TO THE UNITED STATES CONGRESS

WASHINGTON, D.C.

David R. Myrland, Affiant/Complainant, vs. UNITED STATES DEPARTMENT OF JUSTICE, ALBERT GONZALES, UNITED STATES TREASURY DEPARTMENT, JOHN W. SNOW, INTERNAL REVENUE SERVICE, MARK W. EVERSON, U.S. DISTRICT COURT, GARR M. KING, LEE YEAKEL, ROBERT WESTINGHOUSE, LISA PERKINS, STEVEN B. BASS, TERRY L. MARTIN, U.S. TAX COURT, JOEL BERGER, NORTHWEST AIRLINES (a corporation), and all those similarly situated or so involved, marital communities spared, DEFENDANTS.	No. _____ VERIFIED MEMORANDUM IN SUPPORT of 18 U.S.C. § 4 Misprision of felony complaint; 18 U.S.C. §§ 4, 241, 242, 876(d), 880, 1341, 1343, 1623, 1951(a), 1962(c), 1962(d), 2235; 26 U.S.C. § 7214.

1.1 COMES NOW, David R. Myrland, Complainant hereto, seeking to support claims of felonious misconduct complained of as required by 18 U.S.C. § 4 Misprision of felony. Parties hereto will hereinafter be referred to as Petitioner/Respondent (singular masculine). Knowing now that the Courts are issuing protective orders to keep the law out of every American's reach Petitioner felt compelled to believe his interpretation of the law and to report the obvious felonies

arising from the misenforcement proven thereby. This judicial shelter or safe harbor from Congressional assurances is nothing new.

1.2 The United States has admitted tacitly (See *Jim L. Walden v. United States, et al.*, #A-05-CA-444-LY, U.S. Dist. Court, Austin, TX, **Tab #8** Protective Order) that Title 26 USC's provisions do not provide for any contact between the Internal Revenue Service and the Petitioner. **First** - The 16th Amendment allows the Congress alone shall have the power to lay the taxes ultimately sought by the IRS, but the Respondent can produce only executive branch regulations to allege a liability. (See *Walden's* memorandum at ¶¶ 3.4 through (QA)5; Issue B herein ¶¶ 4.12.-4.19). **Second** - Congress has placed a burden upon the Respondent to prove that the office behind the summons of records (26 USC 7602) has permission to leave D.C. prior to acting outside of it. (See 4 USC 72; *Walden's* memorandum at ¶¶ 3.11 through (QB)4; Issue A herein ¶¶ 4.5 - 4.11). **Third** - Petitioner must violate the law (26 CFR 602.101) to file a form to report domestically earned profits (taxable income) on <u>any</u> Form 1040, because the law only permits him to file a tax return to report "foreign earned income." (See *Walden's* memorandum at ¶¶ 3.20 through (QC)3; Issue C herein ¶¶ 4.20 - 4.25).

1.3 In *Walden, id.*, <u>the United States asked for a protective order</u> against having to answer the questions for review found under Petitioner's Issues A, B, and C briefed herein, and that **protective order was issued by judge Lee Yeakel on 8/2/05**. The United States was likewise unable to speak of these laws, 4 USC § 72 and 26 CFR 602.101, in claims in *U.S. v. Herold, infra*, under his Issues A and E respectively in his (mailed on 6/23/99) motion to dismiss. On September 18, 1996 in *McCall, infra*, and in the instance of three other Supreme Court petitioners thereafter, the Supreme Court's denial of certiorari spared Respondent the discomfort of having to discuss the law. (See *McCall v. C.I.R.*, S.Ct. #96-5871; *Bryan v. C.I.R.*, S.Ct. #96-6997; *Santangelo v. C.I.R.*, S.Ct. #96-6935; *Talmage v. C.I.R.*, S.Ct. #97-5299).

1.4 In *U.S. v. Herold*, U.S. Dist. Court, Portland, Oregon, # CR 99-161-KI (prosecution for 26 USC 7203 failure to file return(s), 3 counts), the Court allowed Respondent to remain silent as to certain claims also briefed herein. For four months that Court allowed the Respondent to destroy Mr. Herold's affairs and contracting business to where he had to plead to one count of failure to file so he could get back to work to support his family. Judge Garr M. King was fully

aware of all of this, he was reminded of the Court's duties, and he was pleaded with to hold a hearing and to hold the IRS to the letter of the law, but he refused.

1.5 Indeed, to raise issues concerning applicable provisions in American courts is to violate the law against frivolity. The list below is an accounting of efforts made to obtain indulgence of briefed statutory challenges in common with those raised herein.

Tax Court docket number:
#11315-94 Chris Bernsdorff was penalized $1000.00 for asking Tax Court to indulge issues concerning applicable provisions, *e.g.*, 26 USC § 83 and others.

#15685-94 Susan Eckles was penalized $3000.00 for asking Tax Court to indulge issues concerning applicable provisions, *e.g.*, 26 USC § 83 and others.

#3176-95 Robert and Mauris Justice were penalized $3750.00 for asking Tax Court to indulge issues concerning applicable provisions, *e.g.*, 26 USC § 83 and others.

#1610-95 Richard and Pamela Bryan were threatened with penalties for asking Tax Court to indulge issues concerning applicable provisions, *e.g.*, 26 USC § 83 and others.

#8766-95 William Santangelo was penalized for asking Tax Court to indulge issues concerning applicable provisions, *e.g.*, 26 USC § 83 and others. (See Memorandum Opinion, filed Oct.2, 1995, pg.13, $2,500.00).

#339-95 Stephen Talmage was penalized $6500.00 for offering to concede all facts in exchange for "how to comply with § 83". (See Order and Decision, 3/11/96, pg.8, 19, 20).

Santangelo, **9th Cir**.App.#95-70866, and *Bryan*, **9th Cir**.App. #95-70800, $2000.00 each.

1.6 In actions under 5 USC § 702 (District Court, Seattle, Civil #s C95-1001R filed 6/30/95; C95-1246(C)R filed 8/11/95), the Court (Chief Judge Rothstein, two violations of 18 USC § 242) decided that Sovereign Immunity and 26 USC § 7421 supersede the Citizen's Right to know about the law, regardless of its applicability. U.S. Tax Court cannot say with any certainty whether it sits to decide issues at law, or if it sits to penalize those who dare raise said issues (See ¶ 5.6, *infra*), and yet it feels free to destroy those Citizens with a genuine desire to comply with the law. The Respondent's silence and oppression are judicially proven and exposed by these [decisions]. The Respondent's disregard for the right of the Petitioner to arrange his affairs according to law is represented by many cases through which one can see a wall between the laborer and the statutory provisions to which he [is subject], the provisions relied upon herein.

Being self taught and in court for his first time(s), Petitioner hardly claims to have done this work flawlessly, but for one who wanted only to prepare tax returns to go to this length just to find the truth surely exhausted the remedy purportedly available in the executive and judicial branches.

1.7 In case law (Supreme Court) found at ¶ 4.34, *infra*, it becomes clear that these litigants were precisely on point, that they were anything but frivolous in their claims under 26 USC § 83, and that those "courts" even contradicted the DOJ and S.Ct. to call taxpayers "frivolous" so as to fine them for being correct and for believing in Congress, for attempting to change the IRS with the law.

1.8 Petitioner is in real danger of being falsely arrested and imprisoned, falsely charged, libeled, slandered, and stands to lose everything, tangible and intangible, to his servants. This Complaint should quash allegations of *willfulness* for those who join it, and it's having been filed as required by law should ensure that any and all Grand Juries shall have access to this Complaint in any deliberations involving a controversy under 26 USC. Complainants hereto are not and will never be *willfully* in violation of anything.

Petitioner has relied upon nothing more than the following maxims/axioms:

1. ***Congress*** may lay and collect income taxes, as authorized by the 16th Amendment. Congress must name the subject of any income tax.

2. The law is perfect. All Americans have the right to access the law and to know of its proper application and operation, even tax law.

3. The law must be complied with – all of it, even by the IRS, even 26 CFR 1.83-3(g), 1.1001-1(a), and 602.101.

4. The law must be applied openly and with indifference.

5. Statutes and regulations are intrinsic evidence. To contradict a statutory claim one must either prove, 1) the statute is unconstitutional, 2) the interpretation of the statute is flawed, or 3) the existence of applicable exceptions to the statute under which the claim is made.

6. *Expressio unius est exclusio alterius*/Clear language/Void for vagueness. By denying access to tax law the individual is deprived of access to an entire branch of gov't (legislature) as it relates to an entire title of the United States Code (taxation without representation). In the silence evaporates one's rights to arrange personal affairs according to law (IRS publications are not law).

7. Statutory definitions are not "inclusions." A definition ceases to be a definition if the term "includes" is interpreted as a term which expands the definition to elements not mentioned. A definition excludes all non-essential elements by not listing them.

8. Tax Code (26 USC) § 83 applies to any and all compensation for services. "Section 83(a) explains how property received in exchange for services is taxed." (See 956 F.2d at 498 (CA5 1992)).

9. Fair market value (FMV) of property is determined by an arm's length transaction. FMV equals contract value.

10. Cost is excludible or deductible from gross income. Labor is property, all property is cost under the law; labor's value is cost, not profit.

11. Only Congress writes the law. Administrative regulations can't deviate from statute because regulations aren't written by Congress.

II. INTRODUCTION TO MEMORANDUM.

2.1 With this Memorandum Petitioner seeks to illustrate his claim that statute, in this instance, is written in very clear language and is protective of his property. Congress will find that law operates in ways contrary to routine. While the Respondent *claims* otherwise, it possesses no lawful authority or statutory basis for its claim that 26 USC applies to the Petitioner, and it lacks the requisite leave under 4 USC § 72 which might allow the Respondent to speak to the Petitioner. This challenge is identical to that made in *Brown & Williamson v. F.D.A.*, the challenge that a federal agency such as the IRS has no statutory authority to act as complained of.

2.3 In addition, the Respondent has expressly instructed the Petitioner, in writing, that the amounts now deemed gross income are rightfully deemed to be a cost, an amount deductible from gross income under the law.

2.4 Because these claims are founded upon statute's place in American jurisprudence, anybody protesting Petitioner's reliance upon statute can readily be termed "anti-Congress" and "anti-government"; *due process protestors*. **Exhibits to this verified Memorandum are as follows**:

Exhibit 1. Protective Order issued by U.S. Dist. Court (Austin, TX) in *Walden*, *supra*. (**Tab #8**).

Exhibit 2. 26 CFR 1.83-6 amendment described. See also - "**Proposed Regulations, ¶ 49,538, Proposed Amendments of Regulations (EE-81-88)**, Federal Register 12/5/94." (**Tab #9**).

Exhibit 3. Affidavit of Tim Garrison, accountant of thirty years, describing the arbitrary elements of dealing directly with the IRS on behalf of clients with tax controversies. (**Tab #10**).

Exhibit 4. IRS Publication 17 "Tax Guide for Individuals" excerpts showing reflection of statutes claimed by Petitioner to have been violated. Here, the IRS clearly states that all property is a cost, and that Petitioner's cost is the value of personal services. (**Tab #11**).

Exhibit 5. Three annually consecutive copies of 26 CFR 602.101 as amended showing its evolvement over such period regarding return filing requirements found there. Included is Treasury Decision ("T.D.") 8335 which caused the *amendment* to this regulation. (**Tab #12**).

III. STATUTORY INTERPRETATION & AUTHORITIES.

3.1 Prior to statutory interpretation and analysis the Petitioner would like to review the maxims, axioms, and thresholds of due process by which this research was guided and which duly confine the conclusions set forth herein. This memorandum is an explanation of precisely how the Tax Code operates in many aspects. Cogent refutation places the speaker of such ahead of all DOJ and IRS attorneys, and worlds beyond every federal judge, who all have been unable for years to so speak, as it relates to the competent application of tax law to fact.

A. Statutory language is of primary import.

3.2 In state courts, "Whether the legislature acted wisely by creating the challenged restriction is not a proper subject for judicial determination. *McKinney v. Estate of McDonald*, 71 Wash.2d 262, 264, 427 P.2d 974 (1967); *Port of Tacoma v. Parosa*, 52 Wash.2d 181, 192, 324 P.2d 438 (1958). The fact that the legislature made no exception for minors does not give rise to some latent judicial power to do so by means of a volunteered additional proviso. This is true even if it could be said the legislative omission was inadvertent. *State v. Roth*, 78 Wash.2d 711, 715, 479 P.2d 55 (1971); *Boeing v. King County*, 75 Wash.2d 160, 166, 449 P.2d 404 (1969); *State ex rel. Hagan v. Chinook Hotel*, 65 Wash.2d 573, 578, 399 P.2d 8 (1965); *Vannoy v. Pacific Power and Light Company*, 59 Wash.2d 623, 629, 369 P.2d 848 (1962). If there is a need for such an

exception, it must be initiated by the legislature, not by the courts. *Boeing v. King County*, *supra*; *State ex rel. Hagan v. Chinook Hotel*, *supra*." [1] And in federal courts -

> "The particular need for making the judiciary independent was elaborately pointed out by Alexander Hamilton in the Federalist, No.78, from which we excerpt the following:
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> > "The executive not only dispenses the honors, but holds the sword of the community. The Legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, ***has no influence*** over either the sword or the purse; ***no direction*** either of the strength or of the wealth of the society; and ***can take no active resolution whatever***. ***It may truly be said to have neither force nor will, but merely judgment***." [2]

3.3 "It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the law-making body which passed it, the sole function of the court is to enforce it according to its terms. *Lake County v. Rollins*, 130 U.S. 662, 670, 671; *Bate Refrigerating Co. v. Sulzberger*, 157 U.S. 1, 33; *United States v. Lexington Mill and Elevator Co.*, 232 U.S. 399, 409; *United States v. Bank*, 234 U.S. 245, 258." [3] On state and federal levels, strict construction and hewing to the law with indifference is a mandate and axiom.

3.4 While executive branch officials may enjoy various delegations of regulatory authority, it is Congress' enactments within which those officials must stay when promulgating regulations. (See *Brown & Williamson v. F.D.A.*, 153 F.3d 155, 160-167 (CA4 1998), aff'd 529 U.S. 120 (2000) (FDA stripped of tobacco enforcement authority for lack of statutory basis)). Regulation cannot deviate from statute or it is void. The Secretary of the Treasury is bound by statute. Congressional intent is the deciding factor in considering the validity of a regulation. [4] What does not exist in regulation or statute does not exist at all. [5]

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[1] See *Cook v. State*, 83 Wash.2d 725, 735, 521 P.2d 725 (1974).
[2] See *Evans v. Gore*, 253 U.S. 245, 249, 40 S.Ct. 550, 551 (1920).
[3] See *Carminetti v. U.S.*, 242 U.S. 470, 485, 489-493 (1916).
[4] See *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988); *U.S. v. Larinoff*, 431 U.S. 864, 872-873 (1976); *U.S. v. Calamaro*, 354 U.S. 351, 359 (1956); *Koshland v. Helvering*, 298 U.S. 441, 446-447 (1936); *Manhattan General Equip. Co. v. C.I.R.*, 297 U.S. 129, 134, 54 S.Ct. 397, 399 (1936); *Tracy v. Swartout*, 10 Pet. 354, 359 (1836).
[5] See *Carminetti v. U.S.*, 242 U.S. 470, 485, 489-493 (1916), citing (on 485) *Lake County v. Rollins*, 130 U.S. 662, 670, 671; *Bate Refrigerating Co. v. Sulzberger*, 157 U.S. 1, 33; *U.S. v. Lexington Mill and Elevator Co.*, 232 U.S. 399, 409; *U.S. v. Bank*, 234 U.S. 245, 258; *Security Bank of Minnesota v. C.I.R.*,

3.5 All can see from this supported dialog that legislation and its intent, on state and federal levels, is the governing factor in determining unlawfulness or legality, and that no agency or court has the authority to deviate from it or expand its application to subjects not expressly implicated or addressed. It is *Brown*, and *Chevron*, *infra*, which provide the prescription for deciding Petitioner's challenges, all of which are founded squarely upon strict interpretation of statutory language. These show a lack of statutory authority at the foundation of certain modes of enforcement by the Respondent. The analysis of statute in *Brown*, appellate decision (CA4 1998), serves as an exquisite example of how Petitioner hopes any Court will approach these issues, as due process requires.

B. **Statutory interpretation must be strict**.

3.6 What this case will evoke from the Respondent is either silence regarding the challenge and libel in the form of name-calling on the record, *i.e.*, "tax protester," "lowly taxpayer," or the Respondent will challenge Petitioner's interpretation of statute with a logical contradiction. In such an instance as the latter, a particular approach to the controversy must be taken.

> "***The parties provide vastly differing interpretations of the statutory language, and both contend that the language clearly supports their position.***"

> "The Commissioner's argument has considerable force, if one focuses solely on the language of sections 1281 and 1283 and divorces them from the broader statutory context. But we cannot do that. The Supreme Court has noted that, "***the true meaning of a single section of a statute in a setting as complex as that of the revenue acts, however precise its language, cannot be ascertained if it be considered apart from related sections, or if the mind be isolated from the history of the income tax legislation of which it is an integral part.***" (Cite omitted) According to the Court, the construing court's duty is "***to find that interpretation which can most fairly be said to be imbedded in the statute, in the sense of being most harmonious with its scheme and with the general purposes that Congress manifested.***'" (Cite omitted) The circumstances of the enactment of particular legislation may be particular relevant to this inquiry. (Cite omitted) ***Finally, when there is reasonable doubt about the meaning of a revenue statute, the doubt is resolved in favor of those taxed.*** (Cite omitted)

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994 F.2d 432, 436 (CA8 1993); *Washington Red Raspberry Comm'n v. U.S.*, 657 F.Supp. 537, 545 (1987); *Forging Industry Ass'n v. Secretary of Labor*, 748 F.2d 211, 213 (1984); *Community for Creative Non-violence v. Kerrigan*, 865 F.2d 382, 387-91 (1988); *Iglesias v. U.S.*, 848 F.2d 362, 367 (CA2 1988); *Bank of New York v. U.S.*, 471 F.2d 247, 250 (CA8 1973); *Fidelity Philadelphia Trust Co. v. U.S.*, 122 F.Supp. 551, 553 at [3,4].

As in all cases of statutory interpretation, ***we must start with the text of the statute.*** But we cannot simply focus on sections 1281 through 1283 because they do not exist in a vacuum. ***Rather, we must consider the context provided by the more general statutory scheme of which [they] are a part****."* [6]

"Thus, the statutory scheme into which [the provisions] fit shows a concern with the treatment of discounted obligations. ***We find no mention*** in this scheme of the treatment of bank loans made in the ordinary course of business. Given this context, we would expect that if Congress initially covered loans without discount, as the commissioner contends, ***it would provide language*** clearly stating such an intention. We next examine the statutory text to see if it contains such a clear statement.

We conclude that the statutory text does not clearly cover obligations containing only stated interest. First, nothing in either the sections at issue or in the broader statutory scheme specifically refers to loans [of that type].

Second, we conclude that the actual text of the provisions is ambiguous with regard to whether such obligations are covered." [7]

"We are not convinced that the language is as clear as the Commissioner contends." [8]

"An examination of the statutory context, ***the text of the relevant provisions***, and the legislative history convinces us that the construction that is "most harmonious with its scheme and with the general purposes that Congress manifested." (Cite omitted) Moreover, because the application of [the provision] to these loans is ambiguous, we follow the venerable rule that "[i]n the interpretation of statutes levying taxes . . .***[courts must not] enlarge their operation so as to embrace matters not specifically pointed out***. In case of doubt they are construed most strongly against the government."

"'I respectfully dissent. If the [statutory] intent of Congress is clear, that is the end of the matter.' *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 842, 104 S.Ct. 2778, 2781, 81 L.Ed.2d 694 (1984)." [9]

3.7 This explanation of how to interpret statute only confirms the assertion that statute must clearly impose the duties and requirements over which the Respondent may seek to adversely act against the Petitioner.

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[6] See *Security Bank of Minnesota v. Commissioner of IRS*, 994 F.2d 432, 435-36 (CA8 1993).
[7] *Id*., at 437.
[8] *Id*., at 438.
[9] *Id*., at 441.

C. Statutory definitions and the maxim of *expressio unius est exclusio alterius*.

3.8 Petitioner is basing his claims on statute alone, confining his conclusions to those supported by the application of well settled and accepted canons of statutory construction. Congress' failure to identify the Petitioner in statutory definitions is therefore interpreted as legislative intent that he not be a subject of the statutory scheme upon which the definition is said to operate. Because tax statutes are to be strictly construed, the maxim of *expressio unius est exclusio alterius* is an appropriate interpretive guide. (See maxim applied in *Tennesee Valley Auth. v. Hill*, 437 U.S. 153, 188 (1978); *Passenger Corp. v. Passengers Assoc.*, 414 U.S. 453, 458 (1974); *Bingler v. Johnson*, 394 U.S. 741, 749 (1969); *Evans v. Newton*, 382 U.S. 296, 311 (1966); *Nashville Milk Co. v. Carnation Co.*, 355 U.S. 373, 375 (1958)).

3.9 Petitioner is challenging the statutory authority of the Respondent, and does so with statutory definitions. A "definition" by its terms excludes non-essential elements by mentioning only those things to which it shall apply.

> "**Define**. To explain or ***state the exact meaning*** of words and phrases; to state explicitly; ***to limit***; to determine essential qualities of; to determine ***the precise signification*** of; to settle; to establish or prescribe authoritatively; to make clear. (Cite omitted)"
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> "To "define" with respect to space, means to set or establish its boundaries authoritatively; to ***mark the limits*** of; to determine with precision or exhibit clearly the boundaries of; to ***determine the end or limit***; to fix or ***establish the limits***. It is the equivalent to declare, fix or establish.
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> "**Definition**. A description of a thing by its properties; an explanation of the meaning of a word or term. The process of stating the exact meaning of a word by means of other words. Such a description of the thing defined, ***including all essential elements and excluding all nonessential***, as ***to distinguish it from all other things*** and classes." [10]

3.10 Therefore, a statutory definition's failure to mention the person of the Petitioner as the subject of a tax when it defines "citizen," or as the "person" in penal statutes, excludes the Petitioner from the entire statutory scheme to which such definition is said to apply.

3.11 When a court is confronted with a challenge based on statutory definitions the Supreme Court is clear in its prescription that the specific terms of such a definition must be "met" to trigger applicability of its related statutes to any particular act, person (natural or otherwise), or thing.

[10] See *Black's*, 6th Edition, "define" and "definition."

"***Metropolitan was subject*** to Title VII, however, ***only if, at the time of the alleged retaliation, it met the statutory definition of "employer," to wit***: "a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year." 42 U.S.C. Section(s) 2000e(b). . . . ***Statutes must be interpreted, if possible, to give each word some operative effect***." [11]

". . . Thus, ***Congress did not reach every transaction*** in which an investor actually relies on inside information. ***A person avoids liability if he does not meet the statutory definition of an "insider***[.]" [12]

"On its face, this is an attractive argument. ***Petitioner urges that, in view of the severity of the result flowing from a denial of suspension of deportation, we should interpret the statute by resolving all doubts in the applicant's favor***. Cf. *United States v. Minker*, 350 U.S. 179, 187-188. ***But we must adopt the plain meaning of a statute, however severe the consequences***. Cf. *Galvan v. Press*, 347 U.S. 522, 528." [13]

"***The wording of the federal statute plainly places the incidence of the tax upon the "producer," that is, by definition, upon federally licensed distributors of gasoline such as petitioner***. . . . ***The congressional purpose to lay the tax on the "producer" and only upon the "producer" could not be more plainly revealed***. Persuasive also that such was Congress' purpose is the fact that, if the producer does not pay the tax, the Government cannot collect it from his vendees; ***the statute has no provision making the vendee liable for its payment***. *First Agricultural Nat. Bank v. Tax Comm'n*, *supra*, at 347." [14]

"***A purpose*** to subject aliens, much less citizens, to ***a police practice so dangerous to individual liberty as this*** should not be read into an Act of Congress ***in the absence of a clear and unequivocal congressional mandate***. I think the Act relied on here by the Department of Justice should not be so read. ***I would hold that immigration officers are wholly without statutory authority to summon persons***, whether suspects or not, ***to testify in private as "witnesses" in denaturalization matters***. For this reason I concur in the Court's judgment in this case." [15]

"***Conspicuously absent from § 1415(e)(3), however, is any emergency exception for dangerous students. This absence is all the more telling in light of the injunctive decree*** issued in *PARC*, which permitted school officials unilaterally to remove students in "'extraordinary circumstances.'" 343 F.Supp. at 301. Given the lack of any similar exception in Mills and the close attention Congress devoted to these "landmark" decisions,

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[11] See *Walters v. Metropolitan Enterprises, Inc. et al.*, 519 U.S. 202 (1997).
[12] See *Reliance Elec. Co. v. Emerson Elec. Co.*, 404 U.S. 418, 422 (1972).
[13] See *Jay v. Boyd*, 352 U.S. 345, 357 (1956).
[14] See *Gurley v. Rhoden*, 421 U.S. 200, 205 (1975).
[15] See *U.S. v. Minker*, 350 U.S. 179, 192 (1956).

see S.Rep. at 6, ***we can only conclude that <u>the omission was intentional</u>; we are therefore not at liberty to engraft onto the statute an exception Congress chose not to create***." [16]

"***It is axiomatic that the statutory definition of the term excludes unstated meanings of that term***. *Colautti v. Franklin*, 439 U.S. 379, 392, and n.10 (1979). Congress' use of the term "propaganda" in this statute, as indeed in other legislation, has no pejorative connotation. ***<u>As judges, it is our duty to construe legislation as it is written, not as it might be read by a layman, or as it might be understood by someone who has not even read it</u>***. ***If the term "political propaganda" is construed consistently with the neutral definition contained in the text of the statute itself, the constitutional concerns voiced by the District Court completely disappear***." [17]

"As we have explained ***with reference to the technical definition*** of "child" contained within this statute:

> With respect to each of these legislative policy distinctions, it could be argued that the line should have been drawn at a different point and that the statutory definitions deny preferential status to [some] who share strong family ties. . . . But it is clear from our cases . . . that these are policy questions entrusted exclusively to the political branches of our Government, and ***we have no judicial authority to substitute our political judgment for that of the Congress***.

Fiallo v. Bell, 430 U.S. 787, 798 (1977). Thus, even if Hector's relationship with her nieces closely resembles a parent-child relationship, we are constrained to hold that ***Congress, through the plain language of the statute, <u>precluded this functional approach</u>*** to defining the term[.]" [18]

"***Although agencies must be "able to change to meet new conditions arising within their sphere of authority," any expansion of agency jurisdiction must come from Congress, and not the agency itself.*** 744 F.2d at 1409. Accordingly, the Court of Appeals invalidated the amended regulations." [19]

"***If Congress had intended the more circumscribed approach espoused by the Court of Appeals, there would have been some positive sign that the law was not to reach organized criminal activities that give rise to the concerns about infiltration***. ***The language of the statute, however -- the most reliable evidence of its intent*** -- reveals that Congress opted for a far broader definition of the word "enterprise," and we are unconvinced by anything in the legislative history that this definition should be given less than its full effect." [20]

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[16] See *Honig v. Doe*, 484 U.S. 305, 324 (1988).
[17] See *Meese v. Keene*, 481 U.S. 465, 484 (1987).
[18] See *INS v. Hector*, 479 U.S. 85, 88 (per curiam opinion) (1986).
[19] See *FRS v. Dimensional Financial Corp.*, 474 U.S. 361, 365 (1986).
[20] See *U.S. v. Turkette*, 452 U.S. 576, 593 (1981).

"***The statutory definition of the term "statement" was intended by Congress*** to describe material that could be fairly used to impeach the testimony of a witness. ***A major purpose of the statute was to exclude from that definition various kinds of material***[.]" [21]

"Moreover, since, with the exception of the docket fee provided by 28 U.S.C. § 1923(a), ***the statutory definition of the term "costs" does not include attorney's fees, acceptance of petitioners' argument would require us to ascribe to Congress a purpose to vary the meaning of that term without either statutory language or legislative history to support the unusual construction.*** . . . A judicially created compensatory remedy in addition to the express statutory remedies is inappropriate in this context." [22]

"A new § 208(a) directed the Attorney General to establish procedures permitting aliens either in the United States or at our borders to apply for "asylum." 8 U.S.C. § 1158(a). ***Under § 208(a), in order to be eligible for asylum, an alien must meet the definition of "refugee" contained in § 101(a)(42)(A), a standard that also would qualify an alien seeking to immigrate under § 207***. Meeting the definition of "refugee," however, does not entitle the alien to asylum -- the decision to grant a particular application rests in the discretion of the Attorney General under § 208(a)." [23]

"On the face of the statute, ***the city fails to meet the definition for either term***, since the coverage formula of § 4(b) has never been applied to it. Rather, the city comes within the Act because it is part of a covered State. ***Under the plain language of the statute, then, it appears that any bailout action to exempt the city must be filed by, and seek to exempt all of, the State of Georgia***." [24]

"***Homes that do not meet the definition may not be licensed***, and, under state law, only licensed facilities are entitled to Foster Care payments." [25]

3.12 FURTHER, while the maxim of *expressio unius est exclusio alterius* is broader in its scope than to address only statutory definitions, this clear and consistent pattern shows them to be wholly deserving of its governance. This repeated and recent restatement of this principle, the strict interpretation and application of statutory definitions, shows the challenges made herein to be made in good faith and to be correct.

3.13 From the authorities cited above it is readily gleaned that strict interpretation must govern any assessment of Petitioner's pains and penalties, status, duties, and liabilities, as it relates to 26 USC.

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[21] See *Goldberg v. US*, 425 U.S. 94, 112 (1976).
[22] See *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714 719 (1967).
[23] See *INS v. Stevic*, 467 U.S. 407, lead opinion at fn.18 (1984).
[24] See *City of Rome v. US*, 446 U.S. 156, 167 (1980).
[25] See *Miller v. Youakim*, 440 U.S. 125, 131 (1979).

D. Void for vagueness and taxation by clear language.

3.14 There are certain constraints on the parameters of enforcement authority, certain things that cannot be accomplished if a statute is written in a way so as to prevent the individual of average intelligence from understanding its terms. If a statute is unreasonably vague, if its language is not plain enough to convey its intent or application, it may be held to be *void for vagueness*. Below are several expressions of this standard of due process, all of which are from the U.S. Supreme Court.

> "We agree with the holdings of the District Court and the Court of Appeals on the due process doctrine of vagueness. The settled principles of that doctrine require no extensive restatement here. (fn.7) ***The doctrine incorporates notions of fair notice or warning***. (fn.8) ***Moreover, it requires legislatures to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent "arbitrary and discriminatory enforcement***." (fn.9) Where a statute's literal scope, unaided by a narrowing state court interpretation, is capable of reaching expression sheltered by the First Amendment, the doctrine demands a greater degree of specificity than in other contexts. (fn.10) The statutory language at issue here, "publicly... treats contemptuously the flag of the United States...," has such scope, *e.g.*, *Street v. New York*, 394 U.S. 576 (1969) (verbal flag contempt), and at the relevant time was without the benefit of judicial clarification. (fn.11)" [26]

[26] See *Smith v. Gougen*, 415 U.S. 566, 572 (1974). The Court's footnotes for this paragraph are as follows:

6. Appellant correctly conceded at oral argument that Goguen's case is the first recorded Massachusetts court reading of this language. Tr. of Oral Arg. 17-18. Indeed, with the exception of one case at the turn of the century involving one of the statute's commercial misuse provisions, *Commonwealth v. R. I. Sherman Mfg. Co.*, 189 Mass. 76, 75 N.E. 71 (1905), the entire statute has been essentially devoid of state court interpretation.

7. The elements of the "void for vagueness" doctrine have been developed in a large body of precedent from this Court. The cases are categorized in, e.g., *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972). See Note, *The Void for Vagueness Doctrine in the Supreme Court*, 109 U.Pa.L.Rev. 67 (1960).

8. E.g., *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972); *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939) ("***No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids***") (citations omitted); *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926) ("***[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law***") (citations omitted).

9. E.g., *Grayned*, *supra* at 108; *United States v. Cohen Grocery Co.*, 255 U.S. 81, 89 (1921) ("[T]o attempt to enforce the section would be the exact equivalent of an effort to carry out a statute which in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the court and jury"); *United States v. Reese*, 92 U.S. 214, 221 (1876) ("***It***

"Appellant's second argument, that 26-2101(c) is void for vagueness, also raises a substantial federal question-one of first impression in this Court-even though appellant fundamentally misapprehends the reach of the First Amendment in his argument that the protections of that Amendment extend to the sexual devices involved in this case. As we said in *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972):

> "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, ***we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning***. Second, if arbitrary and discriminatory enforcement is to be prevented, ***laws must provide explicit standards*** for those who apply them. ***A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application***." (Footnotes omitted.)

"See also *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972); *Cline v. Frink Dairy Co.*, 274 U.S. 445, 47 S. Ct. 681 (1927); *Connally v. General Construction Co.*, 269 U.S. 385 (1926)." [27]

"This ordinance is void for vagueness, both in the sense that it "***fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute***," *United States v. Harriss*, 347 U.S. 612, 617, ***and because it encourages arbitrary and erratic arrests and convictions***. *Thornhill v. Alabama*, 310 U.S. 88; *Herndon v. Lowry*, 301 U.S. 242."

"***Living under a rule of law entails various suppositions, one of which is that "[all persons] are entitled to be informed as to what the State commands or forbids***." *Lanzetta v. New Jersey*, 306 U.S. 451, 453."

"*Lanzetta* is one of a well-recognized group of cases ***insisting that the law give fair notice of the offending conduct***. See *Connally v. General Construction Co.*, 269 U.S. 385, 391; *Cline v. Frink Dairy Co.*, 274 U.S. 445; *United States v. Cohen Grocery Co.*, 255 U.S. 81. In the field of regulatory statutes governing business activities, where the acts limited are in a narrow category, greater leeway is allowed. *Boyce Motor Lines, Inc. v.*

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would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large").

10. E.g., *Grayned*, *supra*, at 109; *Smith v. California*, 361 U.S. 147, 151 (1959). Compare the less stringent requirements of the modern vagueness cases dealing with purely economic regulation. E.g., *United States v. National Dairy Products Corp.*, 372 U.S. 29 (1963) (Robinson-Patman Act).

11. See fn. 6, *supra*.

[27] See *Sewell v. Georgia*, 435 U.S. 982, 985 (1978).

United States, 342 U.S. 337; *United States v. National Dairy Products Corp.*, 372 U.S. 29; *United States v. Petrillo*, 332 U.S. 1." [28]

3.15 This standard extends to tax statutes. A tax must be imposed by clear and unequivocal language. Where the construction of a tax law is doubtful, the doubt is to be resolved in favor of whom upon which the tax is sought to be laid. (See *Spreckles Sugar Refining v. McClain*, 192 U.S. 397, 416 (1904); *Gould v. Gould*, 245 U.S. 151, 153 (1917); *Smietanka v. First Trust & Savings Bank*, 257 U.S. 602, 606 (1922); *Lucas v. Alexander*, 279 U.S. 573, 577 (1929); *Crooks v. Harrelson*, 282 U.S. 55 (1930); *Burnet v. Niagra Falls Brewing Co.*, 282 U.S. 648, 654 (1931); *Miller v. Standard Nut Margarine Co.*, 284 U.S. 498, 508 (1932); *Gregory v. Helvering*, 293 U.S. 465, 469 (1935); *Hassett v. Welch*, 303 U.S. 303, 314 (1938); *U.S. v. Batchelder*, 442 U.S. 114, 123 (1978); *Security Bank of Minnesota v. C.I.R.*, 994 F.2d 432, 436 (CA8 1993)).

3.16 This standard adheres only to fairness, it ensures that the average taxpayer isn't unreasonably burdened or unduly assessed, and is even embodied prominently in the Constitutions of some states.

> Washington Constitution, Article VII, § 5. No tax shall be levied except in pursuance of law; and ***every law imposing a tax shall state distinctly the object of the same*** to which only it shall be applied.
>
> South Carolina State Constitution, Art. X, § 3. Taxes shall be levied in pursuance of law. No tax shall be levied except in pursuance of ***a law which shall distinctly state the object of the same, to which object the tax shall be applied***.

3.17 This can be said to preserve part of a greater whole, a doctrine serving due process and the individual's right to understand and access the law.

> "***It is a fundamental tenet of due process that "[n]o one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes***." *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939). A criminal statute is therefore invalid ***if it "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden***." *United States v. Harriss*, 347 U.S. 612, 617 (1954). See *Connally v. General Construction Co.*, 269 U.S. 385, 391-393 (1926); *Papachristou v. Jacksonville*, 405 U.S. 156, 162 (1972); *Dunn v. United States*, ante, at 112-113. So too, vague sentencing provisions may pose constitutional questions if they do not state with sufficient clarity the consequences of

[28] Excerpts from *Papachristou v. City of Jacksonville*, 405 U.S. 156, 172 (1972).

violating a given criminal statute. See *United States v. Evans*, 333 U.S. 483 (1948); *United States v. Brown*, 333 U.S. 18 (1948); cf. *Giaccio v. Pennsylvania*, 382 U.S. 399 (1966)." [29]

"***Criminal statutes must have an ascertainable standard of guilt or they fall for vagueness***. See *United States v. Cohen Grocery Co.*, 255 U.S. 81; *Winters v. New York*, 333 U.S. 507." [30]

"***Void for vagueness simply means that criminal responsibility should not attach where one could not reasonably understand that his contemplated conduct is proscribed***. *United States v. Harriss*, 347 U.S. 612, 617 (1954). In determining the sufficiency of the notice a statute must of necessity be examined in the light of the conduct with which a defendant is charged. *Robinson v. United States*, 324 U.S. 282 (1945)." [31]

3.18 Statute must clearly implicate the Petitioner as an offender or taxable subject or Petitioner must be deemed to be without the scope of the subject legislation, in this instance 26 USC. The questions for review, *infra*, are clear enough, the basis for them simple enough, and the Respondent therefore cannot justify silence upon the Petitioner's queries. In such an instance, Petitioner has due process and privacy rights permitting him to be left alone by the Respondent.

IV. PETITIONER'S STATUTORY CHALLENGES.

4.1 As directed by *Brown v. FDA, supra*, and by *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), we employ the traditional tools of statutory construction to ascertain congressional intent regarding whether it intended to embrace as subject to 26 USC, chapters one, two, twenty one, and/or twenty four, the Petitioner who is a Citizen of the United States, an American, a resident of one of the fifty freely associated compact states. This is a very specific and certain political status (26 CFR 1.1-1(c)) hereby claimed by the Petitioner for the purposes of 26 USC.

4.2 We begin with the basic proposition that agency power is "not the power to make law. Rather, it is 'the power to adopt regulations to carry into effect ***the will of Congress as expressed by the statute***.' "*Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 213-14 (1976) (quoting *Manhattan Gen. Equip. Co. v. Commission*, 297 U.S. 129, 134 (1936)). "[I]t [is] the judiciary's duty "to say

[29] See *United States v. Batchelder*, 442 U.S. 114, 123 (1979).
[30] See *Williams v. United States*, 341 U.S. 97, 100 (1951).
[31] See *United States v. National Dairy Corp.*, 372 U.S. 29, 32 (1963). See also *Browning-Ferris Industries of Vermont v. Kelco Disposal, Inc.*, 492 U.S. 257, 297, 300-301 (1989); *U.S. v. Classic*, 313 U.S. 299, 331 (1941).

what the law is." *Marbury v. Madison*, 1 Cranch. 137, 177 (1803) (Marshal, C.J.)." [32] Thus, our initial inquiry is whether Congress intended to subject the Petitioner to the 26 USC income taxes. (See *Bowen v. Georgetown Univ. Hosp*., 488 U.S. 204, 208 (1988) (stating that "[i]t is axiomatic that an administrative agency's power to promulgate legislative regulations ***is limited to the authority delegated by Congress***"); *INS v. Chadha*, 462 U.S. 919, 953 n.16, 955 n.19 (1983) (providing that agency action "is always subject to check by the terms of the legislation that authorized it; and if that authority is exceeded it is open to judicial review" and "Congress ultimately controls administrative agencies in the legislation that creates them")).

4.3 Under *Chevron*, and *Brown*, we first consider the intent of Congress because "[i]f the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." See *Chevron*, 467 U.S. at 842-43. It is only if the intent of Congress is ambiguous that we defer to a permissible interpretation by the agency. *Chevron*, 467 U.S. at 843.

4.4 The starting point in every case involving construction of a statute is the language of the statute itself. (See *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985) (quoting *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 756 (1975) (Powell, J., concurring)); *Central Bank of Denver, N.A. v. First Interstate Bank of Denver*, N.A., 511 U.S. 164, 173-175 (1994)).

A. **Respondent wants for requisite statutory authority to act against Petitioner**.

4.5 In the Tax Code, Congress has indeed named a subject of the tax or procedure in other commonly applied portions of the Tax Code's statutory scheme, such as in its chapter two:

> § 1402(b) . . . ***An individual who is not a citizen of the United States*** but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa ***shall not, for the purposes of this chapter be considered to be a nonresident alien individual***.
>
> 26 CFR 1.1402(b)-1(d) Nonresident aliens. A nonresident alien individual never has self-employment income. While ***a nonresident alien individual*** who derives income from a trade or business carried on within the United States, Puerto Rico, the Virgin Islands, Guam, or American Samoa... ***may be subject to the applicable income tax provisions*** on such income, such nonresident alien individual ***will not be subject to the tax on self-employment income***, since any net earnings which he may have...do not constitute self-employment income. ***For the purposes of the tax on self-employment income, an***

[32] See *U.S. v. Lopez*, 514 U.S. 549, 115 S.Ct. 1624, 1633 (1995).

> ***individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, or . . . of Guam or American Samoa is not considered to be a nonresident alien individual***.

And in Tax Code chapter 21, Congress named a subject:

> § 3121(e) An individual who is ***a citizen of the Commonwealth of Puerto Rico*** (but not otherwise a citizen of the United States) ***shall be considered*** . . . ***as a citizen*** of the United States.
>
> 26 CFR 31.0-2(a)(1) The terms defined in the provisions of law contained in the regulations in this part shall have the meaning so assigned to them.
>
> 26 CFR 31.3121(e)-1(b) ..The term "citizen of the United States" includes a citizen of the Commonwealth of Puerto Rico or the Virgin Islands, and, effective January 1, 1961, a citizen of Guam or American Samoa.

And in Social Security administration legislation Congress named a beneficiary:

> 42 USC § 411(b)(2) The net earnings from self-employment, if such net earnings for the taxable year are less than $400. ***An individual who is not a citizen of the United States*** but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa ***shall not***, for the purpose of this subsection, ***be considered to be a nonresident alien individual***. In the case of church employee income, the special rules of subsection (i)(2) of this section shall apply for purposes of paragraph (2).

And in Tax Code chapter 24, Congress has named a subject of Form W-4 requirements:

> § 3401(c) Employee.- For the purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

4.6 And these are the only other chapters of the Tax Code, other than chapter one, which the Respondent employs against or upon the individual, employee or self employed, as it relates to the imposition of taxes under 26 USC and compensation for personal services performed by the Petitioner. None of these subjects, expressly named by Congress, happen to be the Petitioner.

4.7 In those chapters referenced above, all subjects of these taxes were found in statutes called "definitions," but in chapter 1 of 26 USC we find no section called "definitions" which even remotely mentions a subject or "citizen" as we found so clearly identified in these other chapters.

These definitions are merely a simple expression or exercise of the power conferred upon Congress by U.S. Constitution, Amdt. 16, to wit:

> U.S. Constitution, Amdt. 16, February 25, 1913. "The ***Congress shall have power to lay and collect taxes on incomes***, from whatever source derived, without apportionment among the several States and without regard to any census or enumeration."
>
> "***But the section contains nothing to that effect***, and, therefore, ***to uphold*** [IRS Commr's] addition to the tax ***would be to hold that it may be imposed by regulation, which, of course, the law does not permit***. *U.S. v. Calamaro*, 354 US 351, 359; *Koshland v. Helvering*, 298 US 441, 446-67; *Manhattan Equipment Co. v. Commissioner*, 297 US 129, 134." [33]

4.8 Again, while Congress has clearly identified a subject in chapters of the Tax Code which impose taxes which clearly do not pertain to the Petitioner but rather apply to people with other citizenships and occupations and their "income," Congress has at the same time never identified a subject citizen in chapter one, the Petitioner's citizenship finding its sole mention in regulation alone, in 26 CFR 1.1-1(a), (b), (c) (fn.[34]); this **regulation** is not the work or intent of Congress. Congress has never named the Petitioner, a Citizen of the United States, as subject to any tax imposed under the provisions of 26 USC.

Under Issue (A):

4.9 Because executive branch officials have no legislative authority, their regulations cannot add to or detract from those enactments of Congress, our lawmakers. While Congress has taken the time to name a subject of taxes imposed by chapters other than chapter 1, it has failed to identify the Petitioner, in any chapter, as a subject of any tax imposed by 26 USC.

4.10 Petitioner has a right to know how the law operates to impose the Respondent's tax, the Respondent has the burden of proof under the weight of Petitioner's evidence, and Petitioner prevails when plain discussion about the provisions relied upon cannot be obtained. Nothing in 26

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[33] See *C.I.R. v. Acker*, 361 U.S. 87, 92 (1959).

[34] See 26 CFR 1.1-1 ***Income tax on individuals***. (a) General rule. (1) ***Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States*** . . .

(b) Citizens or residents of the United States liable to tax. ***In general, all citizens of the United States, wherever resident***, and all resident alien individuals ***are liable to the income taxes imposed by the Code*** whether the income is received from sources within or without the United States. . .

(c) Who is a citizen. ***Every person born or naturalized in the United States and subject to its jurisdiction*** is a citizen. . .

USC even remotely implicates the Petitioner (private sector employee, self employed, capital gains) as the subject of any tax imposed thereunder.

4.11 The mention of Petitioner's Citizenship in mere regulation is a grossly insufficient basis upon which to tax the Petitioner. The Secretary of the Treasury has imposed a tax on the Petitioner through 26 CFR 1.1-1(c), but has done so without authority to do so, the authority to lay income tax having been reserved to Congress and Congress alone. Said regulation is null and void for derogation of statute. This is Petitioner's belief, and until it is dispelled with open discussion and logical application to the contrary Petitioner will continue to act upon it.

Questions under Issue (A):

(QA)1. By what statutory authority does the Respondent seek to tax the Petitioner? Can Respondent point to authorities naming as subject one with the political status and *situs* of the Petitioner?

(QA)2. Is the citizen in §§ 1402(b) and 3121(e) really the same Citizen defined in 26 CFR 1.1-1(c)?

(QA)3. Is the Petitioner rightfully deemed to be the employee in § 3401(c)?

(QA)4. Can the Secretary of the Treasury lay an income tax by naming a subject to the chapter one income tax where Congress has not?

(QA)5. Until Congress names the Petitioner as subject, the Respondent is powerless to even approach the Petitioner regarding any matter governed by 26 USC for lack of personam jurisdiction and statutory authority, right?

B. Respondent wants for requisite statutory leave to operate.

4.12 Looking again only to the intent, *a fortiori*, the mandate, of Congress to first establish the limitations of agency authority, as one must, we find a very broad and general provision doubtlessly rooted in the Founding Fathers' creation of a federal government with limited powers. Congress has chosen to restrict the activities of certain offices (all of them) attached to the seat of government.

> 4 USC § 72. Public Offices; at seat of Government. All offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided by law. (July 30, 1947, ch. 389, 61 Stat. 643.)

4.13 It is the Secretary of the Treasury who controls the IRS and who writes all needful rules and regulations for the enforcement of 26 USC (See 26 USC §§ 7801, 7805), so it is that Office, or perhaps the Office of the Commissioner of Internal Revenue, which must acquire the leave required by 4 USC § 72. Respondent will claim in error that 26 USC § 7621 is the grant of leave required under 4 USC § 72, claiming that the office of the President of the United States is somehow the same office occupied by the Commissioner of Internal Revenue and/or the Secretary of the Treasury.

> 26 USC § 7621 Internal Revenue Districts.
>
> (a) Establishment and alteration.-***The President*** shall establish convenient internal revenue districts for the purpose of administering the internal revenue laws. The President may from time to time alter such districts.
>
> (b) Boundaries.-For the purpose mentioned in subsection (a), ***the President*** may subdivide any State or the District of Columbia, or may unite into one district two or more States.

4.14 The fault of such a claim is further exposed by the ***definitions*** of the terms "State" and "United States" that apply to the entire Tax Code.

> 26 USC § 7701 Definitions.
>
> (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof-
>
> (9) United States.-The term "United States" when used in a geographical sense includes only the States and the District of Columbia.
>
> (10) State.-The term "State" shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.
>
> Note: Under this definition, Alaska and Hawaii were removed from applicability upon receiving freely associated compact state status (See P.L. 86-624, § 18(j); P.L. 86-70, § 22(a)). The fifty freely associated compact states are "countries" (See 28 USC § 297(b)).

4.15 A "definition" is a limitation upon the term defined (See any dictionary). Petitioner charges that Congress has limited the Office of the Secretary of the Treasury to operation in Washington D.C. and U.S. possessions, having never granted express statutory leave to operate elsewhere.

4.16 Petitioner has challenged Respondent's (Sec. of Treas.) **statutory authority** to operate outside of Washington, D.C.. Proof of jurisdiction is the Respondent's burden.. [35]

Under Issue (B):

4.17 Congress requires that the Office of the Secretary of the Treasury receive statutory leave to operate outside Washington, D.C., the seat of government of the United States. If the Secretary of the Treasury (hereinafter "Secretary") has such permission, Petitioner demands that it be disclosed, in plain language, and that the statute granting such leave be cogently ruled upon.

4.18 The Internal Revenue Code is not enforceable against the Petitioner for the Secretary's lack of the requisite leave to operate under 4 USC § 72.

4.19 The Secretary and his delegates, *i.e.*, Commissioner of Internal Revenue, have no authority to operate outside Washington, D.C., as required under 4 USC § 72. No such authority is found in the language of 26 USC § 7621 which only applies to the Office of the President of the United States and "revenue districts." This is Petitioner's belief, and until it is dispelled with open discussion and logical application to the contrary Petitioner will continue to act upon it.

Questions under Issue (B):

(QB)1. Is the Office of the President the same Office as that held by the Secretary? If not, can § 7621 be said to be grant of leave to the Secretary to operate outside of Washington, D.C.?

(QB)2. Where is the Secretary of the Treasury's authority to operate outside of Washington D.C.?

(QB)3. Is 26 USC § 7621 a grant of leave for the Secretary of the Treasury to operate outside of Washington D.C.?

(QB)4. If the IRS cannot supply proof of requisite leave under 4 USC § 72, can Petitioner lawfully be approached by the Respondent in any way?

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[35] See *KVOS v. Associated Press*, 299 U.S. 269, 57 S.Ct. 197, 200, 31 L.Ed. 183 (1936): "…[w]here the allegations…are challenged by the defendant in an appropriate manner, ***the plaintiff must support them by competent proof****."* Also, from *F & S Contr. Co. v. Jensen*, 337 F.2d 160, 161-162, (10th Cir.1963): "***[I]t is now settled that when there is an issue as to the sufficiency of jurisdictional amount, the burden of providing jurisdiction is on the party asserting it.*** *City of Lauden, Okla. v. Chapman*, 257 F.2d 601 (10th Cir.); *McNutt v. General Motors Acceptance Corp*., 289 U.S. 178, 56 S.Ct. 780, 80 L.Ed. 1135. Further more, statutes conferring jurisdiction on federal courts are to be strictly construed ***and doubts resolved against federal court's jurisdiction***. *Aetna Ins. Co. v. Chicago R.I. & P.R.R.*, 229 F.2d 584 (10th Cir.); *Hely v. Ratta*, 292 U.S. 263, 54 S.Ct. 700, 78 L.Ed. 1248."

C. Petitioner must violate regulation to satisfy the IRS in its demands for a Form 1040, other.

4.20 Regulations promulgated by the Office of Management and Budget (OMB), which prescribe the control number to be displayed on particular tax forms, require the filing of forms other than those which will be accepted by the Respondent. The Respondent will accept only forms that violate pertinent regulations.

4.21 Regulation 26 CFR 602.101 prescribes the form bearing the OMB control #1545-0067. This form is the Foreign Earned Income Form, Form 2555. (fn. [36]) Petitioner understands that no Form 1040, be it the 1040EZ, the 1040A, or the Form 1040, bears the OMB control number #1545-0067. It is clear that, for the Petitioner to file any form other than the form #1545-0067, Petitioner must violate 26 CFR 602.101. Since regulations govern, surely they must be complied with.

4.22 Unless Petitioner has earned *foreign earned income* he can see no reason to file the required form; Form 2555 Foreign Earned Income.

4.23 FURTHER, Respondent agrees that the Form 1040 is not the proper form for the Petitioner to file.

Under Issue (C):

4.24 Petitioner has no requirement to file any form or tax return other than the Form 2555 Foreign Earned Income return. To file any form other than the Form 2555, Petitioner must violate 26 CFR 602.101, a regulation that must be complied with. Because only the Form 2555 is prescribed to the Petitioner, the Petitioner has no filing requirements due to the fact that all compensation received during any years in controversy is rightfully deemed to **not** be "foreign earned."

4.25 Petitioner has no gross income to report on the only form that the law permits one with Petitioner's status to file. The Respondent has acted in total disregard for the provisions of 26 CFR 602.101. This is Petitioner's belief, and until it is dispelled with open discussion and logical application of law to the contrary Petitioner will continue to act upon it.

/ / /

[36] See **Exhibit 5**, **Tab #12**, the Form 2555 and Forms 1040, 1040A, and 1040EZ, as well as 26 CFR 602.101 and Treasury Decision 8335, see 26 CFR 602.101 at 1.1-1.

Questions under Issue (C):

(QC)1. What is the OMB number of the form prescribed under 26 CFR 602.101 as that form required of the Petitioner?

(QC)2. Can the Petitioner ignore the provisions of 26 CFR 602.101 and rather file the form that the Respondent will accept?

(QC)3. If the Petitioner can ignore 26 CFR 602.101, what are all of the other regulations, statutes, or other provisions that the Petitioner can simply ignore?

D. Petitioner violates 26 USC §§ 83, 212, 1001, 1011, and 1012 when reporting compensation for services as gross income.

4.26 For the past several taxable years the Petitioner received compensation for services actually rendered. "Section 83(a) explains how property received in exchange for services is taxed." [37] Section 83 applies to all compensation paid for services of corporations, and for the services of individuals. [38] Labor is property. [39] The fair market value ("FMV") of property is established through the terms of an "arm's length transaction." [40]

4.27 With plain language § 83(a) requires that, when compensation is received in [exchange] for services, from the FMV of the compensation, the excess over the "amount paid" (cost) is to be included in gross income.

> § 83 "Property Transferred in Connection with the Performance of Services.
> (a) If, in connection with the performance of services, property is transferred..., ***the excess of***-
> (1) the fair market value of such property...***over***,
> (2) ***the amount (if <u>any</u>) paid*** for such property . . . shall be included in the gross income of the person who performed such services . . ."

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[37] See *Montelepre Systemed, Inc. v. C.I.R.*, 956 F.2d 496, 498 at [1] (CA5 1992).
[38] See 26 CFR 1.83-3(e), (f); *MacNaughton v. C.I.R.*, 888 F.2d 418 (CA6 1989); *Pledger v. C.I.R.*, 641 F.2d 287 (CA5 1981); *Alves v. C.I.R.*, 734 F.2d 478, 481 (CA9 1984); *Klingler Electric Co. v. C.I.R.*, 776 F.Supp. 1158, 1164 at [1] (S.D.Miss. 1991); *Robinson v. C.I.R.*, 82 USTC 444 (1984); *Cohn v. C.I.R.*, 73 USTC 443, 446 (1979).
[39] See *Butcher's Union Co. v. Crescent City Co.*, 111 U.S. 746, 757 (1883); *Slaughterhouse Case*, 83 U.S. 395, 419; 16 Wall. 36-130 (1873); *Adair v. U.S.*, 208 U.S. 161, 172 (1908); *Coppage v. Kansas*, 236 U.S. 1 (1915); *Black's*, 6th, "property."
[40] See 27 CFR 70.150(b); *U.S. v. Cartwright*, 411 U.S. 546, 552 (1973); *Hicks v. U.S.*, 335 F.Supp. 474, 481 (Colo.1971); *Pledger v. C.I.R., supra*; *Black's*, 6th, "Arm's length transaction."

4.28 This requires that the "amount paid" for the compensation be established, the "excess" identified, and that such excess be included in gross income. To figure that "amount paid" or **cost** of the compensation, regulation requires that § 1012 and the regulations thereunder be applied.

> 26 CFR 1.83-4(b)(2) If property to which 1.83-1 applies is transferred at an arm's length, ***the basis of the property*** in the hands of the transferee ***shall be determined under section 1012 and the regulations thereunder***.

4.29 Labor being property, and the cost of the compensation, § 1012 will either include it or exclude it as a cost. Under § 1012 and its implementing regulations, intangible personal property (labor) is not excluded, anywhere.

> 26 CFR 1.1012-1(a) " . . . The cost is the amount paid for such property in ***cash or other property***."

4.30 If Congress intended that labor be excluded from that which is cost, or that property to be treated as a cost must be property within which one has a basis, § 1012 would have to reflect it; it does not, and so labor's value is cost. As such a cost, its fair market value (FMV) is deductible from gross income under § 212 (individual may deduct costs).

4.31 The FMV of the Labor (contract value) is the value of the cost and it is also known as "adjusted basis." Regulation requires that this amount be "withdrawn" from the amount realized in the transaction and that it be "restored to the taxpayer."

> 26 CFR 1.1011-1 Adjusted basis.-The adjusted basis... is the cost or other basis prescribed in ***section 1012***...
>
> 26 CFR 1.1001-1(a) ...from the amount realized upon the sale or exchange there shall be withdrawn a sum sufficient to restore the adjusted basis prescribed by ***section 1011*** and the regulations thereunder... The amount that remains after the adjusted basis has been restored to the taxpayer constitutes the realized gain.

4.32 After determining the FMV of the property that is a cost under the law (See 26 CFR 1.1012-1(a), labor not excluded), and to comply with § 83(a) and 26 CFR 1.1001-1(a), the FMV of cost(s), the "amount paid," the "adjusted basis," must be subtracted from the amount realized (the compensation), including only the excess (if any) in gross income.

4.33 Regulations under § 83 require that § 1012 be applied to figure the cost of Petitioner's compensation. To figure one's cost ("amount paid"), one can also proceed to 26 CFR 1.83-3(g) which says that the term "amount paid" in § 83 refers to the value (the FMV/contract value) of any property paid (labor) for the compensation.

> 26 CFR 1.83-3(g) Amount paid. For the purposes of section 83 and the regulations thereunder, the term "***amount paid***" ***refers to the value of any money or property paid*** for the transfer of property to which § 83 applies.

4.34 The statute which embraces intangible personal property as a cost (§ 1012) is prescribed as the measure of one's cost when having only sold one's labor, and 1.83-3(g) does same. To impose the amounts now sought from the Petitioner the Respondent must violate, and deprive the Petitioner of, the provisions of § 83(a), 212, 1001, 1011, and 1012. The law does not provide that property within which one has no basis be excluded from cost; cost equals the FMV of any and all property disposed to obtain other property, unless expressly excluded under § 1012. [41] As used in statute and regulation, the terms "any" or "any property" are to be construed as all inclusive until express statutory exceptions can be cited to support a contention that such terms are not all inclusive. (See *U.S. v. Monsanto*, 491 U.S. 600, 607-611 and (syllabus) (**1989**); *United States v. Alvarez-Sanchez*, 511 U.S. 350, 357 (**1994**); *U.S. v. Gonzales*, 520 U.S. 1, 4-6 (**1997**); *Department of Housing and Urban Renewal v. Rucker*, 535 U.S. 125, 130-31 (**2002**) citing *Gonzalez* and *Monsanto*).

> **1989** - *Monsanto* - Heroin manufacturer Monsanto argues that he should be allowed to keep enough money for attorney's fees, but the DOJ argues successfully that "**any property**" is all inclusive and therefore means the U.S. can seize any and all property unless Monsanto can point to a specific exclusion of attorney's fees under the law. DOJ can seize everything owned by defendant.
>
> **1994** - *Alvarez* - U.S. argues successfully that, **because statute expressly provides for an exception to "any,"** that it is not all inclusive, that a "delay" should not preclude a criminal defendant's confession or statement to state police from being used as evidence in federal case commenced thereafter. DOJ can use confession sought to be suppressed by criminal defendant.

[41] See also Internal Revenue Code of 1939 §§ 111, 112, 113.

1997 - *Gonzales* - U.S. argues successfully that "**any**" in sentencing laws is all inclusive and therefore prevents the defendants from serving federal time concurrently with other sentences, argues for more jail time and gets it. More jail time for convict.

2002 - *Rucker* (citing *Monsanto* and *Gonzales*) - U.S. argues successfully that "innocent owner" defense unavailable to co-tenant of low income housing who, although innocent, was subject to the statute's eviction of an all inclusive "any tenant" of a leased unit where prohibited activity had taken place. U.S. can evict the innocent tenant of low income housing unit which is scene of prohibited behavior.

And from *Monsanto, Id.*:

"Section 853's ***language is plain and unambiguous***. ***Congress could not have chosen stronger words to express its intent*** that forfeiture be mandatory than § 853(a)'s language that upon conviction a person "shall forfeit . . . ***any property***" and that the sentencing court "shall order" a forfeiture. ***Likewise, the statute provides a broad definition of property which does not even hint at the idea that assets used for attorney's fees are not included***. Every Court of Appeals that has finally passed on this argument has agreed with this view. ***Neither the Act's legislative history nor legislators' post-enactment statements support respondent's argument that an exception should be created because the statute does not expressly include property to be used for attorney's fees, or because Congress simply did not consider the prospect that forfeiture*** [491 U.S. 601] ***would reach such property***. . . . Moreover, ***respondent's admonition that courts should construe statutes to avoid decision as to their constitutionality is not license for the judiciary to rewrite statutory language***. Pp. 606-611." [42]

"In determining the scope of a statute, we look first to its language." *United States v. Turkette*, 452 U.S. 576, 580 (1981). ***In the case before us, the language of § 853 is plain and unambiguous: all assets falling within its scope are to be forfeited upon conviction, with no exception existing for the assets used to pay attorney's fees -- or anything else, for that matter***.

As observed above, § 853(a) provides that a person convicted of the offenses charged in respondent's indictment "***shall forfeit . . . any property***" that was derived from the commission of these offenses. After setting out this rule, § 853(a) repeats later in its text that upon conviction a sentencing court "shall order" forfeiture of ***all property*** described in § 853(a). ***Congress could not have chosen stronger words to express its intent*** that forfeiture be mandatory in cases where the statute applied, or broader words to define the scope of what was to be forfeited. ***Likewise, the statute provides a broad definition of "property" when describing what types of assets are within the section's scope: "real property . . . tangible and intangible personal property, including rights, privileges, interests, claims, and securities."*** 21 U.S.C. § 853(b) (1982 ed., Supp.V). ***Nothing in this all-inclusive listing even hints at the idea that assets to be used to pay an attorney are not "property" within the statute's meaning***.

[42] See *U.S. v. Monsanto*, 491 U.S. 600 (syllabus) (1989).

Nor are we alone in concluding that the statute is unambiguous in failing to exclude assets that could be used to pay an attorney from its definition of forfeitable property. ***This argument, advanced by respondent here,*** see Brief for Respondent 12-19, ***has been unanimously rejected by every Court of Appeals that has finally passed on it,*** as it was by the Second Circuit panel below, see 836 F.2d at 78-80; id. at 85-86 (Oakes, J., dissenting); ***even the judges who concurred*** on statutory grounds in the en banc decision ***did not accept this position,*** see 852 F.2d at 1405-1410 (Winter, J., concurring). We note also that the Brief for American Bar Association as ***Amicus Curiae 6, frankly admits that the statute "on [its] face, broadly cover[s] all property derived from alleged criminal activity and contain[s] no specific exemption for property used to pay bona fide attorneys' fees."***

Respondent urges us, nonetheless, ***to interpret the statute to exclude such property for several reasons.*** Principally, ***respondent contends that we should create such an exemption because the statute does not expressly include property to be used for attorneys' fees*** . . . In support, respondent observes that the legislative history is "silent" on this question, and that the House and Senate debates fail to discuss this prospect. But this proves nothing[.] ***The fact that the forfeiture provision reaches assets that could be used to pay attorney's fees, even though it contains no express provisions to this effect, "'does not demonstrate ambiguity'" in the statute: "'It demonstrates breadth.'"*** *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 499 (1985) (quoting *Haroco, Inc. v. American Nat. Bank & Trust Co. of Chicago*, 747 F.2d 384, 398 (CA7 1984)). ***The statutory provision at issue here is broad and unambiguous,*** and Congress' failure to supplement § 853(a)'s ***comprehensive phrase -- "any property" -- with an exclamatory "and we even mean assets to be used to pay an attorney" does not lessen the force of the statute's plain language***." [43]

"As we have noted before, such post-enactment views "form a hazardous basis for inferring the intent" behind a statute, *United States v. Price*, 361 U.S. 304, 313 (1960); instead, Congress' intent is "***best determined by [looking to] the statutory language that it chooses***," *Sedima, S.P.R.L., supra,* at 495, n.13. . . . ***Finally, respondent urges us, see Brief for Respondent 2029, to invoke a variety of general canons of statutory construction***, as well as several prudential doctrines of this Court, to create the statutory exemption he advances; among these doctrines is our admonition that courts should construe statutes to avoid decision as to their constitutionality. See, *e.g., Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Constr. Trades Council*, 485 U.S. 568, 575 (1988); *NLRB. v. Catholic Bishop of Chicago*, 440 U.S. 490, 500 (1979). ***We respect these canons, and they are quite often useful in close cases, or when statutory language is ambiguous. But we have observed before that such "interpretative canon[s are] not a license for the judiciary to rewrite language enacted by the legislature."*** *United States v. Albertini*, 472 U.S. 675, 680 (1985). ***Here, the language is clear and the statute comprehensive: § 853 does not exempt assets to be used for attorney's fees from its forfeiture provisions***. [44]

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[43] See *Monsanto, Id.*, at 607-09.

[44] See *Monsanto, Id.*, at 610-11.

4.35 Since the 1989 *Monsanto* decision regarding "any property," three very recent decisions ('94, '97 and '02, *supra*) deal directly with the same question as to how to interpret the term "any," the question as to whether it is all inclusive or subject to arbitrary derogation. The inclusion here of lengthy excerpts is intended to offer appreciable input upon the topic and is not intended to delay or hinder process.

4.36 Here, in this unanimous 2002 decision (REHNQUIST, C.J. delivered opinion, BEYER, J. took no part), the Supreme Court draws upon *Monsanto* for guidance in another instance hinged upon interpretation of the term "any," affirming the claim made herein.

> "That this is so seems ***evident from the plain language of the statute***. It provides that -
>
> > each public housing authority shall utilize leases which . . . provide that . . . ***any*** drug-related criminal activity on or off such premises, engaged in by a public housing tenant, ***any*** member of the tenant's household, or ***any*** guest or other person under the tenant's control, shall be cause for termination of tenancy.
>
> 42 U.S.C. § 1437d(l)(6) (1994 Ed., Supp.V). The en banc Court of Appeals thought the statute did not address "the level of personal knowledge or fault that is required for eviction." 237 F.3d at 1120. ***Yet Congress' decision not to impose any qualification in the statute, combined with its use of the term "any" to modify "drug-related criminal activity," precludes any knowledge requirement***. See *United States v. Monsanto*, 491 U.S. 600, 609 (1989). ***As we have explained, "the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind***.'" *United States v. Gonzales*, 520 U.S. 1, 5 (1997). Thus, ***any*** drug-related activity engaged in by the specified persons is grounds for termination, not just drug-related activity that the tenant knew or should have known about." [45]

4.37 Below is an excerpt from *U.S. v. Gonzales*, 520 U.S. 1, 4-6 (1997) just cited in *Dept. of Housing & Urban Renewal v. Rucker, Id.*.

> "Our analysis begins, as always, with the statutory text. Section 924(c)(1) provides:
>
> > Whoever, during and in relation to any . . . drug trafficking crime . . . for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime . . . , be sentenced to imprisonment for five years. . . . Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this

[45] See *Department of Housing and Urban Renewal v. Rucker*, 535 U.S. 125, 130-31 (2002).

> subsection run concurrently with *any other term of imprisonment* including that imposed for the . . . drug trafficking crime in which the firearm was used or carried.

18 U.S.C. § 924(c)(1) (emphasis added). The question we face is whether the phrase "any other term of imprisonment" "means what it says, or whether it should be limited to some subset" of prison sentences, *Maine v. Thiboutot*, 448 U.S. 1, 4 (1980) -- namely, only federal sentences. ***Read naturally, the word "any" has an expansive meaning, that is, "one or some indiscriminately of whatever kind." Webster's Third New International Dictionary 97 (1976). Congress did not add any language limiting the breadth of that word, and so we must read § 924(c) as referring to all "term[s] of imprisonment," including those imposed by state courts***. *Cf. United States v. Alvarez-Sanchez*, 511 U.S. 350, 358 (1994) (noting that statute referring to "any law enforcement officer" includes "federal, state, or local" officers); *Collector v. Hubbard*, 12 Wall. 1, 15 (1871) (***stating "it is quite clear" that a statute prohibiting the filing of suit "in any court" "includes the State courts as well as the Federal courts," because "there is not a word in the [statute] tending to show that the words 'in any court' are not used in their ordinary sense***"). There is no basis in the text for limiting § 924(c) to federal sentences.

In his dissenting opinion, JUSTICE STEVENS suggests that the word "any" as used in the first sentence of § 924(c) "unquestionably has the meaning 'any federal.'" *Post* at 14. In that first sentence, however, Congress *explicitly* limited the scope of the phrase "any crime of violence or drug trafficking crime" to those "for which [a defendant] may be prosecuted in a court of the United States." Given that Congress expressly limited the phrase "any crime" to only federal crimes, we find it significant that no similar restriction modifies the phrase "any other term of imprisonment," which appears only two sentences later and is at issue in this case. *See Russello v. United States*, 464 U.S. 16, 23 (1983) ("'***Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion***'").

The Court of Appeals also found ambiguity in Congress' decision, in drafting § 924(c), to prohibit concurrent sentences instead of simply mandating consecutive sentences. 65 F.3d at 820. Unlike the lower court, however, we see nothing remarkable (much less ambiguous) about Congress' choice of words. Because consecutive and concurrent sentences are exact opposites, Congress implicitly required one when it prohibited the other. This "ambiguity" is, in any event, beside the point, because this phraseology has no bearing on whether Congress meant § 924(c) sentences to run consecutively only to other federal terms of imprisonment.

Given the straightforward statutory command, there is no reason to resort to legislative history. *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 254 (1992). Indeed, far from clarifying the statute, the legislative history only muddies the waters. The excerpt from the Senate Report accompanying the 1984 amendment to § 924(c), relied upon by the Court of Appeals, reads:

> [T]he Committee intends that the mandatory sentence under the revised subsection 924(c) be served prior to the start of the sentence for the underlying or any other offense.

> S.Rep. at 313-314. This snippet of legislative history injects into § 924(c) an entirely new idea -- that a defendant must serve the five-year prison term for his firearms conviction before any other sentences. ***This added requirement, however, is "in no way anchored in the text of the statute***." *Shannon v. United States*, 512 U.S. 573, 583 (1994). [46]

From *United States v. Alvarez-Sanchez*, 511 U.S. 350, 357 (1994):

> "Respondent contends that he was under "arrest or other detention" for purposes of § 3501(c) during the interview at the Sheriff's Department, and that his statement to the Secret Service agents constituted a confession governed by this subsection. ***In respondent's view, it is irrelevant that he was in the custody of the local authorities, rather than that of the federal agents, when he made the statement. Because the statute applies to persons in the custody of "any" law enforcement officer or law enforcement agency, respondent suggests that the § 3501(c) 6-hour time period begins to run whenever a person is arrested by local, state, or federal officers***.
>
> ***We believe respondent errs in placing dispositive weight on the broad statutory reference to "any" law enforcement officer or agency without considering the rest of the statute***." [47]

****End excerpts***.

4.38 In reviewing U.S. Tax Court's disposition of the 26 USC § 83 claim we recall that its restrictive application of the term "any" allowing *some* property (labor, property with no tangible basis or cost) to be excluded under 26 CFR's 1.83-3(g)'s reference to "any money or property" was its only exculpatory reasoning or thread of logic to overcome the claim. In the cases above, decided in 1989, 1994, 1997, and 2002, Tax Court's reasoning regarding "any property" is clearly dismembered as arbitrary and therefore impermissible.

4.39 A very noteworthy point is that we see in each of those cases the U.S. as party movant to the argument that "any" is all inclusive, the party seeking to benefit under that interpretation. When the United States is on the offense the term "any" means everything, but when the lowly citizen demands the same reading it must be refused so the U.S. can take his paycheck. This alone distinguishes those controversies from this one. Naturally, lawfully, fairly, as taxpayers, every American has the right to expect from any court treatment in kind, lest they be the victim of an exaction. (See 26 CFR 601.106(f)(1), exaction violates due process). Regulation 26 CFR 1.83-3(g)

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[46] See *U.S. v. Gonzales*, 520 U.S. 1, 4-6 (1997).
[47] See *United States v. Alvarez-Sanchez*, 511 U.S. 350, 357 (1994).

must be read to include the value of personal services in its prescription that "the value of any money or property paid" be deemed to be an "amount paid" for the purposes of 26 USC 83(a).

4.40 The Respondent wants it both ways, but the Supreme Court has already ruled in favor of only one; "any property" means EVERYTHING. Respondent must offend *Monsanto* and its victory there to argue for the exclusion of the FMV of personal services from the language of 26 USC §§ 83 ("the value of any money or property paid" in 1.83-3(g)) and § 1012 ("cash or other property"), and this alone, as proven through years of litigation of this very claim, is the sole source of the Respondent's ability to tax as gross income the value of personal services actually rendered; Respondent is demanding that it not only *have* the cake, but that it also be allowed to gorge itself upon it at any time of its choosing.

4.41 The Respondent says in publication precisely what has been argued here, and then destroys the lives of anyone who acts upon such advice. [48] (See **Ex.4**, **Tab #11**). IRS Publication 17 is sent to [every] household in America, around Dec.-Jan., and is called "Tax Guide for Individuals," and covers nearly every aspect of personal income taxes; it's the most heavily distributed of all IRS publications. Since § 83 applies to all compensation, FICA wages/tips in § 3121(a) and (q), and § 3401(a) wages, and § 1402(a) self employed Social Security, are likewise classified under the law as § 83 compensation; everything the respondent collects under 26 USC ch.1, 2, 21, and 24 is theft through the violation/deprivation of the protections of §§ 83, 212, 1001, 1011, and 1012, to say nothing of 26 USC 7214 (crime to demand more money than is allowed by law) and 26 CFR 601.106(f)(1) (exaction is a taking of property, violates due process). Read this paragraph several more times after viewing IRS Pub.17 excerpts in **Ex.4**, **Tab #11**; *Monsanto* (others) is even honored in IRS publication.

4.42 The posture of the Respondent and the contrast to *Monsanto* to which it amounts is quite easily portrayed. Petitioner is siding, and will act in accordance with, *Monsanto*:

- THIS -	**vs.**	**- THIS -**
U.S. Tax Court/Secretary of Treasury and Commissioner of IRS say that "Any property" excludes *some* property *i.e.*, labor, resulting in an income tax on the FMV of labor.	|	U.S. Supreme Court and U.S. Department of Justice in *Gonzales*, *Rucker*, ***Monsanto***, *Alvarez*, regarding "any" and "any property." **(IRS Pub.17, 26 CFR 1.83-3(g), 1.1012-1(a))** "Any property" includes all property, like labor; no income tax on FMV of labor.

[48] See **Exhibit 4**, **Tab #11** - IRS Publication 17 "Tax Guide for Individuals" (excerpts), *ala*, all property is cost, cost is the value of personal services actually rendered.

4.43 In case law under § 83, the term "amount paid" is universally equated with the term and concept of "cost." The cost of Petitioner's compensation is figured by applying the provisions of § 1012 and the regulations thereunder. (See 26 CFR 1.83-4(b)(2)).

4.44 The term "amount paid" is defined as the value of **any property** paid by the Petitioner for his compensation for services. (See 26 CFR 1.83-3(g)). Regulation 26 CFR 1.1012-1(a) defines Petitioner's cost as "cash or other property" and fails to exclude from cost that *property within which Petitioner has no basis*. When regulation is read in light of *Monsanto*, as Petitioner demands and subscribes, the value of Petitioner's personal services is a cost, expressly excluded from gross income as an "amount paid" by the terms of § 83(a).

> "The regulations...now govern, and will continue to govern, the abbreviated application process. See *Fort Stewart Schools v. FLRA*, 495 U.S. 641, 654, 110 S.Ct. 2043, 2051, 109 L.Ed.2d 659 (1990). ***No matter what an agency said in the past, or what it did not say, after an agency issues regulations it must abide by them***." [49]

4.45 The Supreme Court has ruled that a tax on the FMV of labor constitutes a diminution of compensation, that is constitutes the taking of part of a contract for the sale of labor. [50] It is said that the 16th Amendment did not extend Congress' taxing power to objects or subjects previously immune, [51] and the right of contract is held in high regard:

> "Included in the right or personal liberty and the right of private property, partaking of the nature of each is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property." [52]

4.46 In instructional publications, the IRS reminds the individual who sells personal services that the cost of their paycheck is the "value of services provided in the transaction," that ALL property is a cost.

Under Issue (D):

4.47 Under law, to tax the FMV of services actually rendered, the Petitioner must be deprived of the provisions of 26 USC §§ 83, 212, 1001, 1011, and 1012. The law (26 CFR 1.83-

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[49] See *Schering Corp. v. Shalala*, 995 F.2d 1103 (D.C.Cir.1993).
[50] See *Evans v. Gore*, 253 U.S. 245, 40 S.Ct. 550 (1920).
[51] See *Peck v. Lowe*, 247 U.S. 165; *Stanton v. Baltic Mining Co.*, 240 U.S. 103.
[52] See *Coppage v. Kansas*, 236 U.S. 1, 14 (1915).

3(g)) embraces the FMV of labor as a cost ("***value of any money or property paid***"), despite the fact that it is property within which the Petitioner has no basis. Property within which one has no basis is not excluded from cost under the law.

4.48 Respondent excludes from cost Petitioner's services merely upon the fact that it is property within which Petitioner has no basis, but such an exclusion is unauthorized under provisions which embrace ALL property as a cost. Petitioner must violate §§ 83, 212, 1001, 1011, and 1012 by not restoring the "adjusted basis" and allowing only the amount that remains thereafter to be taxed as "realized gain," as required under 26 CFR 1.1001-1(a). To report as gross income the value of personal services the Petitioner must enter a false statement on a gov't form in violation of 18 USC § 1001.

Questions under Issue (D):

(QD)1. Since § 83 is applicable to amounts now sought to be included in gross income, it is clear that either the Respondent or the Petitioner is in violation of it, but silence abounds. Does it apply, and, if so, how does it operate and how is the Petitioner to comply with it in the future?

(QD)2. Where, under §§ 83 and 1012, and 26 CFR 1.83-3(g), does it provide that only property within which one has a basis is to be recognized as a cost or, that intangible personal property is excluded from that which is cost?

(QD)3. If such exclusions alluded to in #(2) above do not exist, can "income tax" approach such property's FMV, as contemplated under §83?

(QD)4. In consideration of these provisions, is the FMV of labor (contract value) appropriately termed "gain derived from labor"?

(QD)5. Is the FMV of labor excluded from gross income by law? (See § 83, 212, 1001, 1012; 26 CFR 1.83-3(g)). If so, by what authority?

(QD)6. Can a Court order the exclusion from cost of property within which the Petitioner has no basis when such exception to cost cannot be found in statute or in regulation, especially when it constitutes the difference between paying a tax and not even being subject to it? Can the Respondent claim in one case that "any property" means <u>all</u> property, and in another case argue that "any property" lawfully excludes certain things not recorded, mentioned, or manifest in law? Would such accounting offend the holdings in *Monsanto*, *Gonzales*, *Alvarez*, and *Rucker*? If not, why not?

E. By plain language Congress has limited IRS' assessment authority.

4.49 Statutory grant of assessment authority limits said authority of the IRS to taxes "which have not been duly paid by stamp."

> § 6201 Assessment Authority.
>
> (a) Authority of Secretary.-*The Secretary is authorized and required to make the inquiries, determinations, and assessments of* all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, ***which have not been duly paid by stamp*** at the time and in the manner prescribed by law. *Such authority* shall extend to and include the following:
>
> (1) Taxes shown on returns.-The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title. (Emphasis added)

> 1939 IRC § 3640 Assessment authority. *The Commissioner is authorized and required to make the inquiries, determinations, and assessments of* all taxes and penalties imposed by this title, or accruing under any former internal revenue law, ***where such taxes have not been duly paid by stamp*** at the time and in the manner provided by law."

4.50 In § 6201(a) above, underlining, italics, and bold emphasis is employed. *In italics is the person who can assess taxes*. Underlined is the title containing the taxes that can be assessed, **and in bold is the qualifier which designates what sort of taxes in "this title" can be assessed under such authority**. Only that authority, "such authority," that limited authority, is extended to subparagraph (1). Predecessor section 3640 of the 1939 Code does not have such a subparagraph (1) to lend the IRS the semantic leeway for the expansion of § 6201's application to "returns or lists."

> 26 CFR 301.6201-1 Assessment authority.-(a) In general. The District Director is authorized and required to make all inquiries necessary to the determination and assessment of ***all taxes imposed by the Internal Revenue Code of 1954*** or any prior internal revenue law.

4.51 The obvious limitation present in statute is destroyed by this regulation under § 6201. The phrase "which have not been" is simply read in error by the courts as "which are not." Petitioner is not engaged in a taxable activity that requires payment of liabilities by stamp. The authority to make an assessment of liability against the Petitioner is derived solely through

regulatory deviation from the statute. This is a flagrant abuse of authority by the IRS or Secretary and serves to destroy the restrictions built into § 6201 as written by **Congress**.

4.52 This regulatory omission of the term "stamp" is key, the source of IRS' assessment authority is a mere regulation, just as in *Brown* where such a contrivance was held to be an invalid basis for tobacco regulation due to a lack of statutory authority upon which to rest it. Regulation cannot deviate from statute or it is void. The Secretary of the Treasury is bound by statute. Congressional intent is the deciding factor in considering the validity of a regulation. [53] What does not exist in statute does not exist at all. [54] For this reason, 26 CFR 301.6201-1(a) and any assessment not of taxes "duly paid by stamp" must be declared null and void as beyond the statutory authority of the IRS to so promulgate or initiate. "Our tax system is based upon voluntary assessment and payment, not upon distraint." [55] Under statute, this is indeed true.

Under issue (E):

4.53 Statute restricts Respondent's assessment authority to taxes duly paid by stamp, but which remain unpaid. Even § 6201(a)'s predecessor 1939 IRC 3640 restricts Respondent's assessment authority in the same way.

4.54 Regulation 26 CFR 301.6201-1(a) deviates from statutory restrictions when it extends assessment authority to *all* taxes imposed by the Internal Revenue Code of 1954/1986. Had the Respondent, or the Secretary of the Treasury, not written regulations deviating from statutory restrictions found in § 6201(a), it could not assess any taxes other than those duly paid by stamp. This is Petitioner's belief, and until it is dispelled with open discussion and logical application of law to the contrary Petitioner will continue to act upon it.

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[53] See *Brown & Williamson v. FDA, supra*; *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988); *U.S. v. Larinoff*, 431 U.S. 864, 872-873 (1976); *U.S. v. Calamaro*, 354 U.S. 351, 359 (1956); *Koshland v. Helvering*, 298 U.S. 441, 446-447 (1936); *Manhattan General Equip. Co. v. C.I.R.*, 297 U.S. 129, 134, 54 S.Ct. 397, 399 (1936); *Tracy v. Swartout*, 10 Pet. 354, 359 (1836).

[54] See *Brown & Williamson, supra*; *Carminetti v. U.S.*, 242 U.S. 470, 485, 489-493 (1916), citing (on 485) *Lake County v. Rollins*, 130 U.S. 662, 670, 671; *Bate Refrigerating Co. v. Sulzberger*, 157 U.S. 1, 33; *U.S. v. Lexington Mill and Elevator Co.*, 232 U.S. 399, 409; *U.S. v. Bank*, 234 U.S. 245, 258. See also *Security Bank of Minnesota v. C.I.R., supra*, (CA8 1993).

[55] See *Flora v. U.S.*, 362 U.S. 176 (1959).

Questions under Issue (E):

(QE)1. Does the language of 1939 IRC § 3640 or 26 USC 6201(a) permit the Respondent to assess taxes other than those which have not been duly paid by stamp, taxes like those imposed by chapters 1, 2, 21, and 24? (See 26 USC 4371 and 4411, stamp taxes).

(QE)2. Does 26 CFR 301.6201(a)-1 deviate from 26 USC 6201(a), unreasonably broadening limitations placed upon Respondent's assessment authority as intended by Congress?

F. Criminal statutes in 26 USC have limited scope.

4.55 Petitioner's alleged duties arise from the receipt of gross income, and not from having at any time been an officer or employee of a corporation, or a member or employee of a partnership. This fact excludes Petitioner from the definition of the term "person" as defined in 26 USC chapter 75 Crimes, the chapter in which the charging statute is located.

> 26 USC § 7343 Definition of Term "Person". The term "person," as used in this chapter, includes an officer or employee of a corporation, or a member or employee of a partnership who ***as such officer, employee, or member is under a duty to perform the act*** in respect of which the violation occurred.
>
> "**Define**. To explain or state the exact meaning of words and phrases; to state explicitly; to limit; to determine essential qualities of; to determine the precise signification of; to settle; to establish or prescribe authoritatively; to make clear. (Cite omitted)" "To "define" with respect to space, means to set or establish its boundaries authoritatively; to ***mark the limits*** of; to determine with precision or exhibit clearly the boundaries of; to determine the end or limit; to ***fix or establish the limits***. It is the equivalent to declare, fix or establish."
>
> "**Definition**. A description of a thing by its properties; an explanation of the meaning of a word or term. The process of stating the exact meaning of a word by means of other words. Such a description of the thing defined, ***including all essential elements*** and ***excluding all nonessential***, as to distinguish it from all other things and classes." From *Black's,* 6th edition.

4.56 Knowing that a "definition" is a term of limitation, it is a foregone conclusion that the term "includes" does not change the "definition" into an "inclusion." The provision above provides that the person who may be indicted is one whose duties arise from employment or association, not from receipt of gross income, as would Petitioner's alleged duties. (See authorities cited, *supra*, regarding interpretation of statutory definitions, "It is axiomatic that the ***statutory***

definition of the term excludes unstated meanings of that term." [56]). If Congress intended that any person be subject to ch. 75, it would have used express language to that effect.

> 26 U.S.C. § 7701(a)(14) Taxpayer.- The term "taxpayer" means ***any person*** subject to any internal revenue tax.

4.57 Petitioner is not a "person" who can indeed commit the crimes described under 26 USC § 7201 through 7344. Since no charges may be brought against the Petitioner under 26 USC § 7203, filing, payment, and reporting is indeed voluntary, as it relates to criminal charges under 26 USC, ch.75. This claims extends to monetary penalties for frivolity under §§ 6702 and 6673 as well, for subchapter 68B contains an identical definition of the term "person" at 26 U.S.C. § 6671(b). With all of the case law saying that statutory definitions are all inclusive, there's no way by which the average individual would learn that "includes" is deemed to turn what Congress calls a *definition* into an "inclusion" which lists only part or some of its scope and elements.

Under Issue (F):

4.58 As the term is used in 26 USC § 7343, "includes" does not change to an *inclusion* that which Congress clearly intended as a *definition*. If Congress intended this definition be applicable to any person it surely would have said so, *e.g.*, "any person" or "every person." [57] If § 7343 is said to apply to elements not mentioned, it can no longer be a "definition" as Congress called it, for a "definition" would have to exclude all non-essential elements. If Petitioner is mistaken, then so are law dictionaries which say that "definitions" exclude all non-essential elements.

4.59 Petitioner is not within the intent and scope of 26 USC § 7343, *a fortiori*, 26 USC § 7203. Statutory definitions which use the term "includes" are void for vagueness and overbreadth if the term changes a definition into an *inclusion*, which it does not. This is Petitioner's belief, and until it is dispelled with open discussion and logical application of law to the contrary the Petitioner will continue to act upon it. (See authorities cited herein addressing interpretation of statutory definitions at ¶¶ 3.8 - 3.12, *supra*).

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[56] See *Meese v. Keene*, *supra*, at 484. Supreme Court says statutory definition using "includes" is exclusive of that not mentioned therein.

[57] See 42 USC § 1983 Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights . . .

Questions under Issue (F):

(QF)1. Do the alleged duties of the Petitioner to file a statement or tax return arise from having been an officer, employee, or member of a corporation or partnership?

(QF)2. How can 26 USC § 7343 be rightfully deemed to be a "definition" when it is applied to persons, individuals, or other items or elements not expressly implicated by its language? Why did Congress call it a "definition" if it supposed to be an *inclusion*?

(QF)3. Under the law, is a "definition" the same thing as an "inclusion"? Can a provision said by a legislative body to be a "definition" be enforced as an "inclusion"?

G. Criminal liability does not attach where expert opinion has been used to determine one's liabilities and requirements.

4.60 Petitioner is an expert on the subject of tax law. Knowing as he does, that 26 USC imposes no duty or tax upon him or his property, he views as his obligation under the law to ignore the Respondent outright until he must defend his property.

4.61 He argues here with full knowledge that the Respondent needed and obtained a U.S. District Court restraining order against having to even speak about Issues A - B - C herein. (See *Walden v. IRS, supra*).

4.62 Everything Petitioner sees only serves to confirm his beliefs that the secrecy exists for the sole reason of concealing the fact that 26 USC does not impose the amounts sought from her, and that the IRS is utterly void of statutory authority to speak to her, be it concerning capital gains, Social Security taxes, or a tax compensation for services of any nature.

4.63 It is plain to the Petitioner how truly unfair it is to not only have to pay amounts that the government cannot even prove he owes, but also to be threatened imprisonment if he fails to comply with what cannot be proven to be more than the whim of his executive servants.

4.64 Another very obvious and serious conflict arises in the form of constitutional infringements. Not only can the Petitioner expect to be unduly scrutinized and perhaps harassed by the IRS merely because of his belief in the law, he understands that it all will take place in blunt defiance of his requests for proof of the law which permits such conduct.

4.65 This scenario is perpetuated in open court on every federal level. IRS Publication 17 says that the value of personal services is a cost, but Tax Court will penalize anyone who agrees. Petitioner clearly is not the citizen Congress has named as subject to Social Security (26 USC

1402(b), 3121(e), 42 USC 411(b)(2)) but he's expected to pay that tax under threat of the destruction of his entire lifestyle and probable imprisonment.

4.66 Anyone reading this can certainly understand Petitioner's reluctance or refusal to simply do what his servants tell him to do, and certainly without proof that the "tax" imposed is the intent of his representatives, his lawmakers. Petitioner sees this confrontation as his civic duty, to expose taxation without representation, which is the end result when the law (Congress) is set aside in favor of taxing agency self governance; statute is the source of all IRS authority. The law is perfect.

4.67 As an American, Petitioner cannot reconcile the existence of the IRS, if it means that IRS' threats are veiled in the patina of official right but are proven in any number of instances to be utterly hollow or altogether contrary to law. Petitioner is comfortable in his belief that 26 USC imposes no duty to file a tax return or pay an income tax.

4.68 In addition, the Respondent has expressly instructed the Petitioner, in writing, that the amounts now deemed gross income are rightfully deemed to be a cost, an amount deductible from gross income under the law.

> 1. Petitioner still cannot perceive of exactly how such a belief in the law is violative of any laws regarding taxation of any payment of compensation for services.
>
> 2. Petitioner does not believe that any laws have been violated when he pays no income tax and files no Form 1040. Since the IRS/Secretary of the United States is restricted by 4 USC 72 to operate only in D.C. as proven herein, Petitioner was under no compulsion to pay any sum to the Respondent under 26 USC (Tax Code). How can the Respondent be defrauded when the Petitioner owes the Respondent absolutely nothing? If Respondent (Sec. of Treas.) had authority to operate outside D.C., surely the Respondent would have proven it in any one of many instances.
>
> 3. All sums which may come into question by the IRS were paid to the Petitioner as compensation for personal services actually rendered, and only amounts over this sum are to be included in gross income, lest one violate 26 USC 83 ("amount paid" is "value of any money or property paid"). This is not only prescribed under 26 CFR 1.83-3(g) but also is prescribed in the IRS' "Tax Guide for Individuals" in language closely tailored to match, or to outright quote, provisions which support Petitioner's claim that personal services are a cost. Petitioner relies upon IRS' advice that the value of personal services paid for services actually rendered are a cost, and Petitioner understands costs to be excluded from, or deductible from, gross income under §§ 83 and 212. No gross income, no filing requirements (See 26 USC 6012). No liability, no fraud, no matter what was done with the sums in question, even if the Petitioner wants to spend money on expert advice and various

methods, and no matter who was being paid. (See **Ex.4**, IRS Publication 17 excerpts, **Tab #11**).

> 26 CFR 1.83-3(g) Amount paid. For the purposes of section 83 and the regulations thereunder, the term "amount paid" refers to **the value of any money or property** *paid for the transfer of property to which § 83 applies*.
>
> IRS Publication 17 Tax Guide for Individual, 1993-94, other: Cost basis. The basis of property you buy is usually its cost. The cost is the amount of cash and debt obligations you pay for it and **the fair market value of services** *you provide in the transaction*."
>
> *Cost **is the value of services** *rendered to receive compensation*.
>
> 26 CFR 1.1012-1(a) " . . . The cost is the amount paid for such property in **cash or other property**."
>
> IRS Publication 17 Tax Guide for Individual, 1995 and later editions: The basis of property you buy is usually its cost. The cost is the amount you pay **in cash, debt obligations or in other property**.
>
> ***All property** is cost.

4.69 Respondent is silent except for its contradiction of four S.Ct. decisions regarding "any property." The Secretary of the Treasury is prohibited from operating outside of D.C.; wrong? And what about the Form 2555, and 26 USC §§ 83, 212, 1001, 1011, 1012, 1402(b), 3121(e), 3401(c), 6201(a), 7214, 7343, 7651(5)(A), 4 USC § 72, 42 USC 411(b)(2), 18 USC §§ 241 and 1623? **Respondent agrees or there'd be no need for a protective Order in *Walden***.

4.70 It is clear that, were it not for undue secrecy and a blind propensity for intimidation on the part of the IRS, Petitioner would be living life instead of dealing with one cent penalties, and facing down a DOJ investigation for promoting H&R Block. With all of this under consideration, the U.S. Attorney seeking to bring charges or an indictment against the Petitioner exudes a total disregard for the circumstances and rights of the Petitioner, especially in light of the fact that said esquire will be entirely unable to rebut, disclaim or discredit the claims made herein as ill founded, without merit, or as frivolous, unless Congress itself, to say nothing of the Supreme Court, are also rightfully labeled as such. Only their work product comprises the basis for each and all of the Petitioner's claims. The U.S. Attorney who fails to present this Complaint to any Grand Jury asked to indict the Petitioner is one with contempt for such rights, rather than mere *disregard*.

"***This case is not one in which a taxpayer has relied on the erroneous advice of counsel concerning a question of law. Courts have frequently held that "reasonable cause" is established when a taxpayer shows that he reasonably relied on the advice of an accountant or attorney that it was unnecessary to file a return, even when such advice turned out to have been mistaken***. See, *e.g., United States v. Kroll*, 547 F.2d 393, 395-396 (CA7 1977); *Commissioner v. American Assn. of Engineers Employment, Inc.*, 204 F.2d 19, 21 (CA7 1953); *Burton Swartz Land Corp. v. Commissioner*, 198 F.2d 558, 560 (CA5 1952); *Haywood Lumber & Mining Co. v. Commissioner*, 178 F.2d at 771; *Orient Investment & Finance Co. v. Commissioner*, 83 U.S.App.D.C. at 75, 166 F.2d at 603; *Hatfried, Inc. v. Commissioner*, 162 F.2d at 633-635; *Girard Investment Co. v. Commissioner*, 122 F.2d at 848; *Dayton Bronze Bearing Co. v. Gilligan*, 281 F. 709, 712 (CA6 1922). ***This Court also has implied that, in such a situation, reliance on the opinion of a tax adviser may constitute reasonable cause for failure to file a return***. See *Commissioner v. Lane-Wells Co.*, 321 U.S. 219 (1944) (remanding for determination whether failure to file return was due to reasonable cause, when taxpayer was advised that filing was not required).

When an accountant or attorney advises a taxpayer on a matter of tax law, such as whether a liability exists, it is reasonable for the taxpayer to rely on that advice. Most taxpayers are not competent to discern error in the substantive advice of an accountant or attorney. To require the taxpayer to challenge the attorney, to seek a "second opinion," or to try to monitor counsel on the provisions of the Code himself would nullify the very purpose of seeking the advice of a presumed expert in the first place. See *Haywood Lumber*, *supra*, at 771. "Ordinary business care and prudence" do not demand such actions." [58]

4.71 Between the Respondent's advice that Petitioner's cost is the value of his personal services, and the plethora of evidence, intrinsic and extrinsic, to the contrary of all the IRS conveys as purported matters of official right, Petitioner doesn't stand a chance of avoiding undue intrusion and loss of liberty and property.

"This means, naturally, that a prosecutor anxious about tacking too close to the wind will disclose a favorable piece of evidence. See *Agurs*, 427 U.S. at 108 ("[T]he prudent prosecutor will resolve doubtful questions in favor of disclosure"). This is as it should be. ***Such disclosure will serve to justify trust in the prosecutor as the representative . . . of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done***. *Berger v. US*, 295 U.S. 78, 88 (1935). ***And it will tend to preserve the criminal trial***, as distinct from the prosecutor's private deliberations, as the chosen forum for ascertaining the truth about criminal accusations. See *Rose v. Clark*, 478 U.S. 570, 577-78 (1986); *Estes v. Texas*, 381 U.S. 532, 540 (1965); *United States v. Leon*, 468 U.S. 897, 900-901 (1984) (recognizing general goal of establishing "procedures under which criminal defendants are 'acquitted or convicted ***on the basis of all the evidence***

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

which exposes the truth'" (quoting *Alderman v. United States*, 394 U.S. 165, 175 (1969))). The prudence of the careful prosecutor should not therefore be discouraged." [59]

"Moreover, the Court's analysis reduces the significance of deliberate prosecutorial suppression of potentially exculpatory evidence to that merely of one of numerous factors that "may" be considered by a reviewing court. *Ante* at 683 (opinion of BLACKMUN, J.). This is not faithful to our statement in *Agurs* that "***[w]hen the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable***." 427 U.S. at 106. ***Such suppression is far more serious than mere nondisclosure of evidence*** in which the defense has expressed no particular interest. ***A reviewing court should attach great significance to silence in the face of a specific request***, when responsive evidence is **later** shown to have been in the Government's possession. ***Such silence actively misleads in the same way as would an affirmative representation that exculpatory evidence does not exist when, in fact, it does*** (*i.e.*, perjury) -- indeed, the two situations are aptly described as "***sides of a single coin***." Babcock, Fair Play: Evidence Favorable to an Accused and Effective Assistance of Counsel, 34 Stan.L.Rev. 1133, 1151 (1982)." [60]

"***Failure of government to obey the law cannot ever constitute*** "***legitimate law enforcement activity***." . . . And even if a tainted subsequent confession is "highly probative," we have never until today permitted probity to override the fact that the confession was "the product of constitutionally impermissible methods in [its] inducement." *Rogers v. Richmond*, 365 U.S. 534, 541 (1961). ***In such circumstances, the Fifth Amendment makes clear that the prosecutor has no entitlement*** to use the confession in attempting to obtain the accused's conviction." [61]

"Past decisions of this Court demonstrate that ***the touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial***, not the culpability of the prosecutor. In *Brady v. Maryland*, 373 U.S. 83 (1963), for example, the prosecutor failed to disclose an admission by a participant in the murder which corroborated the defendant's version of the crime. ***The Court held that a prosecutor's suppression of requested evidence violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution***. *Id.* at 87.

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[59] See *Kyles v. Whitley*, 514 U.S. 419, 439 (1995).

[60] See *U.S. v. Bagley*, 473 U.S. 667, 714 (1985). See *Id.*, at footnote 8, "at fn.8, lead opinion: "In fact, the *Brady* rule has its roots in a series of cases dealing with convictions based on the prosecution's knowing use of perjured testimony. In *Mooney v. Holohan*, 294 U.S. 103 (1935), the Court established the rule that the knowing use by a state prosecutor of perjured testimony to obtain a conviction, and the deliberate suppression of evidence that would have impeached and refuted the testimony, constitutes a denial of due process. The Court reasoned that "a deliberate deception of court and jury by the presentation of testimony known to be perjured" is inconsistent with "the rudimentary demands of justice." *Id.* at 112. The Court reaffirmed this principle in broader terms in *Pyle v. Kansas*, 317 U.S. 213 (1942), where it held that allegations that the prosecutor had deliberately suppressed evidence favorable to the accused and had knowingly used perjured testimony were sufficient to charge a due process violation."

[61] See *Oregon v. Elstad*, 470 U.S. 298, 362 (1985)(dissent).

Applying this standard, the Court found the undisclosed admission to be relevant to punishment, and thus ordered that the defendant be resentenced. Since the admission was not material to guilt, however, the Court concluded that the trial itself complied with the requirements of due process despite the prosecutor's wrongful suppression. ***The Court thus recognized that the aim of due process "is not punishment of society for the misdeeds of the prosecutor, but avoidance of an unfair trial to the accused***." *Ibid.*

This principle was reaffirmed in *United States v. Agurs*, 427 U.S. 97 (1976). ***There we held that a prosecutor must disclose unrequested evidence which would create a reasonable doubt of guilt that did not otherwise exist***. Consistent with *Brady*, we focused not upon the prosecutor's failure to disclose, but upon the effect of nondisclosure on the trial:

Nor do we believe the constitutional obligation [to disclose unrequested information] is measured by the moral culpability, or willfulness, of the prosecutor. ***If evidence highly probative of innocence is in his file, he should be presumed to recognize its significance even if he has actually overlooked it***. Conversely, if evidence actually has no probative significance at all, no purpose would be served by requiring a new trial simply because an inept prosecutor incorrectly believed he was suppressing a fact that would be vital to the defense. If the suppression of the evidence results in constitutional error, it is because of the character of the evidence, not the character of the prosecutor." [62]

"Our overriding concern in cases such as the one before us is ***the defendant's right to a fair trial***. ***One of the most basic elements of fairness in a criminal trial is that available evidence tending to show innocence, as well as that tending to show guilt, be fully aired before the jury; more particularly, it is that the State in its zeal to convict a defendant not suppress evidence that might exonerate him***. See *Moore v. Illinois*, 408 U.S. 786, 810 (1972) (opinion of MARSHALL, J.). This fundamental notion of fairness does not pose any irreconcilable conflict for the prosecutor, for as the Court reminds us, the prosecutor "***must always be faithful to his client's overriding interest that 'justice shall be done***.'" *Ante* at 111. ***No interest of the State is served, and no duty of the prosecutor advanced, by the suppression of evidence favorable to the defendant***. ***On the contrary, the prosecutor fulfills his most basic responsibility when he fully airs all the relevant evidence at his command***." [63]

See also *Id.*, at fn.17.

4.72 The Complaint is a part of "all the relevant evidence at [Respondent's] command." Petitioner is rightfully deserving of the Respondent's grace concerning all matters involving 26 USC and personal compensation for services and capital gains, if indeed any controversies exist or arise from Petitioner's treatment of such. Indeed, Petitioner's having relied upon experts (Congress) and 26 USC rather than simply waiving the flag of refusal to pay ("tax protester") clearly shows a desire to not offend the laws of any state or of the United States.

[62] See *Smith v. Phillips*, 455 U.S. 209, 219 (1982).
[63] See *U.S. v. Agurs*, 427 U.S. 97, 116 (1976)(dissent).

Under Issue (G):

4.73 Petitioner has relied upon Congress, purported professionals, and upon the Respondent's depiction of what is cost under the law. Petitioner feels reliance upon such as responsible and excusable conduct if indeed such a basis is faulty (which it is not). This is Petitioner's belief, and until it is dispelled with open discussion and logical application of law to the contrary the Petitioner will continue to act upon it.

Questions under Issue (G):

(QG)1. Can IRS Publication 17 be said to say anything other than that the value of Petitioner's personal services shall be deemed to be a cost?

(QG)2. What did the Respondent mean when it said that Petitioner's cost is the value of "services you provide in the transaction"?

(QG)5. When the courts and the IRS refuse to indulge or analyze tax law or to disclose what its parameters are in their opinion, how is it that the Petitioner can be duly punished for having to rely on his own interpretation and that of purported professionals?

H. Due process and these claims.

4.74 In January of 2005, U.S. Attorney Edward E. Groves of the U.S. Department of Justice, Tax Division, briefed conspiracy under 18 USC § 371 and the element of willfulness under 26 USC § 7203 exactly like this -

***Begin quote of DOJ/Groves' memorandum*.**

> "At trial on the charge of conspiracy under 18 USC § 371, the United States will be required to introduce evidence supporting the conspiracy charge. In order to establish a violation of § 371 as a *Klein* conspiracy, the government must prove beyond a reasonable doubt the following:
>
> 1. An agreement between two or more people;
>
> 2. to defraud the United States; and,
>
> 3. the commission of an overt act in furtherance of the conspiracy by a member of the conspiracy; and,
> 4. dishonest or deceitful means were employed to accomplish the purpose of the agreement.

See *U.S. v. Caldwell*, 989 F.2d 1056 (CA9 1993); *U.S. v. Penagos*, 823 F.2d 346, 348 (CA9 1987); *U.S. v. Klein*, 247 F.2d 908 (CA2 1957), cert. denied, 355 US 924 (1958).

The fourth element outlined above is unique to the Ninth Circuit in *Klein*-type tax conspiracy prosecutions. In *Caldwell*, the Ninth Circuit found the district court's jury instructions deficient because the court did not tell the jurors they had to find that the defendant agreed to defraud the United States by "deceitful and dishonest means." *Caldwell*, 989 F.2d at 1060. The *Caldwell* panel held that the Supreme Court's use of the term "defraud" in § 371 must be limited to wrongs done by "deceit, craft or trickery, or at least by means that are dishonest." *Id.* at 1059 (citing *Hammerschmidt v. United States*, 265 F.2d 182, 188 (1924)).

The United States will also bear the burden of proof of the defendant's willfulness. Willfulness is a voluntary, intentional violation of a known legal duty. *Cheek v. U.S.*, 498 US 192, 201 (1991). Proof of willfulness may be based totally on circumstantial evidence. *United States v. Poschwatta*, 829 F.2d 1477, 1483 (CA9 1987), cert. denied, 484 US 1064 (1988); Evidence that defendants were aware of their legal duty or were warned of the impropriety of their actions is appropriate circumstantial evidence. *United States v. Collocraft*, 876 F.2d 303, 305 (CA2 1989); *United States v. Dack*, 987 F.2d 1282, 1285 (CA7 1983)." [64]

***End quote of DOJ brief**.

4.75 The presumption of correctness enjoyed by the IRS disappears upon introduction of evidence to the contrary, a "determination" must be the result of a consideration of all relevant facts and statutes.[65] Cited herein is an abundance of evidence to the contrary and the Respondent will forever be silent as to the defects in the reasoning and conclusions employed and enumerated.

26 CFR 601.106(f)(1) "Rule 1. ***An exaction*** by the U.S. Government, which is not based upon law, statutory or otherwise, ***is a taking of property without due process of law***, in violation of the [5th Amendment]. . . ."

§ 7214 Offenses by Officers and Employees of the United States.

"(a) Unlawful Acts of Revenue Officers or Agents.- Any officer or employee of the United States acting in connection with any revenue law of the United States-

(1) ***who is guilty of any extortion or willful oppression under color of law; or***

[64] See U.S.' "Motion for an inquiry into potential conflict of interest" **filed 1/5/05** in #02-0133 SOM-BMK, U.S. Dist. Court, Hawaii Division, by DOJ's Edward E. Groves.

[65] See *Hughes v. U.S.*, 953 F.2d 531 (CA9 1992); *Portillo v. Comm'r of IRS*, 932 F.2d 1128 (CA5 1991); *Elise v. Connett*, 908 F.2d 521 (CA9 1990); *Jensen v. Comm'r of IRS*, 835 F.2d 196 (CA9 1987); *Scar v. Comm'r of IRS*, 814 F.2d 1363 (CA9 1987); *Benzvi v. Comm'r of IRS*, 787 F.2d 1541 (CA11 1986); *Maxfield v. U.S. Postal Service*, 752 F.2d 433 (1984); *Weimerskirch v. Comm'r of IRS*, 596 F.2d 358, 360 (CA9 1979); *Carson v. U.S.*, 560 F.2d 693 (1977); *U.S. v. Janis*, 428 U.S. 433, 442 (1975); *Alexander v. "Americans United" Inc.*, 416 U.S. 752, 758-770 (1973); *Pizzarello v. U.S.*, 408 F.2d 579 (1969); *Terminal Wine*, 1 B.T.A. 697, 701-02 (1925); *Couzens*, 11 B.T.A. 1140, 1159, 1179.

> (2) ***who knowingly demands other or greater sums than are authorized by law***, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or...
>
> ***shall be dismissed from office or discharged from employment*** and, upon conviction thereof, ***shall be fined*** not more than $10,000, ***or imprisoned*** not more than five years, ***or both***."
>
> "***Failure of government to obey the law cannot ever constitute*** "***legitimate law enforcement activity***." . . . In such circumstances, the Fifth Amendment makes clear that the prosecutor has no entitlement to use the confession in attempting to obtain the accused's conviction." [66]

4.76 With concise and substantive address, Congress has named the subject of taxes in chapters 2 and 21, and has named the subject of the Form W-4 in chapter 24 (that chapter imposes withholding, not a tax). In those chapters, the subjects named by Congress are not at all the Petitioner.

4.77 Surely, had Congress intended Petitioner to be subject it would have enacted legislation saying so. The fact that it has chosen to not do so is naturally nobody's fault, for it is not a fault at all. Do the whims of the IRS govern judicial proceedings or does Congress govern judicial proceedings? What is the IRS' lawful basis for taxation of the Petitioner, and by what authority does it operate without answering to 4 USC § 72?

4.78 These queries show the Petitioner to be possessive of good faith in this claim that the IRS lacks of statutory authority and personam jurisdiction over him.

> "We agree with the holdings of the District Court and the Court of Appeals on the due process doctrine of vagueness. The settled principles of that doctrine require no extensive restatement here. (fn.7) ***The doctrine incorporates notions of fair notice or warning***. (fn.8) ***Moreover, it requires legislatures to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent "arbitrary and discriminatory enforcement***."(fn.9) Where a statute's literal scope, unaided by a narrowing state court interpretation, is capable of reaching expression sheltered by the First Amendment, the doctrine demands a greater degree of specificity than in other contexts. (fn.10) The statutory language at issue here, "publicly... treats contemptuously the flag of the United States...," has such scope, *e.g., Street v. New York*, 394 U.S. 576 (1969) (verbal flag contempt), and at the relevant time was without the benefit of judicial clarification. (fn.11)" *Id.*, at 572. [67]

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[66] See *Oregon v. Elstad*, 470 U.S. 298, 362 (1985)(dissent).
[67] See *Smith v. Gougen*, *supra*, at 572.

4.79 Misconduct on the part of the IRS amounts to an estoppel of the Respondent under the clean hands doctrine. [68] Courts do not exist to reward the groundless arguments of the Respondent, but are rather bound by law. In this instance the two are diametrically opposed.

> "The need to use the Court's supervisory powers to suppress evidence obtained through governmental misconduct was perhaps best expressed by Mr. Justice Brandeis in his famous dissenting opinion in *Olmstead v. United States*, 277 U.S. 438, 471-485 (1928):
>
> > Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. ***Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy***. To declare that, in the administration of the criminal law, the end justifies the means -- ***to declare that the Government may commit crimes in order to secure the conviction of a private criminal -- would bring terrible retribution***. Against that pernicious doctrine this Court should resolutely set its face.
>
> *Id.* at 485. Mr. Justice Brandeis noted that "a court will not redress a wrong when he who invokes its aid has unclean hands," *id.* at 483, and that, in keeping with that principle, the court should not lend its aid in the enforcement of the criminal law when the government itself was guilty of misconduct.
>
> > Then aid is denied despite the defendant's wrong. It is denied in order to maintain respect for law; in order to promote confidence in the administration of justice; in order to preserve the judicial process from contamination.
>
> *Id.* at 484. See also *id.* at 469-471 (Holmes, J., dissenting); *id.* at 488 (Stone, J., dissenting); *Lopez v. United States*, 373 U.S. 427, 453, n.3 (1963)(BRENNAN, J., dissenting)." [69]

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[68] See *Black's,* 6th Edition: "Clean hands doctrine. Under this doctrine, equity will not grant relief to a party, who, as actor, seeks to set judicial machinery in motion and obtain some remedy, if such party in prior conduct has violated conscience or good faith or other equitable principal. *Franklin v. Franklin*, 365 Mo. 442, 283 S.W.2d 483, 486. One seeking relief cannot take equitable advantage of one's own wrong. *Fair Automotive Repair, Inc. v. Car-X Service Systems, Inc.*, 2 Dist., 128 Ill.App.3d 763, 84 Ill.Dec. 25, 471 N.E.2d 554, 558."

[69] See *U.S. v. Payner*, 447 U.S. 727, 745 (1980).

4.80 "[T]axpayers [are] entitled to know the basis of law and fact on which the Commissioner sought to sustain the deficiencies." [70] Regarding the assessment and collection of taxes, the threshold of due process is well defined.

> "With the IRS' broad power must come a concomitant responsibility to exercise it within the confines of the law." [71]
>
> "[18] More importantly, the statute does not require that the taxpayer put a legal classification on his protest. The Service, however, with its expertise, is obliged to know its own governing statutes and to apply them realistically." [72]
>
> "***The mission of the Service*** is to encourage and achieve the highest possible degree of voluntary compliance with the tax laws and regulations and ***to maintain the highest degree of public confidence in the integrity and efficiency of the Service. This includes communicating the requirements of the law to the public***, determining the extent of compliance and causes of non-compliance, ***and doing all things needful to a proper enforcement of the law***." *Federal Register*, Vol.39, #62, Fri.March 29, 1974, 1110 Organization and functions of the Internal Revenue Service, Sec.1111.1 Mission, since revised to sound less congenial.

4.81 "It has long been established that a taxpayer has the right to arrange his affairs so as to minimize the taxes he pays. See *Gregory v. Helvering*, 293 U.S. 465, 469, 55 S.Ct. 266, 267, 79 L.Ed. 596 (1935) . . The firm's arrangements were not illegal and so were not prohibited[.]" [73] Statutes are Petitioner's intrinsic evidence, [74] and it contains obvious protections and benefits as briefed and claimed herein. The statutory nature of Petitioner's claims requires that contradiction be comprised of and based upon law to the contrary.

Under Issue (H):

4.82 The Respondent is silent as to alternative interpretations of provisions relied upon. Respondent refuses the Petitioner access to the law, and without such access, the Petitioner is of course without the information necessary to calculate liabilities, much less determine whether the Respondent has any legal authority whatsoever.

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[70] See *Helvering v. Tex-Penn Oil Co.*, 300 U.S. 481, 498 (1937).
[71] See *Bothke v. Fluor Engineers and Constructors, Inc.*, 713 F.2d 1405, 1413, at [11] (CA9 1983).
[72] *Id.*
[73] See *Boccardo v. C.I.R.*, 56 F.3d 1016, 1018, 1020 (CA9 1995).
[74] See *Brown & Williamson v. F.D.A.*, *supra*, statutory analysis for limitations of authority is in appellate decision.

4.83 While Congress has indeed failed to name the Petitioner, a Citizen of the United States, as a subject of any of the four chapters the Respondent applies to any seller of personal services (chapters 1, 2, 21, 24), the Respondent persists without any type of legal challenge to the claims of the Petitioner whatsoever. Statute clearly requires the Secretary of the Treasury to have express leave to operate outside of D.C., and the Respondent has been, and remains, silent in Court as to the Secretary's requisite leave under 4 USC § 72.

4.84 Due process rights of the Petitioner are violated when the law is not fully open for discussion. The Petitioner has the right to look to the law and not to the Respondent when determining any 26 USC tax liability, and if such law cannot be understood or explained by the Respondent, due process rights are violated upon the assessment of a tax liability against the Petitioner. Since Respondent must know and apply its governing statutes realistically, there is no excuse for silence as to the operation of applicable statutes and regulations.

4.85 Under the *Brown* and *Chevron* tests for statutory basis for agency authority, under the void for vagueness doctrine, the maxim of *expressio unius est exclusio alterius*, and the clear language doctrine, if clear Congressional intent to name the Petitioner as a subject to an income tax cannot be readily produced by the Respondent, and if no express legislative permission to operate as described in 4 USC § 72 is readily disclosed, due process requires all assessments and alleged liabilities contested herewith be nullified as unlawful.

4.86 The maxim *expressio unius est exclusio alterius* is particularly appropriate to interpreting definitions, as they're found in statutory scheme. A "definition" excludes from the scope of the scheme to which it applies all those things not expressly mentioned therein. The Petitioner has the right to presume any law inapplicable when definitions in statute do not expressly apply themselves to her. This is Petitioner's belief, and until it is dispelled with open discussion and logical application of law to the contrary the Petitioner will continue to act upon it.

Questions under Issue (H):

(QH)1. Can the Respondent point to express legislative permission for the Secretary of the Treasury to operate outside of Washington, D.C., as required under 4 USC § 72? If not, by what authority does the Respondent speak to the Petitioner?

(QH)2. Can the Respondent point to a statute which identifies a U.S. Citizen, like the Petitioner, as the subject of any of the Tax Code's income taxes? If not, how does 26 USC pass the test under authorities cited herein, *supra*?

(QH)3. Does due process embrace or exclude Petitioner's access to the letter of the law?

(QH)4. How can legislation not be void for vagueness when it requires the input of the Respondent just to stay out of trouble and jail?

(QH)5. Can the Respondent enforce a law it can't openly explain without violating due process rights under the void for vagueness doctrine?

(QH)6. Inquire as to: "Mr. Gonzales, please compare Mr. Hardy to §§ 83(a), 1012 and 7203 and tell me what you think. Did you consider the exclusionary sentence of 26 USC § 7203 when charging him and/or others with failure to file? Please explain how that exclusion works. Section 7343, same questions."

(QH)7. How many sole proprietors would Congress find in jail against whom no § 6654 penalties had been assessed when it investigated the DOJ's last ten years of tax prosecutions under 26 USC § 7203 failure to file?

4.87 Petitioner has disposed of IRS' presumption of correctness with intrinsic and extrinsic evidence to the contrary, and to hold that its silence somehow now passes for rebuttal and for the practice of law is an obvious sprint from the Petitioner and his rights to due process. Lest these doctrines (void for vagueness/*expressio unius*) be abandoned, for as long as these issues remain unaddressed Petitioner must be recognized as being duly outside the scope of authority of the Respondent under 26 USC, and therefore as one over whom no federal court enjoys personam jurisdiction in relation to income taxation.

V. TAX COURT'S HOLDINGS.

5.1 Here is partial text from the final order of U.S. Tax Court in 1996 in *Talmage v. C.I.R.*, USTC docket #339-95 regarding two claims which are briefed herein. It is clear that the court contradicted *Monsanto, Alvarez-Sanchez, Gonzales,* and *Dept. of Housing & Urban Renewal v. Rucker,* all *supra* at Issue D pg.25 - 35, and the appellate decisions cited therein, as they pertain to the interpretation of the terms "any" and "any property." The court also committed through haste invalid applications not found in statutory construction. *Monsanto* and the others were not

presented in support in the *Talmage* case. Likewise is true of those cases cited herein which address specifically the gravity of "statutory definitions." (See ¶¶ 3.8 - 3.12, *supra*). **Begin here** with Tax Court's assessment of the § 83 claim briefed herein:

> "Because the issues are purely legal, this case is ripe for summary judgment. Tax protester arguments like the claim that wages are not taxable income also suffice (as an alternative to dismissal, and in the absence of better argument) to justify summary judgment for the respondent. (protester cite omitted). Even if wages are, in effect, an exchange of value for equal value, they are nevertheless taxable income. (protester cite omitted) And even if we apply section 1001, his basis is determined under sections 1011 and 1012 as his cost, not fair market value. ***Since he paid nothing for his labor, his cost and thus his basis are zero***. (protester cite omitted) Consequently, even under section 1001, his taxable income from his labor is his total gain reduced by nothing, *i.e.*, his wages.
>
> "Petitioner's primary argument is that section 83, Property Transferred in Connection with the Performance of Services, has the effect of exempting his wages from income tax because it requires us to apply section 1012, which specifies that cost should be used to determine the basis of property (unless the Code provides otherwise) to determine the extent to which wages constitute taxable income. Petitioner asserts that he "paid" for his wages with his labor and that section 83 allows the value of his labor as a cost to be offset against his wages, thereby exempting them from tax. Section 83 provides that property received for services is taxable to the recipient of the property to the extent of its fair market value minus the amount (if any) paid for the property. In attempting to equate his wages with property for which he has a tax cost, petitioner's argument is nothing more than a variation of the wages-are-not-income claim frequently advanced by tax protesters, and it is completely without merit. (protester cites omitted) Petitioner's argument fails for the same reason that other protester's arguments fail; ***the worker's cost for his services-and thus his basis-is zero, not their fair market value***."

***End quote** from *Talmage*.

5.2 While it becomes clear early on that § 83 utterly confounded the presiding officer, we see that, when faced with the brief of the § 83 claim, Tax Court's ruling **1)** conceded the statute's applicability to compensation in chapters 1, 2, 21 and 24, **2)** agreed with the interpretation of the language of the provisions relied upon and that § 83(a) "explains how property received in exchange for services is taxed," **3)** that personal services are property, and **4)** that the fair market value of property it feels is indeed within the language of 1.83-3(g) as an "amount paid" would indeed be deducted from gross income as a cost or *amount paid*. To the DOJ and Supreme Court "any property" is everything.

5.3 We see that the court hung the entire rebuttal or refutation upon the mere fact that personal services are without a basis to the worker, that the labor was not purchased by the worker

before he or she sells it to a client or employer, that because the labor is property that is not paid for by the worker it cannot be deducted as a cost by the worker. The court does so without citing any lawful basis for the exclusion of the value of personal services from "any money or property" in 1.83-3(g), nor to a lawful exception to "cash or other property" in 1.1012-1(a), and *U.S. v. Monsanto*, *Dept. of Housing & Urban Renewal v. Rucker*, and *United States v. Gonzales*, *United States v. Sanchez-Alvarez*, *supra*, unequivocally require that Tax Court do so, that any court do so, before such amounts (the FMV of services rendered) can rightfully or *lawfully* be excluded from consideration as an "amount paid." Tax Court was not faced with these four U.S. Supreme Court decisions relating to the terms "any" and "any property."

5.4 FURTHER, Tax Court went on to address, in footnote only, other claims made under *Talmage's* issues (A) through (E) in that case. It is starkly apparent that Tax Court has committed to a misinterpretation of the last phrase of § 6201(a), deciding that the language says, "which *are not* duly paid by stamp," when indeed the statute says, "which *have not been* duly paid by stamp." When Petitioner fails to pay amounts said to be a 26 USC liability on compensation for personal services, a failure to pay taxes which are duly paid by stamp has not occurred. This decision holds subparagraph (1) of subsection (a) as a subsection itself, and holds it equal to subsection (a) by ruling that its extension of "such authority" to amounts shown on returns in is addition to the authority in subsection (a), when indeed it is under or within subsection (a), and expressly refers to "such authority," and *that* authority is the one which is limited to unpaid stamp taxes. The statute's 1939 predecessor is plain and is plain evidence against this decision by its language, *i.e.*, "where such taxes have not been duly paid by stamp."

> "Petitioner also claims that sec. 6201, Assessment Authority, limits respondent's authority to assess taxes to taxes paid by stamp. Section 6201 does grant respondent assessment authority, and other authority, with respect to taxes payable by stamp, but it also grants such authority with respect to all taxes as to which returns or lists are made under the Code, and this clearly includes the income tax."

5.5 To merely say the statute operates in such a way is far from explaining how it is so. In addition, that court received an analysis of the entire Social Security statutory scheme and can only devote a footnote to it, while the Fourth Circuit in *Brown* devoted a solid fifteen plus pages to a much simpler statutory scheme for a tobacco company; this is willful dereliction.

> "Petitioner advances some other frivolous arguments. He claims that sec. 3121(e) ("An individual who is a citizen of the commonwealth of Puerto Rico (***but not otherwise a citizen of the United States***)") implies that he is not a citizen of the United States for the purposes of the income tax."

5.6 That's not what **that petitioner** claimed! Is it really "frivolous" to claim that the 26 CFR 1.1-1(c) Citizen is not the same as the § 3121(e) citizen? **That** particular petitioner claimed that the definition of citizen quoted by Tax Court above excludes him from FICA, not the income tax (chapter 1 tax). **That** particular petitioner claimed that, as a citizen of the United States, he is not the Puerto Rican (or other possession) citizen subject to Social Security. Is § 3121(e) really how Congress would set about defining U.S. Citizenship? Hardly.

> "...The logical force requiring rejection of their arguments-apart from their ***assertions of personal political philosophy which do not provide a basis for us, a Court sitting to interpret the law***, to decide the questions dispositive of this case..." See *Rowlee v. C.I.R.*, 80 USTC 1111, 1120 (**1983**), quoting *Reading v. C.I.R.*, 70 TC 730 (1978), aff'd. 614 F.2d 159 (CA8 1980, at 173).

Compare:

> "...***the pleadings do not raise a genuine issue of material fact*** respecting Respondent's determinations . . . ***but rather involve only issues of law***. (Cite omitted) Therefore .... Respondent's motion for judgment on the pleadings will be granted. . . . ***The final matter we consider is [penalties]***." See *Abrams v. C.I.R.*, 82 USTC 403, 408 (**1984**).

5.7 Tax Court sits to decide issues at law one year, but sits to penalize all those who dare bring issues at law in the next year; this is [judicial] *holiday* spanning over twenty years. (See 26 USC § 8022 Joint Committee on Taxation). **This** particular Petitioner **implies** here and now that, when Congress intends to identify him as the subject of a tax, it will say, "Any individual born or naturalized in the United States and subject to its jurisdiction" owes this tax. **This** particular Petitioner has never had the statutory legal standing to apply for or to receive a Social Security card or benefits, and the Respondent has never had authority to offer them to Americans such as the Petitioner.

5.8 Social Security is an "income tax" on portions of compensation which are *income*. Since § 83 applies to any and all compensation, it applies to compensation in Social Security chapters 2 and 21 of the Tax Code. (§ 1402(a) self employment earnings, and § 3121(a) wages and subsection (q) tips). To impose SS tax on Americans, statutory definitions must be set aside

(violated), and § 83 must be violated, by the Secretary of the Treasury and his IRS. Congress says that nonresident aliens to the Petitioner are to go to chapter 2 for self employment earnings (See 26 U.S.C. 879(a)(2) [75]); it's a tax for non-U.S. Citizens, while Petitioner is a U.S. Citizen in 26 CFR 1.1-1(c), a mere regulation. Congress says that Social Security under chapters 2 and 21 are the same tax imposed by 1939 Tax Code § 3811.

> 26 USC § 7651(5) Virgin Islands.-
> (A) For purposes of this section, the reference in section 28(a) of the Revised Organic Act of the Virgin Islands to "any ***tax specified in section 3811*** of the Internal Revenue Code" shall be ***deemed to refer to any tax imposed by chapter 2 or by chapter 21***.
>
> 1939 Code § 3811 Collection of Taxes in Puerto Rico and Virgin Islands.
> (a) Puerto Rico.
> (b) Virgin Islands. [76]

5.9 There's an abundance of evidence that Petitioner **cannot be both citizens**, the U.S. Citizen in chapter one and the citizen liable for and eligible for Social Security. Petitioner must meet the statutory definition of "citizen" in 26 USC chapters 2 and 21 to be liable for Social Security. The, Supreme, Court, ". . . Thus, Congress did not reach every transaction in which an investor actually relies on inside information. A person avoids liability if he does not meet the statutory definition of an "insider[.]" [77] "It is axiomatic that the statutory definition of the term excludes unstated meanings of that term," [78] "[h]owever severe the consequences." [79] The proof and [aroma] of the IRS' lawlessness is overwhelming, the theft now exposed is rampant; who's in charge of the law? Clearly, not the judiciary or Congress.

5.10 Litigation of these conclusions showed them to be unassailable, each court having to commit derelictions, fundamental errors and miscarriages of justice to accessorize the misconduct exposed.

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[75] See 26 USC § 879 Tax Treatment of Certain Community Income in the Case of Nonresident Alien Individuals. (a) General rule.-In the case of a married couple 1 or both of whom are nonresident alien individuals..., such community income shall be treated as follows: (2) Trade or business income..., shall be treated as provided in section 1402(a)(5).
[76] Clearly, 1939 Tax Code § 3811 was merely split into chapters 2 and 21 of the 1954 Tax Code.
[77] See *Reliance Elec. Co. v. Emerson Elec. Co.*, 404 U.S. 418, 422 (1972).
[78] See *Meese v. Keene*, *supra*, at 484.
[79] See *Jay v. Boyd*, *supra*, at 357 (1956).

VI. CONCLUSION.

6.1 The rights and duties of the Petitioner are plainly stated in statutes relied upon, and absent Congressional leave to deviate from said statutes the Petitioner must act upon the conclusions stated. The absence of logical, cogent, and authoritatively supported refutation rooted in accepted principles and standards is Petitioner's validation of precisely what is claimed and complained of herein.

6.2 Until proof of leave required under 4 USC § 72 is disclosed, and until the Respondent informs America of the statute wherein Congress clearly subjects the Petitioner to the chapters it applies to him, Petitioner must be understood to be a Citizen of the United States over which the Respondent, *a fortiori*, any federal Court hearing controversies under 26 USC, enjoys no personam jurisdiction whatsoever. For these reasons Petitioner believes that no violation of any law occurs when he files no 1040, and when no "income tax" is paid on the value of his personal services or capital gains. The law is on the side of the Petitioner as one who is not in violation of anything, "willfully" or otherwise.

> "There is sufficient evidence to support a conviction if, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have ***found the essential elements of the crime beyond a reasonable doubt***." *United States v. Nelson*, 137 F.3d 1094, 1103 (9th Cir. 1998) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979))."

> "[4] . . . Because this fact is ***a necessary element of the statutory definition*** of anabolic steroids, which is ***in turn a necessary element of the offense***, failure to offer this evidence resulted in insufficient evidence to sustain the jury's verdict."

See *U.S. v. Orduno Aguilera*, No.98-50346 (CA9 filed 7/19/99). And -

> "No rational trier of fact (a judge) could have found that this standard was met for Estrada. ***The record was barren of evidence that he participated in the conspiracy***."

> "[2] Even though Estrada initially denied living in the trailer, his denial was as consistent with non-participating knowledge of the crime as it was with complicity in the crime. ***When there is an innocent explanation for a defendant's conduct as well as one that suggests that the defendant was engaged in wrongdoing, the government must produce evidence that would allow a rational jury to conclude beyond a reasonable doubt that the latter explanation is the correct one***. ***In Estrada's case, the government produced no such evidence***."

See *U.S. v. Estrada-Macias*, No.97-10115 (CA9 filed 7/12/00). Why is it that Americans can't get this from the IRS and the Courts in relation to tax matters and related allegations under 18 U.S.C. § 371 Conspiracy to defraud?

6.3 Seeking review of the IRS for statutory limitations of authority is a failure to state a claim under 5 USC §§ 701 - 706 which is for that express purpose, and protective orders block discovery to that end. (*Walden, supra*). The individual's right to arrange personal affairs according to law is abolished under these policies of the Respondent. When such silence is necessary to the collection of amounts allegedly imposed by law as income taxes, due process rights of every nature become meaningless.

6.4 The fact that the Respondent demands money from Americans so it can afford and facilitate their false arrest and imprisonment, after swearing to protect them at all times, convinces the Petitioner that "democracy" is imposed by force, not simply *enjoyed*. The Respondent needs a restraining order against these issues despite years of preparedness to rebut them. Anyone having knowledge that the provisions relied upon herein do not operate as briefed is urged to explain exactly how Petitioner is mistaken as to such operation by answering the questions presented for review beneath each issue briefed.

VII. VERIFICATION.

7.1 I, David R. Myrland, do hereby declare under penalties of perjury that the foregoing statements are true and correct to the best of my knowledge and belief. Executed this ___ day of December, 2005.

_____
David R. Myrland, Affiant/Complainant

7.2 The above affirmation was duly subscribed and sworn to before me, this ____ day of December, 2005, by David R. Myrland.

7.3 I, _____, am a Notary under license from the State of Washington whose Commission expires on _____, and be it known by my Hand and my Seal as follows:

_____
Notary signature

/ / /