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: . . ." (emphasis added)

However, this section does not designate anyone as liable for the payment of the tax. This is very important and the IRS may not be allowed to presume otherwise, since Defendant has rebutted this claim of presumption.

It should be noted at this point that titles and headings, such as "Married individuals, and surviving spouses filing joint returns", and "Heads of households" are not part of the law and have absolutely no legal effect per 26 U.S.C. § 7806. Therefore, the actual statute commences with, "There is hereby imposed . . ." The imposition of the tax is on taxable income only, not on any person or entity. In contrast, see 26 U.S.C. § 884, discussed more fully *infra*, which does impose a tax on an entity.

Subtitle A does, however, designate partners as liable for the taxes on income of a partnership, but only in their "individual" capacities (26 U.S.C. § 701), while certain partnerships are declared liable for excess recapture of credits (26 U.S.C. § 704). This of course is why the IRS may create a SFR 1065 Partnership Income Tax return under § 6020(b)

Foreign corporations are specifically designated as the party liable for payment of the "Branch profits tax" imposed by 26 U.S.C. § 884, (which, incidentally, does impose the tax on "any foreign corporation").

The only other party that is identified in the income tax law as liable for the payment of any income tax, is revealed in 26 U.S.C. § 1461:

"***Sec. 1461. Liability for withheld tax***

"**Every person required to deduct and withhold any tax under this chapter is hereby made liable** for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter."

(emphasis added)

"This chapter" is "Chapter 3 - Withholding Tax on Nonresident Aliens and Foreign Corporations". Thus the liable party in this instance is anyone withholding tax on nonresident aliens and foreign corporations.

There are no other references in Subtitle A (the income tax law) to anyone being liable for the tax imposed by § 1, other than those: partners (but only in their "individual" capacity); certain large partnerships in certain excess credit situations; foreign corporations; and those withholding taxes on nonresident aliens and foreign corporations.

There is only one other party that is identified as being liable for the income tax, but to find that party we have to journey outside the realm of the income tax law to "Subtitle C – Employment Taxes", where we find:

"**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** [*"Subtitle C – Employment Taxes; Chapter 24 – Collection of Income Tax at Source on Wages"*], and shall not be liable to any person for the amount of any such payment."

(emphasis and [*bracketed material*] added)

Thus, the only persons being assigned any liability for the income tax imposed by § 1 are those five instances — partners, certain large partnerships, foreign corporations, withholders of taxes on nonresident aliens, and foreign corporations, and those employers required by Chapter 24 of Subtitle C to withhold taxes on employees.

The absence, or near absence, of a statutory provision specifying exactly who is liable for a tax imposed is not customary. 26 U.S.C. §§ 2032A and 2056A specifically state who is liable for the Estate Tax; 26 U.S.C. § 3102(b) specifically states who is liable for the FICA tax;: 26 U.S.C. § 3202 specifically states who is liable for the Railroad Retirement Tax; 26 U.S.C. § 3505 specifically imposes liability for Employment Taxes; 26 U.S.C. §§ 4002 and 4003 specify not only who is primarily liable, but who is secondarily liable for the Luxury Passenger Automobile Excise Tax. See also: 26 U.S.C. §§ 4051 and 4052 (Heavy Trucks and Trailers Excise Tax); 26 U.S.C. § 4071 (Tire Manufacture Excise Tax); 26 U.S.C. § 4219 (Manufacturers Excise Tax); 26 U.S.C. § 4401 (Tax on Wagers); 26 U.S.C. § 4411 (Wagering Occupational Tax); 26 U.S.C. § 4483 (Vehicle Use Tax); 26 U.S.C. § 4611 (Tax on Petroleum); 26 U.S.C. § 4662 (Tax on Chemicals); 26 U.S.C. § 4972 (Tax on Contributions to Qualified Employer Pension Plans); 26 U.S.C. § 4980B (Excise Tax on Failure to Satisfy Continuation Coverage Requirements of Group Health Plans); 26 U.S.C. § 4980D (Excise Tax on Failure to Meet Certain Group Health Plan Requirements); 26 U.S.C. § 4980F (Excise Tax on Failure of Applicable Plans Reducing Benefit Accruals to Satisfy Notice Requirements); 26 U.S.C. § 5005 (Gallonage Tax on Distilled Spirits); 26 U.S.C. § 5043 (Gallonage Tax on Wines); 26 U.S.C. § 5232 (Storage Tax on Imported Distilled Spirits); 26 U.S.C. § 5364 (Tax on Wine Imported in Bulk); 26 U.S.C. § 5418 (Tax on Beer Imported in Bulk); 26 U.S.C. § 5703 (Excise Tax on Manufacture of Tobacco Products); and 26 U.S.C. § 5751 (Tax on Purchase, Receipt, Possession or Sale of Tobacco Products), to name a few.

Considering the "standard in the drafting of taxation laws industry", particularly in view of the requirement of strict construction, the limitation of liability to those five instances cannot be assumed to have been an oversight. In this instance the only ones liable are those specifically named as liable, just as in any other tax provision.

> In *United States v. Calamaro,* 354 U.S. 351, 77 S.Ct. 1138 (1957), the Supreme Court reviewed the conviction of a "pick-up man" in a numbers game operation. Calamaro had been convicted of failure to pay an occupational tax, imposed not only on persons who are subject to the excise tax on being "engaged in the business" of wagering, but also on those who are "engaged in receiving wagers" on behalf of one subject to the excise tax.

Although the "pick-up man", Calamaro, was the person who actually received the money from the players, handed out the betting slips to the players and was acting on behalf of the "banker", the Supreme Court held that the he was not one who "engaged in receiving wagers" because "receiving wagers" meant accepting or entering into the wager, not receiving the money for the wager. See also *Griffin v. United States*, 588 F.2d 521 (5th Cir. 1979); *Fine v. United States*, 206 F.Supp. 520 (Colo. 1962); *Drake v. United States*, 355 F.Supp. 710 (ED Mo. 1973); and *United States v. Mobil Corp*, 543 F. Supp. 507 (ND Tex. 1981) (26 U.S.C. 6001 and 26 CFR 31.6001 stating records "shall at all times be available for inspection" by revenue officers did not permit IRS blanket access, without warrant or summons, to browse through employee W-4's).

In *Calamaro*, the government cited a parallel regulation that more clearly included the "pick-up" man as one who "engaged in receiving wagers", which the Supreme Court effortlessly dismissed:

"Finally, the Government points to the fact that the Treasury Regulations relating to the statute purport to include the pick-up man among those subject to the § 3290 tax, and argues (a) that this constitutes an administrative interpretation to which we should give weight in construing the statute, particularly because (b) section 3290 was carried over *in haec verba* into § 4411 of the Internal Revenue Code of 1954. We find neither argument persuasive. **In light of the above discussion, we cannot but regard this Treasury Regulation as no more than an attempted addition to the statute of <u>something which is not there</u>. As such the regulation can furnish no sustenance to the statute**. *Koshland* v. *Helvering*, 298 U.S. 441, 446-447. Nor is the Government helped by its argument as to the 1954 Code. The regulation had been in effect for only three years, and there is nothing to indicate that it was ever called to the attention of Congress. The re-enactment of § 3290 in the 1954 Code was not accompanied by any congressional discussion which throws light on its intended scope. In such circumstances we

consider the 1954 re-enactment to be without significance. *Commissioner* v. *Glenshaw Glass Co.*, 348 U.S. 426, 431. *Calamaro*, supra, at 358-9 (emphasis added)

See also, *Water Quality Ass'n v. United States*, 795 F.2d 1303 (7th Cir. 1986), where, citing and quoting *Calamaro*, the court added at p. 1309:
"**It is a basic principle of statutory construction that courts have no right first to determine the legislative intent of a statute and then, under the guise of its interpretation, proceed to either add words to, or eliminate other words from the statute's language**. *DeSoto Securities Co. v. Commissioner*, 235 F.2d 409, 411 (7th Cir. 1956); see also *2A Sutherland Statutory Construction* § 47.38 (4th ed. 1984). Similarly, **the Secretary has no power to change the language of the revenue statutes because he thinks Congress may have overlooked something**." (emphasis added)

There is no dispute, nor does the government otherwise contend, that Defendant, is not a partner in any partnership, is not a large partnership, nor is he a foreign corporation. Defendant is not required to withhold any taxes on a nonresident alien nor on any foreign corporation, nor is he required by Chapter 24 of Subtitle C to withhold taxes on any fees he receives. Accordingly, the only way the income tax law could be interpreted as imposing any liability for income tax upon Defendant is by inference or implication. "But in statutes levying taxes the literal meaning of the words employed is most important, for ***such statutes are not to be extended by implication*** beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the Government and in favor of the taxpayer." *Merriam*, *supra*.

If the provisions of the Internal Revenue Code, even considering those outside the Income Tax Law (Subtitle A) fail to "plainly and clearly" lay liability for the tax upon Defendant, then they cannot be given that effect through strained interpretations, implication or inference.

Nevertheless, the government claims that Defendant owes income taxes "***though none had been clearly laid thereon by statute***. Shades of Pym and John Hampden, of the Boston tea party, and

of Patrick Henry and the Virginians! There is no warrant in law for such a holding." *Tandy Leather, supra*.

It is, therefore, respectfully submitted that there is no statute that renders Defendant liable for an income tax, and, therefore, he is not so liable. The Plaintiff's agency the IRS has refused to provide the statute written by Congress which makes Defendant liable for income tax. See attached Exhibit X Check. Absent a lawful liability for taxes, the essential element, liability for a tax deficiency cannot exist. See attached Exhibit X Liability for Tax Index. Such refusal to provide the statute and remain silent can be viewed as fraud according to the Courts

> *U.S. v. Prudden*, 424 F.2d. 1021; U.S. v. Tweel, 550 F. 2d. 297, 299, 300 (1977)
> **Silence can only be equated with fraud when there is a legal and moral duty to speak or when an inquiry left unanswered would be intentionally misleading**. We cannot condone this shocking conduct... If that is the case we hope our message is clear. **This sort of deception will not be tolerated and if this is routine it should be corrected immediately.** (emphasis added)
>
> **Morrison v. Coddington**, 662 P. 2d. 155, 135 Ariz. 480(1983).
> **Fraud and deceit may arise from silence where there is a duty to speak the truth, as well as from speaking an untruth.** (emphasis added)

Therefore the alleged tax liabilities determined by the IRS for the years 2001 and 2002 were created without authority and under "color of law" lacking any statutory tax liability backing. In this case as a matter of law, this case should be dismissed with prejudice.

There must be a statute which clearly and unequivocally makes a person liable for income tax before they are required to file a tax return. The IRS will falsely claim that 26 U.S.C. § 1 Tax Imposed, which was discussed above, and has been shown that it does not make one liable.

The IRS has claimed in the past that 26 U.S.C. § 61 Gross Income, creates a liability, but this claim is even more ridiculous since the word liable is not even used in this statute.

The IRS claims that 26 U.S.C. §§ 6001, 6011, and 6012 are the statutes that make Defendant and others liable. However, a review of these will clearly show that this is not true.

> 26 U.S.C. § 6001 Notice or regulations requiring records, statements, and special returns, states in part; *"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.*"

Do you see where they make you liable? This statute doesn't make Defendant liable, they simply state that **if you are liable**, then you must keep records, and render such statements, and make such return.

> 26 U.S.C. § **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."*

Do you see where they make Defendant liable? These sections don't make a person liable, they simply state that any person **made liable,** must file. *How is a person made liable?* The Court says the liability must exist in the statutes as discussed above.

> § **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 a 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 an individual,
> (ii) who is a head of a household (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 an 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 an 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.
Clause (iv) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151 (c).

The IRS's claim that this statute makes Defendant liable is without merit under the law. The word liable is not even used in this statute. Certainly one could argue that this statute is the one that requires everyone to file. However, that argument is frivolous since this is a conditional statute, and a condition must be met before the statute can be applied. There are millions of people within the United States who at one time filed a tax return but no longer do, because they now believe that they do not meet this requirement.

Where is the statute that makes Defendant liable for income tax? It simply does not exist, which is why the Plaintiff's Agency the IRS would not provide it when Defendant offered to pay the alleged debt in September 2007. See Plaintiff's Exhibit X Check

Here again, Defendant and others have found it impossible to get the IRS to provide the statute. *Why is this so hard? Could it be that there is no statute, and they do not want us to know? What other possible explanation could there be for not providing the information?* Simply put there is no statute that makes Defendant liable for income tax. See Exhibit X- Liability For Tax Index.

So is the IRS committing fraud by not providing the answer to Defendant's question, where is the statute that makes Defendant liable for income tax? I say yes they are, because they will not answer, and are being deceitful by not answering. The Courts agrees, and this is reflected in the following cases.

Morrison v. Coddington, **662 P. 2d. 155, 135 Ariz. 480(1983).**
Fraud and deceit may arise from silence where there is a duty to speak the truth, as well as from speaking an untruth.

McNally v. U.S., **483 U.S. 350, 371-372**, Quoting U.S. v Holzer, 816 F.2d. 304, 307 "Fraud in its elementary common law sense of deceit includes the **deliberate concealment of material information in a setting of fiduciary obligation**. A public official is a fiduciary toward the public, and if he deliberately conceals material information from them he is guilty of fraud.

U.S. v. Prudden, **424 F.2d. 1021; U.S. v. Tweel, 550 F. 2d. 297, 299, 300 (1977) Silence can only be equated with fraud** when there is a legal and moral duty to speak or when an inquiry left unanswered would be intentionally misleading. We cannot condone this shocking conduct... If that is the case we hope our message is clear. This sort of deception will not be tolerated and if this is routine it should be corrected immediately.

For a more in-depth analysis, see attached Exhibit X Memorandum written by Attorney, Tommy Cryer.

MISAPPLICATION OF STATUES

The IRS claims that 26 U.S.C. 6020(b) gives them the authority to create a return for Defendant, for Income Tax. This claim is without merit and has no backing in the law. Defendant has claimed that the IRS has operated under color of law. This section of the Memorandum shows the misapplication of statutes not written for income tax, being used for income tax, and showing that any implementing or enforcement regulations are found in Title 27, and not Title 26.

A review of the CFR Cross Reference Table shows the implementing or enforcement regulations for § 6020 are found in Title 27 Part 53 & 70, it does not have any regulations for Title 26 Subtitle A, where Income Tax is found. Below is a part of the CFR Index, which shows the common sections of code that the IRS likes to misapply, since the average person doesn't understand the law. This is a blatant violation of the law.

6020	**Returns prepared by Secretary**	**27 CFR Part 53 & 70**
6201	Assessment Authority	27 CFR Part 53 & 70
6203	Method of Assessment	27 CFR Part 70
6205	Special Rules for Employment Taxes	27 CFR Part 23
6301	Collection Authority	27 CFR Part 70
6303	Notice and Demand for Tax	27 CFR Part 70
6321	Liens for Taxes	27 CFR Part 70
6331-43	Levy and Distraint	27 CFR Part 70
6601.02	Interest on Underpayments	27 CFR Part 70

6651	Failure to File Tax Return or Pay Tax	27 CFR Part 70, 24, 25 194
6671-72	Penalty Assessed as Tax, Person Defined	27 CFR Part 70
6701	Penalties for Understatement of Tax	27 CFR Part 70
6702	Civil Penalty	----------

You will not find a 26 C.F.R. § 1.6020 in the book of Federal Regulations, showing that 26 U.S.C. § 6020 has any implementing or enforcement regulations for Subtitle A - Income Tax, therefore the SFR they created for Defendant is being done beyond any statutory authority granted by Congress. They are overstepping their authority. You will find a 26 C.F.R. § 301-6020-1T, however, this part 301 regulations, applies to federal and state employees, they are internal and are **not** substantive, but rather "**interpretive**", and they do not have the force and effect of law. Here is what the 8th Circuit Court said about the Treasury using "interpretive" regulations to change the legal intent of Congress.

> *Helvering v. Edison Brothers' Stores,* 8 Cir. 133 F2d 575 (1943] "The Treasury **cannot by interpretive regulations, make income of that which is not income within the meaning of the revenue acts of Congress,** nor can Congress, without apportionment, tax as income that which is not income within the meaning of the 16th Amendment."

It is a fact that a statute is unenforceable until it has an implementing regulation. There is no implementing regulation for **Returns prepared by The Secretary** under Part 1 of 26 CFR. *Could the reason that the IRS has no jurisdiction to enforce the income tax be because it is voluntary?* The IRS must have an implementing regulation that enforces the statute which needs enforcement. See 26 U.S.C. § 7805(a).

The implementing regulation must be published in the Federal Register as required by the Federal Register Act, 55 U.S.C. Chapter 15. The implementing regulation assigns responsibility for enforcement to a specific agency. Without a designated agency, the law is unenforceable. However, the IRS has attempted to enforce this via administration, and now has moved it over to the Judicial for enforcement.

The fact that the implementing or enforcement is in Title 27 and not Title 26,shows that the statute was not written for Income Tax found in Title 26 Subtitle A. See attached Exhibit X -

CFR Index showing Enforcement- Implementing Regulations. As additional confirmation that this does not apply to Income Tax, the Secretary did not write a regulation 26 C.F.R. § 1.6020 which would be required, if this applied to income tax.

We have looked at § 6020(b). There should be no doubt after reading this statute, that it clearly states that the Secretary is authorized under special conditions to make a return from his own knowledge, and from such information as he can obtain through testimony or otherwise. **What this statute does not tell you, is which types of returns may be created under the authority of this statute.** The IRS likes to presume that it is any return, but the statute places a restrictive condition of, "*required by any internal revenue law or regulation made there under at the time prescribed therefor*;" **or,** "*makes, willfully or otherwise, a false or fraudulent return.*"

Again 26 USC § 6020(b)(1) is a conditional statute, meaning that conditions must be met for the execution or use of this statute by the Plaintiff's agency the IRS. The conditions;

(1) A person **fails to make any return** required by any internal revenue law or regulation made there under at the time prescribed therefor;

(2) Or **makes**, willfully or otherwise, a **false or fraudulent return**;

These are the **only two conditions** that allow the Plaintiff's agency the IRS to create and execute a return under § 6020(b).

As additional evidence, we can look at the Internal Revenue Manual 35.2.2.11 (08-11-2004), which states;

> "Section 6020(b)(1) authorizes the Secretary to make a return upon either a taxpayer's **failure to file a return** or upon a taxpayer's filing of a **fraudulent** return." This seems to limit it to only a fraudulent return, and not include a false return as the statue authorizes.

So in Defendant's case, the only condition that could possibly apply would be that Defendant "***fails to make any return*** *required by any internal revenue law or regulation made there under*

at the time prescribed therefor." So let's review the facts to see if the Defendant's actions meet this condition which would be required for the IRS to use this statute.

There must be a statute which clearly and unequivocally requires the filing of a tax return, before Defendant could have failed to make a return. Such 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. The IRS will falsely claim that 6001, 6002, 6011 and 6012 are the statutes that make you liable.

26 U.S.C. § 6001 Notice or regulations requiring records, statements, and special returns, states in part; *"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.*" Do you see where these make you liable to file a return? These sections don't make you liable, they simply state that **if you are liable**, then you must file.

26 U.S.C. § **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."* Do you see where they make you liable to file a return? These sections don't make you liable, they simply state that any person **made liable,** then must file.

WHAT THE IRS HAS ADMITTED

The Plaintiff's agency the IRS's SFR program regarding the Form 1040 will not result in a valid return being made by the Secretary of the Treasury or his delegate. This is not Defendant's opinion, but comes from the GAO which has stated in a letter to Senator Daniel P. Moynihan dated February 17, 2000, concerning the SFR Program, quoting from Cornelia M. Ashby, the

Plaintiff's agency the IRS Associate Director of Tax Policy and Administration Issues, that "**no actual return is prepared**." See Exhibit X - GAO Report on SFR's.

Defendant claims that the IRS is not legally allowed to complete a 1040 tax return under the authority of 6020(b). *Could the fact that no actual return is being prepared by the IRS, be prima facie evidence that they know they are not authorized to create a 1040? Why would the IRS not use the same form (1040) which they have for years created and provided for the public to use to comply with 26 U.S.C. 6020(b)?* The IRS has no problem using other previously designated forms to create SFR's including Forms 941, 944, 943, 940, 1065, or 2290. In fact these are called out by name in many IRM provisions.

Certainly it appears in all other cases that the IRS uses the current designated forms to create the SFR under the authority of 6020(b). *So why doesn't the IRS use the previously authorized 1040 Form to do a SFR for Individual Income Tax?* Defendant can think of several reasons, but the most obvious is that the IRS knows that what they are doing is in direct violation of the statute, and should they be caught, they do not want to have committed additional crimes.

There can be no doubt that the IRS has created a provision which allows them to create a SFR and this can be found in IRM 4.19.17.1.3.1) (11-10-2006) Substitute For Return Procedures. This single IRM Provision mentions the Form 1040 as the form to be created. This single provision seems to back up the IRS Disclosure letter which states; "**Delegation orders which authorize Internal Revenue Service employees to create substitution for returns do not exist. This is part of a processing procedure located in an Internal Revenue Manual…**"

However, note that this IRM provision never says the return is being created under the authority of 6020(b).

The letter goes on to state that, "Instead these officials noted that the Plaintiff's agency the IRS prepares a document that **substitutes for the return** and that **proposes an assessment**, which is **posted to the taxpayer's account,** and is **subject to the collection process**."

- No actual return is prepared.

- The document(s) that substitutes for the return is prepared. {*Why not just complete a Form 1040 rather than a document or series of documents? A 1040 would have to be signed under penalty of perjury, and these other documents are not signed under penalty of perjury.*}
- The **proposed** assessment. {*So the assessment done by the IRS is just a proposed assessment and not an actual assessment? When does it change from a proposed assessment to a real assessment? Try to rebut this proposed assessment and see the IRS's response.*}
- This proposed assessment is then posted in the taxpayer's account. {*This is when the computer starts sending letters of demand. Remember the Push Code 036 - Expenditures/Timber Asset Sale that the IRS entered into the computer? The computer knows the assessment entered into the computer is the tax liability from the sale of timber, which is a federal privileged activity.*}
- It is now subject to the collections process. {*Turn the switch on and the computer now checks to see if all the elements are present before it sends out its demand letter to the taxpayer. (1) Is there an assessment? Yes. (2) Is the taxpayer involved in some kind of taxable activity? Yes. (3) Is the taxpayer a corporation or a partnership? Yes. (4) Then start sending the taxpayer letters demanding the money owed.*}

What the IRS has failed to state here is, that this process requires the taxpayer's consent, which is Congressionally mandated in 26 U.S.C. §6020(a). Review IRM Part 4.19.17.1.3.1 (11-10-2006) "Substitute for Return Procedures," where it describes at item 10 the requirement to have the taxpayer's signature on the return submitted.

The United States Tax Court also warned the Plaintiff's agency the IRS, that this procedure, using the Commissioner's Dummy Return was not in accordance with 26 U.S.C. §6020(b). The U.S. Tax Court first made this statement in the case, **Phillips v CIR**, 86 TC 433, (1986) and most recently in **Wheeler v CIR**, 127 TC 14 (2006), Docket Nos. 14430-03, 7206-04, filed May 22, 2006. There are numerous other Tax Court cases making reference to this same issue.

The Internal Revenue Manual at Part 35.2.2.11 (08-11-2004) states;

"Section 6020(b)(1) authorizes the Secretary to make a return upon either a taxpayer's **failure** to file a return, or upon a taxpayer's filing of a **fraudulent** return. This is 100% in harmony with the statute § 6020(b)(1). Nowhere does this state that the return may be frivolous in order to enable the return to be created as noted in the 26 C.F.R. § 301.6020-1T (b). Here the regulation clearly attempted to extend the authority granted by the statue and confirmed by the IRM provision. This is just one of the many deceiving methods that the IRS uses to try to explain their authority.

In two cases decided in 2003, the Tax Court clarified what constitutes a return under § 6020(b), for purposes of the addition to tax under § 6651(a)(2). *See Cabirac v. Commissioner*, 120 T.C. 163 (2003), and *Spurlock v. Commissioner*, T.C. Memo. 2003–124. In *Spurlock*, the Tax Court held that a return for § 6020(b) purposes (1) must be "subscribed" (signed); (2) it must contain sufficient information from which to compute the taxpayer's tax liability; and (3) the return form and any attachments must purport to be a 'return'. "*Spurlock*, slip. op. at 27. In *Cabirac*, the documents the Service proffered as constituting a § 6020(b) return were (a) dummy Forms 1040 that identified the taxpayer, but which were not signed, and did not show any tax due, (b) a subsequently prepared 30-day letter, and (c) a revenue agent's report attached to the 30-day letter explaining how the Service computed the taxpayer's liability.

Applying the analysis later explained in *Spurlock*, the Tax Court held **that these documents did not constitute a § 6020(b) return.** Critical to the Tax Court's analysis was that the Service never treated the documents, which the Service created at various times, as one group purporting to be a return. *See Millsap v. Commissioner*, 91T.C. 926 (1988), *acq. in result in part*, 1991–2 C.B. 1, describing a valid § 6020(b) return at issue therein."

Office of Chief Counsel, Notice – CC 2007-005, dated February 4, 2007 states,
"It is essential that § 6020(b) returns be placed in evidence if the Tax Court is to find that the Service has met its burden of proof under § 7491(c) and sustain the Service's addition to tax determination. In cases brought by non-filers, the Tax Court will deny the § 6651(a)(2) addition to tax if a valid § 6020(b) return is not entered into the record. See, **Wheeler v. Commissioner**, 127 T.C. 14 (2006); **Guthrie v. Commissioner**, T.C. Memo. 2006-81; and **Holmes v.**

Commissioner, T.C. Memo. 2006-80. This Notice updates and modifies CC-2004-009 (Jan. 22, 2004), which updated and modified CC-2003-019 (June 12, 2003)."

Now as shown above we have the GAO and Senator Daniel P. Moynihan addressing the SFR Program with a quote from the Plaintiff's agency the IRS Associate Director, Tax Policy and Administration Issues, Cornelia M. Ashby, stating that "no actual return is prepared." Then we have the Internal Revenue Manual 4.19.17.1.3.1 (11-10-2006), stating that we must have the taxpayer's signature on the return causing the SFR process to agree with 26 U.S.C. § 6020(a).

Further we have the United States Tax Court repeatedly, since 1986 thru to 2006, warning the Plaintiff's agency the IRS, that the Commissioner's Dummy return is not a return in accordance with 26 U.S.C. § 6020(b). The Plaintiff's agency the IRS's Chief Counsel is also stating that a 26 U.S.C. § 6020(b) return is required if there has been a 26 U.S.C. § 6651 addition to tax.

From all of the above authorities, it appears that a return is required to have the taxpayers consent, in order to be assessed. And also, that the 26 U.S.C. § 6651 addition to tax relies upon the posting of a valid return.
The IRC at 26 U.S.C. § 6651(a) states, in part;
"…the addition to tax under paragraph (1) shall not be less than the lesser of $100 or 100 percent of the amount required to be shown as tax on such return."

The penalty described above is shown on the Plaintiff's agency the IRS, Transcript of Account, [Individual Master File, (IMF)] as an addition to Tax posted with a transaction code 300. From the definition of this TC 300,it indicates that the Additions to Tax are clearly additions to taxes shown posted upon the return. These additions to tax are treated as a tax and further defined in Title 26 U.S.C. § 6665.

The IRC at 26 U.S.C. § 6665 states, in part;
"(a) Additions treated as tax
Except as otherwise provided in this title—

(1) The additions to the tax, additional amounts, and penalties provided by this chapter, shall be paid upon notice and demand and shall be assessed, collected, and paid in the **same manner as taxes**; and" (emphasis added).

Now we can see that these Additions to Tax imposed by 26 U.S.C. §6651 are penalties, required to be added to, and assessed in the same manner as taxes. Taxes are assessed under Title 26 U.S.C. § 6201 as those found posted upon the return of the taxpayer, or the Secretary's filed return. The key with the assessment is the return. **If there is no return, then there is no assessment.**

The IRC at 26 U.S.C. § 6201, Assessment authority, states, in part;
3(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.

This discussion can continue showing the wording of the law to include a return that is required to be within the Transcript of Account prior to the posting of any additions to tax. Further, that the taxpayer can only subscribe a Form 1040 return, thereby giving his consent to the assessment of tax upon the return. Nothing else is acceptable under the tax laws.

The IRC at 26 U.S.C. § 7804. Other personnel, states, in part;
(a) Appointment and supervision
Unless otherwise prescribed by the Secretary, the Commissioner of Internal Revenue is authorized to employ such number of persons as the Commissioner deems proper for the

administration and enforcement of the internal revenue laws, and the Commissioner shall issue all necessary directions, instructions, orders, and rules applicable to such persons.

At this point we can see that various authorities including the United States Congress, the United States Tax Court, the Government Accounting Office, and the Plaintiff's agency the IRS's Chief Counsel, each have stated and shown that a return must be in place prior to the posting of any "Additions to Tax". The Internal Revenue Service has repeatedly done things their way since they were first warned by the United States Tax Court in 1986 causing various violations of law.

The IMF attached hereto, shows a posting of an "SFR 150" which identifies a Commissioner's Dummy return. This posting contains an invalid, unsubscribed return that does not qualify as a satisfying transaction to open an IMF account. This invalid, unsubscribed return represents Identity Theft and Computer Fraud, because the IMF account can only be created by a Taxpayer's subscribed and executed return. The United States Tax Court stated in **Millsap v CIR** that the signing of the return was the taxpayer's Consent to be assessed. An assessment requires the taxpayer's consent therefore the Secretary is barred from signing a Form 1040 return. The SFR procedures found within the Internal Revenue Manual, IRM requires the taxpayer's signature.

All government tax attorneys are, or should be fully aware of the requirement for a return as stated in the Plaintiff's agency the IRS Chief Counsel's Notice dated February 4, 2007. The IRM also states that government field attorneys should have an understanding of the symbols and codes used by the Service Center on the Transcript of Account. (See IRM 35.8.1.8.2).
At this point we can safely state that the IMF should not exist without a valid return. This appears to violate Title 26 U.S.C. §7214 and § 1203 of Public Law 105-206, because not only has this issue been challenged prior to now, but every government employee is required to know his/her job function.

CONCLUSION

The evidence presented, shows that the Plaintiff's agency the IRS has no statutory authority to create an SFR for an **individual for Income Tax**. In other words there is no Congressional authority authorizing them to do this.

The Plaintiff's agency the IRS cannot produce the Delegation Order that specifically listed the authority to create a Form 1040 SFR. The simple truth is that the Plaintiff's agency the IRS was so desperate to create SFR's for Income Tax, that they wrote their own provision in the IRM giving themselves the authority to create a SFR 1040. You can find this procedure to create a SFR for Income Tax in IRM 4.19.17.1.3.1 (11-10-2006) Substitute for Return Procedures.

The United States Supreme Court stated in, **MORTON v. RUIZ**, 415 U.S. 199, 235 (1974): "Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required."

The procedures for assessing taxes and the procedures for assessing penalties must be made in the same manner as mandated by Congress. This has not been done by the Plaintiff's agency the IRS Substitute for Return Program included within this taxpayer' IMF Account. The IMF Account and all transactions taken since the posting of the invalid return must be rendered moot as having no basis in law.

Ignorance of the law cannot be used as a defense, and now being notified of the foregoing provisions of law; any further actions by anyone would include conspiracy to defraud the party involved. The mere existence of an IMF requires a taxpayer subscribed Form 1040, because, as the United States Tax Court stated, the return is the taxpayer's consent to be assessed. Every return including the invalid Commissioner's Dummy return, contains an assessment, therefore, the taxpayer can only subscribe to the return, in order to avoid a Constitutional violation.

The use of an SFR 150 to open a tax module on an IMF, evidences a possible Constitutional violation, as this has been done without Defendant's consent. There can be no debt or assessment without a valid return subscribed to by the taxpayer. Everything that has

transpired and posted to the Defendant's IMF must be considered moot, void, and must also be expunged from the record.

Now we can see that these Additions to Tax imposed by 26 U.S.C. § 6651 are penalties required to be added to and assessed in the same manner as taxes. Taxes are assessed under Title 26 U.S.C. § 6201 as those found posted upon the return of the taxpayer or the Secretary's filed return. The key with the assessment is the return. **If there is no return then there is no assessment.**

The IRC at 26 U.S.C. §6201, Assessment authority, states, in part;

(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.

This discussion can continue showing the wording of the law to include a return that is required to be within the Transcript of Account prior to the posting of any additions to tax. And further that a Form 1040 return can only be subscribed by the taxpayer thereby giving his consent to the assessment of tax upon the return. Nothing else is acceptable under the tax laws.

The IRC at 26 U.S.C. § 7804. Other personnel, states in part;

> (a) Appointment and supervision Unless otherwise prescribed by the Secretary, the Commissioner of Internal Revenue is authorized to employ such number of persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws, and the Commissioner shall issue all necessary directions, instructions, orders, and rules applicable to such persons.

At this point we can see that various authorities including the United States Congress, the United States Tax Court, the Government Accounting Office, and the IRS Chief Counsel each have stated and shown that a return must be in place prior to the posting of any “Additions to Tax”. The Internal Revenue Service has repeatedly done things their way since they were first warned by the United States Tax Court in 1986 causing various violations of the law.