

Appellate No. 07-1156

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff/Appellee.

v.

JOHN BAPTIST KOTMAIR, JR.,
and SAVE-A-PATRIOT FELLOWSHIP,
Defendants/Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

**APPENDIX TO
SAVE-A-PATRIOT FELLOWSHIP'S OPENING BRIEF**

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APPENDIX TO
SAVE-A-PATRIOT FELLOWSHIP'S OPENING BRIEF

TABLE OF CONTENTS

DOCKET SHEET	1
COMPLAINT	10
EXCERPTS FROM THE RECORD (CHRONOLOGICAL)	
Docket 38 (SAPF summary judgment motion excerpts)	23
Docket 38, Exhibit 5 (Deposition of Gary Metcalfe (excerpts))	27
Docket 38, Exhibit 9 (May 12, 1982, Joint Committee on Taxation TEFRA report (excerpts))	32
Docket 38, Exhibit 10 (May 18, 1982, House Ways and Means Committee hearing (excerpts))	35
Docket 38, Exhibit 11 (July 12, 1982, Senate Finance Committee report (excerpts))	38
Docket 38, Exhibit 12 (August 17, 1982, Conference report, H.R.4961 (excerpts))	40
Docket 38, Exhibit 13 (December 31, 1982, Joint Committee on Taxation TEFRA report (excerpts))	42
Docket 38, Exhibit 15 (SAPF program agreement)	46
Docket 38, Exhibit 18 (Hearing Transcript, MJG-95-935)	50
Docket 38, Exhibit 19 (Affidavit of John Kotmair	55
Docket 42, (US summary judgment motion excerpts)	58

TABLE OF CONTENTS

Docket 43 (Declaration of Joan Rowe)	68
Docket 43, Exhibit 1A (Member Handbook - pt. 1 (excerpts))	82
Docket 43, Exhibit 1B (Member Handbook - pt. 2 (excerpts))	92
Docket 43, Exhibit 3 (printout from TaxFreedom101.com)	104
Docket 43, Exhibit 4 (“Tax basics,” <i>www.save-a-patriot.org</i>)	122
Docket 43, Exhibit 5 (Kotmair letter to member about IRA)	124
Docket 43, Exhibit 6A (RA #235 (ad for ARR & SOC))	126
Docket 43, Exhibit 6B (RA #195 (references to ARR & SOC))	127
Docket 43, Exhibit 6C (RA #236 (ad for ARR & SOC))	130
Docket 43, Exhibit 6D (RA #238 (article about scope of IRC and SS))	131
Docket 43, Exhibit 8 (CMS notices, outline of correspondence, “communication bridges”)	134
Docket 43, Exhibit 9 (CP-515 response letter)	146
Docket 43, Exhibit 10 (CP-518 response letter)	150
Docket 43, Exhibit 11 (SFR authority letter)	153
Docket 43, Exhibit 12 (30-day notice response letter (written protest))	157
Docket 43, Exhibit 13 (Notice of Deficiency response)	162
Docket 43, Exhibit 13A (Notice of Deficiency response)	169
Docket 43, Exhibit 14 (Notice of Intent to Levy response)	178
Docket 43, Exhibit 15 (IRS Letter 3175C)	185

TABLE OF CONTENTS

Docket 43, Exhibit 16 (Letter 3175C response)	188
Docket 43, Exhibit 17 (Power of Attorney notices)	192
Docket 43, Exhibit 18 (1996 Letter to members - “The Silent Raid”)	195
Docket 43, Exhibit 19 (<i>Piercing the Illusion</i> (excerpt))	203
Docket 43, Exhibit 20 (IRS letter, June 3, 1994)	205
Docket 43, Exhibit 21 (Statement of Citizenship)	207
Docket 43, Exhibit 31 (Injunction Order against Haraka)	209
Docket 43, Exhibit 33 (IRS’ “Truth about frivolous tax arguments”)	216
Docket 43, Exhibit 35 (“Costs” sheet).....	228
Docket 44, Exhibits 43A-D (Deposition of John Kotmair, Jr., excerpts)	229
Docket 45 (Declaration of Evan Davis)	241
Docket 45, Exhibit 1 (Deposition of Ray Berglund (<i>Bell</i> case) (excerpt)) ...	242
Docket 46 (Declaration of Joseph Nagy)	245
Docket 47 (Declaration of Camille Nagy)	248
Docket 48 (Declaration of Nicholas Taflan)	251
Docket 48, Exhibit 1 (Bankruptcy Court Petition)	256
Docket 48, Exhibit 2 (Motion - Enlargement of Time)	258
Docket 48, Exhibit 3 (Motion for Contempt and Sanctions)	260
Docket 48, Exhibit 4 (duplicate of Exhibit 3)	267

TABLE OF CONTENTS

Docket 48, Exhibit 5 (Objection to Proof of Claim)	271
Docket 48, Exhibit 6 (Notice of Adversary Proceeding)	277
Docket 48, Exhibit 7 (Opposition to Motion to Dismiss)	287
Docket 48, Exhibit 8 (Opposition to Motion to Dismiss Objection to Proof of Claim)	290
Docket 48, Exhibit 9 (Motion to Reconsider Order Dismissing Petition)	293
Docket 48, Exhibit 14 (Designation of Contents for Inclusion in Record on Appeal)	297
Docket 51, Exhibit 4 (IRS letter, November 5, 1990)	322
Docket 54, SAPF opposition to US summary judgment (excerpts)	323
Docket 54, Exhibit 1 (Kotmair Affidavit, Independent Representative Agreement)	337
Docket 54, Exhibit 2 (Deposition of Joan Rowe)	341
Docket 54, Exhibit 4 (US Rule 26(a)1 disclosures).....	357
Docket 54, Exhibit 5 (US response to SAPF interrogatories)	359
Docket 54, Exhibit 8 (SAPF's response to US' request for admissions)	362
Docket 54, Exhibit 11 (26 CFR §1.1441-5 (1999 edition))	370
Docket 54, Exhibit 12 (IRS' Publication 515 (1990 edition))	371
Docket 54, Exhibit 13 (Request for OMB Approval for SS-5)	374
Docket 62 (excerpt)	376

TABLE OF CONTENTS

Docket 62 (Second Declaration of Joan Rowe)	377
Docket 62, Exhibit 37 (PDF Agreement)	382
Docket 62, Exhibit 38 (Follow-up letter for “sources” PA request)	384
Docket 62, Exhibit 39 (Follow-up letter for “sources” PA request)	389
Docket 62, Exhibit 48 (Zero return of Wesley Sherwood)	397
Docket 62 (Second Declaration of Camille Nagy w/ Exhibits 1 - 4)	403
Docket 62 (Second Declaration of Joseph Nagy w/ Exhibits 1 - 8)	411
Docket 62 (Declaration of Gary Metcalfe)	425
Docket 62 (Second Declaration of Nicholas Taflan w/ Exhibits 1 - 9)	428
Docket 64 (excerpt)	472
ORDER AND DECISIONS IN QUESTION	
Permanent Injunction Order (November 29, 2006)	473
Memorandum (November 29, 2006)	478
Order (February 7, 2007)	503
NOTICE OF APPEAL	506
ADDITIONAL MATERIALS	
Transcript of hearing on September 20, 1996 in <i>Save-A-Patriot Fellowship v. U.S.A.</i> , Case #MJG 95-935 (excerpts)	507
<i>Save-A-Patriot Fellowship v. U. S.</i> , 962 F.Supp 695 (1996)	517

William M Nickerson, presiding

James K. Bredar, referral

Date filed: 05/13/2005

Date terminated: 11/29/2006 Date of last filing: 03/05/2007

History

Doc. No.	Dates	Description
<u>1</u>	<i>Filed & Entered:</i> 05/13/2005	Complaint <i>Docket Text:</i> COMPLAINT FOR PERMANENT INJUNCTION against John Baptist Kotmair, Jr, Save-A-Patriot Fellowship , filed by United States of America. (Attachments: # (1) Civil Cover Sheet)(raf, Deputy Clerk)
<u>2</u>	<i>Filed & Entered:</i> 05/16/2005 <i>Terminated:</i> 05/16/2005	Motion to Appear Pro Hac Vice <i>Docket Text:</i> MOTION for Anne Norris Graham to Appear Pro Hac Vice by United States of America. (cag, Deputy Clerk)
<u>3</u>	<i>Filed & Entered:</i> 05/16/2005	Order on Motion to Appear Pro Hac Vice <i>Docket Text:</i> MARGINAL ORDER granting [2] Motion for Anne Norris Graham to Appear Pro Hac Vice (cag, Deputy Clerk)
<u>4</u>	<i>Filed & Entered:</i> 05/17/2005	Summons Issued <i>Docket Text:</i> Summons Issued 20 days as to John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. (raf, Deputy Clerk)
<u>5</u>	<i>Filed & Entered:</i> 06/17/2005	Affidavit of Service <i>Docket Text:</i> AFFIDAVIT of Service for Summons & Complaint served on John Baptist Kotmair, Jr., and Save-a-Patriot Fellowship on 06/15/2005, filed by United States of America. (Attachments: # (1) Affidavit Affadavit of Service - Kotmair# (2) Affidavit Affadavit of Service - Save-A-Patriot Fellowship)(Graham, Anne)
<u>6</u>	<i>Filed & Entered:</i> 07/05/2005	Answer to Complaint <i>Docket Text:</i> ANSWER to Complaint for Permanent Injunction by John Baptist Kotmair, Jr.(mcb, Deputy Clerk)
<u>7</u>	<i>Filed & Entered:</i> 07/06/2005	Memorandum to Parties <i>Docket Text:</i> MEMORANDUM to all Counsel/Parties re: This case will remain subject to Electronic Filing as therein set forth. Signed by Judge William M Nickerson on 7/5/05. (c/m 7/6/05 mcb, Deputy Clerk)
<u>8</u>	<i>Filed & Entered:</i> 07/14/2005	Answer to Complaint <i>Docket Text:</i> ANSWER to Complaint by Save-A-Patriot Fellowship.(Harp, George)
<u>9</u>	<i>Filed & Entered:</i> 08/04/2005	Answer to Complaint <i>Docket Text:</i> AMENDED ANSWER to Complaint for Permanent Injunction, by John Baptist Kotmair, Jr. (Attachments: # (1) Proposed Order)(mcb, Deputy Clerk)
<u>10</u>	<i>Filed & Entered:</i> 08/08/2005	Amended Answer to Complaint <i>Docket Text:</i> AMENDED ANSWER to by Save-A-Patriot Fellowship. (Harp, George)
<u>11</u>	<i>Filed & Entered:</i> 10/05/2005	Order

Docket Text: PAPERLESS ORDER Approving filing of [9] Amended Answer to Complaint filed by John Baptist Kotmair, Jr., [10] Amended Answer to Complaint filed by Save-A-Patriot Fellowship,. Signed by Judge William M Nickerson on 10/6/05. (cae, Chambers)

12 *Filed & Entered:* 10/05/2005 Scheduling Order

Docket Text: SCHEDULING ORDER: Status Report due by 2/17/2006. Signed by Judge William M Nickerson on 10/5/05. (mcb, Deputy Clerk)

13 *Filed & Entered:* 12/30/2005 Motion to Compel
Terminated: 01/10/2006

Docket Text: (FILED IN ERROR - SHOULD HAVE BEEN FILED AS A NOTICE OF SERVICE OF MOTION TO COMPEL - WILL REFILE) MOTION to Compel *Defendants' Discovery Responses* by United States of America. Responses due by 1/17/2006 (Attachments: # (1) Memorandum in Support of Motion to Compel# (2) L.R. 104.7 Certificate of Conference# (3) Exhibit A# (4) Exhibit B# (5) Exhibit C# (6) Exhibit D# (7) Exhibit E# (8) Exhibit F# (9) Exhibit G# (10) Exhibit H)(Graham, Anne) Modified on 1/10/2006 (mcb, Deputy Clerk).

14 *Filed & Entered:* 01/03/2006 Motion to Appear Pro Hac Vice
Terminated: 01/10/2006

Docket Text: (FILED IN ERROR) MOTION to Appear Pro Hac Vice by *Thomas M. Newman* by United States of America. (Graham, Anne) Modified on 1/5/2006 (mcb, Deputy Clerk).

15 *Filed & Entered:* 01/09/2006 Notice of Appearance

Docket Text: NOTICE of Appearance by Thomas Matthew Newman on behalf of United States of America. (mcb, Deputy Clerk)

16 *Filed & Entered:* 01/10/2006 Notice of service of motion to compel discovery

Docket Text: NOTICE of service of motion to compel discovery by United States of America (Attachments: # (1) Motion to Compel# (2) Brief in Support of Motion to Compel# (3) Certificate of Conference# (4) Exhibit A# (5) Exhibit B# (6) Exhibit C# (7) Exhibit D# (8) Exhibit E# (9) Exhibit F# (10) Exhibit G# (11) Exhibit H)(Graham, Anne)

17 *Filed & Entered:* 01/17/2006 Notice of service of response to motion to compel discovery

Docket Text: NOTICE of service of response to motion to compel discovery by John Baptist Kotmair, Jr re [16] Notice of service of motion to compel discovery. (hml, Deputy Clerk)

18 *Filed & Entered:* 01/18/2006 Memorandum to Parties

Docket Text: MEMORANDUM to Counsel/Parties re Pro Se Party. Signed by Judge William M Nickerson on 1/18/06. (hml, Deputy Clerk)

19 *Filed & Entered:* 01/25/2006 Order Referring Case to Magistrate Judge

Docket Text: ORDER REFERRING CASE to Magistrate Judge James K. Bredar for All discovery and related scheduling matters. Signed by Judge William M Nickerson on 1/25/06. (mcb, Deputy Clerk)

20 *Filed & Entered:* 01/30/2006 Reply to Response to Motion

Docket Text: Notice of Service of REPLY to Response to Motion re [16] MOTION to Compel *Defendants' Discovery Responses* filed by John Baptist Kotmair, Jr. (Attachments: # (1) # (2))(Newman, Thomas) Modified on 2/9/2006 (mcb, Deputy Clerk).

21 *Filed & Entered:* 02/01/2006 Notice of service of response to motion to compel discovery

Docket Text: NOTICE of service of response in Opposition to Motion to Compel discovery by Save-A-Patriot Fellowship (Attachments: # (1) Response in Opposition to Motion to Compel# (2) Memorandum in Support of Opposition) (Received via e-mail in Clerk's Office on 1/27/06)(mcb, Deputy Clerk)

22 *Filed & Entered:* 02/08/2006 Response

Docket Text: Notice of Service of REPLY to Defendant SAPF's Notice of service of response to [16] Motion to Compel discovery, filed by United States of America. (Attachments: # (1) # (2) # (3) Exhibit # (4) Exhibit # (5) Exhibit # (6) Exhibit # (7) Exhibit # (8) Exhibit)(Newman, Thomas) Modified on 2/9/2006 (mcb, Deputy Clerk).

23 *Filed:* 02/14/2006 Correspondence
Entered: 02/15/2006

Docket Text: Return pleading letter to Defendant, John B. Kotmair, Jr. (c/m mcb, Deputy Clerk) Additional attachment(s) added on 2/15/2006 (mcb, Deputy Clerk).

24 *Filed & Entered:* 02/17/2006 Status Report

Docket Text: STATUS REPORT filed by United States of America. (Attachments: # (1))(Newman, Thomas)

25 *Filed & Entered:* 03/09/2006 Order

Docket Text: ORDER SETTING date for a Telephone Status Conference. Signed by Judge William M Nickerson on 3/9/06. (mcb, Deputy Clerk)

26 *Filed & Entered:* 03/22/2006 Scheduling Order

Docket Text: AMENDED SCHEDULING ORDER. Signed by Judge William M Nickerson on 3/22/06. (mcb, Deputy Clerk)

27 *Filed & Entered:* 04/03/2006 Motion to Compel
Terminated: 11/17/2006

Docket Text: NOTICE of Service of MOTION to Compel by Save-A-Patriot Fellowship. (Attachments: # (1) Memorandum in Support of Motion to Compel Discovery# (2) Exhibit # (3) # (4) Notice of Service)(Harp, George) Modified on 4/4/2006 (mcb, Deputy Clerk).

28 *Filed & Entered:* 04/10/2006 Motion for Extension of Time to File Response/Reply
Terminated: 04/12/2006

Docket Text: MOTION for Extension of Time to File Response/Reply as to [27] MOTION to Compel by United States of America. Responses due by 4/27/2006 (Newman, Thomas)

29 *Filed & Entered:* 04/12/2006 Order on Motion for Extension of Time to File Response/Reply

Docket Text: PAPERLESS ORDER granting [28] Motion for Extension of Time to File Response/Reply as to [27] MOTION to Compel. Signed by Judge William M Nickerson on 4/12/06. (cae, Chambers)

30 *Filed & Entered:* 04/25/2006 Motion to Compel
Terminated: 05/16/2006

Docket Text: MOTION to Compel *discovery responses* by United States of America. Responses due by 5/12/2006 (Newman, Thomas)

31 *Filed & Entered:* 04/25/2006 Certificate of Counsel

Docket Text: CERTIFICATE of Counsel re [30] MOTION to Compel *discovery responses* by Thomas Matthew Newman on behalf of United States of America (Newman, Thomas)

32 *Filed & Entered:* 05/08/2006 Notice of service of response to motion to compel discovery

Docket Text: NOTICE of service of response to motion to compel discovery by United States of America re [27] MOTION to Compel *discovery* (Attachments: # (1) response# (2) declaration# (3) Exhibit # (4) Exhibit # (5) Exhibit # (6) Exhibit # (7) Exhibit # (8) Exhibit # (9) Exhibit # (10) Exhibit # (11) Exhibit)(Newman, Thomas)

33 *Filed & Entered:* 05/16/2006 Order on Motion to Compel

Docket Text: ORDER granting in part and denying in part [30] Motion to Compel. Signed by Judge James K. Bredar on 5/12/06. (hml, Deputy Clerk)

34 *Filed & Entered:* 05/24/2006 Appeal of Magistrate Judge Decision to District Court

Docket Text: APPEAL OF MAGISTRATE JUDGE DECISION by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship re [33] Order on Motion to Compel (Attachments: # (1) Memorandum in Support# (2) Affidavit of John Baptist Kotmair, Jr.)(hml, Deputy Clerk)

35 *Filed & Entered:* 05/24/2006 Motion to Stay
Terminated: 11/29/2006

Docket Text: MOTION to Stay Pending Determination by District Judge of Objection to Order of Magistrate Judge by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. Responses due by 6/12/2006.(hml, Deputy Clerk)

36 *Filed & Entered:* 05/24/2006 Motion for Summary Judgment
Terminated: 11/29/2006

Docket Text: MOTION for Summary Judgment by John Baptist Kotmair, Jr. Responses due by 6/12/2006. (Attachments: # (1) Affidavit of John B. Kotmair, Jr.)(hml, Deputy Clerk)

37 *Filed & Entered:* 05/30/2006 Response in Opposition to Motion

Docket Text: RESPONSE in Opposition re [35] MOTION to Stay *order compelling discovery responses* filed by United States of America. Replies due by 6/13/2006. (Newman, Thomas)

38 *Filed & Entered:* 05/31/2006 Motion for Summary Judgment
Terminated: 11/29/2006

Docket Text: MOTION for Summary Judgment by Save-A-Patriot Fellowship. Responses due by 6/19/2006 (Attachments: # (1) Memorandum in support of Motion for Summary Judgment# (2) Exhibit Exhibit 1# (3) Exhibit Exhibit 2# (4) Exhibit Exhibit 3# (5) Exhibit Exhibit 4# (6) Exhibit Exhibit 5# (7) Exhibit Exhibit 6# (8) Exhibit Exhibit 7# (9) Exhibit Exhibit 8# (10) Exhibit Exhibit 9# (11) Exhibit Exhibit 10# (12) Exhibit Exhibit 11# (13) Exhibit Exhibit 12# (14) Exhibit Exhibit 13# (15) Exhibit Exhibit 14# (16) Exhibit Exhibit 15# (17) Exhibit Exhibit 16# (18) Exhibit Exhibit 17# (19) Exhibit Exhibit 18# (20) Exhibit Exhibit 19)(Harp, George)

39 *Filed & Entered:* 06/08/2006 Motion for Sanctions
Terminated: 11/29/2006

Docket Text: MOTION for Sanctions *for discovery violations filed* by United States of America. Responses due by 6/26/2006 (Attachments: # (1) Affidavit # (2) Exhibit # (3) Exhibit # (4) Exhibit # (5) Exhibit # (6) Exhibit # (7) Exhibit # (8) Exhibit # (9) Exhibit # (10) Exhibit # (11) Exhibit # (12) Exhibit # (13) Exhibit # (14) Exhibit # (15) Exhibit # (16) Exhibit # (17) Exhibit # (18) Exhibit # (19) Exhibit)(Newman, Thomas)

40 *Filed & Entered:* 06/09/2006 Motion for Extension of Time to File Response/Reply
Terminated: 07/19/2006

Docket Text: MOTION for Extension of Time to File Response/Reply as to [36] MOTION for Summary Judgment, [38] MOTION for Summary Judgment *filed* by United States of America. Responses due by 6/26/2006 (Newman, Thomas)

41 *Filed & Entered:* 06/13/2006 Reply to Response to Motion

Docket Text: REPLY to Response to Motion re [35] MOTION to Stay *Order to Compel Discovery* filed by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. (Attachments: # (1) Exhibit)(Harp, George)

42 *Filed & Entered:* 06/19/2006 Motion for Summary Judgment
Terminated: 11/29/2006

Docket Text: MOTION for Summary Judgment *filed* by United States of America. Responses due by 7/6/2006 (Attachments: # (1) Supplement Brief in support of motion for summary judgment# (2) Supplement Index of exhibit)(Newman, Thomas)

43 *Filed & Entered:* 06/19/2006 Affidavit

Docket Text: AFFIDAVIT re [42] MOTION for Summary Judgment *filed* by United States of America. (Attachments: # (1) Exhibit Exhibit 1A# (2) Exhibit Exhibit 1B# (3) Exhibit Exhibit 2# (4) Exhibit Exhibit 3# (5) Exhibit Exhibit 3A# (6) Exhibit Exhibit 4# (7) Exhibit Exhibit 5# (8) Exhibit Exhibit 6# (9) Exhibit

Exhibit 6A# (10) Exhibit Exhibit 6B# (11) Exhibit Exhibit 6C# (12) Exhibit Exhibit 6D# (13) Exhibit Exhibit 6E# (14) Exhibit Exhibit 7# (15) Exhibit Exhibit 8# (16) Exhibit Exhibit 9# (17) Exhibit Exhibit 10# (18) Exhibit Exhibit 11# (19) Exhibit Exhibit 12# (20) Exhibit Exhibit 13# (21) Exhibit Exhibit 13A# (22) Exhibit Exhibit 14# (23) Exhibit Exhibit 15# (24) Exhibit Exhibit 16# (25) Exhibit Exhibit 17# (26) Exhibit Exhibit 18# (27) Exhibit Exhibit 19# (28) Exhibit Exhibit 20# (29) Exhibit Exhibit 21# (30) Exhibit Exhibit 22# (31) Exhibit Exhibit 23# (32) Exhibit Exhibit 24# (33) Exhibit Exhibit 25# (34) Errata Exhibit 26# (35) Exhibit Exhibit 27# (36) Exhibit Exhibit 28# (37) Exhibit Exhibit 29# (38) Exhibit Exhibit 30# (39) Exhibit Exhibit 31# (40) Exhibit Exhibit 32# (41) Exhibit Exhibit 33# (42) Exhibit Exhibit 34# (43) Exhibit Exhibit 35)(Newman, Thomas)

44 Filed & Entered: 06/19/2006 Affidavit

Docket Text: AFFIDAVIT re [42] MOTION for Summary Judgment filed by United States of America. (Attachments: # (1) Exhibit Exhibit 1# (2) Exhibit Exhibit 2# (3) Exhibit Exhibit 3# (4) Exhibit Exhibit 4# (5) Exhibit Exhibit 5# (6) Exhibit Exhibit 6# (7) Exhibit Exhibit 7# (8) Exhibit Exhibit 8# (9) Exhibit Exhibit 9# (10) Exhibit Exhibit 10# (11) Exhibit Exhibit 11# (12) Exhibit Exhibit 12# (13) Exhibit Exhibit 13# (14) Errata Exhibit 14# (15) Exhibit Exhibit 15# (16) Exhibit Exhibit 16# (17) Exhibit Exhibit 17# (18) Exhibit Exhibit 18# (19) Exhibit Exhibit 19# (20) Exhibit Exhibit 20# (21) Exhibit Exhibit 21# (22) Exhibit Exhibit 22# (23) Exhibit Exhibit 23# (24) Errata Exhibit 24# (25) Exhibit Exhibit 24# (26) Exhibit Exhibit 26# (27) Exhibit Exhibit 27# (28) Exhibit Exhibit 28# (29) Exhibit Exhibit 29# (30) Exhibit Exhibit 30# (31) Exhibit Exhibit 31# (32) Exhibit Exhibit 32# (33) Exhibit Exhibit 33A# (34) Exhibit Exhibit 33B# (35) Exhibit Exhibit 33C# (36) Exhibit Exhibit 33D# (37) Exhibit Exhibit 34# (38) Exhibit Exhibit 35# (39) Exhibit Exhibit 36# (40) Exhibit Exhibit 37# (41) Exhibit Exhibit 38# (42) Exhibit Exhibit 39# (43) Exhibit Exhibit 40# (44) Exhibit Exhibit 41# (45) Exhibit exhibit 42# (46) Exhibit Exhibit 43A# (47) Exhibit Exhibit 43B# (48) Exhibit Exhibit 43C# (49) Exhibit Exhibit 43D)(Newman, Thomas)

45 Filed & Entered: 06/19/2006 Affidavit

Docket Text: AFFIDAVIT re [42] MOTION for Summary Judgment filed by United States of America. (Attachments: # (1) Exhibit Exhibit 1)(Newman, Thomas)

46 Filed & Entered: 06/19/2006 Affidavit

Docket Text: AFFIDAVIT re [42] MOTION for Summary Judgment filed by United States of America. (Newman, Thomas)

47 Filed & Entered: 06/19/2006 Affidavit

Docket Text: AFFIDAVIT re [42] MOTION for Summary Judgment filed by United States of America. (Newman, Thomas)

48 Filed & Entered: 06/19/2006 Affidavit

Docket Text: AFFIDAVIT re [42] MOTION for Summary Judgment filed by United States of America. (Attachments: # (1) Exhibit Exhibit 1# (2) Exhibit Exhibit 2# (3) Exhibit Exhibit 3# (4) Exhibit Exhibit 4# (5) Exhibit Exhibit 5# (6) Exhibit Exhibit 6# (7) Exhibit Exhibit 7# (8) Exhibit Exhibit 8# (9) Exhibit Exhibit 9# (10) Exhibit Exhibit 10# (11) Exhibit Exhibit 11# (12) Exhibit Exhibit 12# (13) Exhibit Exhibit 13# (14) Exhibit Exhibit 14(1)# (15) Exhibit Exhibit 14(2)# (16) Exhibit Exhibit 14(3)# (17) Exhibit Exhibit 15# (18) Exhibit Exhibit 16)(Newman, Thomas)

49 Filed & Entered: 06/20/2006 Notice (Other)

Docket Text: NOTICE by United States of America re [40] MOTION for Extension of Time to File Response/Reply as to [36] MOTION for Summary Judgment, [38] MOTION for Summary Judgment filed by the United states is Withdrawn (Newman, Thomas)

50 Filed & Entered: 06/26/2006 Response in Opposition to Motion

Docket Text: RESPONSE in Opposition re [39] MOTION for Sanctions for discovery violations filed by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. Replies due by 7/10/2006. (Attachments: # (1) Memorandum in Support of Opposition# (2) Exhibit # (3) Exhibit)(Harp, George)

51 Filed & Entered: 06/27/2006 Supplemental

Docket Text: Supplement to [50] RESPONSE in Opposition to [39] Motion of the United States for Sanctions for Discovery Violations, filed by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. (Attachments: # (1) Exhibit # (2) Exhibit # (3) Exhibit # (4) Exhibit # (5) Exhibit # (6) Exhibit # (7) Exhibit # (8) Exhibit)(Harp, George) Modified on 6/27/2006 (mcb, Deputy Clerk).

52 *Filed & Entered:* 06/28/2006 Motion to Strike
Terminated: 07/19/2006

Docket Text: MOTION to Strike [51] Supplemental, *untimely response filed by United States of America.* Responses due by 7/17/2006 (Newman, Thomas)

53 *Filed & Entered:* 07/07/2006 Response

Docket Text: RESPONSE to [42] MOTION of United States for Summary Judgment, filed by John Baptist Kotmair, Jr. (Attachments: # (1) Exhibit 1)(mcb, Deputy Clerk)

54 *Filed & Entered:* 07/07/2006 Response in Opposition to Motion

Docket Text: RESPONSE in Opposition re [42] MOTION for Summary Judgment *filed* filed by Save-A-Patriot Fellowship. Replies due by 7/21/2006. (Attachments: # (1) # (2) Exhibit # (3) Exhibit # (4) Exhibit # (5) Exhibit # (6) Exhibit # (7) Exhibit # (8) Exhibit # (9) Exhibit # (10) Exhibit # (11) Exhibit # (12) Exhibit # (13) Exhibit # (14) Exhibit # (15) Exhibit # (16) Exhibit)(Harp, George)

55 *Filed & Entered:* 07/10/2006 Reply to Response to Motion

Docket Text: REPLY to Response to Motion re [39] MOTION for Sanctions *for discovery violations filed* filed by United States of America. (Attachments: # (1) Exhibit #1# (2) Exhibit #2# (3) Exhibit #3# (4) Exhibit #4# (5) Exhibit #5# (6) Exhibit #6# (7) Exhibit #7)(Newman, Thomas)

56 *Filed & Entered:* 07/14/2006 Motion for Leave to File Excess Pages
Terminated: 07/19/2006

Docket Text: MOTION for Leave to File Excess Pages *to respond to defendant Save-a-Patriot's reply to the United States' motion for summary judgment filed by United States of America.* Responses due by 7/31/2006 (Newman, Thomas)

57 *Filed & Entered:* 07/17/2006 Response in Opposition to Motion

Docket Text: RESPONSE in Opposition re [52] MOTION to Strike [51] Supplemental, *untimely response filed* filed by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. Replies due by 7/31/2006. (Harp, George)

58 *Filed & Entered:* 07/17/2006 Motion to Strike
Terminated: 07/19/2006

Docket Text: MOTION to Strike [55] Reply to Response to Motion, by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. Responses due by 8/3/2006 (Harp, George)

59 *Filed & Entered:* 07/17/2006 Response in Opposition to Motion

Docket Text: RESPONSE in Opposition re [56] MOTION for Leave to File Excess Pages *to respond to defendant Save-a-Patriot's reply to the United States' motion for summary judgment filed* filed by Save-A-Patriot Fellowship. Replies due by 7/31/2006. (Harp, George)

60 *Filed & Entered:* 07/19/2006 Order on Motion for Extension of Time to File Response/Reply

Docket Text: ORDER denying [40] Motion for Extension of Time to File Response/Reply, denying [52] Motion to Strike, denying [56] Motion for Leave to File Excess Pages, denying [58] Motion to Strike. Signed by Judge William M Nickerson on 7/19/2006. (cae, Chambers)

61 *Filed & Entered:* 07/21/2006 Response

Docket Text: REPLY to Defendant Kotmair's Response in Opposition to [42] Motion for Summary Judgment filed by United States of America. (Newman, Thomas) Modified on 7/24/2006 (mcb, Deputy Clerk).

62 *Filed & Entered:* 07/21/2006 Response

Docket Text: REPLY to SAPF's Response in Opposition to [42] Motion for summary Judgment filed by United States of America. (Attachments: # (1) Affidavit Second Declaration of Revenue Agent Joan Rowe# (2) Exhibit 36# (3) Exhibit 37# (4) Exhibit 38# (5) Exhibit 39# (6) Exhibit 40# (7) Exhibit 41# (8) Exhibit 42# (9) Exhibit 43# (10) Exhibit 44# (11) Exhibit 45# (12) Exhibit 46# (13) Exhibit 47# (14) Exhibit 48# (15) Affidavit Second Declaration of Camille Nagy# (16) Exhibit 1# (17) Exhibit 2# (18) Exhibit 3# (19) Exhibit 4# (20) Affidavit Second Declaration of Joseph Nagy# (21) Exhibit 1# (22) Exhibit 2# (23) Exhibit 3# (24) Exhibit 4# (25) Exhibit 5# (26) Exhibit 6# (27) Exhibit 7# (28) Exhibit 8# (29) Affidavit Declaration of Gary Metcalfe# (30) Declaration of Thomas Newman# (31) Affidavit Second Declaration of Nicholas Taflan# (32) Exhibit 1# (33) Exhibit 2# (34) Exhibit 3# (35) Exhibit 4# (36) Exhibit 5# (37) Exhibit 6# (38) Exhibit 7# (39) Exhibit 8# (40) Exhibit 9)(Newman, Thomas) Modified on 7/24/2006 (mcb, Deputy Clerk).

63 *Filed & Entered:* 07/31/2006 Response in Opposition to Motion

Docket Text: RESPONSE in Opposition re [58] MOTION to Strike [55] Reply to Response to Motion, filed by United States of America. Replies due by 8/14/2006. (Newman, Thomas)

64 *Filed & Entered:* 08/10/2006 Motion to Strike

Terminated: 11/29/2006

Docket Text: MOTION to Strike [62] Response,,,, to SAPF's Opposition to U.S.'s Motion for Summary Judgment by Save-A-Patriot Fellowship. Responses due by 8/28/2006 (Attachments: # (1) Affidavit # (2) # (3) # (4) # (5))(Harp, George)

65 *Filed & Entered:* 08/14/2006 Reply to Response to Motion

Docket Text: REPLY to Response to Motion re [58] MOTION to Strike [55] Reply to Response to Motion, filed by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. (Harp, George)

66 *Filed & Entered:* 08/28/2006 Response

Docket Text: RESPONSE re [64] MOTION to Strike [62] Response,,,, to SAPF's Opposition to U.S.'s Motion for Summary Judgment filed by United States of America. (Newman, Thomas)

67 *Filed & Entered:* 09/11/2006 Reply to Response to Motion

Docket Text: REPLY to Response to Motion re [64] MOTION to Strike [62] Response,,,, to SAPF's Opposition to U.S.'s Motion for Summary Judgment filed by Save-A-Patriot Fellowship. (Harp, George)

68 *Filed & Entered:* 11/29/2006 Memorandum Opinion

Docket Text: MEMORANDUM. Signed by Judge William M Nickerson on 11/29/06. (mcb, Deputy Clerk)

69 *Filed & Entered:* 11/29/2006 Order on Motion for Summary Judgment

Docket Text: ORDER Denying [38] Motion of Defendant for Summary Judgment; Denying as MOOT [39] Motion of United States for Sanctions; Granting [42] Motion of United States for Summary Judgment; Denying [64] Motion of Defendants to Strike; Overruling [34] Objections of the Defendants to the Magistrate Judge Decision of May 16, 2006; Denying as Moot [35] Motion of Defendants to Stay; Denying [36] Motion of Defendant for Summary Judgment. Signed by Judge William M Nickerson on 11/29/06. (mcb, Deputy Clerk)

70 *Filed & Entered:* 11/29/2006 Order

Docket Text: PERMANENT INJUNCTION ORDER. Signed by Judge William M Nickerson on 11/29/06. (mcb, Deputy Clerk)

71 *Filed & Entered:* 12/13/2006 Motion for New Trial

Terminated: 02/07/2007

Docket Text: MOTION for New Trial by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. Responses due by 1/2/2007 (Attachments: # (1) Memorandum in Support of Motion for New Trial# (2) Exhibit 1# (3) Exhibit 2)(Harp, George)

72 *Filed & Entered:* 12/13/2006 Motion to Alter/Amend Judgment

Terminated: 02/07/2007

Docket Text: MOTION to Alter/Amend Judgment by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. Responses due by 1/2/2007 (Attachments: # (1) Memorandum in Support of Motion for Modification of the Permanent Injunction Order# (2) Exhibit 1)(Harp, George)

73 *Filed & Entered:* 12/14/2006 Motion to Stay
Terminated: 12/19/2006

Docket Text: MOTION to Stay re [70] Order by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. Responses due by 1/2/2007 (Attachments: # (1) Memorandum in Support of Motion for Stay Pending Resolution of Motion for Modification of Permanent Injunction Order and Motion for New Trial)(Harp, George)

74 *Filed & Entered:* 12/19/2006 Order on Motion to Stay

Docket Text: ORDER granting [73] Motion of Defendants to Stay. Signed by Judge William M Nickerson on 12/19/06. (c/m 12/19/06 mcb, Deputy Clerk)

75 *Filed & Entered:* 12/29/2006 Response in Opposition to Motion

Docket Text: RESPONSE in Opposition to [71] MOTION for New Trial and [72] MOTION to Alter/Amend Judgment filed by United States of America. Replies due by 1/12/2007. (Newman, Thomas)

76 *Filed & Entered:* 01/12/2007 Reply to Response to Motion

Docket Text: REPLY to Response to Motion re [71] MOTION for New Trial filed by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. (Harp, George)

77 *Filed & Entered:* 02/07/2007 Order on Motion for New Trial

Docket Text: ORDER DENYING [71] Motion for New Trial; DENYING [72] Motion for Modification of the Permanent Injunction Order; LIFTING the Stay on the 11/29/06 Injunction Order. Signed by Judge William M Nickerson on 2/7/07. (hml, Deputy Clerk)

78 *Filed & Entered:* 02/14/2007 Motion to Stay
Terminated: 02/22/2007

Docket Text: Emergency MOTION to Stay re [77] Order on Motion for New Trial, Order on Motion to Alter/Amend Judgment *pending Appeal* by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. Responses due by 3/5/2007 (Attachments: # (1) Memorandum)(Harp, George)

79 *Filed & Entered:* 02/16/2007 Response in Opposition to Motion

Docket Text: RESPONSE in Opposition re [78] Emergency MOTION to Stay re [77] Order on Motion for New Trial, Order on Motion to Alter/Amend Judgment *pending Appeal*/Emergency MOTION to Stay re [77] Order on Motion for New Trial, Order on Motion to Alter/Amend Judgment *pending Appeal* filed by United States of America.Replies due by 3/2/2007. (Newman, Thomas)

80 *Filed & Entered:* 02/16/2007 Notice of Appeal

Docket Text: NOTICE OF APPEAL as to [77] Order on Motion for New Trial, Order on Motion to Alter/Amend Judgment, [70] Order by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. Appeal Record due by 3/19/2007. (Harp, George)

-- *Filed:* 02/20/2007 USCA Appeal Fees
Entered: 02/21/2007

Docket Text: USCA Appeal Fees received \$ 455 receipt number 138507 re [80] Notice of Appeal filed by Save-A-Patriot Fellowship, John Baptist Kotmair, Jr. (sls, Deputy Clerk)

81 *Filed & Entered:* 02/20/2007 Reply to Response to Motion

Docket Text: REPLY to Response to Motion re [78] Emergency MOTION to Stay re [77] Order on Motion for New Trial, Order on Motion to Alter/Amend Judgment *pending Appeal*/Emergency MOTION to Stay re [77] Order on Motion for New Trial, Order on Motion to Alter/Amend Judgment *pending Appeal* filed by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. (Harp, George)

82 *Filed & Entered:* 02/21/2007 Transmission of Notice of Appeal and Docket Sheet to USCA

Docket Text: Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re [80] Notice of Appeal. **IMPORTANT NOTICE:** To access forms which you are required to file with the United States Court of Appeals for the Fourth Circuit please go to <http://www.ca4.uscourts.gov> and click on Forms & Notices. (bmh, Deputy Clerk)

- 83 *Filed & Entered:* 02/22/2007 Order on Motion to Stay
Docket Text: ORDER granting [78] Motion of defendants to Stay. Signed by Judge William M Nickerson on 2/22/07. (slf, Deputy Clerk)
- *Filed & Entered:* 02/26/2007 Record to 4cca
Docket Text: Assembled Electronic Record Transmitted to Fourth Circuit -- Initial (sls, Deputy Clerk)
- *Filed & Entered:* 02/28/2007 USCA Case Number
Docket Text: USCA Case Number 07-1156 for [80] Notice of Appeal filed by Save-A-Patriot Fellowship, John Baptist Kotmair, Jr. Case Manager - Jackie Brown (sls, Deputy Clerk)
- 84 *Filed & Entered:* 03/05/2007 Appeal Transcript Request
Docket Text: TRANSCRIPT REQUEST by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship re USCA Case Number, [80] Notice of Appeal (Attachments: # (1) Certificate regarding transcripts)(Harp, George)

PACER Service Center			
Transaction Receipt			
03/21/2007 15:54:23			
PACER Login:	sf2466	Client Code:	sapf
Description:	History/Documents	Search Criteria:	1:05-cv-01297-WMN
Billable Pages:	7	Cost:	0.56

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No.
)	
JOHN BAPTIST KOTMAIR, JR., d/b/a)	
SAVE-A-PATRIOT FELLOWSHIP and)	
NATIONAL WORKERS RIGHTS)	
COMMITTEE; and SAVE-A-PATRIOT)	
FELLOWSHIP, an unincorporated association,)	
)	
Defendants.)	

COMPLAINT FOR PERMANENT INJUNCTION

Plaintiff, the United States of America, complains as follows against defendants John Baptist Kotmair, Jr., doing business as Save-A-Patriot Fellowship (SAPF) and National Workers Rights Committee (NWRC), and SAPF, an unincorporated association:

1. This action has been requested by a delegate of the Secretary of the Treasury and commenced at the direction of a delegate of the Attorney General pursuant to Internal Revenue Code (I.R.C.) (26 U.S.C.) §§ 7402(a) and 7408.
2. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and I.R.C. §§ 7402(a) and 7408.
3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Kotmair resides within this judicial district at 2911 Groves Mill Road in Westminster, Maryland and because SAPF's office is within this judicial district at 12 Carroll Street, also in Westminster.

1

Defendants' Activities

4. Doing business as SAPF and NWRC, Kotmair organizes and sells tax-fraud schemes designed to assist customers in evading their federal tax liabilities and interfering with the administration of the internal revenue laws.

5. SAPF, an unincorporated association, also organizes and sells tax-fraud schemes designed to assist customers in evading their federal tax liabilities and interfering with the administration of the internal revenue laws.

6. Kotmair describes himself as the "fiduciary" and founder of SAPF.

7. Defendants employ a staff, whom they refer to as paralegals and caseworkers, that assist them in organizing and selling tax-fraud schemes.

8. Defendants market their tax-fraud schemes through the websites www.save-a-patriot.org, www.taxfreedom101.com, and www.taxtruth4u.com and through their newsletters *The Tax Freedom 101 Report* and *Reasonable Action*.

9. Defendants offer two categories of membership in SAPF: associate membership, for which they charge an initial fee of \$99 and an annual renewal fee of \$99, and full membership, for which they charge an initial fee of \$697 and an annual renewal fee of \$99.

10. Both associate and full members receive a subscription to the *Reasonable Action* newsletter and have access to the SAPF staff, who defendants advertise will answer the members' tax questions.

11. Both associate and full members are covered by the "Member Assistance Program," also known as the "Victory Express," which provides financial incentives for members to violate the internal revenue laws.

12. Defendants describe the Member Assistance Program/Victory Express as giving members "insurance-like protection" against IRS levies and seizures and against criminal convictions for tax crimes. Defendants promise that the Member Assistance Program/Victory Express will pay members "above and beyond" the value of property seized by the IRS and will pay the beneficiaries of members convicted for tax crimes \$25,000 per year while the member is incarcerated.

13. For an additional \$35 per year, SAPF members can join the "Patriot Defense Fund," which also provides financial incentives for them to violate federal tax laws.

14. Defendants promise that the Patriot Defense Fund will pay participating members up to \$10,000 for the litigation costs of a criminal tax trial and \$5,000 per appeal if the member is convicted.

15. Through the Member Assistance Program/Victory Express and Patriot Defense Fund, defendants encourage others to violate the internal revenue laws.

16. Defendants sell SAPF members an "Affidavit of Revocation and Rescission," which consists of letters to the Secretary of the United States Treasury purporting to revoke the member's application for a Social Security number.

17. For members who give Kotmair power of attorney over their tax matters, Kotmair and SAPF staffers working at his direction respond to IRS notices of deficiency, liens, levies, and seizures, and other correspondence with letters making frivolous arguments about the internal revenue laws and indicating a refusal to cooperate with the IRS. Defendants charge an additional \$38 to \$48 per letter.

18. Kotmair and SAPF staffers working at his direction file frivolous Freedom of Information Act (FOIA) requests on behalf of members.

19. Kotmair (who is not an attorney) and SAPF staffers working at his direction (who also are not attorneys) offer to prepare bankruptcy petitions for members in order to help them stay IRS collection actions.

20. Kotmair and SAPF staffers working at his direction also offer to prepare other court filings for members to use to obstruct IRS collection efforts.

21. Through NWRC, advertised as a division of SAPF, defendants prepare documents for members that they claim will prevent the member's employer from withholding federal taxes from the member's wages.

22. For prices ranging from \$5 to \$210, defendants sell videotapes, audiotapes, and books that contain false commercial speech promoting their schemes and directing and inciting customers to violate the internal revenue laws.

23. For \$295, defendants sell a "Home-Study Program," consisting of their videotapes, audiotapes, and books. They falsely advertise that the Home-Study Program teaches how "thousands of Americans have stopped filing returns 100% lawfully with no fear of reprisal from the IRS."

24. For an additional \$100, customers of defendants' Home-Study Program become participants in the "Home-Business Opportunity," a multi-level marketing scheme in which the customer sells defendants' videotapes, audiotapes, and books to others for a commission.

25. In promoting their tax-fraud schemes, defendants make the following false and fraudulent statements about the federal income tax laws and the tax advantages of their schemes:

- “The tax on wages has absolutely nothing to do with the tax on income”
- “The ‘income tax’ . . . is an ‘indirect’ tax in the form of an ‘excise’ imposed on certain ‘activities’ or ‘occupations’”
- “Taxable income . . . is limited to certain income that has been ‘earned’ while living and working in certain ‘foreign’ countries or territories.”
- The “wage tax . . . may . . . be considered mandatory, but only for the payor of the wages (the employer) and even then, only if both the employer and the employee have voluntarily agreed (via application) to participate in the entitlement program. . . . [N]either can be compelled to participate.”
- SAPF members can “lawfully stop the withholding of income and employment taxes in the work place.”
- “tens of thousands of your fellow Americans already QUIT social security - 100% legally”
- “American Citizens and permanent resident aliens, living and working within the States of the Union ARE NOT SUBJECT to the filing of an IRS Form 1040 and ARE NOT LIABLE for the payment of a tax on ‘income.’”
- “the Internal Revenue Code is limited in application. It cannot (per constitutional restriction) . . . does not . . . and never has been . . . applied against the United States citizen who is living and working within the 50 states of the union. That individual is neither the subject nor the object of the tax – and neither is his income.”

26. Defendants know or have reason to know that their statements regarding the internal revenue laws are false. Courts have repeatedly rejected their arguments and other similar arguments as frivolous. Additionally, in 1981 Kotmair was convicted of willful failure to file 1975 and 1976 federal income tax returns. Kotmair is also aware that his son, Edward Kotmair, was convicted in 1999 on three counts of failure to file federal income tax returns under I.R.C. § 7203.

Count I
Injunction under I.R.C. § 7408
for Violation of I.R.C. §§ 6700 and 6701

27. The United States incorporates by reference the allegations in paragraphs 1-26.

28. I.R.C. § 7408 authorizes a district court to enjoin any person from, *inter alia*, engaging in conduct subject to penalty under I.R.C. §§ 6700 or 6701 if injunctive relief is appropriate to prevent recurrence of that conduct.

29. Section 6700 penalizes any person who organizes or participates in the sale of a plan or arrangement and, in connection with the organization or sale, makes or furnishes a statement regarding any tax benefit that the person knows or has reason to know is false or fraudulent as to any material matter.

30. Section 6701 penalizes any person who prepares a document that he has reason to believe will be used in connection with any material matter arising under the internal revenue laws and who knows that the document, if so used, would result in an understatement of another person's tax liability.

31. Defendants organize and sell plans that they falsely claim allow their customers legally to stop paying federal taxes and filing federal tax returns.

32. In organizing and selling their plans, defendants make false or fraudulent statements regarding the excludibility of income and the securing of other tax benefits.

33. Defendants know or have reason to know that their promotional materials contain false or fraudulent statements within the meaning of I.R.C. § 6700.

34. Defendants prepare or assist in the preparation of customers' correspondence to the IRS making frivolous arguments about the internal revenue laws and indicating a refusal to cooperate with the IRS.

35. Defendants prepare or assist in preparing bankruptcy and other court filings presenting frivolous arguments about the internal revenue laws.

36. Defendants have reason to believe that the correspondence they prepare will be sent to the IRS and that if the IRS relied on that correspondence it would result in understatements of customers' tax liabilities.

37. Defendants have reason to believe that the bankruptcy and other court filings they prepare will be used in connection with their customers' tax liabilities and that if a court, the IRS, or the United States relied on those filings the filings would result in understatements of the customers' tax liabilities.

38. If they are not enjoined, defendants are likely to continue to organize and sell tax-fraud plans and to assist in preparing documents understating their customers' tax liabilities.

Count II
Injunction under I.R.C. § 7402(a)
and the Appropriateness of Injunctive Relief

39. The United States incorporates by reference the allegations in paragraphs 1-38.

40. I.R.C. § 7402(a) authorizes a court to issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws, even if the United States has other remedies available for enforcing those laws.

41. Defendants substantially interfere with the enforcement of the internal revenue laws by promoting tax-fraud plans that they falsely advise customers will permit the customers legally to stop paying federal tax and filing federal tax returns.

42. Defendants substantially interfere with the administration of the internal revenue laws by sending frivolous letters and FOIA requests to the IRS on behalf of customers, by preparing frivolous and abusive court filings to obstruct IRS collection actions, and by actively encouraging others, through financial incentives, to violate the internal revenue laws.

43. The United States is irreparably harmed by defendants' tax-fraud plans because customers following their advice fail to pay federal taxes, fail to file federal tax returns, and obstruct IRS examination and collection efforts.

44. The United States is irreparably harmed by defendants' interference with IRS examinations and collection activities because it impedes the IRS's discovery and recovery of unreported and unpaid taxes.

45. Unless defendants are enjoined, the IRS will have to devote substantial time and resources to identify and recover lost revenue from their customers.

46. While the United States will suffer irreparable harm if defendants are not enjoined, defendants will not be harmed by being compelled to obey the law.

47. The public interest will be advanced by enjoining defendants because an injunction will stop their illegal conduct and the harm it is causing.

48. In the absence of an injunction backed by the Court's contempt powers, defendants are likely to continue to obstruct and interfere with the enforcement of the internal revenue laws.

WHEREFORE, plaintiff the United States of America respectfully prays for the following:

A. That the Court find that defendants have engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701 and that injunctive relief under I.R.C. § 7408 is necessary and appropriate to prevent defendants, and any business or entity through which they operate, and anyone acting in concert with them, from further engaging in such conduct or any other conduct subject to penalty under the Internal Revenue Code;

B. That the Court find that defendants have interfered with the enforcement of the internal revenue laws and that injunctive relief pursuant to I.R.C. § 7402(a) and the Court's inherent equity powers is appropriate to prevent them, and any business or entity through which they operate, and anyone acting in concert with them, from further engaging in such conduct;

C. That this Court, pursuant to I.R.C. § 7408, enter a permanent injunction prohibiting defendants, individually and doing business under the names listed in this complaint or under any other name or using any other entity, and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, from directly or indirectly:

1. Engaging in activity subject to penalty under I.R.C. § 6700, including organizing or participating in the sale of a plan or arrangement and making a statement regarding the securing of any tax benefit that they know or have reason to know is false or fraudulent as to any material matter;

2. Engaging in activity subject to penalty under I.R.C. § 6701, including preparing or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position that they know will, if used, result in an understatement of tax liability;
3. Promoting, marketing, organizing, selling, or receiving payment for any plan or arrangement regarding the securing of any tax benefit that they know or have reason to know is false or fraudulent as to any material matter; and
4. Engaging in any other activity subject to penalty under I.R.C. §§ 6700 or 6701 or any other penalty provision in the Internal Revenue Code;

D. That this Court, pursuant to I.R.C. §§ 7408 and 7402(a), enter a permanent injunction prohibiting defendants, individually and doing business under the names listed in this complaint or under any other name or using any other entity, and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, from directly or indirectly:

1. Representing or assisting any other person before the IRS in connection with any matter, including preparing or assisting in the preparation of correspondence to the IRS on behalf of any other person;
2. Preparing or assisting in the preparation of court filings, including bankruptcy petitions, on behalf of any other person;
3. Preparing or assisting in the preparation of FOIA and Privacy Act requests on behalf of any other person;

4. Obstructing or advising or assisting anyone to obstruct IRS examinations, collections, or other IRS proceedings;
5. Advising anyone that they are not required to file federal tax returns or pay federal taxes;
6. Instructing, advising, or assisting anyone to stop the withholding of federal employment taxes from wages;
7. Providing incentives, financial or otherwise, either directly or through the Member Assistance Program, the Victory Express, the Patriot Defense Fund, or any other plan or arrangement, for others to violate the internal revenue laws;
8. Selling or distributing any newsletter, book, manual, videotape, audiotape, or other material containing false commercial speech regarding the internal revenue laws or speech likely to incite others imminently to violate the internal revenue laws;
9. Organizing or selling any document purporting to enable the customer to discontinue payment of federal tax; and
10. Engaging in other similar conduct that substantially interferes with the administration and enforcement of the internal revenue laws;

E. That this Court, pursuant to I.R.C. § 7402(a), order defendants, at their own expense, to notify all SAPF members (both associate and full members) and all individuals who have purchased defendants' tax plans, arrangements, and materials of the permanent injunction against defendants and to provide them with a copy of the permanent injunction against defendants;

F. That this Court, pursuant to I.R.C. § 7402(a), order defendants to produce to counsel for the United States a list identifying by name, address, e-mail address, telephone number, and Social Security number, all SAPF members (both associate and full members) and all persons and entities who have purchased defendants' tax-fraud plans, arrangements, or materials;

G. That this Court, pursuant to I.R.C. § 7402(a), order defendants and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them to remove from defendants' websites and those websites over which they have control all tax-fraud scheme promotional materials, false commercial speech regarding the internal revenue laws, and speech likely to incite others imminently to violate of the internal revenue laws; to display prominently on the first page of those websites a complete copy of the permanent injunction; and to maintain those websites for one year with a complete copy of the Court's permanent injunction so displayed throughout that time;

H. That this Court, pursuant to I.R.C. § 7402(a) and the Court's inherent equitable powers, order defendants to complete the requirements of paragraphs E through G, *supra*, within 11 days of the permanent injunction and file a certification of compliance with those requirements within 12 days of the permanent injunction;

I. That this Court permit the United States to conduct post-judgment discovery to ensure defendants' compliance with the permanent injunction; and

J. That this Court grant the United States such other relief, including costs, as is just and equitable.

Respectfully submitted,

ALLEN F. LOUCKS
United States Attorney

/s/Anne Norris Graham
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Background to § 6700

IRC § 6700 was enacted in 1982 as part of Public Law 97-248, known as TEFRA—the Tax Equity and Fiscal Responsibility Act. On May 12, 1982, the Joint Committee on Taxation prepared a comparative description of two bills then proceeding through Congress—H.R. 6300, *The Tax Compliance Act of 1982*, and H.R. 5829, *The Taxpayer Compliance Improvement Act of 1982*. According to the report (Exhibit 9), H.R. 5829 contained no provision for this new penalty, but H.R. 6300 did:

“H.R. 6300 would impose a new civil penalty on persons who organize or participate in the sale of abusive tax shelters. An abusive tax shelter would be any partnership or other entity, any investment plan or arrangement, or any other plan or arrangement having a purported effect on Federal tax liability in connection with which the person makes or furnishes either (1) a false or fraudulent statement with respect to the allowability of any tax benefit or (2) a gross valuation overstatement (whether or not the accuracy of the statement is disclaimed).” [Emphasis added]

Right from the beginning, this new penalty against abusive tax shelters was described as prohibiting only those shelters whose promoters made false statements about the tax benefits of participation in the shelter.⁶

On May 18, 1982, the House Ways and Means Committee held a hearing on H.R. 6300. John Chapoton, Assistant Treasury Secretary for Tax Policy, gave a prepared statement to the committee (Exhibit 10). Mr. Chapoton said the abusive tax shelter penalty:

“... would apply to persons who organize or assist in the organization of a partnership (or other entity), an investment plan or arrangement, or a plan or arrangement that has (or purports to have) an effect on Federal tax liability, as well as to a person who participates in the sale of such an entity, plan or arrangement, if the person either knowingly makes a false or fraudulent statement concerning a tax benefit of the offering, or makes a gross valuation overstatement.” [Emphasis added]

⁶ Tax shelters whose promoters make gross valuation overstatements are also subject to penalty, but since such overstatements are not alleged in the instant case, they will not be mentioned further.

Not only does he recognize that the penalty is explicitly limited, Chapoton gives that as his reason why the penalty is not overly broad:

"We believe that the penalty must be applicable to a wide variety of investment plans and arrangements in order to be effective. The scope of the penalty is not, in our view, overly broad because it will apply only in the situation where the promoter makes a representation as to tax consequences of the investment that he knows or has reason to know is false or fraudulent as to any material matter, or where a valuation approaches fraud because it exceeds a reasonable estimate by a very wide margin." [Emphasis added]

The Senate Finance Committee included this penalty provision in its amendments to H.R. 4961 (TEFRA). Senate Report No. 97-494, dated July 12, 1982, is the Committee's report on H.R. 4961. (Exhibit 11, p. 267). Their explanation for the addition of § 6700:

"The bill imposes a new civil penalty on persons who ... make ... a statement ... with respect to the availability of any tax benefit alleged to be allowable by reason of participating in the entity, plan or arrangement" [Emphasis added]

This element is also confirmed by the Conference Report for H.R. 4961, dated August 17, 1982 (Exhibit 12, p. 572), where the explanation of § 6700 states, in pertinent part:

Senate amendment

A new civil penalty would be imposed on persons who ... make ... a statement... with respect to the availability of any tax benefit said to be available by reason of participating in the investment, ..."

Conference agreement

... when a person makes ... a statement with respect to the availability of a tax benefit with respect to the investment, he will be liable for the penalty if he knew or had reason to know the statement was false or fraudulent as to any material matter." [Emphasis added]

Finally, on December 31, 1982, the U.S. Government Printing Office published a report by the Joint Committee on Taxation titled "General Explanation of the Revenue Provisions" of TEFRA (Exhibit 13, p. 211). It states:

The Act imposes a new civil penalty on persons who ... make ... a statement which the person knows or has reason to know is false or fraudulent as to any material matter with

respect to the availability of any tax benefit alleged to be allowable by reason of participating in the entity, plan or arrangement... [Emphasis added]

The essential nature of the prohibited tax shelters has remained the same since it was first enacted. It was never intended to apply to false statements generally, nor even to all false statements with respect to the allowability of any deduction or credit, or the excludability of any income. It only applies to false statements with respect to the availability of any of these tax benefits *by reason of participation in the shelter*. That is, unless tax benefits are claimed to be derived from participation in the plan or arrangement, that essential element is missing.

If Congress had intended the penalty to apply to false statements generally, they would only have had to *not add* the explicit condition regarding participation. However, since they did add it, the scope of the law cannot now be construed so as to render that explicit condition a nullity.

“No rule of statutory construction has been more definitely stated or more often repeated than the cardinal rule that ‘significance and effect shall, if possible, be accorded to every word. As early as in *Bacon's Abridgment, s 2*, it was said that ‘a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.’(citation omitted)” *Petition of Public National Bank, 278 U.S. 101, 104 (1928)*.

The evidence of the committee reports shows that the legislators clearly intended the penalty to be restricted to those situations where false claims of tax benefits were used to promote participation in a tax shelter. In fact, the evidence shows that the element of participation was deemed to be necessary to prevent the penalty from being “overbroad.”

The § 6700 penalty cannot now be extended by executive or judicial branch to apply to the organization or sale of a plan or arrangement, even *if* false statements were made, unless those statements were with respect to the tax benefits derived from participation in the plan. The legislative power is vested in neither of those branches—only in Congress. If those other branches think such a

change is necessary or desirable, they must try to convince Congress to alter the law; but until such time as Congress removes it, the element of *benefits being derived from participation* is necessary before the prohibitions of § 6700 can apply.

Insufficiency of § 6700 allegations

In light of the history just given, the insufficiency of Plaintiff's allegations concerning violations of § 6700 becomes clear. None of the allegedly false statements quoted in the complaint relate to any tax benefits that are claimed to be available as a result of becoming a member of Save-A-Patriot Fellowship. Instead, they relate solely to the effect of the written laws, and have absolutely nothing to do with membership.

SAPF teaches the limited application of the tax laws, and shows how those limitations are manifested in the language of the law. SAPF never claims (nor is it even alleged anywhere in the Complaint) that the limitations of the tax laws are a result of participation in the Fellowship. Quite the contrary—SAPF expressly teaches that the limitations are a result of the Constitutional restrictions on the government's power to tax citizens. Therefore, joining the Fellowship could not possibly have any effect on one's taxability, and absolutely no tax benefits are derived from membership in the Fellowship. Most important, however, is the fact that Plaintiff has failed to allege any statement made by Defendant SAPF that is *false with respect to any tax benefit secured by reason of participation in SAPF*. Plaintiff, therefore, has failed to plead the elements necessary to constitute an offense under § 6700, and is not entitled to the injunctive relief it seeks, and Defendant is entitled to summary judgment with respect to all counts relating to § 6700.

Elements of aiding and abetting understatement of liability

Paragraph 34 and 36 together comprise the bulk of Plaintiff's allegations regarding conduct

1 Q The www.Taxfreedom101.com.

2 A I believe that was a website that was
3 affiliated with Save-A-Patriot, was being
4 used for kind of educational purposes, which
5 is why I think the 101 was on the back of it.

6 Q Okay. And that gets into my next
7 question. What was it on that website that
8 led you to believe that Mr. Kotmair may have
9 been connected with it or that Save-A-Patriot
10 would have been connected with it?

11 A I would say I think there was
12 probably some articles on there that he had,
13 was attributed as being the author on, but
14 I'm again, relying on memory and --

15 Q Okay. That's fine. Okay. But you
16 don't recall, there was nothing on the
17 website itself indicating that Mr. Kotmair
18 might have been an owner or in control of it
19 or anything?

20 A As I recall, on the website, no I
21 don't believe there was. I -- he was, you
22 know, just maybe had some articles that he
23 had put on there.

24 Q Okay. And was there anything on the

1 assistance program?

2 A Yes. And the NWRC, which is I think
3 the National Worker's Rights Committee. I
4 think that's what that stands for as I
5 recall.

6 MR. KOTMAIR: Did you or anybody you
7 know have insurance being an IRS agent for if
8 you wrongfully violated someone's rights that
9 you were covered with this insurance?

10 THE DEPONENT: I know there was --
11 yes, yes, there is insurance out there for
12 that.

13 MR. KOTMAIR: Did you have a policy?

14 MR. NEWMAN: I don't see how that's
15 relevant.

16 MR. KOTMAIR: Well, it's relevant if
17 -- to this.

18 MR. NEWMAN: That he has insurance?

19 MR. KOTMAIR: No, that for the same
20 purpose that if he violates the law he's
21 covered as an IRS agent.

22 MR. NEWMAN: It's not relevant
23 whether or not he had the insurance or even
24 knows about it.

1 secretary and this letter is saying that it
2 was done, improperly done.

3 MR. KOTMAIR: All right, let me ask
4 you another question about that. You saw
5 these types of letters, right?

6 THE DEPONENT: Yes.

7 MR. KOTMAIR: Did you ever
8 investigate what we were saying in those
9 letters to make sure that it was incorrect?

10 THE DEPONENT: It's against the --

11 MR. KOTMAIR: Did you ever, did you
12 ever investigate what we stated in these
13 letters to make sure that we were incorrect
14 in what we were saying?

15 THE DEPONENT: If you're asking me if
16 I've ever read every page --

17 MR. KOTMAIR: No, no, I'm not asking
18 you --

19 THE DEPONENT: In that internal
20 revenue --

21 COURT REPORTER: Wait, you can only
22 talk one at a time.

23 MR. NEWMAN: Let's take a break.

24 (Off the record)

1 Just answer yes or no. If you didn't, you
2 don't actually know yourself in your own mind
3 whether it's right or wrong.

4 THE DEPONENT: I stand by the answer
5 I said. It's contrary to the accepted,
6 accepted determination that I believe is
7 supported by court cases and the law.

8 MR. KOTMAIR: I'll ask you this
9 question one more time. In your own mind you
10 don't know if this is right or wrong because
11 you didn't check it out; is that right?

12 THE DEPONENT: As I said, I didn't
13 personally read those sections or those
14 documents, no.

15 MR. KOTMAIR: So you don't know,
16 okay.

17 BY MR. HARP:

18 Q All right. The next document was
19 marked Plaintiff's Exhibit 12 to Mr.
20 Kotmair's original deposition. Could you
21 review that and again tell me what in there
22 that you see that may be referring to or
23 regarding the sale of a tax fraud scheme or
24 plan.

1 the investigation or actions against
2 individuals. The assessment of taxes or --

3 MR. KOTMAIR: And those letters
4 actually --

5 THE DEPONENT: Whatever.

6 MR. KOTMAIR: Actually impede that.

7 THE DEPONENT: No, because they're
8 disregarded. But you're still --

9 MR. KOTMAIR: There's no --

10 THE DEPONENT: But it's still the
11 idea that, you know, you get this letter. I
12 mean it's an attempt to impede.

13 MR. KOTMAIR: That's fine.

14 THE DEPONENT: I mean, and the idea
15 if you get the letter and you respond to it
16 and you say, hey, you know, this individual's
17 not authorized to represent you, then that's
18 impeding it because it's causing, you know,
19 an extra administrative step or steps.

20 MR. KOTMAIR: Do you know if the
21 service ever actually gave me an appeal
22 hearing for them not recognizing my number
23 that they issued to me?

24 THE DEPONENT: No, I don't know.

[JOINT COMMITTEE PRINT]

COMPARATIVE DESCRIPTION

OF

H.R. 6300

(THE TAX COMPLIANCE ACT OF 1982)

AND

H.R. 5829

**(THE TAXPAYER COMPLIANCE IMPROVE-
MENT ACT OF 1982)**

**SCHEDULED FOR A HEARING BEFORE THE
COMMITTEE ON WAYS AND MEANS
ON MAY 18, 1982**

**PREPARED BY THE STAFF OF THE
JOINT COMMITTEE ON TAXATION**



MAY 12, 1982

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON: 1982

JCS-15-82

50-108-0

*J862-13
H782-12*

Exhibit 9 32

H.R. 5829

No provision.

2. Obligations required to be registered (sec. 102 of H.R. 6300)***Present law***

Under present law, the tax status of debt obligations is generally the same regardless of whether the obligation is issued in registered form or in bearer form. However, in the case of certain State and local obligations relating to housing or energy programs, interest on the obligations is exempt from Federal income tax only if the obligation is issued in registered form. Unregistered (bearer) obligations are often used in commercial dealings as effective substitutes for cash. Such obligations may, therefore, be used to conceal untaxed income.

H.R. 6300

H.R. 6300 would discourage the issuance of bearer instruments to the general public by denying certain tax benefits for such obligations and by prohibiting the issuance of bearer obligations by the Federal government. Specifically, the Second Liberty Bond Act would be amended to require that every obligation of the United States or any agency or instrumentality thereof must be in registered form. In addition, interest on an obligation of a State or local government would not be exempt from Federal income tax unless the obligation were issued in registered form. In the case of obligations issued by other than governmental units, registration would be required on all obligations except (1) obligations issued by a natural person, (2) obligations not of a type offered to the public, and (3) obligations with a maturity at issue of less than one year. Thus, most commercial paper would be exempt from the registration requirements. The Secretary would be given authority to require registration of short-term and non-public obligations if, with respect to specific types of obligations, he determines that such obligations are used frequently to evade Federal taxes.

In the case of obligations issued by other persons such as corporations, trusts, and partnerships, the issuing entity would be permitted a deduction for interest paid on any obligation required to be registered which is not in registered form and the holder would not be permitted any loss deduction with respect to such unregistered obligations. For purposes of these new rules, an obligation would be considered issued in registered form if the right to principal and interest were determined by entries on the books of the issuer.

These new registration requirements would apply to obligations issued after December 31, 1982.

H.R. 5829

No provision.

B. Abusive Tax Shelters**1. Penalty for promoting abusive tax shelters, etc. (sec. 111 of H.R. 6300)*****Present law***

Present law contains no penalty provision specifically directed at promoters of abusive tax shelters and other abusive tax avoidance schemes. When a promoter sells a tax shelter that is promised on mis-

representations of the tax law, the existence of the investment assets, or the value of property or services, the promoter is not subject to any civil tax penalty unless some action of the promoter is connected with the preparation or presentation of a false or fraudulent return or other document. In such a case, the promoter may incur a civil penalty if his actions constituted return preparation. An injunction against further violation of the return preparer rules could also be sought. If the promoter is not a return preparer, then the only remedy available to the Government is criminal prosecution for aiding, assisting in, procuring, counselling or advising the preparation or presentation of a false or fraudulent return or other document under the internal revenue laws.

H.R. 6300

H.R. 6300 would impose a new civil penalty on persons who organize or participate in the sale of abusive tax shelters. An abusive tax shelter would be any partnership or other entity, any investment plan or arrangement, or any other plan or arrangement having a purported effect on Federal tax liability in connection with which the person makes or furnishes either (1) a false or fraudulent statement with respect to the allowability of any tax benefit or (2) a gross valuation overstatement (whether or not the accuracy of the statement is disclaimed). A gross valuation overstatement would be a statement of the value of services or property which exceeds 200 percent of the correct value and which is directly related to the amount of any deduction or credit allowable to any shelter participant. The penalty for promoting an abusive tax shelter would be the greater of \$1,000 or 10 percent of the gross income derived or to be derived from the activity. If the Internal Revenue Service cannot determine the entire amount of the gross income from an activity, it may assess the penalty on the portion of such gross income that may be determined. The Secretary would be given authority to waive all or part of any penalty resulting from a gross valuation overstatement, when there was a reasonable basis for the valuation and the valuation was made in good faith. The mere existence of an appraisal would not be sufficient, by itself, to show either reasonable basis or good faith. As in the case with the civil fraud penalties, the burden of proof in imposing the penalty would be on the Secretary. This penalty would be in addition to all other penalties provided for by law and would apply beginning on the day after the date of enactment.

H.R. 5829

No provision.

2. Action to enjoin promoters of abusive tax shelters, etc. (sec. 112 of H.R. 6300)

Present law

Present law provides that a civil action may be brought by the United States to enjoin any person who is an income tax return preparer from (1) engaging in any conduct subject to penalty under the income tax return preparer provisions or under the criminal tax laws, (2) misrepresenting his qualifications, (3) guaranteeing a refund or credit, or (4) engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the tax laws. Injunctive relief may be granted by the appropriate

**TAX COMPLIANCE ACT OF 1982 AND
RELATED LEGISLATION**

HEARING
BEFORE THE
COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES
NINETY-SEVENTH CONGRESS
SECOND SESSION
ON
H.R. 6300
**A BILL TO IMPROVE COMPLIANCE WITH THE INTERNAL
REVENUE LAWS**

MAY 18, 1982

Serial 97-63

Printed for the use of the Committee on Ways and Means



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON: 1982

07-442 O

H 781-39

35

Exhibit 10

false tax documents and the return preparer penalty to deal with these problems. In many cases, promoters of abusive tax shelters are not tax return preparers as that term is defined in the Internal Revenue Code. In other cases, it is difficult to establish an intention to aid or assist in the preparation of a false or fraudulent tax return that would result in a criminal sanction.

H.R. 6300 would provide a civil penalty for promotion of abusive tax shelters. H.R. 6300 would also provide IRS with the authority to proceed in court to obtain an injunction against persons who have engaged in conduct that would give rise to imposition of the penalty for promotion of abusive tax shelters; such an injunction could be issued if the court believes that injunctive relief is appropriate to prevent recurrence of such conduct. Similar injunctive authority now exists in the return preparer area. H.R. 5829 contains no parallel provisions.

The penalty for promotion of abusive tax shelters would apply to persons who organize or assist in the organization of a partnership (or other entity), an investment plan or arrangement, or a plan or arrangement that has (or purports to have) an effect on Federal tax liability, as well as to a person who participates in the sale of such an entity, plan or arrangement, if the person either knowingly makes a false or fraudulent statement concerning a tax benefit of the offering, or makes a gross valuation overstatement. A gross valuation overstatement is defined as a statement as to the value of property or services that exceeds the correct value by 200 percent. The Secretary would have authority to abate a penalty imposed due to a valuation overstatement if there were a reasonable basis for the valuation and the taxpayer acted in good faith. Under the bill, the penalty would be the greater of \$1,000 or 10 percent of the gross income derived by the person from the activity. The burden of proof in a court proceeding would be on the Secretary to determine whether the penalty provisions have been violated.

Our voluntary tax compliance system is jeopardized by abusive tax shelter schemes. Frequently, the persons who enter into such schemes are not aware that the scheme is inconsistent with the tax law. Therefore, the persons who promote such schemes and investments, being the persons most knowledgeable regarding the validity of the scheme or investment under the law, are appropriate targets of a penalty, and we support this provision.

We believe that the penalty must be applicable to a wide variety of investment plans and arrangements in order to be effective. The scope of the penalty is not, in our view, overly broad because it will apply only in the situation where the promoter makes a representation as to tax consequences of the investment that he knows or has reason to know is false or fraudulent as to any material matter, or where a valuation approaches fraud because it exceeds a reasonable estimate by a very wide margin.

We believe that the bill's injunction rules are also necessary, as in the return preparer area. IRS has at times successfully challenged an abusive tax shelter, only to find the promoter of the shelter has marketed additional abusive shelter schemes, which require separate audits and enforcement proceedings. This problem is particularly acute because the IRS generally must await the filing of a tax return -- sometimes long after the scheme has been sold -- even to begin its examination of the scheme. By that time, the promoter may have sold several new schemes. Where a court determines that there is a likelihood of recurring conduct, an injunction may well be the only effective means of preventing promoters from organizing and selling new abusive tax shelter schemes.

We strongly feel, however, that the venue of the injunction provision should be enlarged. The bill allows an injunction action to be brought in the district in which the promoter resides or has his principal place of business. If a promoter sells shelters by mail or employs salesmen in other states to market the shelter, the IRS cannot seek an injunction in those districts against the promoter, even though witnesses and documents would be present in those districts. Even the venue in the return preparer area may include the district in which the taxpayer with respect to whose income tax return the action is brought resides. We therefore think the venue in the promoter situation should be broadened to include any district in which the promoter is doing business.

Fraud Penalty

If any portion of an underpayment is due to fraud, present law imposes a civil penalty equal to 50 percent of the entire underpayment. If part of an underpayment is attributable to negligence or intentional disregard of rules and regulations not constituting fraud, the penalty is 5 percent of the entire underpayment, plus 50 percent of the interest payable on the portion of the underpayment due to negligence for the period beginning on the last date prescribed by law for payment of the tax and ending on the date of the assessment of the tax. The 50 percent of interest penalty in negligence cases was added by the Economic Recovery Tax Act.

97TH CONGRESS }
2d Session }

SENATE

{ Rept. 97-494
Vol. 1

**TAX EQUITY AND FISCAL RESPONSIBILITY
ACT OF 1982**

REPORT

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

ON

H.R. 4961

together with

ADDITIONAL SUPPLEMENTAL AND MINORITY VIEWS



JULY 12, 1982.--Ordered to be printed

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96-028 O

S 363-4

Exhibit 11 38

Explanation of Provision

The bill imposes a new civil penalty on persons who organize, assist in the organization of, or participate in the sale of any interests in a partnership or other entity, any investment plan or arrangement, or any other plan or arrangements when, in connection with such organization or sale, the person makes or furnishes either (1) a statement which the person knows is false or fraudulent as to any material matter with respect to the availability of any tax benefit alleged to be allowable by reason of participating in the entity, plan or arrangement, or (2) a gross valuation overstatement as to a matter material to the entity, plan or arrangement, whether or not the accuracy of the statement of valuation is disclaimed. A gross valuation overstatement is any statement or representation of the value of services or property which exceeds 400 percent of the correct value of the property or services and which is directly related to the amount of any income tax deduction or credit allowable to any participant. Although the valuation error must be even more substantial than that required before a penalty applies to the investor, the committee believes that such a limited penalty will prevent any unintended application. The penalty for gross valuation overstatement will have no effect on bona fide commercial or investment transactions in which, for example, a willing and knowledgeable buyer purchased from a willing and knowledgeable seller for cash because such a purchase price will define the value of the investment. A matter is material to the arrangement if it would have a substantial impact on the decision making process of a reasonably prudent investor.

The penalty for promoting an abusive tax shelter is an assessable penalty equal to the greater of \$1,000 or 10 percent of the gross income derived, or to be derived, from the activity. *There need not be reliance* by the purchasing taxpayer or actual underreporting of tax. These elements have not been included because they would substantially impair the effectiveness of this penalty. Thus, a penalty could be imposed based upon the offering materials of the arrangement without an audit of any purchaser of interests. If the Internal Revenue Service cannot determine the entire amount of the gross income from an activity, it may assess the penalty on the portion of such gross income that may be determined. In determining the penalty with respect to the amount of gross income yet to be derived from an activity, the Secretary may look only to unrealized amounts which the promoter or other person may reasonably expect to realize.

The Secretary is given authority to waive all or part of any penalty resulting from a gross valuation overstatement, upon a showing that there was a *reasonable basis for the valuation and the valuation was made in good faith*. The mere existence of an appraisal is not sufficient, by itself, to show either reasonable basis or good faith. Rather, the Secretary may, for example, examine the basis for the appraisal, the manner in which it was obtained, and the appraiser's relationship to the investment or promoter.

This penalty is in addition to all other penalties provided for by law.

Effective Date

This section will take effect on the day after the date of enactment.

97th Congress
2d Session

HOUSE OF REPRESENTATIVES

Report
No. 97-700

**TAX EQUITY AND FISCAL RESPONSIBILITY
ACT OF 1982**

CONFERENCE REPORT

TO ACCOMPANY

H.R. 4961



AUGUST 17, 1982.—Ordered to be printed

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H 783 - 10

Exhibit 12 40

Conference agreement

The conference agreement follows the Senate amendment.

k. Penalty for promoting abusive tax shelters, etc.***Present law***

Present law contains no penalty provision specifically directed toward promoters of abusive tax shelters and other abusive tax avoidance schemes.

House bill

No provision.

Senate amendment

A new civil penalty would be imposed on persons who organize or sell any interest in a partnership or other entity or investment, when, in connection with such organization or sale, the person makes or furnishes either (1) a statement, which the person knows is false or fraudulent as to any material matter with respect to the availability of any tax benefit said to be available by reason of participating in the investment, or (2) a gross valuation overstatement as to a matter material to the entity which is more than 400 percent of the correct value.

The penalty for promoting an abusive tax shelter is an assessable penalty equal to the greater of \$1,000 or 10 percent of the gross income derived, or to be derived, from the activity.

The Secretary is given authority to waive all or part of any penalty resulting from a gross valuation overstatement upon a showing that there was a reasonable basis for the valuation and the valuation was made in good faith. This penalty is in addition to all other penalties provided for by law.

This section will take effect on the day after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment except that, (1) when a person makes or furnishes, in connection with the organization or sale of an interest in any entity or investment, a statement with respect to the availability of a tax benefit with respect to the investment, he will be liable for the penalty if he knew or had reason to know the statement was false or fraudulent as to any material matter. The addition of "has reason to know," clarifies that the Secretary may rely on objective evidence of the knowledge of a promoter or salesperson (for example) to prove that he deliberately furnished a false or fraudulent statement. For example, a salesman would ordinarily be deemed to have knowledge of the facts revealed in the sales materials which are furnished to him by the promoter. The "reason to know standard" is not, however, intended by the conferees to be used to impute knowledge to a person beyond the level of comprehension required by his role in the transaction. Thus, this standard does not carry with it a duty of inquiry concerning the transaction.

[JOINT COMMITTEE PRINT]

**GENERAL EXPLANATION
OF THE
REVENUE PROVISIONS OF THE
TAX EQUITY AND FISCAL RESPONSIBILITY
ACT OF 1982,**

(H.R. 4961, 97TH CONGRESS; PUBLIC LAW 97-248)

**PREPARED BY THE STAFF OF THE
JOINT COMMITTEE ON TAXATION**



DECEMBER 31, 1982

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1983

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J862-1

Exhibit 13 42

Revenue Service establishes fraud by a promoter, the investors may be materially aided in their efforts to seek rescission of the contracts under which they invested. Finally, the promoter penalty was viewed as particularly equitable because the promoter, professional advisor or salesman of a tax shelter generally is more culpable than the purchaser who may have relied on their representations as to the tax consequences of the investment.

Explanation of Provision

The Act imposes a new civil penalty on persons who organize, assist in the organization of, or participate in the sale of any interest in a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement when, in connection with such organization or sale, the person makes or furnishes either (1) a statement which the person knows or has reason to know is false or fraudulent as to any material matter with respect to the availability of any tax benefit alleged to be allowable by reason of participating in the entity, plan or arrangement, or (2) a gross valuation overstatement as to a matter material to the entity, plan or arrangement, whether or not the accuracy of the statement of valuation is disclaimed. Thus, persons subject to the penalty may include not only the promoter of a classic tax shelter partnership or tax avoidance scheme, but any other person who organizes or sells a plan or arrangement with respect to which there are material inaccuracies affecting the tax benefits to be derived from participation in the arrangement. For example, the penalty could apply to some one organizing or selling an investment to or for a particular client. Moreover, the plan or arrangement need not be an investment; the term includes other activities such as the sale of mail-order ministries or family trust arrangements. A matter is material to the arrangement if it would have a substantial impact on the decision making process of a reasonably prudent investor.

The "knows or has reason to know" standard clarifies that the Secretary may rely on objective evidence of the knowledge of a promoter or salesperson (for example) to prove that he deliberately furnished a false or fraudulent statement. For example, a salesman would ordinarily be considered to have knowledge of the facts revealed in the sales materials which are furnished to him by the promoter. The "knows or has reason to know standard" was not, however, intended by Congress to be used to impute knowledge to a person beyond the level of comprehension required by his role in the transaction. Thus, this standard does not carry with it a duty of inquiry concerning the transaction beyond that implied by a person's role in the transaction.

A gross valuation overstatement is any statement or representation of the value of services or property which exceeds 200 percent of the correct value of the property or services and which is directly related to the amount of any income tax deduction or credit allowable to any participant. Although the valuation error must be more substantial than that required before the valuation overstatement penalty applies to the investor, Congress believed that such a limited penalty will prevent any unintended application. The pen-

of filing a false Form 1099 even though the taxpayer's own name, address, and taxpayer identification number appeared on the return (*United States v. Snyder*, 549 F.2d 171 (10th Cir. 1977)), the preparer of false information returns for exempt organizations (*Beck v. United States*, 298 F.2d 622 (9th Cir. 1962)), and floor brokers in foreign exchange operations who provided false information to a taxpayer and, therefore, participated in the preparation of a fraudulent tax return (*United States v. Siegel*, No. 79 CR 606, N.D. Ill. (June 27, 1979), 79-2 U.S.T.C. ¶ 9698).

Under prior law, there was no comparable civil penalty on persons who aid or assist in the preparation or presentation of false or fraudulent documents under the internal revenue laws. However, income tax return preparers who willfully attempt to understate the liability for tax of any person were (and continue to be) subject to a penalty of \$500 per return.

Reasons for Change

Congress believed that a new civil penalty analogous to the criminal penalty for aiding and abetting in the preparation or presentation of a false return or document under the internal revenue laws was necessary for the following four reasons. First, the penalty will permit more effective enforcement of the tax laws by discouraging those who would aid others in the fraudulent underpayment of their tax. Second, Congress felt that it is inappropriate to impose sizeable civil fraud penalties on taxpayers but to allow the advisors who aid or assist in the underpayment of tax to escape civil sanctions. Third, Congress recognized that certain types of conduct should be penalized but are not so abhorrent as to suggest criminal prosecution. Finally, Congress believed the new penalty will help protect taxpayers from advisors who seek to profit by leading innocent taxpayers into fraudulent conduct. It was anticipated that the Internal Revenue Service and Justice Department will continue to pursue vigorously the prosecution of criminal violations of the tax laws, including cases involving conduct that would also be subject to this new penalty.

Explanation of Provision

The Act provides for a new civil penalty on any person who aids, assists in, procures, or advises the preparation or presentation of any portion of a return, affidavit, claim or other document under the internal revenue laws which the person actually knows will be used in connection with any material matter arising under the tax laws, and which portion the person actually knows will (if used) result in an understatement of the tax liability of another person. The penalty was intended to apply as a civil counterpart to the criminal penalty on aiding or assisting in the preparation or presentation of false or fraudulent on returns or other documents.

No person will be subject to this penalty unless that person is directly involved in aiding or assisting in the preparation or presentation of a false or fraudulent document that will be used under the tax laws, or directly "procures" a subordinate to do any act punishable under this provision. The requirements that a person "know" that a document will be used in connection with a material

matter arising under the tax laws and that the person "know" that the document, if used, will result in an understatement of tax were designed to limit the penalty to cases involving willful attempts to accomplish an understatement of the tax liability of a third-party.

Thus, for example, a tax advisor would not be subject to this penalty for suggesting an aggressive but supportable filing position to a client even though that position was later rejected by the courts and even though the client was subjected to the substantial understatement penalty. If, however, the tax advisor suggested a position which he knew could not be supported on any reasonable basis under the law, the penalty could apply. Thus, if a person prepares a return deducting an amount the preparer knows is not deductible that person could be subject to the penalty. However, if a person prepares a schedule or other portion of a return which portion is, in all respects, correct, that person will not be subject to this penalty even if he or she knows that one or more other portions of the return he or she does not help prepare and over which he does not have any control is fraudulent. The penalty does not apply to any person who merely furnishes typing, reproducing or other mechanical assistance in the preparation of the return, etc.

The term "procures" includes ordering or otherwise causing a subordinate to do an act subject to this penalty, or knowing of and not attempting to prevent participation of a subordinate in an act subject to this penalty. Thus, the penalty imposes an affirmative duty on supervisors to act to prevent the wrong proscribed by the provision when he knows it is occurring. The term "advises" includes acts of independent contractors such as attorneys and accountants in counseling a particular course of action. A "subordinate" is any person, including an agent, over which the person has direction, supervision, or control. Direction, supervision, or control for this purpose includes only direct and immediate direction, supervision, and control.

The burden of proof in imposing this penalty is on the Secretary. In addition, all of the other procedural rules described in section 322 of the Act apply to this penalty.

In general, this penalty is in addition to all other penalties provided by law except the penalty on income tax return preparers. If either the return preparer penalties or this penalty may apply with respect to any document the Secretary must elect which penalty to pursue. It is possible, however, for such a tax advisor to be subject to both this penalty and the promoter penalty (sec. 320 of the Act).

This penalty, which is \$1,000 for each return or other document (\$10,000 in the case of returns and documents relating to the tax of a corporation), can be imposed whether or not the taxpayer knows of the understatements. The penalty can, however, be imposed only once for any taxable period (or taxable event) with respect to documents relating to any one person. Thus, someone who assists two taxpayers in preparing false documents would be liable for a \$2,000 penalty whereas the penalty would be only \$1,000 if he had advised in the preparation of two false documents for the same taxpayer. Similarly, an advisor who prepares a false partnership return and ten false schedule K-1's for ten individual partners would be subject to an \$11,000 penalty.



Protection · Education · Fellowship

Save-A-Patriot Fellowship

Post Office Box 91, Westminster, Maryland 21158 · 410-857-4441

Together We Stand —Or— Separately You Will Be Stood On!!!

Program Agreement

The **Save-A-Patriot Fellowship** (SAPF) is a national organization of American Patriots who have joined together to resist the illegal actions of the IRS and other government agencies who knowingly or unknowingly deceive the public. We are tired of being threatened and intimidated by the bureaucrats who run these agencies, and will no longer tolerate the illegal actions of those in our own government — all three branches.

We have researched the law, and developed legal defenses for the protection of our Liberty and Property. These actions are being proven successful, in that by our concerted efforts, we can neutralize their primary weapon: FEAR (*False Evidence Appearing Real*).

Face it: the bureaucrats who are endowed with perpetual control of our government keep the people in line by FEAR. They use the media to plant stories suggesting that resistance is futile and that the IRS is invincible. Then they publish stories showing that reprisal will be swift and financially painful. These "reminders," and a lifetime of financial conditioning, make it difficult for most people to take the first step. SAPF members know that this risk has now been virtually removed!

To our knowledge, there is no insurance company willing to buck the establishment's system and insure Patriots against the criminal acts of the IRS and State agencies. Our only alternative was to start and maintain our own. However, creating and operating a conventional insurance company would be

impossible. The bureaucrats would insist on our submitting to the dictates of the insurance commissions to the detriment of the Patriot, who would be left with nothing but promises. If we had taken that route, in no time at all we would have been expending funds on legal actions against government regulatory agencies, rather than directing our efforts against the illegal acts of government employees. Furthermore, it would be necessary to conceal any money received on insurance claims from the prying eyes and hands of the IRS. We would have wasted our time fighting on their grounds and on their terms, which would have been an inefficient use of our available funds.

There was, and is, only one logical answer: a FELLOWSHIP that gives the Patriot insurance-like protection to Save-A-Patriot!

HOW DOES IT WORK?

Fellowship members pledge to reimburse other members for losses of cash or property incurred from illegal confiscation by the IRS and/or their brothers in state taxing agencies. This is done by spreading the reimbursement costs to all members. Since 1984, the Fellowship has helped members recoup their losses due to the illegal actions of the IRS. Under its earliest program, when a member in good standing lost property or was incarcerated, he or she put in a claim for the actual amount of the loss or the incarceration, and the Fellowship assessed its members their apportioned share of that amount.

For example, "John Freeman" became

Exhibit 15

46

a member of SAPF. After a stubborn and valiant fight through every phase of the bureaucratic maze and the courts, the IRS illegally confiscated his car, valued at 9,000 FRNs (Federal Reserve Notes, commonly referred to as 'dollars'). His fellow members were assessed their share (in the case of 1,000 members, the apportioned share would be 9 FRNs per member). Mr. Freeman got equal value for his loss. If Mr. Freeman was incarcerated, the Fellowship assessed the members 25,000 FRNs for him for any full or partial year of incarceration. But that was before the

VICTORY EXPRESS! **... all aboard!!**

With the "*Victory Express*" program in place, each member is now assessed a 10 FRN minimum per claim, *regardless* of the size of the claim, and no matter how large the membership becomes. For example, when the membership hits 50,000 members (In 1984, the federal government stated that the number of participants in the Tax Patriot part of the Constitutional Revival Movement was 80,000 — what is it today?), members will be shouting, "Attack me, come after me!" At 10 FRNs minimum assessment per member, the received amount would be 500,000 FRNs for going to a federal prison camp or for the loss of a car *regardless* of its actual value. Most people don't make that much money *working* for years. The fear of incarceration loses its sting, since the incarceration assessments are for *each* year or any *part* of a year. What will happen when the membership reaches 100,000? We believe this will cause enrollments to *explode*!

Using the example of Mr. Freeman: if the membership numbered only 2,000, he would receive 20,000 FRNs (10 FRN minimum times 2,000) for his 9,000 car. That's a *profit* of 11,000 FRNs for losing his car. Can you imagine? With 100,000 members, most likely we'd see IRS agents contemplating and maybe even lining up to become members. The bigger we get, the better the support will get. Now, with the *Victory Express*, Americans more than ever can assert

their Constitutional rights and obey the law as **written** without FEAR. Presto, Mr. Freeman's friends lose their fear of the IRS and join the Constitutional Revival Movement.

The surest and safest protection for funds is to keep them in the hands of the insured. The only money sent to SAPF Headquarters is the annual 99 FRN membership participation fee (tendered in FRNs or totally blank postal money order). This fee is used for SAPF administration (staff, rent, phone, printing, equipment, postage, etc.). All other moneys assessed for the benefit of a member's loss are sent *directly* to that member claimant by other SAPF members, after receipt of the claim that has been verified by the SAPF Headquarters staff.

This program does not make it cost effective for the IRS to confiscate Mr. Freeman's auto, if he resists properly. If the loss to the Patriot is nothing, but is actually a **profit** — and the expense to each member is only 10 FRNs — **THEN WHO IS THE REAL LOSER?**

With this kind of protection (\$\$\$), Americans will not only lose their fear of the IRS, they'll be standing in line *wanting* to go to jail! In other words, the socialists' house of cards will collapse — **SO THAT LIBERTY MAY BE RESTORED THROUGHOUT THE LAND!**

CONCLUSION

The Save-A-Patriot Fellowship Program is a brilliantly simple defensive weapon whose success has been phenomenal. It will be even more successful now with the *Victory Express*. You can snap one pencil in half with very little effort, but try it with a fistful! In any battle, the allied participants must support one another or the enemy will "divide and conquer." Over the years, it has become evident that the socialists in government are unified in support of one another and worship only themselves, the money they control, and the power they wield. Their god is the god of materialism, and their goal is a one-world socialist government where their authority can no longer be challenged. Any payment to the government that is not actually required by law is no different than a tithe or free-will offering to a church — except that in this case, it furthers

the agenda of those socialists who are usurping the Constitution. The Constitution is the supreme law of the land, and therefore it is the "authority" that God has placed over us.

By the application of a little logic, one can see that making voluntary payments to a government that is in rebellion against the established authority is no less than rebellion against God. If we are to contend for the faith, then we must stand unified in the support of our King when He orders us to *"Stand fast therefore in the liberty wherewith Christ has made us free, and be not entangled again with the yoke of bondage."* — Galatians 5:1.

THE AGREEMENT

Member: A Member is a Patriot who has paid the annual participation fee to Save-A-Patriot Fellowship (in FRNs or a TOTALLY BLANK POSTAL MONEY ORDER), and has agreed to abide by the Fellowship Program Agreement.

Member's Identification Number: This number is assigned to each applicant to the Fellowship upon SAPF's receipt of the application and participation fee. The I.D. number must be used in all correspondence related to a Claim. A Member making an apportioned payment to a claimant uses his/her I.D. number only, not their own name. On the envelope used to convey the apportioned payment, the return address should be the Member's I.D. number and SAPF's address.

Coverage Offered: For civil claims, up to 150,000.00 FRNs; for criminal claims, up to 25,000.00 FRNs per year.

Civil Coverage: Will be paid in FRNs or a TOTALLY BLANK POSTAL MONEY ORDER directly to the Member claimant or his/her assign (accompanied by the paying Member's I.D. number), only after SAPF HQ has determined that a judgment does exist and that the claimant, to the best of his/her ability, has taken advantage of every agency appeal procedure and court proceeding lawfully possible; and only after SAPF has verified the actual market value of the real and/or personal property confiscated.

Criminal Coverage: Apportioned to the membership at a minimum of 10 FRNs per member by SAPF, to be paid (in FRNs or TOTALLY

BLANK POSTAL MONEY ORDER) directly to the claimant or to his/her assign (accompanied by the paying Member's I.D. number). This is only after SAPF HQ has determined that the claimant Member is actually incarcerated and is given physical proof that said Member, to the best of his/her ability, resisted and delayed the tyrants at every step through the criminal investigation and all other agency and court proceedings feasible. Such payments will be made annually until the end of the incarceration. Any partial or full calendar year a member is incarcerated will be treated as a full year.

Claimant: A Member in good standing, whose annual participation fee and member assistance assessments are paid up to date and who has physical proof of using the administrative and legal process in every way possible, civilly and/or criminally.

Claims: Proof of a Claim must be forwarded to SAPF along with every Claim. To prevent unprincipled persons from taking unfair advantage of the Fellowship, *a claimant must be a member in good standing 6 months before the occurrence of any act causing a claim;* for civil claims, 6 months before the notice of deficiency [or State taxing agency's equivalent] in question; for criminal claims, 6 months before any grand jury indictment or U.S. or State attorney information. Claims may only be submitted for actions initiated by a State or Federal government agency, not by the Patriot Member.

Civil Claims: These cannot be submitted to SAPF until *after* the confiscation of real or personal property, and must be accompanied by proof of the property value, and verified by a local SAPF Independent Representative or realty appraiser. The benefit amount will be determined by the size of membership, with a 10 FRNs minimum per member. *Note:* Property held by banks, savings and loan associations, stock brokers, insurance companies or any other institution that utilizes electronic money is NOT covered for loss under this agreement. Also, losses that involve questions of lawful money and/or property taxes, and/or contractual agreements with private lending institutions or individuals, are NOT claimable under the Fellowship Program Agreement.

Criminal Claims: These cannot be sub-

mitted to SAPF until the Patriot Member is actually incarcerated.

Payment of Claims: Upon receipt of a Claim Statement containing the apportioned amount to be paid and a Claim envelope from SAPF, Members have 35 days to forward their portion of the Claim to the claimant Member. Members **must not** use their name and address in this transaction; only their I.D. number and SAPF's address. Upon receipt of any payment, the Claimant or his/her assign **must** carefully

compile all of the Claim envelopes and forward them to Save-A-Patriot Fellowship, P.O. Box 91, Westminster, MD 21158, Tel. (410)-857-4441 (telephone number **must** be used in SAPF's address), within 30 days. Any Member whose Claim envelope is **not** returned to SAPF by the Claimant or his/her assign, will be terminated for violation of the Fellowship Agreement. To be reinstated and be able to make a Claim for themselves, a delinquent Member must show proof of excusable neglect to SAPF.



Name of Applicant Patriot (*print or type*) Street City State Zip Code Telephone No.

I have enclosed a total of _____ FRNs tendered in CASH or in U.S. POSTAL (POST OFFICE) MONEY ORDER(S) **ONLY WITH BOTH PAYER AND PAYEE AREAS LEFT TOTALLY BLANK**; I understand that all funds tendered to the Fellowship are nonrefundable; I understand that my membership will lapse one year from this date, and that if the 99 FRN annual participation fee is not tendered before that date on the following year, that all my rights, privileges, and/or coverage of any liability claim within the *Save-A-Patriot Fellowship Program Agreement* will be forfeited. (*check only where applicable*)

- 697 FRNs _____ first-time Full Membership application;
- 99 FRNs _____ first-time Associate Membership application;
- 100 FRNs _____ for my initial Co-Membership application (available with Full Membership only);
- 99 FRNs _____ for my Annual Renewal fee;
- 210 FRNs _____ for the 12-hour video seminar "Just The Facts" (includes S/H);
- 30 FRNs _____ for a book containing the graphics and documents seen on "Just The Facts" (includes S/H);
- 30 FRNs _____ for my Membership Handbook (recommended).

In the event that I am criminally incarcerated, my assigned beneficiary is:

Name of Beneficiary (*print or type*) Street City State Zip Code Telephone No.

I understand that it is my responsibility to notify S.A.P.F. of any change of address and/or beneficiary.

Signature of Applicant Patriot

Date Signed

After completing this application, return it to the Independent Representative (IR) who gave it to you. The IR will forward it to SAPF Headquarters. If no IR is involved, return it directly to SAPF Headquarters. If this is a renewal, forward directly to Headquarters. After this application (or renewal) has been processed **it will be returned to you** as proof of membership, with your membership I.D. number inscribed. Be sure to keep this original for your records because SAPF Headquarters maintains all membership files off the premises on computer. Remember, the success of this program depends upon numbers — **SO TELL OTHERS ABOUT THE FELLOWSHIP!**

The above Patriot has been accepted and his/her assigned I.D. number is: _____.

Independent Representative Printed Name Independent Representative Signature (Membership Number)

1 THE COURT: All right. And there were money
2 orders in the kitchen, and money orders in the
3 bedroom.

4 THE WITNESS: Right.

5 THE COURT: Well, I get the picture at the
6 moment. I am sure I will have some questions after
7 Mr. Hrebiniak finishes, but Mr. Hrebiniak, it is your
8 turn.

9 CROSS-EXAMINATION BY MR. HREBINIAK:

10 Q Yes, Mr. Kotmair, could you explain what kind of
11 organization Save-A-Patriot Fellowship is?

12 A Well, it is a first amendment unincorporated
13 organization.

14 Q By unincorporated you mean there have been no
15 corporation papers filed with the state?

16 A No, it is just an association we call a
17 fellowship.

18 Q And is it registered with the state or federal
19 government as a --

20 A No.

21 Q As a charitable organization?

22 A No.

23 THE COURT: You mean so that peek
24 contributors can take tax deductions. That would be
25 kind of inconsistent with their philosophy. The one

1 thing Mr. Kotmair is not doing is selling tax
2 deductions, right.

3 THE WITNESS: That is correct.

4 THE COURT: He may be accused of a lot of
5 things but does not suggest that if you give him money
6 you should deduct it on your tax returns.

7 THE WITNESS: That is correct.

8 THE COURT: He suggests you shouldn't have a
9 tax return at all, right?

10 THE WITNESS: I don't suggest that, Your
11 Honor to anyone.

12 THE COURT: But you certainly wouldn't
13 suggest that they should deduct anything do you on a
14 tax return?

15 THE WITNESS: I don't give tax advice to
16 anybody, but if I did, I would not, that is correct.

17 THE COURT: He doesn't, but if he did, his
18 personal feelings do not encourage people to use these
19 deductions, so he was not seeking a tax exception for
20 this.

21 BY MR. HREBINIAK:

22 Q No. Now, are there officers in this organization?

23 A Myself.

24 Q Just yourself?

25 A That is correct.

1 circumstances of where it was located and where it was
2 possessed, you know, might have some probative value,
3 but the direct testimony, everybody is in agreement it
4 did not -- it all belonged to the fellowship.

5 THE COURT: You are an attorney and you can
6 answer a little different than Mr. Kotmair. Wouldn't
7 you agree when he goes to the grocery store and buys a
8 box of Wheaties, that is his, that box of Wheaties is
9 his. It is not -- it is fueling him to carry on the
10 great work of the fellowship, but so is whatever you
11 had for breakfast fueling you to do your business.
12 You don't think about -- you should pardon the
13 expression in this case, deducting from the tax return
14 that I am sure you file Mr. Harp, I am not asking you.
15 Your breakfast helps you to be a better lawyer.

16 MR. HARP: Your Honor, for a normal
17 circumstance and the normal situation and the normal
18 client, Mr. Hrebiniak's argument may have some merit
19 but --

20 THE COURT: I realize we don't have any of
21 that.

22 MR. HARP: We don't have that here.

23 THE COURT: I don't think anybody can deny
24 the sincerity of Mr. Kotmair. I mean we can only
25 disagree with him of course. We can't deny his

1 sincerity.

2 MR. HARP: I mean --

3 THE COURT: Or at least his consistency.

4 MR. HARP: Your Honor, the Court has had
5 other dealings with Mr. Kotmair in the past and
6 irrespective of whatever the feelings the Court or the
7 government may have about him, I don't think anybody
8 has ever been able to find any kind of reproach
9 whatsoever about his dedication and what he has done
10 over the years.

11 THE COURT: I think there is no contest about
12 his sincerity and his consistent statement of views
13 that are consistent. That is his way of looking at
14 the world.

15 MR. HARP: And Mr. Hrebiniak characterized, I
16 think wrongfully that the Save-A-Patriot fellowship is
17 loosely organized, and from what I know about it, it
18 is not. I would be inclined to describe it more as
19 compartmentalized rather than loosely organized. But
20 the reasons they have had to do that over the years, I
21 think probably these warrants that were issued out
22 here in 93 is main good evidence of some of the
23 problems they have had or potential problems they had
24 from time to time. All of the assets we are talking
25 about to, whether it be these collectible coins or

1 and why it was returned.

2 MR. HARP: Your Honor, I will suggest --

3 THE COURT: No, first of all, as I understand
4 it, now six thousand square feet for this operation,
5 and we have to remember, we are dealing where an
6 organization that has expressed views, views that are
7 unpopular with federal law enforcement and that is the
8 nature of this organization, which is why we have to
9 be scrupulously careful to honor their first amendment
10 rights. Nobody is trying to jump on those, but there
11 is obviously something going on there that is
12 proselytizing the views of Mr. Kotmair and his
13 compatriots, and anybody -- unless they are violating
14 some law, nobody wants to interfere with their rights
15 to sell their ideas, correct, so you can't deny they
16 are actually doing some first amendment activity.

17 MR. HREBINIAK: No, you cannot.

18 THE COURT: And therefore that there has to
19 be in fairness, some assets that are devoted to that.
20 To that because so to speak, now, whether that is Mr.
21 Kotmair himself or this fellowship as an
22 unincorporated association, is in debate.

23 MR. HREBINIAK: Or maybe Your Honor hit the
24 distinction there. That certainly any assets devoted
25 to that, like the computers and whatever, but

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civil No. WMN05CV1297
)
 JOHN BAPTIST KOTMAIR, JR.,)
 et al.,)
)
 Defendants.)

AFFIDAVIT OF JOHN B. KOTMAIR, JR., IN SUPPORT OF DEFENDANT SAPF'S
MOTION FOR SUMMARY JUDGMENT

I, John Baptist Kotmair, Jr., do hereby declare as follows:

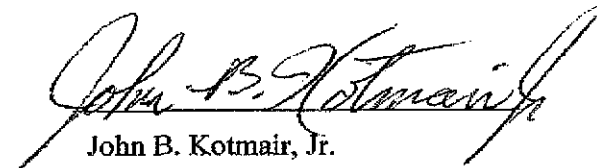
1. I am a citizen of Maryland and a defendant in the above captioned action.
2. The Save-A-Patriot Fellowship is a first-amendment, unincorporated political association, of which I am the Fiduciary of its day-to-day operations.
3. The Save-A-Patriot Fellowship is not a for-profit organization. It turns no profit, and was never intended to do so, and often needs to solicit donations.
4. Neither I nor Save-A-Patriot Fellowship have ever had control or ownership of www.taxfreedom101.com, and www.taxtruth4u.com. Moreover, SAPF has never printed, sold or distributed "The Tax Freedom 101 Report."
5. Neither SAPF nor I have ever offered for sale, the "Home-Study Program" and "Home-Business Opportunity." To the best of my knowledge, they were offered only on the www.taxfreedom101.com.

6. As stated in the membership handbook of the Save-A-Patriot Fellowship, the Fellowship is dedicated to confining the IRS and other government personnel within the written law. To that end, the Save-A-Patriot Fellowship writes letters to IRS personnel in response to their notices and determinations, laying out the relevant law and administrative procedures so that they can obtain due process.
7. It is my experience, and the experience of members of which I have knowledge, that the letters Save-A-Patriot Fellowship writes to the IRS are, almost without exception, never considered by the IRS in determining or adjusting an already-assessed amount, nor are they responded to substantively.
8. I have never written any letter to the IRS on behalf of a Fellowship member which either proposed or, to my knowledge, resulted in any understatement in the IRS' determination of a liability.
9. Since I founded Save-A-Patriot Fellowship, it has always held the position that Americans should pay the taxes that are due and owing in accordance with the written law.
10. When writing to employers and other third parties, Save-A-Patriot Fellowship uses the title "National Workers' Rights Committee" as a letterhead.
11. The National Workers' Rights Committee ("NWRC") is simply a division of Save-A-Patriot Fellowship, and not a separate entity. Its sole function is to serve only Save-A-Patriot Fellowship members.
12. I have adopted the title "Director" for the purposes of NWRC. I am "Director" of NWRC solely by virtue of being the Fiduciary of Save-A-Patriot Fellowship. It is not a position separate and distinct from the Fiduciary of Save-A-Patriot Fellowship.

13. Since the time this court decided, in *Save-A-Patriot Fellowship v. U. S.*, 962 F.Supp 695 (1996), that Save-A-Patriot was an unincorporated association, and that it was not a "sole proprietorship" of me, SAPF has made no organizational changes, nor does it, to this day, operate any differently than it did in 1996. It continues to be a first-amendment, unincorporated political association, engaging in constitutionally protected speech.

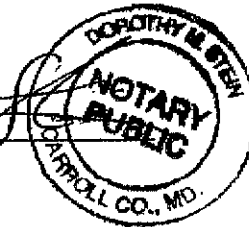
I hereby declare that the foregoing is correct and true to the best of my knowledge, information and belief.

Dated this 31st day of May, 2006.


John B. Kotmair, Jr.

Subscribed and sworn to before me, a Notary Public, of the State of Maryland, County of Carroll, this 31st day of May, 2006, that the above named person did appear before me and was identified to be the person executing this document.


Notary Public



My Commission Expires On: October 7th 2009

these documents.¹²

Defendants also advise members not to report or pay tax on "U.S.-source" income. Defendants sell letters, written by Kotmair, alleging that "income that is taxable is from a foreign source only" and "there is no tax liability or requirement to file an information return for citizens with source income from within the States of the Union."¹³

As part of the scheme to assist customers in evading federal income tax payment and filing requirements, defendants offer to represent customers before the IRS, and sell at least ten anticipated responses to IRS inquiries, which defendants describe as "power-of-attorney work." Defendants charge customers a fee between \$38-\$48 for each letter purporting to represent the customer, which includes privacy act requests to gather "exculpatory evidence."¹⁴ The letters are virtually identical, are all signed by Kotmair, and espouse the so-called "§ 861 Argument."¹⁵ Specifically, defendants represent in the letters that "income must be derived from one of the 'specific sources'" listed in 26 C.F.R. § 1.861(f) or there is "no filing requirement."¹⁶

¹² Rowe Dec. ¶¶ 57-62, Exhs. 25-29; Declaration of Dr. Amzi Sherling ¶¶ 4-9, Exhs. 1-2; Declaration of Nicholas Taflan ¶¶ 5-10; Declaration of Thomas M. Newman ¶¶ 2-32, & 44, Exhs. 1-31, & 43C (Tr. 162-167, 181-182); Declaration of Joseph Nagy ¶ 6; Declaration of Camille Nagy ¶ 6; docket nos. 6 & 8, ¶ 16.

¹³ Rowe Dec. ¶ 16, Exh. 5; Declaration of Thomas M. Newman ¶ 44, Exh. 43D (Tr. 208).

¹⁴ Rowe Dec. ¶¶ 5, 23, 25-36, Exhs. 1A (p. 6), 8-18; Declaration of Joseph Nagy ¶¶ 8-14; Declaration of Camille Nagy ¶¶ 7-14; Declaration of Nicholas Taflan ¶ 11; Declaration of Thomas M. Newman ¶ 44, Exh. 43A (Tr. 53); docket nos 6 & 8, ¶ 17.

¹⁵ Rowe Dec. ¶¶ 26-27, 29-30, Exhs. 9-10, 12-13; Declaration of Joseph Nagy ¶¶ 3-4, 6-12; Declaration of Camille Nagy ¶¶ 3-4, 6-12; Declaration of Nicholas Taflan ¶¶ 3-4; Declaration of Thomas M. Newman ¶ 44, Exh. 43B (Tr. 132-134).

¹⁶ Rowe Dec. ¶ 29-30, Exhs. 12-13; Declaration of Joseph Nagy ¶¶ 3-4, 6-12; Declaration of Camille Nagy ¶¶ 3-4, 6-12; Declaration of Nicholas Taflan ¶¶ 3-4; Declaration of Thomas M. Newman ¶ 44, Exh. 43B (Tr. 132-134); Declaration of Evan Davis ¶ 4, Exh. 1 (Tr. 16).

Defendants' protest letters include, *inter alia*, responses to (1) requests for income tax returns, (2) Notices of Deficiency, and (3) Notices of Intent to Levy. All these letters allege, on behalf of defendants' customers, that there is no income tax filing or payment requirement because the individual earned only U.S.-Source income.¹⁷ Defendants have mailed over 800 protest letters to the IRS during the course of this investigation, despite having been notified by the IRS that Kotmair is not authorized to represent defendants' customers.¹⁸

Defendants also offer to assist customers in filing court pleadings in bankruptcy and federal district court. In connection with this service, defendants have filed motions and pleadings advocating the § 861 Argument.¹⁹ Defendants state that the bankruptcy pleadings they sell require the IRS to prove that all taxes were properly assessed and is a method to delay collection.²⁰ Their handbook explains the alleged benefits of their representation as proving that the IRS erroneously sent notices alleging tax liabilities imposed on U.S.-source income—and courts can require the IRS to obey the law according to defendants—the § 861 Argument.²¹ Defendants inform customers that they can build a case establishing the alleged error using the protest letters and court filings in order to assist the customers in excluding all U.S.-source

¹⁷ Rowe Dec. ¶ 25-32, Exhs. 8-14; Declaration of Joseph Nagy ¶¶ 3-4, 6-12; Declaration of Camille Nagy ¶¶ 3-4, 6-12; Declaration of Nicholas Taflan ¶¶ 3-4; *See Narramore*, T.C. Memo. 1996-11, Tax Court Doc. No. 34184-87 (filed Oct. 19, 1987)(noting that these protest letters have been sold for at least 19 years).

¹⁸ Rowe Dec. ¶ 41-51, Exhs. 19-20; Declaration of Thomas M. Newman ¶ 44, Exh. 43B (Tr. 113-115).

¹⁹ Declaration of Nicholas Taflan ¶ 14(l), Exh. 14; Declaration of Thomas M. Newman ¶ 44, Exhs. 43A (Tr. 53), 43C (Tr. 158); docket nos. 6 & 8 ¶ 20.

²⁰ Rowe Dec. ¶ 5, Exh. 1B (p. 23); Declaration of Nicholas Taflan ¶ 14(d), Exh. 5.

²¹ Rowe Dec. ¶ 5, Exh. 1B (p. 21).

the administration of the internal revenue laws, from organizing and selling tax-fraud schemes, and from assisting in the preparation of false documents relating to federal tax matters.

As set forth more fully in the declaration of Revenue Agent Joan Rowe, Kotmair claims to be a tax law expert as the founder and self-proclaimed fiduciary of Save-a-Patriot Fellowship and director of the National Workers Rights Committee.¹ Kotmair formed SAPF in 1984 after being released from prison following a conviction for willfully failing to file income tax returns for 1975 and 1976.²

Defendants Kotmair and SAPF market the discredited “§ 861 Argument” or “U.S.-source” tax-fraud scheme through their newsletter *Reasonable Action*, the save-a-patriot.org website, and through a salesforce, which SAPF calls independent representatives.³ Section 861 Argument proponents, using a tortured statutory-construction argument, conclude that the foreign-source income rules from § 861 somehow sharply limit the scope of § 61, which defines income as “income from whatever source derived” —to conclude that domestic-source income of U.S. citizens is not taxable.⁴

For membership fees ranging from \$99 to \$697, defendants furnish their customers, whom defendants call “members,” with access to SAPF staff who (1) provide documents,

¹ Rowe Dec. ¶ 22, 24, Exhs. 6E and 7; docket nos. 6 & 8, ¶ 6.

² Rowe Dec. ¶ 5; docket nos. 6 & 8, ¶ 26; *see also Kotmair v. Commissioner*, 86 T.C. 1253 (1986).

³ Rowe Dec. ¶¶ 6-15, 15-22, 26-32, Exhs. 2-4, 6-6E, 9-14; docket nos 6 & 8, ¶¶ 8, 10. The United States does not contest that the taxfreedom101.com and taxtruth4u.com websites are not owned by defendants.

⁴ *United States v. Bell*, 414 F.3d 474, 475 (3rd Cir. 2005)(explaining the fallacy of the § 861 Argument).

person not subject to withholding.”⁸ Defendants also offer to sell follow-up letters to the Secretary of Treasury, and advise customers that a lack of response from the Government is “conclusive proof” that their Social Security number has been revoked and they are no longer obligated to file tax returns.⁹

As part of the scheme, defendants offer to provide additional assistance to customers whose employers continue to withhold taxes from their wages. For additional fees, defendants will send threatening letters, and file complaints against, employers who continue to withhold taxes.¹⁰ Kotmair has received numerous court decisions stating that individuals cannot opt-out of Social Security because “[m]andatory participation is indispensable to [its] fiscal vitality,” and because “[t]he Internal Revenue Code compels [employers] to withhold taxes and social security (FICA) contributions ‘at the source.’”¹¹ Despite unequivocal language in the decisions contrary to their position, however, defendants continue to sell and promote the alleged tax benefits of

⁸ Rowe Dec. ¶¶ 52-57, Exhs. 22, 25; Declaration of Thomas M. Newman ¶ 44, Exh. 43C (Tr. 162,-167, 181-182); Declaration of Dr. Amzi Sherling ¶¶ 4-9.

⁹ Rowe Dec. ¶¶ 18-21, Exhs. 6A (p. 20), 6B (pp. 3, 17, 19)(1990)), 6C (p. 20), 6D (pp. 13-14, 18).

¹⁰ Rowe Dec. ¶¶ 56-62, Exhs. 22, 25-29; Declaration of Dr. Amzi Sherling ¶¶ 4-9, Exhs. 1-2; Declaration of Nicholas Taflan ¶¶ 5-10; Declaration of Thomas M. Newman ¶¶ 2-32, Exhs. 1-31. See also *Damron v. Yellow Freight Sys.*, 18 F. Supp. 2d 812 (E.D. TN 1998)(taxpayer used statements provided by SAPF); *Alaska Computer Brokers v. Morton*, 1995 WL 653260 (D. Ak., September 6, 1995)(same); *United States v. Crosson*, 1995 WL 756599 (E.D. Pa., December 20, 1995)(same).

¹¹ E.g., *Shepherd v. Sturm, Ruger & Co*, 1998 OCAHO LEXIS 27 at *4 (Feb. 18, 1998) (Kotmair filed at least 30 complaints in the Office of Chief Administrative Hearing Officer (OCAHO), against employers on behalf of members. In *Shepherd*, the OCAHO court, which hears employment disputes, noted that Kotmair receive copies of all decisions as the complainants representative.) See also Declaration of Thomas M. Newman ¶ 2-32, & 44, Exhs. 1-31 (noting 30 other cases.)

income from federal income tax payment and filing requirements.

Moreover, defendants require that customers use these materials, and employ their delay tactics, in order to claim the benefits of their insurance-like coverage, which rewards customers for violating the income tax laws. This promotion is designed to disrupt or hinder the enforcement of the internal revenue laws.²²

Defendants peddle these services—all containing the § 861 Argument—despite knowing that the IRS views the arguments as frivolous and that two of SAPF's former employees, Thurston Bell and Richard Haraka, were enjoined from performing identical conduct.²³ In addition, defendants continue to falsely advise customers that Kotmair is authorized to represent individuals before the IRS and to send written protests based on the discredited § 861 Argument.²⁴

The IRS has identified 864 SAPF members. It costs the U.S. Treasury an estimated \$1,364,005 to prepare substitutes for returns and process frivolous correspondence mailed by defendants for these customers. This cost does not include the hours that IRS Revenue Officers will have to devote attempting to collecting from defendants' customers who refuse to pay the

²² Rowe Dec. ¶¶ 5, 8, 18-21, Exhs. 1A (p. 6), 1B (p. 28), 3 (providing methods for obstructing IRS Appeals' conferences), 6A (p. 2), 6C (p. 2), 6D (p. 2); Declaration of Joseph Nagy ¶ 14; Declaration of Camille Nagy ¶ 14; *Save-A-Patriot Fellowship v. United States*, 962 F. Supp. 695 (D. Md. 1996)(noting that customers must use every delay tactic possible).

²³ Rowe Dec. ¶¶ 8, 17, 33-34, 63-64, Exhs. 3 (Kotmair discusses other tax-fraud promoters who were enjoined by federal courts, including Bell and Haraka), 6, 15-16, 31-32 (court orders enjoining Bell and Haraka), 33; Declaration of Thomas M. Newman ¶¶ 34, 44, Exhs. 33 (in his affidavit, Bell explains that he and Haraka worked for SAPF), 43C (Tr. 147); *See also United States v. Bell*, 238 F. Supp. 2d 696 (M.D. Pa. 2003).

²⁴ Rowe Dec. ¶¶ 41-42, 44-51; Declaration of Thomas M. Newman ¶ 44, Exh. 43D (Tr. 217-218).

National Workers Rights Committee. Since the United States is not alleging SAPF is an alter ego of Kotmair, and seeks to enjoin his conduct separately, his argument is without merit.

SAPF's motion contends that some of the false statements listed in the United States' complaint were taken from websites owned by their representatives. The United States does not dispute this fact. Thus, there are no genuine issues of material fact remaining for trial concerning the issues of (1) whether defendants engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701 by promoting an abusive tax scheme; and (2) whether an injunction is necessary to prevent the recurrence of such conduct.

II. A Permanent Injunction Should Issue under IRC § 7408 Before Defendants Engage in Further Conduct Subject to Penalty under §§ 6700 and 6701.

IRC §§ 6700, 6701, and 7408 all were enacted as part of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248, §§ 320-321, 96 Stat. 324, 611-612, 615-616. Section 6700 was intended to prevent "[t]he widespread marketing and use of tax shelters," which "undermines public confidence in the fairness of the tax system and in the effectiveness of the existing enforcement provisions." S. Rep. No. 97-494, vol. 1 at 266 (1982), *reprinted in* 1982 U.S.C.C.A.N. 781, 1014. Section 6701 was intended to "help protect taxpayers from advisors who seek to profit by leading innocent taxpayers into fraudulent conduct" and to provide for "more effective enforcement of the tax laws by discouraging those who would aid others in the fraudulent underpayment of their tax." S. Rep. No. 97-494, vol. 1 at 275, *reprinted in* 1982 U.S.C.C.A.N. at 1022. Congress included IRC § 7408 as part of this framework because it believed that allowing the IRS to seek injunctive relief against promoters was the most effective way to attack abusive tax shelter schemes and prevent further harm, because the IRS would not be "required to await the filing and examinations of tax returns

have been repeatedly rejected by courts as false.³⁶

Defendants also misrepresent the tax benefits of their "Affidavit of Revocation" and "Statement of Citizenship" schemes. Defendants falsely state that participants can file these documents in order to proclaim that they are U.S. citizens not subject to withholding, and can revoke their Social Security numbers in order to evade employment tax payment requirements. Moreover, defendants falsely instruct customer that they "cannot" file income tax returns after using these documents. There are numerous court cases in which individuals have attempted to revoke their Social Security number in order to discontinue paying taxes.³⁷ None of them has been successful. Claims that individuals can file "Statements of Citizenship" in order to evade income tax withholding have also been unanimously rejected.³⁸

Defendants' statements regarding the benefits of SAPF membership in eliminating tax

³⁶ See, e.g., *Bell*, 414 F.3d 474, 475 (3rd Cir. 2005), aff'g 238 F. Supp. 2d 696 (M.D. Pa. 2003); *United States v. Gerads*, 999 F.2d 1255 (8th Cir. 1993) (rejecting appellants' contention that they are not U.S. citizens, but rather state citizens and not subject to taxation); *Lonsdale v. United States*, 919 F.2d 1440 (10th Cir. 1990) (rejecting a host of tax protester arguments); *In re Becraft*, 885 F.2d 547 (9th Cir. 1985); *Betz v. United States*, 40 Fed. Cl. 286 (Fed. Cl. 1998); *Sherwood v. Commissioner*, T.C. Memo. 2005-268 (involving an SAPF); *Tolotti v. Commissioner*, T.C. Memo. 2002-86 (same); *Narramore*, T.C. Memo. 1996-11 (same); *Kotmair v. Commissioner*, 86 T.C. 1253, 1262 (1986) (Kotmair's arguments characterized as "meritless, frivolous, wrongheaded, and even stupid.")

³⁷ *United States v. Ferguson*, 793 F.2d 828 (7th Cir. 1986); *United States v. Sasscer*, 2000 WL 1479154 (D. Md. 2000); *Narramore*, T.C. Memo. 1996-11; (SAPF attached an "Affidavit of Revocation" to his motion.); *United States v. Lee*, 455 U.S. 252, 257 (1982); *United States v. Luman*, 2005 WL 1027075 (N.D. Ga. April 7, 2005) (promoter enjoined from selling methods to evade income tax withholding); Rev. Rul. 2005-17.

³⁸ *Alaska Computer Brokers*, 1995 WL 653260 (D. Ak. Sept. 6, 1995) (SAPF customer's "Statement of Citizenship" is "frivolous"); *Damron*, 18 F. Supp. 2d 812 (E.D. TN 1998) (taxpayer "adopted this misguided philosophy and misinterpretation of the law from a tax protest organization known as the Save-A-Patriot Fellowship" in addressing the Affidavit of Revocation); *Benz v. Department of Defense*, 1997 WL 837789 (Sept. 4, 1997).

Further, even a cursory review of cases involving defendants' customers reveals that the IRS, Tax Court, bankruptcy courts, and federal courts have uniformly rejected defendants' positions regarding the revocation of Social Security numbers, the use of the "Statement of Citizenship," and the § 861 Argument. Defendants also know that two of their former employees was enjoined for nearly identical conduct. Most significantly, Kotmair, as the director of the NWRC, was served with—yet blatantly ignores—at least forty decisions explicitly rejecting his position as frivolous.⁵⁰ For these reasons, defendants knew, or should have known, their statements were false.

(4) Defendants' False Statements Pertained to a Material Matter.

The Government must also establish that the statements made pertained to a "material" matter.⁵¹ If a particular statement has a substantial impact on the decision-making process or produces a substantial tax benefit to a taxpayer, the matter is properly regarded as "material" within the meaning of section 6700.⁵²

There is substantial evidence that defendants' statements pertain to a material matter. First, defendants' protest letters indicate that hundreds of defendants' customers gave Kotmair authority to represent them before the IRS regarding a "material" matter—i.e. their personal income tax liability—despite the fact that he cannot represent them. Moreover, defendants

⁵⁰In addition defendants falsely advertise they can prepare bankruptcy pleadings and represent customers before the IRS. Defendants know these representation are false. *In re Weatherley*, 1993 WL 268546 (E.D. Pa., July 15, 1993)(enjoining SAPF from preparing bankruptcy petitions in any court in the United States).

⁵¹ It should be noted that SAPF acknowledges in its motion that its services relate to a material matter.

⁵²See *Buttorff*, 761 F.2d at 1062.

In the instant case, defendants advise customers to file "Affidavits of Revocation"—purporting to remove the individual from the jurisdiction of the IRS and relieve them from income and employment tax filing and payment requirements— and a "Statements of Citizenship"—which defendants state is used in place of a Form W-4 to declare the individual is not subject to income or employment tax withholding. Defendants know their customers use these documents because they note that their customers used the "revocation" in the protest letters defendants mail to the IRS. Those customers purporting to have revoked their Social Security number have failed to file income tax returns— all directed by defendants. Moreover, Kotmair represented at least forty customers in disputes with employers that refused to accept these documents.

In addition, defendants know that these documents, if used, would result in the understatement of their customers' tax liabilities, withholding obligations, and filing requirements because their customers fail to file returns and request that employers stop withholding taxes. Defendants know that both the courts and the IRS reject their positions; they simply refuse to accept the rejections.⁵⁷ As such, defendants' conduct violates of § 6701, and provides further grounds for an injunction under IRC § 7408.

C. A Permanent Injunction Should be Issued Based on I.R.C. § 7402.

This Court is authorized by IRC § 7402 to issue an injunction "as may be necessary or

prove, but has proven, that defendants have actual knowledge their customers used the documents. Moreover, contrary to SAPF assertion, it is these "affidavits" and "statements" which violate Section 6701, not their frivolous protest letters.

⁵⁷ Defendants are aware that their customers have faced IRS audits and criminal liabilities after using these documents. In fact, defendants use that knowledge to their financial advantage by insisting that customers purchase more of their "IRS Response Letters."

appropriate for the enforcement of the internal revenue laws.” That statute manifests “a Congressional intention to provide the district courts with a full arsenal of powers to compel compliance with the internal revenue laws,”⁵⁸ and “has been used to enjoin interference with tax enforcement even when such interference does not violate any particular tax statute.”⁵⁹ The legislative history accompanying § 7408 explicitly states that “the court will continue to have full authority under [§ 7402] and will continue to possess the great latitude inherent in equity jurisdiction to fashion appropriate relief.” S. Rep. No. 97-494, *supra* at 269.

Here, injunctive relief under § 7402 is appropriate to prevent defendants from continuing to interfere with tax enforcement. Defendants’ false tax advice and abusive programs interfere with the enforcement of the internal revenue laws by delaying examination and collection and by discouraging customers from complying with the tax laws.⁶⁰ Their activities undermine public confidence in the fairness of the federal tax system and incite violations of the internal revenue laws. Defendants’ promotion causes the Government irreparable harm and the Government’s remedies at law are inadequate.⁶¹

⁵⁸ See *United States v. First Nat’l City Bank*, 568 F.2d 853 (2nd Cir. 1977).

⁵⁹ *United States v. Ernst & Whinney*, 735 F.2d 1296, 1300 (11th Cir. 1984). See *United States v. Kaun*, 633 F. Supp. 406, 409 (E.D. Wis. 1986) (“federal courts have routinely relied on [§ 7402(a)] . . . to preclude individuals . . . from disseminating their rather perverse notions about compliance with the Internal Revenue laws or from promoting certain tax avoidance schemes”), *aff’d*, 827 F.2d 1144 (7th Cir. 1987).

⁶⁰ A cursory reading of defendants’ protest letters demonstrate that they are not designed to advance the IRS examination, but rather are meant solely to throw obstacles in the way of the IRS examiner.

⁶¹ Other remedies available to the Government involve actions against each individual taxpayer who purchases or follows the defendant’s programs. Due to the number of these individuals, this would be extremely burdensome. Also, because many of these persons do not file tax returns (as advised by the defendants), even identifying these persons might be

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

Case No.: WMN 05 CV 1297

JOHN BAPTIST KOTMAIR, et al.,)

Defendants.)

Declaration of Revenue Agent Joan Rowe in Support of the United States' Motion for Summary Judgment

1. I am a duly commissioned Revenue Agent with the Internal Revenue Service (IRS), where I have worked for 23 years.

2. Except where noted to the contrary, I have personal knowledge of the matters set forth in this Declaration, and, if called upon to testify to such matters, could do so competently.

3. As part of my duties, I have been assigned to determine if civil penalties should be assessed against John B. Kotmair, Jr., (Kotmair) a Maryland resident, and Save-a-Patriot Fellowship (SAPF), under 26 U.S.C. §§ 6700 or 6701 for promoting a tax-fraud scheme, and whether Kotmair and SAPF should be enjoined from promoting this tax scheme under 26 U.S.C. §§ 7402 and 7408.

4. I have reviewed the materials related to the preliminary investigation, which was primarily conducted by another Revenue Agent.

5. Kotmair organized SAPF in 1984 after serving a sentence for willfully failing to file income tax returns for 1975 and 1976, according to SAPF's "Membership Book," a copy of which is attached as Exhibit 1A (pages 1-18) and Exhibit 1B (19-31).

6. The preliminary investigation revealed that SAPF publishes false statements regarding the income tax laws and advises SAPF customers not to report income earned while working in the United States.

7. SAPF and Kotmair publish marketing materials falsely stating that U.S.-source income is not taxable, U.S. citizens are not required to file income tax returns, and that individuals can revoke their application for Social Security numbers.

8. As part of the scheme, SAPF operates as a self-described "business," Exhibit 2, marketing services at the websites located at www.save-a-patriot.org, www.taxfreedom101.com, a copy of which is attached as Exhibit 3, and www.taxtruth4u.com, Exhibit 3A and through a newsletter called *Reasonable Action*.

9. The taxtruth4u.com website promotes SAPF materials through an "Exam Certified Independent Representative of S.A.P.F."

10. The taxfreedom101.com website also promotes SAPF products and services and lists its address as 12 Carroll Street, Westminster, Maryland. This is the physical location of SAPF.

11. The taxfreedom101.com states that customers "Thousands of Americans have quit Social Security, and now collect and keep 100% of their earnings!" The taxfreedom101.com website falsely states that participation in Social Security is "voluntary," customers can revoke their Social Security number, and that the income tax does not apply to income earned while working in the United States.

12. The taxfreedom101.com website further advertises services offered by SAPF, including: (1) "power of attorney" work, (2) challenging levies, which includes filing complaints

against IRS employees, (3) enforcement of hardship petitions, and (4) filing bankruptcy petitions and other court pleadings.

13. The services advertised on the *taxfreedom101.com* website that are provided by SAPF are identical to those stated in the SAPF Membership Handbook.

14. At the website located at *www.save-a-patriot.org*, SAPF explains the services provided to customers, and falsely states, among other things, that "Taxable income . . . is limited to certain income that has been 'earned' while living and working in certain 'foreign' countries or territories," and is attached as Exhibit 4.

15. The *save-a-patriot.org* website also falsely states that the "Form 1040 individual income tax return is appropriate for any person acting as a fiduciary for a nonresident alien and receiving interest and/or dividends from the stock of domestic (US) corporations on behalf of that alien."

16. As part of the scheme, SAPF and Kotmair advise customers through written letters that "domestic . . . income is not taxable." A copy of a letter advising an SAPF customer not to report U.S.-source income on an IRA withdrawal is attached as Exhibit 5.

17. In defendants' 1999 *Reasonable Action* newsletter, issue 237, SAPF falsely advises customers that "there is no law imposing an income tax on U.S. Citizens," which is attached as Exhibit 6.

18. In defendants' 1998 *Reasonable Action* newsletter, issue 235, SAPF falsely advises customers that "the Code does not impose 'income taxes' on the domestic income[] of citizens within the States of the Union," which is attached as Exhibit 6A.

19. In defendants' 1998 *Reasonable Action* newsletter, issue 233, SAPF states that John B. Kotmair "encourages thousands [perhaps million] of citizens not to file" income tax returns. The 1990 and 1998 copies of *Reasonable Action* are attached as Exhibit 6B.

20. In defendants' 1998 *Reasonable Action* newsletter, issue 236, SAPF falsely states that the term "United States" includes only "the District of Columbia, the commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa," which is attached as Exhibit 6C.

21. In defendants' 1999 *Reasonable Action* newsletter, issue 238, SAPF falsely states that the "Internal Revenue Code does NOT apply U.S. citizens who are living and working in the 50 states," which is attached as Exhibit 6D.

22. In defendants' 1999 *Reasonable Action* newsletter, issue 239, SAPF false states the U.S. citizens who are living and working in the 50 states are not required to have income tax withheld, which is attached as Exhibit 6E.

23. The investigation further revealed that Kotmair and SAPF promote a tax scheme that involves preparing documents that falsely claim SAPF customers are not subject to the federal income taxation, and not required to file income tax returns. SAPF customers are charged \$45-48 for each letter mailed to the IRS advancing these arguments.

24. These documents are authored by Kotmair, who claims to have knowledge of the income tax laws, and is touted as a tax law expert, the "fiduciary" of SAPF, and the "director" of the National Workers Rights Committee. Attached as Exhibit 7 is a full-page advertisement placed in the March 23, 2001-edition of U.S.A. Today, stating that Kotmair is an "expert."

25. As part of the scheme, SAPF provides customers with ten categories of responses to IRS inquiries enumerated in the "Outline of Anticipated Correspondence," which is attached as Exhibit 8.

26. As part of the scheme, SAPF mails to the IRS protest letters responding to requests for the SAPF customer's income tax return, when none was filed. The letters, prepared by SAPF, falsely state that the SAPF customer is not required to file an income tax return because they are not "citizens of the United States living or working abroad," a copy of which is attached as Exhibit 9.

27. As part of the scheme, SAPF mails to the IRS written protests responding to second notices requesting the SAPF customer's income tax return, when none has been filed. These letters, prepared by SAPF, falsely state that the SAPF customer is not required to file an income tax return because they did not "receive any foreign earned income" and, therefore, "has no requirement to file an income tax return," a copy of which is attached as Exhibit 10.

28. As part of the scheme, SAPF mails to the IRS written protests responding to notification that a "Substitute for Return" was prepared under the provisions of I.R.C. § 6020(b) for the SAPF customer, a copy of which is attached as Exhibit 11.

29. As part of the scheme, SAPF mails to the IRS written protests responding to notices proposing the SAPF customer's income liability when a substitute for return is prepared for the individual. In these letters, Kotmair requests a meeting on behalf of customers, which falsely states his customers are not required to file an income tax return because they "received no income from sources listed in 26 CFR § 1.861-8(f)," a copy of which is attached as Exhibit 12.

30. As part of the scheme, SAPF sends written protests to the IRS responding to Notices of Deficiency sent to SAPF customers when a "Substitute for Return" has been prepared under the provisions of I.R.C. § 6020(b). These letters, prepared by SAPF, falsely state that the SAPF customers were not required to file an income tax return because they received no "Foreign Earned Income," a copy of which is attached as Exhibit 13.

31. Attached as Exhibit 13A is a copy of a typical notice of Deficiency sent to an SAPF customer. The reference in the Notice of Deficiency to I.R.C. § 6651(f) penalties for 1997 through 2002 indicates that this customer has not filed an income tax return for these years. The reference to I.R.C. § 6654 penalties indicates that this individual did not make sufficient quarterly tax payments for 1998 through 2002.

32. As part of the scheme, SAPF sends written protests to the IRS responding to Notices of Intent to Levy after an assessment has been recorded. These letters, prepared by SAPF, falsely state that the assessments are invalid because the SAPF customer is not liable for any tax as a U.S. citizen, a copy of which is attached as Exhibit 14.

33. In response to SAPF's protest letter, the IRS mails SAPF customers a letter informing them that the arguments raised by Kotmair and SAPF are frivolous. A copy of a form letter "3175" is attached as Exhibit 15.

34. As part of the scheme, SAPF and Kotmair send responses to "3175" letters. These letters, prepared by SAPF and Kotmair, falsely state that the member is not liable for any tax because they are not "withholding agents," a copy of which is attached as Exhibit 16.

35. As part of the scheme, SAPF prepares the power-of-attorney forms which are sent to customers, a copy of which is attached as Exhibit 17. In the power-of-attorney forms, the SAPF

customers provide "John B. Kotmair, Jr.," with authority to investigate their income taxes that the IRS "alleges [they] owe... includ[ing] income tax returns," and further state that the SAPF customer has a "material interest" in this matter.

36. As part of the scheme, SAPF annually solicits SAPF customers to execute updated power-of-attorney forms, a copy of a letter requesting a member to provide a signed power-of-attorney is attached as Exhibit 18.

37. I have investigated Kotmair's status as a representative, and to the best of my knowledge, John B. Kotmair, Jr. is not authorized to represent individuals regarding their personal income tax liabilities before the IRS.

38. Although the power-of-attorney forms prepared by SAPF state that Kotmair is authorized to represent individuals before the IRS, Kotmair states in his book *Piercing the Illusion*, at page 139, that he received "a letter from the District Director of the Baltimore IRS Office, notifying [him] that his representative number had been revoked." A copy of page 139 of *Piercing the Illusion* is attached as Exhibit 19.

39. On June 3, 1994, the IRS District Director notified Kotmair that he is "ineligible to practice before the Internal Revenue Service." Exhibit 20. The letter further indicates that Kotmair was previously sent notification that he was ineligible to practice before the IRS on May 11, 1993.

40. In response to the letters received by SAPF, and signed by Kotmair, the IRS informs SAPF customers that the person listed on the power-of-attorney (Kotmair) "is not eligible to represent you." A copy of the letter is attached as Exhibit 21.

41. As part of this scheme, SAPF sent at least 846 protest letters to the IRS, from May 2004 through November 2005, claiming that SAPF customers are not subject to income tax payment or filing requirements as U.S. citizens living and working in the United States.

42. In the frivolous letters described in paragraph 41, Kotmair purported to represent at least 305 individuals from various states, including: Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Mississippi, Missouri, New Hampshire, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, South Carolina, Texas, Virginia, Washington, and West Virginia.

43. The investigation further revealed that the letters containing these frivolous arguments were exhibits in the following cases: Wadsworth v. Commissioner, T.C. Memo. 1997-238; Moore v. Commissioner, T.C. Memo. 2001-305; Tolotti v. Commissioner, T.C. Memo. 2002-86; and Sherwood v. Commissioner, T.C. Memo. 2005-268.

44. During December 2005, a total of 25 letters, sent by SAPF on various dates, purporting to represent taxpayers regarding their individual income tax liabilities were received by the IRS Ogden Service Center.

45. During January 2006, a total of 28 letters, sent by SAPF on various dates, purporting to represent taxpayers regarding their individual income tax liabilities were received by the IRS Ogden Service Center.

46. During February 2006, a total of 29 letters, sent by SAPF on various dates, purporting to represent taxpayers regarding their individual income tax liabilities were received by the IRS Ogden Service Center.

47. As March 6, 2006, a total of 19 letters, sent by SAPF on various dates, purporting to represent taxpayers regarding their individual income tax liabilities were received by the IRS Ogden Service Center. The letters received by the IRS during this period were mailed by SAPF during January and February 2006.

48. As March 6, 2006, a total of 17 letters, sent by SAPF on various dates, purporting to represent taxpayers regarding their individual income tax liabilities were received by the IRS Ogden Service Center. The letters received by the IRS during this period were mailed by SAPF during January and February 2006.

49. As of May 16, 2006, a total of 16 letters, sent by SAPF on various dates, purporting to represent taxpayers regarding their individual income tax liabilities were received by the IRS Ogden Service Center. The letters received by the IRS during this period were mailed by SAPF during March and April 2006.

50. The 846 letters discussed in paragraph 41 does not represent an accurate total of letters sent by SAPF and Kotmair, as not all letters sent by SAPF are accounted for, and were not compiled prior to this investigation.

51. Kotmair and SAPF send these letters, which include FOIA requests, to the IRS despite having been notified on May 11, 1993, and June 3, 1994, that Kotmair is ineligible to represent individuals before the IRS, Exhibit 19 and 20.

52. The investigation further revealed that SAPF and Kotmair prepare documents purporting to revoke an individual's application for their Social Security number in order to discontinue the withholding of income and employment taxes.

53. As part of the scheme, SAPF sells to customers an "Affidavit of Revocation," and a "Statement of Citizenship," with instructions for filing these documents.

54. As part of the scheme, SAPF falsely advises customers that employers cannot legally withhold employment taxes after the "Affidavit of Revocation" and "Statement of Citizenship" are filed.

55. As part of the scheme, SAPF falsely advises customers that they "cannot file an IRS Form W-4 with an employer, or any other IRS or state income tax forms, once [they] execute" the "Affidavit of Revocation" and "Statement of Citizenship." A copy a letter advising an SAPF that they can no longer file income tax returns, sent with an "Affidavit of Revocation," "Statement of Citizenship," and a bill for \$95 for the documents is attached as Exhibit 22.

56. Defendants also offer to write letters to employers and draft complaints suing employers who continue to withhold income and employment tax, Exhibits 23 and 24.

57. Attached as Exhibit 25 is a copy of SAPF website located at save-a-patriot.org, stating that an SAPF member used a "Statement of Citizenship" supplied defendants in order to evade income tax withholding requirements.

58. I have identified a number of protest letters written SAPF, which were signed by John B. Kotmair, Jr., in which the SAPF member has purported to revoke their Social Security number. Those letters are attached as Exhibits 26 through 27. The letters demonstrate that these individuals failed to file income tax returns after revoking their Social Security number.

59. I have identified one of the SAPF customers purporting to revoke their Social Security number as James O. Jarvis, which is attached as Exhibit 28.

60. The investigation further revealed that SAPF James O. Jarvis was represented by John B. Kotmair, Jr., as the Director of the National Workers Rights Committee in a lawsuit against Mr. Jarvis's employer, which is attached as Exhibit 29.

61. SAPF customers used the "Statement of Citizenship" and "Affidavit of Revocation" in order to evade the proper payment of income and employment taxes in the following cases: *Damron v. Yellow Freight Sys.*, 18 F. Supp. 2d 812 (E.D. TN 1998); *Alaska Computer Brokers v. Morton*, 1995 WL 653260 (D. Ak., Sept. 6, 1995) *Johnson v. Florida Power Corp.*, 1997 WL 1051475 (Dec. 10, 1997)(The opinion notes 23 other cases filed by Kotmair); *Hamilton v. The Recorder*, 1997 WL 1051472 (Nov. 7, 1997); *Benz v. Department of Defense*, 1997 WL 837789 (Sept. 4, 1997); *Parham v. U.S.P.S.*, 1997 WL 837789 (Aug. 27, 1997); *Davis v. GTE*, 1997 WL 837789 (August 6, 1997); *Lee v. Airtouch Communications*, 6 OCAHO 901 (1996)(same), appeal filed, No. 97-70124 (9th Cir. 1997); *Shepherd v. Sturm, Ruger & CO., INC.*, 1998 OCAHO LEXIS 27 (Feb. 18, 1998); *Bunn v. USX/U.S. Steel*, 1998 OCAHO LEXIS 6 (Jan. 15, 1998)

62. The investigation further revealed that some of defendants' customers have been criminally convict of tax crimes in *U.S. v. Murphy*, 182 F.3d 923 (7th Cir. 1999), *U.S. v. Crosson*, 1995 WL 756599 (E.D. Pa. Dec. 20, 1995), and Exhibit 30.

63. The investigation further revealed that two of defendants' former employees were enjoined by District Courts for engaging in identical conduct, those court orders are attached as Exhibit 31 and 32.

64. The arguments raised by SAPF, which state that U.S.-source income is not taxable and that individuals can revoke their Social Security numbers are addressed in a publication

titled "The Truth About Frivolous Tax Arguments." This publication has been sent to SAPF customers as part of the letter 3175 (Exhibit 15), and is attached as Exhibit 33.

65. The investigation further revealed that defendants reward customers who violate the federal income tax laws by offering to reimburse individuals with civil liabilities or criminal tax charges. Attached as Exhibit 34 is a copy of a bill and statement from an SAPF customer indicating they mailed cash to another SAPF customer as part of this scheme.

66. Attached as Exhibit 35 is a document estimating the IRS's costs associated with processing frivolous filings as of June 2004.

67. Based on the June 2004 estimated costs stated in Exhibit 35, the IRS expends \$5.30 processing each frivolous letter sent by SAPF. The estimated administrative cost of processing the 846 letters exceeds \$4,483. This estimate excludes lost revenues for uncollected taxes from SAPF customers, and the cost of responding to the letters sent by SAPF.

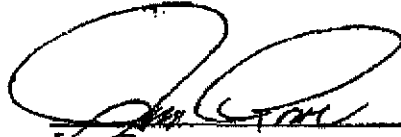
68. Based on the June 2004 estimated costs stated in Exhibit 35, the IRS expends \$1,607 in processing substitutes for returns for non-filers. The estimated cost to the U.S. Treasury attributable to filing substitutes for returns for the 846 individuals known to be SAPF customers is \$1,359,522.

69. In addition to the cost associated with processing the correspondence, a total of 638 hours was spent on this investigation. This cost to the U.S. Treasury does not include the time spent by IRS counsel attorneys in providing legal advice regarding this investigation, the hours that IRS revenue agents throughout the country will have to devote to determining SAPF's customers' tax liability, or the hours IRS revenue officers who will have to devote to collecting

from SAPF's customers who refuse to pay federal income taxes based on SAPF's, and Kotmair's, fraudulent advice and documents.

Under 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated this 12th day of June, 2006.



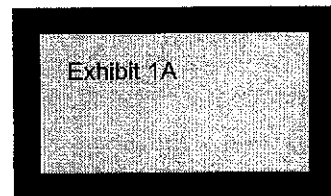
Joan Rowe
Revenue Agent
Internal Revenue Service

Save-A-Patriot Fellowship

Member Handbook

This manual contains valuable information about your membership. It was designed to answer the most frequently asked questions about the Fellowship and should be read and reviewed on a regular basis.

Please read this manual carefully
before calling Fellowship headquarters.



Together We Must Stand – Or -- Separately You Will Be Stood On!!!

WHAT IS THE SAVE-A-PATRIOT FELLOWSHIP?

Over the past two decades, a vast profusion of so-called "un-tax" and "de-tax" groups and gurus have come and gone, most of which relied upon — and were ultimately defeated by — a bewildering variety of unproven arguments, untested theories and so-called "silver bullets".

Steadfast from the beginning, there has emerged, a single prestigious, national organization which serves no other purpose than to actively promote the study of the Law — as it is actually written — and to assist its members in the assertion of their rights in accordance with the Law, especially when dealing with the IRS and the state taxing agencies.

The Save-A-Patriot Fellowship (SAPF) has been in continuous existence since 1984 and at the same physical location since 1986 - 12 Carroll Street in Westminster, Maryland — and at the same telephone number - (410) 857-4441 — and now has members numbering in the thousands from all fifty states.

SAPF is a national association of individuals who are aware that various government agencies — and the IRS in particular — are regularly and systematically infringing upon individual rights. In general, Fellowship members are also aware that this infringement is a direct result of inadequately trained government employees who are more concerned with "following orders", "pushing buttons", issuing memos and otherwise adhering to administrative "policy" than to the written Law itself, and that such policy often runs counter to the constitutional limitations that are imposed on the government.

The Fellowship has researched and developed legal defensive weapons to protect our Liberty and Property. When someone joins the Fellowship, it is a foregone conclusion that they are, to whatever extent, "Fed"—up with the government bureaucracy that has brought this about, and are particularly concerned with the IRS and its propensity to:

- 1) Misapply the Law;
- 2) Illegally enforce its provisions;
- 3) Wreak havoc on peoples' lives, and;
- 4) Rely upon the fact that most people do not take the time to educate themselves or prepare a proper legal defense.

Moreover, since the era of president Roosevelt, our system of justice has "presumed" that any agency of the government has legal jurisdiction over a citizen with regard to the body of Law that the agency is charged with administering, without first having to establish and prove that the agency's contentions are correct. Therefore, any burden of proof to the contrary falls fully upon the individual.

This reversal of presumption in disregard of constitutional ethic has resulted in Courts ruling that rights "will [no longer] be passively protected" and that "they must [now] be aggressively asserted" by the "belligerent claimant in person." (citizen)

By using the news media to plant stories suggesting that resistance is futile and reprisal is swift and painful, the bureaucrats keep the multitudes in line and in F.E.A.R (False Evidence Appearing Real). These "reminders" and a lifetime of Pavlovian conditioning make it difficult for most people to take the first break-away step. However, Fellowship members know: the risk can be removed!

TOGETHER WE MUST STAND - OR - SEPARATELY YOU WILL BE STOOD ON!

A single pencil is easy to snap in your bare hands. Now try it with a bundle of pencils! The Fellowship provides mutual aid, support, and assistance to those who wish to assert their rights. This is accomplished in a number of ways.

FIRST TYPE OF SUPPORT

The Fellowship operates much like an insurance company in that members pledge under our Member Assistance Program (MAP) to reimburse other members should they suffer a loss of cash or property as a result of illegal IRS collection practices and confiscation. With the financial threat of asserting one's liberty thereby removed by spreading the reimbursement costs among all members, "closet" Patriots are joining the Fellowship in droves. Welcome to the Constitutional Revivalist Movement!

To our knowledge, there is no insurance company willing to "buck the system" and insure American Patriots against the criminal acts of the IRS. Our only alternative was to start and maintain our own. However, creating and operating a conventional insurance company would have been impossible. The bureaucrats would have insisted on our submitting to the dictates of the Insurance Commission to the detriment of Patriots who would be forced to expend funds on legal actions

against insurance companies rather than directing our combined efforts against the illegal acts of the government. Furthermore, monies received on insurance claims would automatically be available to the prying eyes of the IRS.

There was and is only one logical answer—a true FELLOWSHIP—to give the Patriot insurance-like protection to Save-A-Patriot!!!

THE HEART OF THE FELLOWSHIP

A true state of Liberty cannot exist without the rights to property protected. The vision of Founder and Fiduciary, John Kotmair, which became the driving force and fundamental purpose behind the Save-A-Patriot Fellowship, was a group of Patriots working together and dedicating their resources where needed to eliminate ignorance, fear, and loss of property while making a stand for their rights against a government system growing increasingly out of control.

One of the greatest fears anyone can face in our society today is the loss of property. This understanding is what lead to what we call the “heart of the fellowship” - the Member Assistance Program (MAP); members helping to restore the lives of fellow members who have been hurt when their property is lost or stolen due to illegal action by various IRS employees.

When a member knows, through a mutual agreement, that he can count on other members to assist him when hard times hit, worry, anxiety and fear of the unknown becomes less of a factor in the fight for his rights and leaves much more room for courage and determination to abound.

It is imperative that each of us understands how critically important it is to meet our pledge of monthly commitment to the Member Assistance Program.

Remember, this is not socialist government wealth redistribution under threat of incarceration — this is voluntary charity. Please also keep in mind that any one of our fellowship members asserting his or her rights can very possibly be the one individual who sets a precedent for any given legal issue that we address, thus changing for the better the lives of all of us, our children and our grandchildren, for all time. In other words, you may never know which of us was the “straw that broke the [socialist] camel’s back”.

There are currently more cracks in the government’s dam than there are bureaucratic fingers to plug them — you may never know which of us causes the dam to break. You may never know the member’s name until it happens. You may never have any idea how they are living or what they are going through to take their stand for God and their country. But, they know YOU - by the FRN’s they receive in the mail just when it counts the most — when it matters that the kids have clothes, or food, or schoolbooks, or that the family has a car to get to and from work, or that the breadwinner has to leave the family for a while and “serve his or her country”. When these things matter, your actions speak louder than words. And your names, with thanks, are on the lips and in the prayers of those members whose lives you have touched.

HOW HAS THE MEMBER ASSISTANCE PROGRAM WORKED?

Like a “Swiss watch”! Since 1984, there have been two types of insurance-like coverage provided: civil and criminal. Civil coverage up to 150,000 FRN’s includes the reimbursement of stolen cash and/or property. Criminal coverage reimburses an incarcerated member 25,000 FRN’s towards the loss of his or her earnings during any part or a full year of incarceration.

When a member in good standing loses cash or real property due to illegal confiscation by the IRS and/or a state taxing agency, or if the member is incarcerated, s/he puts in a claim to SAPF headquarters for the actual amount of the loss or incarceration. Upon validation of the claim, a uniform assessment is apportioned to the entire membership.

The cost per member of participating in the MAP reached an annual high of approximately 500 FRN’s in 1991. Recently, it has averaged less than 20 FRN’s per month, a decline of over 50%! This remarkable reduction is the result of several factors:

As a result of our recently introduced Associate (educational) Membership (a description of which follows below), many “constitutionally reborn” Americans have joined the Fellowship at a time when they were not ALREADY embattled with the IRS. These members continue to join daily in order to become educated, learn how to protect their property, “line their ducks up”, and decide when and how to move forward. Many of these members later upgrade to Full Member (described below), fully prepared for the battle.

As a result of this new area of growth, the overall “health” of the Fellowship has become stronger as fewer and fewer members become damaged by illegal IRS activities and require assistance. Since even Associate Members pledge to

participate to support the MAP, the swelling of our ranks has resulted in a reduction in each member's share of the monthly assessment.

Also, the quality and scope of the services the Fellowships legal defense departments - case development, NWRC, and paralegal (described below) — are able to provide to members continue to improve through experience. Over the past five years, the case development department alone has tracked, generated or archived a total of five million documents, all with a staff of less than two dozen people (the government should be so efficient). A September 1996 communication from our Maryland headquarters revealed that 85% of those cases under case development had gone dormant, meaning that the IRS had not attempted to contact the member in six months or longer.

AN EXAMPLE OF THE MEMBER ASSISTANCE PROGRAM IN ACTION:

John Freeman became a member of SAPF. After a stubborn and valiant fight through every phase of the bureaucratic maze, the IRS illegally confiscated his car valued at 9,000 FRN's (Federal Reserve Notes, commonly but erroneously referred to as "dollars"). His fellow members were assessed their share (in the case of 1,000 members, the apportioned share would be 9 FRN's each) — equal value received for equal loss. If John was incarcerated for a full year, the Fellowship reimbursed him 25,000 FRN's.

THE "VICTORY EXPRESS" ... ALL ABOARD !!!

Under this recently revised version of the MAP, each member will be assessed a minimum of 10 FRN's each month, REGARDLESS of the size of the claim no matter how large the membership becomes.

Using the example of John Freeman again, if the membership were only 1,000, he would receive 10,000 FRN's (10 FRN minimum X 1,000 members) for his 9,000 car — a PROFIT OF 1,000 FRN's FOR LOSING HIS CAR! Some loss!!!

When the membership reaches our goal of 100,000 members, each claimant will be paid approximately ONE MILLION FRNs! - whether the member loses a home or is incarcerated in a federal prison camp for 6 months for "willful failure to file". And, unlike the lottery, he won't have to wait 20 years! Some members may even wish for multiple sentences, since the incarceration assessments are for any portion of a year, each! Because of adverse publicity, federal judges will be hard pressed to sentence Patriots to serve time in federal prison camps.

We believe the VICTORY EXPRESS will cause SAPF enrollments to EXPLODE! And the larger the Fellowship becomes, the greater the support of the People will become! Associate Memberships will ALL upgrade to Full Membership as the People lose their fear and jump into the fray.

When the membership reaches 100,000, IRS agents will be tempted to defect their positions en masse. With no "hired guns" to extort the public, the welfare state will collapse along with the Federal Reserve Bank and the evil doers can be brought to Justice.

Under the new "VICTORY EXPRESS", Mr. Freeman's friends can assert their constitutional rights and obey the Law as written without fear of the IRS. As Americans by the hundreds of thousands join the Constitutional Revival Movement, the despotic house of cards will collapse—and LIBERTY WILL BE RESTORED!!! IT IS A WORKABLE, OBTAINABLE PLAN!!!

SECOND TYPE OF SUPPORT

The Fellowship provides assistance via its case development, National Workers Rights Committee (NWRC) and paralegal departments. For example, should the IRS attempt to contact a member with, for example, a summons to appear at an audit, a request to file a tax return or a proposed assessment of taxes alleged to be owed (examples of IRS civil investigation), caseworkers in the Fellowship's case development department are available acting under power-of-attorney authorized by the member to handle the correspondence, to address any improper requests or allegations and to develop an overall evidentiary foundation of "exculpatory evidence".

NWRC provides such member services as the proper procedure and paperwork to discontinue tax withholding or the proper response to an IRS Notice of Levy or to an employer's request for a social security number. NWRC has recently achieved out-of-court settlements with employers who either refused to hire or fired a Fellowship member who does not possess a social security number.

If the IRS attempts to move forward with an improper lien or illegal collection action, paralegals are available to assist. Paralegal services are also available to (for example) file the proper action in bankruptcy court to stop tax collection activity.

In summary, any tax issue requiring accurate legal assistance and/or defense based upon the Law is available to members on a reasonably priced, fee-for-service basis. Compare our work to that of any "Yellow Pages" attorney and we're certain you will agree.

THIRD TYPE OF SUPPORT

The Fellowship provides educational material in the form on newsletters, books, audio cassettes and videos. The bi-monthly membership newsletter *Reasonable Action* is one of the most highly respected tax-oriented publications in the country. Back issues published since 1986 and covering every conceivable aspect of law and taxation are available to members. A complete listing of available resources is found on the order forms accompanying this packet.

WHAT THE FELLOWSHIP IS NOT

SAPF is NOT a "tax protest" organization. The Fellowship is a First Amendment, Unincorporated Association (recently acknowledged by The Federal District Court for the District of Maryland, Case No. MJG 95-935) dedicated to confining IRS and other government personnel within the written Law. Our association recognizes the necessity of taxation (raising of revenues) but also recognizes that this necessity has provisions in the Law and that the government in meeting its exigencies may not extend its activities beyond the Law. The Fellowship actively promotes the study of the Law and the assertion of one's rights in accordance with the Law. Since it does not "protest" or "object" to any tax - income or otherwise - it is not a "tax protest" organization.

DO YOU KNOW YOUR RIGHTS UNDER LAW?

One must have a license to practice Law. That does not, however, mean that one who is not a licensed attorney or CPA cannot SHOW a fellow citizen what the Law actually says. The Law must be written so that ANY Citizen of average intelligence - licensed or otherwise — can readily understand it, otherwise, as the courts have ruled, it must be held "void for vagueness."

The common understanding of man CANNOT be applied to the Law. Only YOU can decide if you are liable for federal and state income taxes.

Because of what appears to be a Lawful command on the surface, many Citizens, because of their respect for what appears to be Law, are cunningly coerced into waiving their rights due to ignorance.
U.S. Supreme Court, U.S. v. Minker, 350 US 179 at 187.

In America, rights cannot be taxed but privileges can be, which is why there is freedom in understanding your actual, legal liabilities and requirements under the Law. Remember: it's not always what you don't know that can hurt you the most, but what you "know" ... THAT JUST ISN'T SO!

TWO TYPES OF MEMBERSHIP:

Associate Membership

For those wishing to avail themselves of the opportunity to receive the finest "adult education" currently available with regards to our constitutional heritage, including a thorough and accurate analysis of the limited liability of the U.S. citizen for internal taxation.

Full Membership

For those needing case development, NWRC and/or paralegal assistance in responding properly to a Notice of Deficiency, lien, levy or seizure or to other correspondence received from the Internal Revenue Service or state taxing agency; or in stopping tax withholding in the workplace; or in quitting Social Security; or in filing bankruptcy to stop tax collection activity; or with any other tax issue requiring legal assistance and defense.

RESTORING TRUE LIBERTY IN AMERICA

For many years, by using fear of audit and other scare tactics, the IRS has maintained constant surveillance over millions of honest Americans. Now, it's time to reach out and inform the public that our investigation of the IRS itself is complete. As John Kotmair, the Fiduciary of the Fellowship has said, "The turkey is done and it's time to stick a fork into it!"

PRACTICALLY SPEAKING, THERE ARE NO MORE MISSING PUZZLE PIECES!

The overall picture is complete and it's not a pretty one. Those who view it for the first time may never look at their government the same way again. It's time for Americans to take our country back, beginning with our pocketbooks; for, without our rights to Property asserted and defended, true Liberty in America can never exist.

VIDEOS AVAILABLE

By now every member should have our new, eye-opening, 2-hour introductory video, titled *THE TRUTH BEHIND THE INCOME TAX* and our ground-breaking 12-hour video seminar, titled *JUST THE FACTS*. IF not, contact the bookstore.

CONCLUSION:

The Save-A-Patriot Fellowship Program is a brilliantly simple defensive weapon whose success has been phenomenal. With the implementation of the newly introduced "VICTORY EXPRESS", the question must be asked, how much longer can the enemy resist us?

REMEMBER OUR MOTTO: *Together We Must Stand --Or-- Separately You Will Be Stood On !!!*

In any battle, the allied participants must support one another or the enemy will "divide and conquer". Over the years, it has become evident that the despots in government are unified in support of one another and worship only themselves, the "money" they control, and the power they wield. Their god is a god of materialism, and their goal is a one-world government where their authority can no longer be challenged.

A FROM PRESIDENTIAL MESSAGE:

Bill Clinton, in his January 28, 1998 State-of-the-Union Message, stated:

"We must exercise responsibility not just at home but around the world. On the eve of a new century we have the power and the duty to build a new era of peace and security. But make no mistake about it. Today's possibilities are not tomorrow's guarantees. America must stand against the poisoned appeals of extreme nationalism ... To meet these challenges, we are helping to write international rules of the road for the 21st century protecting those who join the family of nations and isolating those who do not".

For a full account of how we came to this type of sedition, read *Piercing the Illusion* by John Baptist Kotmair, Jr., the Save-A-Patriot Fellowship's Founder and Fiduciary, available from the Fellowship Book Shop.

FINANCING YOUR OWN DEMISE

Any payment to this government that is not actually required by law, is no different than a tithe or free will offering to a church - except that in this case, it furthers the agenda of those who are usurping the Constitution—the Supreme Law of the Land, and therefore the "authority" that God has placed over us.

By the application of a little logic, one can see that voluntary payments to a government that is in rebellion against the established authority is no less than rebellion against God. If we are to contend for the faith, then we must stand unified in the support of our King when He orders us to:

Stand fast therefore in the liberty wherewith Christ has made us free, and be not entangled again with the yoke of bondage. — Galatians 5:1

FELLOWSHIP METHODOLOGY

In accomplishing its objectives, the Fellowship must strictly adhere to the law. Numerous policies have been instituted to ensure that the staff and Independent Representatives do so, and that they operate within their scope of (common law)

employment. The Fellowship operates as a matter of RIGHT, which is protected under the 1st Amendment, therefore among other considerations, the staff and Independent Representatives are prohibited from making actual legal determinations. This includes determining whether any given individual is subject to the internal revenue laws. The individual in question (a prospective member, for example) would be the only person who could make such a determination. Staff members and Independent Representatives may cite the law and explain it in terms of its regulations and procedures in order to assist someone in making a correct decision. The staff (casework or NWRC departments - see below) may also generate a written response on behalf of members who have received improper inquiries from the IRS. However, neither our staff nor our Independent Representatives can tell you whether or not you are required to file a return or pay a tax. YOU are the only person who can make this determination. Once a prospective member has made that decision, the staff can act accordingly.

Since you have joined SAPF, we assume that you have studied the IR Code and have determined that your activities are not the subject of the tax under United States Code (USC) Title 26 (Internal Revenue Code) and that the law does not require you to file a return or pay an income tax. We also assume that you have made a correct decision and that you are in compliance with the law. Nevertheless, new members are often surprised when one of our staff asks for a clarification of their beliefs regarding legal requirements to file.

We do so because many new members do not know how to express themselves clearly and their intent is not always obvious.

Since the Fellowship does not condone illegal activity of any kind, either by individuals or by government, we will often ask a new member or prospective member whose remarks leave room for doubt to clarify his or her position with regard to their non-filing of returns. By doing so, we can more fully determine their intent and thereby establish whether their individuals activities could be construed as that of an illegal tax protester.

If a staff member or Independent Representative has reason to believe that this may be the case and/or that the potential member actually believes the law requires him or her to file a return and that s/he has chosen to willfully violate that requirement, then it is Fellowship policy to advise the individual to comply with the law and file the return that they believe is required.

PAYMENTS FOR THE MEMBER ASSISTANCE PROGRAM (MAP)

Your Fellowship Main Program Agreement (membership application) requires you to support other members who have suffered losses to the IRS by paying your apportioned share to assist them (the agreement explains this in detail). A member in good standing who is subjected to illegal collection action by IRS personnel is eligible for Fellowship benefits if s/he has complied with the terms of the Main Program Agreement. The amount necessary to reimburse that member is apportioned to the entire membership in the form of assessment(s) which will be enclosed with your monthly statement.

Each month, the Fellowship sends out a monthly bill which is an assessment for expenses to the Fellowship for work done on behalf of the member. Some members have had no work done for them or have paid for services as they receive them. They will still receive a bill that will have 0.00 owed on it. We do this so if any mistakes are noted, the member can bring it to our attention at the earliest possible opportunity.

Along with this monthly bill is the assessment to all the membership for the member in need that month. A general explanation is included to let the membership know something about the member being helped. Included will be two envelopes. One is addressed to the member in need and the other is addressed to the Fellowship. In the envelope addressed to the member will be placed the FRN's or totally blank Postal Money orders. The member's number forwarding the FRN's will be written at the return address area so that the member being helped will be able to forward this information to the Fellowship. The envelope addressed to the Fellowship will contain the assessment billing plus any FRN's owed and a preprinted statement letting the Fellowship know that the injured members assessment has been sent. This approach has been very successful.

All payments, regardless of whether they are made to the Fellowship or to the member must be tendered in FRN's or totally blank U.S. Postal Money Orders and paid within 30 days. Failure to pay the assessment(s) will invalidate your Fellowship Program Agreement and you will be ineligible for benefits. It may also subject your membership to cancellation. The prompt payment for member assistance is imperative in order that the Fellowship work for everyone!

TAX BASICS 101

The Fellowship normally operates under the presumption that members are cognizant of the following facts:

Under our three-branch form of government, the legislature enacts the statutory law, made in pursuance to the Constitution. The rules of *statutory construction*, statutes must be written in explicit terms to mean exactly what they say, no more. Any person of average intelligence must be able to understand a given law, otherwise, under the *vagueness doctrine* it must be held to be "void for vagueness."

The following are the basic facts regarding "income" and "employment" taxes that every working American should have been taught and needs to understand.

All federal law is categorized into 50 topical "titles" of law known as the United States Code (USC). Title 26 (26 USC) encompasses the Internal Revenue Code (IRC). Regulations to enforce the law and specify civil penalties for violators are written and promulgated by agencies of the executive branch, such as the Department of the Treasury which oversees the Internal Revenue Service (IRS). The Treasury regulations for Title 26 are found in 26 Code of Federal Regulations (26 CFR). In order to understand the IRC which encompasses far more than just "income" taxes, one must first understand the subdivision of the IRC.

The IRC is divided into eleven subtitles, the first five of which (subtitles A through E) each cover different categories of taxation, while the last six pertain to procedure, administration, definitions, etc. Subtitle A is the income tax, Subtitle B covers estate and gift taxes, Subtitle C is the wage (employment) tax, Subtitle D covers miscellaneous excise taxes, and Subtitle E covers alcohol, tobacco, and "certain other excise taxes." Each subtitle is totally distinct and separate with regards to the tax it imposes.

In order to become the legally defined "taxpayer" as defined in subtitle F under code section 7701(a)(14) and required to pay a particular class of tax, a liability for the tax must arise from written statute within an applicable subtitle. The tax on income under Subtitle A is an "indirect" tax in the form of an "excise" imposed on certain privileges and defined by the U.S. Supreme Court as gain separated from capital.

The tax on wages under Subtitle C is for the purpose of building credits towards entitlement programs such as Social Security is commonly reported by employers on forms W-2 and 1099. The tax on wages has absolutely nothing to do with the tax on income under subtitle A. The only statute in all of Subtitle A making anyone liable for the "income" tax is code section 1461 which applies to withholding agents. The income of the withholding agent is NOT the subject of the tax. Code section 7701(a)(16) defines the "withholding agent" as one who is required to withhold income taxes from nonresident aliens under code section 1441, from foreign corporations under IRC 1442, from certain foreign tax-exempt organizations under IRC 1443, earned income from the Virgin Islands under IRC 1444, U.S. real property purchased from a nonresident alien or foreign corporation under IRC 1445, and on the income of any foreign partner you may have under IRC 1446. The income tax under Subtitle A is on foreign activities only, which is why it is absolutely correct to state that, unless withholding from foreigners or living and working in a foreign country under a current tax treaty with the U.S., no citizen or resident alien who has lived and worked exclusively within the fifty states of the Union has ever paid a penny in income taxes. You've paid employment taxes, although swearing them to be "income" to yourself on the affidavit known as Form 1040.

With regard to the filing of returns, the only filing requirement for an individual under Subtitle A "income" tax is found in code section 6012(a). Under section 6012(a) and its underlying regulations, "taxable income" is limited to certain income that has been "earned" while living and working in certain foreign countries or the U.S. possessions and territories. The only requirement for an individual to file a return under subtitle A (income tax) is section 6012(a). The Internal Revenue Service identifies the imposition of the income tax and the type of income that is considered "taxable income" for the purpose of this filing requirement in their request to the U.S. government's Office of Management and Budget (OMB) which must "approve" the administration and enforcement of the applicable regulations. Taxable income for the purpose of this section is limited to income that has been "earned" while living and working in certain "foreign" countries or the U.S. possessions and territories.

Under the 1980 Paperwork Reduction Act, the Office of Management and Budget (OMB) must assign an OMB approval number to any agency return that requests and collects information from a U.S. citizen. According to OMB approval control number 1545-0067 assigned to Treasury regulations 1.1-1 "Tax imposed" and 1.6012-0 "Person required to make returns of income" under 26 CFR part 600 to end, the required return for a U.S. citizen to report income is not Form 1040, but Form 2555, "Foreign Earned Income." The 1040 return for the "U.S. Individual" is merely a supplemental worksheet for the required Form 2555. The top of Form 2555 instructs "attach to front of Form 1040" and "for use by U.S. citizens".

Treasury Decision 2313 (TD 2313), issued in 1916 to "collectors of internal revenue" pursuant to the U.S. Supreme Court under the *Brushaber v. Union Pacific R.R.* decision, clarifies that the Form 1040 individual income tax return is to be used only by the fiduciary of a nonresident alien individual receiving interest and/or dividends from the stock of domestic (US) corporations on behalf of that alien.

For the above reasons, the income tax under Subtitle A is not "voluntary" as some have asserted. It is mandatory, but only for those to whom it applies as explained above. Since the law is limited in its application, the question of whether it is mandatory or voluntary is superfluous. The question is: to whom, and under what circumstances is the law applied? With regard to the wage tax under Subtitle C, certain legal requirements may be considered mandatory, but only for the payer of the wages (the "employer") and even then, only if both the "employer" and the "covered employee" have voluntarily agreed via voluntary application on Form W-4 to participate in the entitlement programs. Since there is no legal requirement for a citizen to have a social security number (SSN) in order to live and work in the U.S. or simply for the sake of having one; no legal requirement exists for a citizen who would seek employment to enter a SSN on Form W-4, sign and submit it, and; no legal requirement for a citizen who would hire others to obtain an employer identification number (EIN), neither party - "employee" or "employer" - can be compelled to participate in the entitlement programs, hence compliance under Subtitle C is correctly said to be *voluntary* for citizens. The same applies to resident aliens, who have all the rights of citizens except voting and running for political office.

In order to prevent the withholding of income taxes from citizens and resident aliens, IRS Publication 515 and Treasury regulation 1.1441-5 explain the proper use of the Statement of Citizenship (SOC), the original of which is retained by the withholding agent and a copy of which is sent by the withholding agent to the Internal Revenue Service Center in Philadelphia only (the IRS international or foreign tax office). Call the IRS forms distribution center at 1-800-TAX-FORM for a copy of Form 2555 and Publication 515. Title 26 and 26 Code of Federal Regulations can be consulted on the Internet of the World Wide Web, on CD-ROM from the government Printing Office, at any law library and even at many large city libraries.

In closing, if you are a citizen or resident alien working within one of the 50 union States, not the federal states, you have never been made liable by Congress for the payment of the income tax under title 26, Subtitle A. If you voluntarily filed a Form 1040 in the past, you created a legal presumption of a requirement where none actually exists under law, and will be expected by the IRS to continue filing unless and until you rebut that presumption via sworn affidavit. This will thereby shift the burden of proof to the agency (Secretary of the Treasury/IRS), which must then prove your statements incorrect. To date, no agency has ever rebutted our affidavits, they try to ignore them.

One who quits the Social Security entitlement program (via affidavit), will not receive back any monies already paid in, and by the submission of the affidavit will be ineligible to receive any future federal benefits. The Social Security Administration, ignoring the affidavit, will accept an application for benefits from those who have submitted the affidavit and have enough credits recorded within the agency records. The results of this action will be that the affidavit is than revoked and that individual is than subject to be taxed on the benefits received and will have a requirement to file a Form 1040 tax return.

For this reason we encourage our members to develop a conviction for their actions through education. The internal revenue laws are limited in application. The foregoing statements are NOT legal advice. They are merely factual statements about the law. The Fellowship does NOT give legal advice. It assists members in asserting their rights.

POLICIES

The following policies protect our members, Independent Representatives and the Fellowship's staff. It is imperative that all members act within these policies at all times. PLEASE INFORM A STAFFER AT SAPF HEADQUARTERS IF YOU HAVE KNOWLEDGE OF ANY MEMBER, INDEPENDENT REPRESENTATIVE, OR STAFF MEMBER ACTING OR SPEAKING OUTSIDE OF THESE POLICIES.

1) Un-taxing? De-taxing?

Under no circumstances should you refer to Fellowship assistance as "un-taxing" or "de-taxing" or any other similar phrase. The phrase itself carries with it the connotation that something is being done to cancel or nullify an existing legal requirement. Obviously, if an individual is contending that he or she is not the subject of the law and has no legal requirement to file a return or pay a tax then there is no existing legal requirement to un-do. More succinctly, it is the law that imposes a tax. If the law imposes a tax, then it is incumbent upon those who are subject to the law to comply with its provisions (i.e. file the return and pay the tax). If the law does not impose a tax on a specific object, subject, or activity, then there is nothing to un-tax. If a member, Independent Representative staff member represents Fellowship services as a process of un-taxing, then this could be construed to imply that the Fellowship is somehow able to cancel a statutory taxing provision. That is not the case, therefore please refrain from using the term. While previous signatures on tax returns do create a "presumption" that a statutory requirement exists, presumptions are not statutes and they may be rebutted, however actual, legal requirements cannot. Therefore if anything is to be un-done it is the presumption and not a taxing statute! Semantics are the fine line between being correct and being incorrect.

Realizing, in 1973, that the only way to effectively stop this mad rush to a world socialist government, was to interfere with its financial engine—the Federal Reserve Bank. John entered a movement, started by Mr. A.J. Porth, called the Tax Rebellion. At that time it was the general belief that the 16th Amendment changed the U.S. Constitution and the Internal Revenue Code imposed a tax on U.S. citizens living and working within the States of the union.

After many confrontations with the IRS and State taxing agencies, causing the need to study the relevant court cases and the law, it was discovered that the 16th Amendment did not change the Constitution and that the income tax was actually an excise tax. From there it was gradually discovered that only nonresident aliens and foreign corporation were liable for the payment of income taxes within the States of the union.

Recognizing that in order to restore our liberties and freedoms, the general public would not only have to be educated to their plight but would eventually have to get involved. To help accomplish this, John traveled all over the country lecturing to anyone or organization that would listen. He became the Chairmen for the Committee of Correspondence, a Director for the Patriot Network, and later the National Patriot Association.

Eventually the Justice Department got involved and John was indicted for "Willful failure to file" for the years 1975 and 1976. It became very apparent to not only John but his attorney that the deck was stacked against them and John was convicted. He was given a two year sentence to be served at a minimum security prison in Maxwell Air Force Base, Montgomery, Alabama.

During his "service to his country," John continued his lectures within the prison, often times getting guest speakers to come in from the "outside." Many of these speakers were notable people from the community like Judges and Congressmen. On some occasions, John got them to admit to crimes they either knew about or helped orchestrate against the citizens of this country, yet they went home after the seminars and John was forced to stay.

History teaches that the main cause for the defections from General Washington's army, during the war of rebellion against King George, was the immediate needs of the soldiers families. Understanding this, and seeing this first hand in this modern day non-violent war against tyranny, John thought of ways to help deter this unwanted exit from our ranks and additionally make it easier for other Patriots to join the Cause of Liberty. John asked himself, what is the greatest fear a person can have concerning the IRS? It was obvious to him that the foremost concern of every Patriot was putting his/her family in danger because of the loss of property and incarceration.

He then knew what was needed to combat these fears. A Fellowship! Not just a group of like minded individuals but an association of Patriots willing to stand together to help defray the costs of a member fighting for the rights and freedoms guaranteed by the Constitution.

Exactly 31 days after leaving prison camp, on February 24th, 1984, Save-A-Patriot Fellowship opened its door to an 8'x8' room. Today it has grown into a complex containing a print shop, copy room, paralegal room, casework area, advanced 30 gigabyte video production studio, book shop, 150 person meeting room with stage, sound and video cameras and a complete law library, both on disk, hard copy and computer access to West Law. The rest is history.

ACCESS TO VEHICLES / PUBLICATIONS / VIDEOS

While some publications and videos are available to the general public, all response letters to the IRS or affidavits (revocation and rescission, constructive notice, indemnity, etc.) are exclusive to the membership.

PRICING...

CASEWORK / NWRC

Case and National Workers Rights Committee work are generally 45 FRN's per letter to include certified mail costs. In some cases, advanced research may be needed to accomplish a desired task and charges will go up somewhat accordingly. These extra charges will always be explained prior to a member before any additional work will be undertaken.

PARALEGAL WORK

HOW TO INTERFACE WITH THE STAFF

For the sake of efficiency, it is imperative that members, especially new ones, learn to interface with the appropriate staff members, and that they do so at specifically designated times. A member who is unable to work within this structure reduces the effectiveness of the staff and increases the costs of overall operations for everyone.

EXECUTION OF NOTICE OF FEDERAL TAX LIENS

If a notice of lien is executed and filed in your county courthouse as a result of improper procedure(s) by IRS personnel, forward a copy to your caseworker to be inserted in your file for future use. Usually there is no direct action to be taken at the time of such a filing.

CID (CRIMINAL INVESTIGATION)

If you receive a letter or some other form of contact from a special agent, (CID), and you feel unqualified to respond, you may call the National Workers Rights Committee for assistance. They will provide you with a response to build pertinent facts about the law that can be presented for a jury's consideration.

BREACHING / OVERCOMING STATE TAX OBSTACLES

If you receive an inquiry from the State taxing agency in which you live, you may call National Workers Rights Committee to request a response.

BREACHING / OVERCOMING EMPLOYER OBSTACLES

If your employer will not accept your statement of citizenship or comply with the laws pertaining to citizens who claim their lawful (exemption) from income tax, contact the National Workers Rights committee for assistance. They will provide you with a response.

BREACHING / OVERCOMING SOCIAL SECURITY NUMBER OBSTACLES

If you experience a problem obtaining a driver's license or any other problem having to do with the revocation of your Social Security application, contact the National Workers Rights Committee.

QUESTIONS ABOUT THE LAW

Questions and answers can occupy a great deal of time. The Fellowship services are oriented in such a way as to focus resources towards case development. We intentionally minimize the time-consuming tasks associated with non-productive activities like telephone conversations. We feel the vast majority of questions can be answered by a cursory reading of the SAFF publications (newsletter series), viewing the video series, or listening to the audio series available through the Fellowship book shop. When you consider that the same simple question is asked repeatedly of the staff (by thousands of people) you can understand why we ask that you take as much time as possible to study these materials before calling to discuss these matters. Once you have exposed yourself to the material, you will have fewer questions and they will be more precise.

At this point you might request a telephone conference with one of our consultants. More importantly, when you receive an answer to your question you will be better able to understand the answer! Until that time, we ask that you subscribe to the newsletter, view or listen to the tapes, and try to do your homework before involving the staff and reducing their available time in case development.

Exhibit 1B

MISCONCEPTIONS ABOUT THE LAW

CRIMINAL VS. CIVIL OBSTACLES

An understanding of the difference between civil actions and criminal actions is essential should you ever be contacted by the IRS. The vast majority of contacts are civil in nature. That is... the IRS is contending that you owe them money as opposed to contending that you have committed a crime. If you receive a request for a return, a proposed assessment, or

notice of deficiency etc., then the action that the IRS is taking is civil. If you receive an inquiry from an IRS SPECIAL AGENT, as opposed to a REVENUE OFFICER or REVENUE AGENT then the action that is being taken is criminal.

If you receive an inquiry from a IRS revenue agent, or revenue officer, you should immediately FAX or mail a copy of the inquiry so that a timely response can be made. If you receive a telephone call from a special agent, do not let them engage you in a conversation, after obtaining his/her name, politely tell him/her to put their inquiry in writing and mail it to you. Then without hesitation, hang up the telephone. If you receive a visit from special agents, do not let them engage you in a conversation, after obtaining their cards, politely tell them to put their inquiry in writing and mail it to you. Then without hesitation, close the door. If you receive a letter from a special agent, call the National Workers Rights Committee (NWRC) for assistance. They will provide you with a response. There is a charge for EACH response.

If your employer or bank receives a levy purportedly authorizing and demanding that your assets be turned over to the IRS, you should contact NWRC for assistance. They will provide you with a response. If your employer or bank ignores the response, ask the SAPF receptionist to speak with someone in the paralegal department. They will inform you of available options.

When you decide to assert your rights in accordance with the law it becomes essential that you UNDERSTAND the law. In the vast majority of cases, we find that most people think they understand—and indeed most possess at least a substantive understanding—but in reality they lack the ability to differentiate between the fine points of the law, especially with regard to the language they use to describe their understanding. There is an old expression... "I think you think you understand what I think I said but what you may not realize is that what I think I said is not what I meant!" With that said, we suggest that you take the test included with this handbook.

THE SAPF INDEPENDENT REPRESENTATIVE PRELIMINARY EXAMINATION

There is no better way to determine the extent of your understanding of the law than to test yourself. The Fellowship offers an exam to anyone interested in taking it. The SAPF Preliminary Examination covers the basic information that any member should know and understand about the tax laws and the scheme of taxation in the United States. This exam would put the brightest members of the Bar to shame. Very few people have passed this exam the first time through. However, the purpose of the exam is to show anyone taking it their areas of weakness in understanding the law, not to embarrass them by their lack of knowledge. Any member in good standing who wishes to become certified as an Independent Representative (IR) for SAPF MUST pass this exam. If the potential IR fails the first time, he or she is allowed to take it again until the results reflect that they do have a grasp of the basics needed to take our message to the public. Simply by studying the results of your exam you will greatly increase your learning curve pertaining to the issues we address at SAPF.

SAPF "POWER-OF-ATTORNEY" CASEWORK

We have found that many members (especially those who are new to the Fellowship) simply do not understand what our power-of-attorney program is all about. Some are so naive as to think that one letter from SAPF will make the IRS go away. We assure you, that is rarely the case. In fact, to put it as bluntly as possible: When we write a letter to the IRS we do NOT even try to make the IRS go away! This approach may seem confusing—so please read on...

You're probably asking yourself: "If the caseworkers at SAPF are not going to make the IRS go away then why am I giving the power-of-attorney?" If you want to assert your rights, it is absolutely imperative that you know what to expect and that you understand the purpose of the power-of-attorney program. If you are unable or unwilling to invest the time necessary to understand the process that is about to occur, or what we will be doing to help you, then you will either give up in despair or you will get angry at us because of your own mis-perception. Please don't put yourself in that position.

The situation is this: One hundred thirty years ago, during The War Between the States, Congress passed what was called The Anti-Injunction Act, now codified as § 7421 of the Internal Revenue Code. The effect of that legislation was to prevent the Courts from interfering with the actual collection of a tax, and as you might suspect, it complicates matters for people like you who want to assert their rights. The average member thinks: "Since the income tax is limited in application and since my income is obviously not the subject of the tax, why not just ask the Court to enjoin the collection of the tax?" And that's a good question...but that's NOT the question you should be asking. Instead, ask yourself: "How can the Court enjoin the collection of a tax when the Anti-Injunction Act that we just mentioned prevents them from doing so?" The answer is: They can't, and that's why we don't ask the Court to prevent the IRS from collection a tax. However, the Court does have the jurisdiction to prevent the IRS from using wrongful assessment and collection procedures.

That being the case...If you are not the subject of the income tax and the IRS has errantly sent you an inquiry, then you have what is called an administrative remedy. These administrative remedies ensure that a person, like yourself, will receive what is called "due process." And, they exist in the form of legal requirements that are imposed on the IRS so that the law will be applied properly. But of course, whether or not those requirements prevent the IRS from hurting someone depends entirely upon whether or not the individual in question makes the proper responses, protests and/or requests that are necessary to obtain relief. Do you know the specific remedy for any given IRS inquiry? Probably not! But more important, if you don't know what they are, then how can you possibly pursue them? When we represent you, that is exactly what we do. We request the remedy that is available under the law. So you ask: "Does this make the IRS go away?" No—not necessarily! But then, it is NOT intended to make the IRS go away! You say: "Well...if it doesn't make the IRS go away then why bother???" The answer is very simple: Knowing that most IRS employees are ignorant of the law and that they will probably not go away, you are building a case to show the court that the IRS has in fact violated the law that was supposed to give you the remedy you were entitled to. Even if the court rules against your evidence of IRS wrong doing, that is not conclusive. When a judge rules against the law, that is called a fraud on the court and can be re-opened at any time.

The important point to remember is that...if you never bothered to make the response, protest and/or request in the first place, then the IRS have no requirements to violate and it is presumed that they are doing things correctly. The issue before the Court is NOT whether your income was the subject of the income tax. Rather, the issue before the Court is whether you received due process—and that depends on whether you requested the remedies that were available to you and whether the IRS gave you the opportunity to pursue those remedies.

The responses, protests and/or requests that we forward to the IRS on your behalf, cite specific administrative due process requirements that impose certain legal obligations on the IRS personnel involved. This effectively puts the IRS employee in a position where he must stop the improper assessment procedure or violate the law in order to move forward with collection. It has been our experience that most IRS employees ignore these legal obligations. However, when they violate those laws relating to due process, a law suit becomes possible. But...only if you can document the denial of due process, up to and including, for example, the IRS's failure to send a proper "Notice and Demand." This is what we do when we take power-of-attorney.

So now you might ask: "How much does it cost to document the denial of due process and what happens after it's documented?" The answer is: We charge 48 FRN's per letter, (includes certified mail costs, and if paid within 10 days—discount 10 FRN's), for each piece of correspondence that we generate. Sometimes, we do as many as three or four per month and sometimes we don't do any at all. Over the course of the year we might write as many as ten for a total of three or four hundred FRN's. However, after that process is complete, and you have exhausted your administrative remedies (assuming the IRS ignores them and they usually do) then a law suit can be filed to seek relief.

Some people get halfway through the process and think that since the IRS hasn't "given up," we must be doing something wrong. Nothing could be further from the truth. The IRS is not going to give-up until they are forced to give-up. Why? Because the IRS counts on people losing their resolve. They count on people being financially unprepared to move forward with a suit. And you know what? The IRS is absolutely correct because a lot of people do just that! If you really want to assert your rights, then you need to prove to them that they're wrong! If you want to assert your rights, you need to set aside the funds that will be necessary to take the legal battle into Court—and when you do, you've got to have the documentation we've been talking about.

COURT LITIGATION SERVICES

ACTION I: CHALLENGING A WRONGFUL NOTICE OF LEVY/LIEN IN COURT

The following court actions are prepared by Fellowship paralegals for members to file in United States District Court, State courts, courts of appeal and the U.S. Supreme Court when needed.

The paperwork is prepared and sent to the member with instructions on filing. In certain cases, the IRS is first notified by letter of the member's claim, which is prepared by a caseworker. Aside from bankruptcy, the lawsuits listed are usually a matter of filing paperwork with a court, without appearance in person. After reading this memo, members may call and speak with a paralegal if they have questions about court appearance, potential costs, etc. If there is a financial difficulty, it may be possible to make arrangements to pay by speaking with an Accounting Assistant in our office. The donations associated with each court action represent the member's share of the Fellowship's debt, determined according to Fellowship resources and time used by paralegals to complete the work. The fees are to be forwarded to the office when a lawsuit is requested to be prepared. The court filing fee for the lawsuit is paid directly to the clerk of court when the member files their paperwork.

The research supporting the suits is largely unavailable or avoided by attorneys, who by the nature of their employment have a vested interest in maintaining favor with their state bar associations and judges. The work is tailored to each member's situation, and does not share the same status as the letter-writing appeals with the Internal Revenue Service (in which the arguments are broken down into separate lines of correspondence on singular issues, and certain replies are anticipated).

In choosing a suit to file, members should give careful thought to their personal financial circumstances, the effect of the IRS actions on their property, and what effect they seek to achieve by their chosen action. All of these considerations can be made by first reading this memorandum, and later speaking with a paralegal. Some members have decided to file suit even though IRS actions did not effect their property significantly, to increase the political pressure in the courts and public exposure of the issues.

In hardship cases, (meaning in cases where a person's principle source(s) of income are being wrongfully levied upon), the filing of a bankruptcy petition is likely to be the only source of immediate relief. Filing a bankruptcy petition will challenge the IRS as a creditor in the court; force them to support their claims; and potentially allow a member to argue the basis of an IRS assessment. This option is likely to be more appealing to members when they understand the possible uses of it — after speaking with a paralegal. More specifics on bankruptcy follow. The other actions available differ somewhat from bankruptcy in terms of their argument(s). They are based on the legal restrictions on IRS assessment and collection authority, advancing a case to potentially set a precedent. The results of a successful case of this type would likely serve to clarify the application of the law and/or reprimand an IRS employee for actions leading up to and including the Notice of Levy/Lien.

The current political climate of the courts is such that judges are (in a number of cases) actively protecting government employees who violate the law. The Fellowship is seeking several avenues of action to inform the public about this situation, and promote introduction of legislation that will correct this wrongful behavior (featured in *Reasonable Action* Newsletter article). However, until this problem is corrected throughout the country, and citizens have prompt redress of grievances both administratively and judicially, the only "*Reasonable Action*" is to exercise all rights available under law. In support of that premise, we encourage members to seek judicial appeal of all unlawful actions of certain government employees, once they have exhausted all necessary appeals with the government agency in question. Whenever a judge obviously rules against the law, that is called a fraud on the court, and the outcome is not conclusive. The record of the administrative appeals and court proceedings should be preserved, for if our joint effort to bring the government back under the law, redress can then be obtained.

ACTION II: JUDICIAL REVIEW OF WRONGFUL NOTICE OF LEVY/LIEN AND INVOLVEMENT OF IRS EMPLOYEE WHO SIGNED THEM.

This action is filed to request that a court order IRS employees to obey the laws as written. Additional information including costs for the suit and appeal possibilities may be obtained by calling the paralegal department.

ACTION III: ENFORCEMENT OF THE HARDSHIP PETITION FOR RELEASE OF LEVY

During the latter part of the 1980's, Congress passed an Act called the "Taxpayer's Bill of Rights." As part of that legislation, they made provisions for relief in cases of indiscriminate IRS collection actions causing taxpayers to have difficulty meeting their basic needs and living expenses. Under the new laws taxpayers have a procedure to notify the IRS of a hardship situation and request a release of the (so-called) levy. (Note: citizens have Rights secured by the United States Constitution and do not need any such rights to be passed by Congress. Because citizens are not the subject of the Internal Revenue Code, [outside of foreign earned income], taxpayers are the nonresident aliens and foreign corporations not having the Rights secured to citizens. Wherefore, rights within the Internal Revenue Code could be extended to these foreigners by Congress, and when citizens are wrongfully set upon by the IRS employees, there is nothing that prevents them from exercising these particular statutes.)

If their basic living expenses exceed their current assets and income being levied, the IRS is required to release the levy. Members should contact their caseworker to obtain the petition to be filed with the IRS. We have had limited success with this petition as a result of the IRS seeking to unlawfully gain more information than required by law (possibly to start a wrongful assessment for the current period?), as well as demanding the signing of tax returns. In these instances the members have considered filing a lawsuit to enforce it. Since the initial petition costs the same as any power-of-attorney letter, and we have certain cases where it has stopped a levy, we believe it is worth attempting, even if a member doesn't wish to enforce it in court. Additional information including costs for the suit and appeal possibilities may be obtained by calling the paralegal department.

ACTION IV: SUIT FOR REFUND OF TAXES AFTER DENIAL OF PETITION FOR REFUND

When the IRS recommends that a person file a suit to obtain a tax refund, they demand that a person have (1) filed tax returns, (2) paid the full amount of tax allegedly owed, and (3) filed amended returns seeking a refund. It is not offered as a means of bringing a jurisdictional challenge to the agency, but only for purposes of stipulating the proper amount of tax due. As a result of our recent research, we can make this same option available to members who have had property wrongfully taken by Notice of Levy (whether or not they filed tax returns or had the total alleged liability taken).

Under the provisions of law authorizing this petition, a person can challenge the jurisdiction of the agency, including an erroneous assessment and/or erroneous collection action. The petition offers the IRS an opportunity to support their actions and answer the earlier appeals, but notifies them that a lawsuit will be filed in the absence of a reply. Their only reply option is to refund the payments taken by the wrongful levy or be sued for refund. Therefore, members seeking to bring an action for a refund must first file this petition. Once it has been filed and the IRS answers, they should forward the appropriate donation for the suit and contact a Fellowship paralegal if they have any questions. Should the IRS fail to answer, the law allows for a suit to be filed after a period of six months. Members should contact their caseworker to obtain the original petition.

Actions (II) and (III) are based on petitions prepared by a caseworker for a member to send to the Internal Revenue Service. The petitions cost the same as normal power-of-attorney correspondence. If and when the IRS fails to reply to the petition, and members have forwarded payment, the preparation of the lawsuits listed above will begin. Because the same arguments used in Action (I) can be raised here, these actions could proceed into the possible sequence of motions listed under Action I (District Court, Appeals Court, then Supreme Court.)

Members should be aware that a positive ruling in response to the original action filed, without opposing motions from the US, is uncommon. The reasons can be attributable to the judicial climate described earlier. The actions listed are requesting the courts to demand an IRS agent to act lawfully. It is predicated on the earlier and neglected responsibility of the IRS to correct wrongdoing when first notified by a party injured. These actions are filed against IRS agents in their individual capacity, and do not seek any award for damages. They only seek the court's command that the IRS obey the law.

Important Note: No guarantee of a certain outcome can be given by the Fellowship due to the current political climate in the courts. What can be guaranteed is that members will receive assistance in making legally-correct arguments, (that can be preserved as explained above), using the latest strategies available for doing so.

ACTION V: PETITIONING BANKRUPTCY COURT TO STOP COLLECTIONS AND CHALLENGE IRS CLAIM

This option is mentioned earlier, but deserves a specific explanation here. Whereas the other actions presented can be delayed by the IRS, the court, etc., as well as their effects on Notices of Levy, this action places an immediate freeze on all IRS collection action(s) upon filing. It requires all property taken previous to the filing to be returned to the petitioner (period set by state laws), and requires the IRS to prove their claim as any other creditor before the court. In addition to challenging the IRS collections, this action provides for challenging the assessment of a tax that led to the issuance of the Notice of Lien/Levy. The IRS's "proof of claim" is challenged when filed, the court is moved for an adversarial hearing. The casework that has been done through power-of-attorney, will contain the evidence needed to sustain this proceedings. Should tax returns be demanded by the court during this action, there are options for members who have determined that they have no such legal requirement.

Members who are interested in more information on this action, or would like to go ahead with it, should call the office and they will be directed to a paralegal who can prepare the suit or answer questions. This memorandum is part of our continuing effort to inform members of their legal options and reach our goal of restoring our Constitutionally-limited government, protected by a free and responsible citizenry.

THE ANTI-INJUNCTION ACT

Most members who have viewed our video series have a general idea about the Anti-Injunction Act, the law passed by Congress during the War Between the States which prevented courts of law from enjoining (stopping) the collection of federal taxes. What members might not be aware of is the current situation in courts of law around the country, on both State and Federal levels, to use this law for the wholesale dismissal of actions that in any way challenge the misapplication of the law by certain employees of Internal Revenue Service. The original intent and actual effect of this law is that it prevents a particular remedy at law that was enjoyed previously, that of Judicial Remedy regarding the collection of a tax. Therefore, it is important to note that the actions listed do not seek judicial remedy relating to a collection of a tax. They seek existing Administrative Remedy provided by law, whereby the agency in question (the Internal Revenue Service in this case), corrects its wrongful procedures on its own and stops damaging a person outside of law.

While this action does involve a court of law, the role of the court here is not to force the agency to stop collecting a tax, but simply to determine whether an actual misapplication of the law is taking place. The laws governing "abatement" of an alleged tax being assessed or collected wrongfully is already in place!

As an example, the law protecting citizens from wrongful "deficiency" assessments is the principle foundation upon which we seek Administrative Appeal through the letters sent in our Power-of-Attorney program. In theory, because Administrative Remedy exists in law for the agency to correct internal errors, there is little need (or proper jurisdiction) for a court to take judicial action and order the IRS to stop collecting a tax. The idea of delaying a court with issues best handled by the agency in question would then appear to be a waste of government resources expended in operating the court.

Does this mean that there is no method of seeking damages, so long as a court directs the IRS as to the proper existing Administrative Remedy to exercise in a person's case? Does this prevent subsequent court actions once the IRS has stopped their wrongful procedures? The potential subsequent actions against the individual Internal Revenue Service employees who had violated the law could be pursued and invoke the judicial authority of a court with regard to actions of the agent. Once the issue of potential tax revenues being collected is moot (the IRS having admitted out of court that they were proceeding wrongfully, and having ceased trying to collect a misapplied tax), an action can be pursued that seeks Judicial Remedy and damages. A memorandum of this type should serve to supplement our efforts of keeping members informed through the *Reasonable Action* Membership Newsletter, concerning the specific legal remedies that Save-A-Patriot Fellowship can assist members in seeking.

The actions made available by the Fellowship and its paralegal department should in no way be construed as attempting to evade the lawful assessment, collection, or payment of income taxes; at the same time, members are probably aware that this type of tax applies to foreign persons and entities to begin with.

CALLING THE FELLOWSHIP

For the sake of efficiency, it is imperative that new members learn to interface with the appropriate staff members, and that they do so at specifically designated times. A member who is unable to work within this structure reduces the effectiveness of the staff and increases the costs of overall operations for everyone.

GUIDELINE #1—WHEN TO CALL

- a) You may call your caseworker whenever you receive correspondence from the IRS that needs special instructions
- b) You may call a paralegal if a caseworker has first directed you to do so, and you intend to begin preparation of a law suit, if you are being levied or have a quiet title in process.
- c) You may call the order department to check on an order, for any of the publications, "vehicles" or tapes produced, generated by or otherwise available from the Fellowship, that is overdue.
- d) You may call during the times listed below.

PLEASE FORMULATE AND WRITE OUT YOUR QUESTIONS BEFORE CALLING THE FELLOWSHIP.

This increases our efficiency, saves a tremendous amount of time, and keeps the conversation focused and on point.

GUIDELINE #2—WHEN NOT TO CALL

- a) Please do not occupy staff time to answer technical questions about the law until you have studied pertinent issues of the *Reasonable Action* newsletter and, preferably, the SAPP audio or video tapes. If this material does not answer your questions, then you may request help in this area. You may fax you questions to 410-857-5249.
- b) You should not call any department of the fellowship outside of the guidelines LISTED IN THIS SECTION except for emergencies.

Paralegal—Telephone Conferences Monday through Friday, from 9 AM to 12 PM.

National Workers Rights Committee—Telephone Conferences weekdays from 10 AM to 1 PM.

Casework—Telephone Conferences Monday through Friday, from 9 AM to 5 PM. *Please refer to guideline #2(a) in this section before calling.

Fiduciary (John B. Kotmair, Jr.)—Telephone Conferences by appointment.

National Representative—(to be announced) Email: @save-a-patriot.org

Personal Visits SAPF HQ with John Kotmair—by appointment, request conference through our receptionist via telephone.

Appeals Conferences or Seminars with John Kotmair away from SAPF HQ—Schedule through our receptionist via telephone.

Billing Statements and Information—Call Accounting Assistant

Bookstore—Monday through Friday, from 9 AM to 5 PM. Call main number.

JUST THE FACTS (Consists of Video and Audio tapes and Document Book)

In order to promote accuracy, the Fellowship has produced a video entitled *Just The Facts*. It is undeniably the most accurate, comprehensive source of information in the constitutional movement with regard to taxes. The presentation consists of 6 video tapes. The topic of each video tape is listed below. These tapes represent 30 years of research and are technically accurate. They are an excellent introduction into the inner sanctum of IRS procedure and reveal (among other things) how the IRS manages to cover-up their misapplication of the taxing provisions by the use of phony computer entries and improper computer codes. The tapes are simple enough for the average person to understand yet comprehensive and detailed. Important points are emphasized with animation and graphics.

The tapes are packaged in a beautiful display case. This series is excellent for holding in-home seminars for local members or just explaining your position to friends and family. The tapes are available for 210 FRN's which includes shipping. Members can encourage the purchase of this video and explain the benefit of a proof of purchase (see below). An excellent 190 page reference book consisting of the exhibits and documents shown in the presentation is available for 30 FRN's. For convenience and to further enhance your studies, the entire presentation is also available on 8 audio cassette companion tapes. The cost for the audio tapes is 65 FRN's.

For the sake of truly understanding the issues that the fellowship address, it is recommended that the audio tapes NOT be used as a substitute for the video series, but rather, in conjunction with the videos. According to experts in learning theory, we all learn just a little differently. Some learn aurally [through the ear gate], some are tactile [through touch] learners, and some learn best through visual media. Whatever your learning style, the Fellowship now has a combination of tools that will employ synergy [the total effect is greater than the some of the parts], to get you up to speed in a hurry. You will be able to use these media to learn the entire body of information as quickly and efficiently as possible. Using these resources together will shorten your learning curve.

PROOF OF PURCHASE

Most of our members know, the government relies upon uneducated juries to move forward with willful failure cases. The knowledge and intent of any individual who is made the subject of wrongful prosecution, is kept from the jury lest the facts reveal the limited application of the law. The jury, being ignorant of the law, has no other alternative but to base its decision on emotion and/or presumption rather than on the facts that are suppressed by the court. However, "material" facts cannot be suppressed.

So... What are material facts and how are they established? The act of "purchasing" the SAPF video, and the act of "relying" upon the information contained within, are examples of material facts. The information presented in the video becomes material because it demonstrates the cause of the individuals belief. Therefore, should someone's "intent" ever be brought into question, the purchase of this SAPF video series may be more important than you think, especially if their "understanding" of the law developed from watching the tapes.

According to the Supreme Court in the Cheek decision, such information may not be withheld from a jury. If the video resulted in, or formed the basis of their belief then it is admissible as evidence in an action which questions their intent. Under these circumstances, "proof of purchase" may be extremely important. It can show, for example, that they were exposed to certain facts about the law and that those "facts" lead to further research, ultimately resulting in their determination that the law did not require them to file a return. If those "facts" reveal that the law does not require the filing of a return (under whatever application or circumstance they may be examining) then they are material and cannot be withheld from the jury - BUT - the individual must prove that they were exposed to those facts and the date on which they became aware of them, otherwise they could be suppressed. If they are unable to do so, the question could be raised that their behavior was merely negligent.

A "proof of purchase" can eliminate such contention, and substantiate the point in time on which their actions were based on fact rather than any negligent behavior, and it can substantiate the reasons for believing that the law does not require them to file. The facts in the video purchased on such and such a date, are a material demonstration of their knowledge of the facts and understanding at the time. The Fellowship can provide them with a "proof of purchase" in the form of a notarized affidavit which will confirm the date on which they received the information.

If a prospective member purchased a video and has not already received their affidavit, they should call us and we will prepare one for them at no charge. If they are in possession of an unauthorized copy, they should seriously consider obtaining a legitimate copy with proof of purchase.

Piercing the Illusion

Piercing the Illusion is a book written by the SAPF Fellowship's founder and fiduciary John Baptist Kotmair, Jr. It sets straight the history of how the United States of America, in practice, has gone from a Constitutional Republic to a democratic socialist state; from a Union of States to a federal nation. It lays out how the Founders and Framers, for the first time in the history of the world, created a government using God's plan for mankind, laying out a workable plan for the return thereto. Americans have lost their way and have grown ignorant of their own cultural, *Piercing the Illusion* will help them to find their way back.

REASONABLE ACTION NEWSLETTER

The *Reasonable Action* Newsletter is the method we use to communicate with members en masse. For that reason it is extremely important. When you become a member of the Fellowship, your membership fee includes 6 issues of the newsletter. We will send you 6 issues as they come off the press. When the subscription expires the member will be billed for another 6 issues at the current rate.

The Fellowship publishes a newsletter every 2 months, however priorities do arise that can delay the printing. If you have a question as to whether you are up to-date with the latest issue, the SAPF switchboard operator can tell you the number of the most current issue so you may verify that you have received the latest.

The newsletters represent the most accurate information currently available in written form. It is advisable, if not imperative, that members obtain each of the back issues for study purposes. Issues that are currently available are listed in the most current issue of the *Reasonable Action* newsletter. If you have any comments or suggestions pertaining to the RA (articles, subjects to cover, personal research), please direct any communications to SAPF: Attn. Editor, *Reasonable Action* Newsletter.

THE FELLOWSHIP WEB SITE

The Fellowship maintains an Internet Web Site that can be accessed at the Internet address <http://www.save-a-patriot.org>. This Web Site contains numerous historical, legal and political facts and research links that should aid members in their education and recruitment efforts.

CHANGE OF ADDRESS

It is extremely important to notify the Fellowship if your address changes. The best way to accomplish this is to use your monthly statement. Just circle the address that is on the statement and mark it as incorrect. A forwarding address is good for 12 months. However, if you move and do not leave a forwarding address you will not get your statement. If this occurs, all issues of the newsletter and any work on your case file will be suspended until you notify the Fellowship of your change of address.

BILLING AND YOUR MONTHLY STATEMENT

Prompt payment is required—THE SAVE-A-PATRIOT FELLOWSHIP IS NOT A BUSINESS. THEREFORE THE PRICING STRUCTURE IS NOT PROFIT ORIENTED. IN ADDITION, THE COST ASSOCIATED WITH DOING WORK ON BEHALF OF MEMBERS IS VERY INTENSIVE.

Since time is usually a critical factor in any response to the IRS, the Fellowship will process a response immediately and absorb the cost up front until the member can reimburse the Fellowship. These circumstances make it essential that all statements be remitted within 30 days. If payment is not received within that period of time, your case worker will suspend work pending remittance of the balance due. Since a proper response to IRS correspondence is time sensitive in terms of preserving due process issues, non-payment or delayed payment of any balance due on your statement may have a detrimental effect on any case being developed on your behalf.

METHOD OF PAYMENT—

The Save-A-Patriot Fellowship does not do business with banks. Aside from the fact that the Federal Reserve Bank system is financially unsound, unstable and tends to corruption, we have found that the various banking establishments repeatedly refuse to obey the law.

By way of illustration—when a bank receives an IRS levy against a depositor it will typically turn over the funds and violate the individual's due process rights rather than insisting the IRS get a proper Court order. It seems that banks are more concerned about their favorable status with the Federal Reserve than they are about obeying the law. Therefore, as a matter of principle the Fellowship will not do business with banks, or for that matter anyone else who would violate the law or refuse to respect a persons rights to property and due process. Since the Fellowship does not bank or possess a checking account, payment must be tendered in FRN's (abbr. for Federal Reserve Accounting Unit Denominations, more popularly, but incorrectly referred to as dollars) or U.S. Postal money orders which can be obtained from any post office. If payment is made via Postal money order, the money order should be left TOTALLY blank, (payee and payor sections both TOTALLY blank), and the receipt retained for your records (if you keep any). To ensure proper credit either the monthly statement or a written explanation for the purpose of the funds must accompany your payment. Unless specifically identified, any funds forwarded to the Fellowship without the statement or explanation will be considered donations.

POWER OF ATTORNEY WORK

It is incumbent upon all members with cases in development to keep their case workers supplied with current Power-of-Attorney forms. These may be submitted along with your remittance when you pay your monthly statement or they may be forwarded directly to your case worker. The specific power-of-attorney that is necessary for corresponding with the IRS is valid for only a limited period of time (60 days). Therefore, you should keep a supply of blank forms on hand and forward notarized or witnessed originals as needed (obviously if you fill all of them out and send all of them to your caseworker, it will be necessary to have him/her generate another blank master for you to use. This wastes time and effort.

All power-of-attorney forms should be signed in visibly BLUE INK. The IRS often attempts to delay our investigation into wrongful procedure by contending that power-of-attorney forms signed in black ink are copies and not originals. If a power-of-attorney form is signed in visibly blue ink it alleviates any delay caused by IRS stall tactics.

CORRESPONDENCE TO THE FELLOWSHIP

All fellowship members need to understand the problems associated with the deluge of personal correspondence received by the Fellowship. Many people choose to write letters to the Fellowship and we do appreciate the many words of advice and wisdom within those letters. However, such correspondence should be limited to one-way messages. The Fellowship does not have a department to answer written letters from members. Therefore please do not expect a response to written questions. At some point in the future we may expand to include such a department but for now our resources are focused on correspondence between members and the IRS.

If you have any questions, they should be submitted by telephone according to the information listed under "when to call" and "when not to call" within the preceding section. Questions may be faxed anytime, however, it is very important that they be addressed to the proper party. One of our greatest concerns is the correspondence we receive from the maverick member who insists he knows it all and wants to re-invent the wheel. When someone writes to us and tells us they intend to drive over a cliff in a truck because they think its a good idea we feel obligated to straighten them out. We get more than a few of these letters, each one outlining a specific legal argument that someone wants to present to a Court. For us to address such correspondence properly we would need to perform a great deal of legal research and address each point in the letter. That can turn into a major project. Unfortunately we do not have the several weeks, nor the staff, necessary to devote to such matters. Such correspondence is counter-productive and, once again, we must ask all members to limit their letters to one-way messages or requests. If a member insists on discussing such subjects they should call via telephone since the interactive nature of conversation makes it a more efficient method of communicating.

SAPF & PDF MEMBERSHIPS

Below is a list of the basic differences between the Save-A-Patriot Fellowship (SAPF) and the Patriot Defense Fellowship (PDF):

Save-A-Patriot Fellowship (SAPF)

Initial membership fee to join for a full membership is 697 FRN's, 99 FRN's for an associate membership; annual renewal fees of 99 FRN's, and co-membership is 100 FRNs and available with full membership only;

- **Civil Coverage:** *Member Must be in Good Standing 6 Months Before any "Deficiency Notice". *Covers Real and/or Personal Property. Actual Market Value Maximum Claim -150,000.00 FRN's. *Member must prove they used every Court proceeding and delay tactic possible.
- **Criminal Coverage:** *Member Must be in Good Standing 6 Months Before any IRS criminal investigation, Grand Jury Indictment or U.S. Attorney Informational. Covers Incarceration Any Part of a Calendar Year is Treated as a Full Year. Claim - 25,000.00 FRN's. Member must prove they used every Court and Agency proceedings and delay tactics as possible.

Patriot Defense Fellowship (PDF)

Must be a SAPF Member before joining. Annual participation fee of 50 FRN's. Prosecutorial Coverage: *Member must be in good standing in BOTH Fellowships for 6 months before the IRS or any State C.I.D. has read claimant his/her rights and/or given notification that claimant is under investigation. Covers trial, and/if, any conviction appealed Claim - 10,000.00 FRN's (conviction) / 5,000.00(appeal) *Member must prove they used every Court and agency proceedings and delay tactics as possible. Note: PDF assessments are apportioned among PDF Members ONLY!

SAVE-A-PATRIOT FELLOWSHIP ASSOCIATE MEMBERSHIP PROGRAM

As a member of this program, you have access to all member benefits except casework, N.W.R.C., and/or paralegal services. Casework and/or paralegal services are absolutely necessary for any member communicating with the IRS through the fellowships Power-of-Attorney Services department. If you are a member needing these types of services immediately, you should upgrade to a "full" membership.

The Associate Membership includes:

1. Six (6) issues of the "Reasonable Action" Newsletter with the opportunity to renew your subscription as needed.

2. Consultations with John Kotnair (via telephone, or, in person when in Westminster), based on availability.
3. The ability to purchase IRS and other publications approved by SAPF.
4. A free subscription to "Audio News" (the daily SAPF audio newsletter) when you choose to participate in an optional, specially selected national 800# voice mail system. Highly recommended! Ask about it.
5. The privilege of faxing questions to SAPF headquarters, 24 hours a day, for a timely response. (For fastest response, the 800# voice mail system is recommended.)
6. The opportunity to become a "Associate" status Independent Representative (I.R.) and RECEIVE commissions by enrolling new members! ("Associate" status I.R.'s earn commissions only. "Full" status I.R.'s are qualified to earn commissions AND BONUSES!)
7. The right to purchase the "Revocation and Rescission Affidavit" and follow-up paperwork.
8. The right to file a claim for loss of property due to certain illegal IRS activities.
9. The opportunity to help others who have been injured due to certain illegal IRS activities.
10. A chance to show the world that you believe in the principles that made this country great! *** You may choose to participate with the many others around the country who are taking a stand or, simply by being a member, choose to support the Fellowship financially that we may continue in the fight for your family and ours. EVERY MEMBER HELPS!!*** Some of these services are available to non-members. This list was compiled because many members don't realize what they have available through the Fellowship.

Participation as a Save-A-Patriot Fellowship member is easy:

1. Pay your membership fee.
2. Pay your annual membership dues
3. Inform SAPF HQ of any important changes pertaining to your membership application.
4. Participate in the Member Assistance Program.
5. Let us help you MAKE A DIFFERENCE!!

PRO SE AND PROPRIA PERSONA LITIGANUS

Along with all of its complexities, the average person has no inkling of the intricate nature of the judicial process. For this reason, the Fellowship does not promote or encourage anyone to act on their own behalf in a court of law. Even if a member is well versed on the law and how it is applied, they may still wind up in a losing position if they are not familiar the rules of the Court.

For example, do you know how to introduce evidence that will be accepted as evidence in your case? If not, you are doing yourself a great injustice. Many people believe that the discovery phase of a case is where any and all evidence to be used in that case is shown to the opposing side and simply accepted as usable evidence. But the truth is, during discovery both sides in the case have the opportunity to introduce the evidence they are choosing to bring forward. The opposing attorney, at this time, has the opportunity to fight the introduction of that evidence, possibly stopping it from being used at all.

There is more to it than just having the facts go into the Court. You have to know all of the tactics and strategies that are used to manipulate the facts, and, avoid addressing the facts. It's a real-life high-power chess game. For example, most people have NO IDEA how the Rules of Evidence works. Let's say you need to get the *Just The Facts* videos into the courtroom as evidence in your case, John Kotnair (SAPF Fiduciary) would have to be subpoenaed to testify that he did, in fact, sign the proof-of-purchase affidavit that accompanied it and that it is him presenting the information that you were using. (You have

just been taught ONLY ONE of the myriad of tactics and strategies the Fellowship has for you to take advantage of as a member.)

You've got law. You've got facts. You've got rules. All three of them are involved separately and then they intertwine in the Court proceedings. It is imperative that people understand the service that SAPF provides its members from the understanding of these important facets of a case. As part of the services for our members, the Fellowship makes sure the member understands, and has, the correct evidence they might need someday, and, the means to make sure that evidence gets admitted into the Court.

EXAMPLE OF THE LEVEL OF SERVICE FROM SAPF—

Many people do not realize the service SAPF HQ gives them with membership. Take investigations. The average member has no idea what they are all about. First, SAPF HQ is getting the member the evidence they need to show that everything the IRS has done to them is false and fraudulent. Second, the member is getting documents that identify the individuals who are doing this so, those very individuals can be subpoenaed for the case. Although the member may not realize this service, the lawyers do! Should a member ever need one, SAPF HQ hands a member's lawyer the packet which contains their case papers. The lawyer finds that all their work has been done for them!

Some people think we are writing letters to make the IRS go away. Well, think about it. If the IRS decides to come after you, nothing is going to make them go away! People looking for the easy out are simply hoping to find someone who will take over their thought processes, relieve them of all responsibility and accountability, and assure them that the big, bad monster called the IRS, under the bed, is going to go away!

The Constitution is the Supreme Law of the land and its laws are written. Republic means a Republic in a REPRESENTATIVE GOVERNMENT. WHEN YOU HAVE A SUPREME LAW THAT IS WRITTEN, THAT MEANS THAT THE REPRESENTATIVES ARE BOUND BY THAT, therefore all of our laws are written. Many people say, "show me where in the Code the law states that I don't have to pay an income tax." Law doesn't work that way. Laws are written to whom they apply, not the other way around. In other words, YOU WON'T FIND IT! These people are either ignorant of how the law is written or they are simply looking for the easy way out with a "seal of approval."

Many people come to the Fellowship after they have been exposed to and gone through some of the "theory mills" around the country and are very disappointed to find that we cannot help them. When someone uses an argument such as "I am a non-resident alien.", it doesn't get tossed aside. The argument shows ignorance of the law and ignorance of jurisdiction.

The IRS holds on to information such as this and saves it for a rainy day. The ignorant patriot walks happily along until he finds out he has no protection from the thunderstorm! If the IRS has NOT gone after one of these folks criminally, the best advice they could receive is to write a letter to the appropriate agencies and tell them that they were in error, that they were misled by someone that had convinced them of something that they now know to be untrue. They should do it as soon as possible and before they do anything else to destroy any chance they have of being brought up on a criminal case of willful intent by FRAUD.

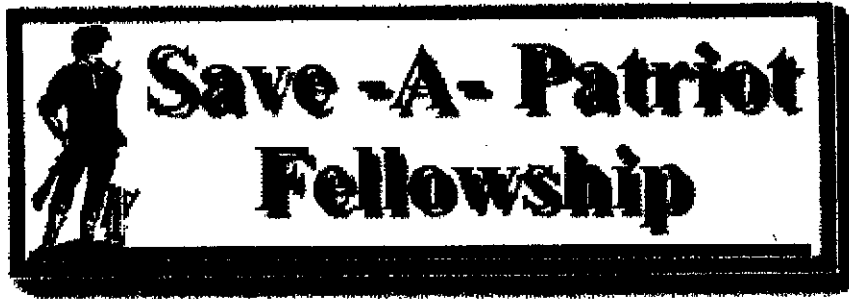
Just in case someone asks, the Affidavit of Revocation and Rescission from the Fellowship is NOT ENOUGH to offset or negate the previous actions mentioned. Even if someone does not join the Fellowship, they need to watch the video series! Every member can help someone from being led down a primrose path.

Read what some of our members have written concerning the work done for them at the Fellowship:

Tom Brissey—*When I get depressed I pull out a few letters written by the Fellowship. The quality work and lawful, on point responses pick my spirits up.*

Mike Maddox—*Without the Fellowship I would have gone down the tube two years ago.*

Membership Enrollment and Joining Form for the...



*Since 1984 - A First Amendment Association
National Headquarters: Westminster, Maryland*

MEMBERSHIPS AVAILABLE <i>Two Levels</i> A General Comparison and Overview	
<p><u>ASSOCIATE MEMBERSHIP</u></p> <p>\$89 FRNs One-Time \$99 Yearly Renewal</p>	<p><u>FULL MEMBERSHIP</u></p> <p>\$697 FRNs One-Time \$99 Yearly Renewal add Co-Full Memberships for \$100 FRNs</p>
<p>Education and Fellowship: For those wishing to join with others, avail themselves of the opportunity to receive the finest "adult education" currently available with regards to our constitutional heritage, including a thorough and accurate analysis of the limited liability of the U.S. citizen for internal domestic taxation.</p>	<p>Education and Fellowship: For those wishing to join with others, avail themselves of the opportunity to receive the finest "adult education" currently available with regards to our constitutional heritage, including a thorough and accurate analysis of the limited liability of the U.S. citizen for internal domestic taxation.</p>
<p>Protection: Associate Members participate in the insurance-like financial protection plan to assist members who have suffered loss civilly or criminally due to IRS or state taxing agency abuse. The only program like it in existence!</p>	<p>Protection: Providing its eligible Full Members who have suffered loss civilly or criminally due to IRS or state taxing agency abuse insurance-like financial compensation in order to Save-A-Patriot! The only program like it in existence!</p>
<p>Assistance: Access to fellowship headquarters and assistance in preparing some legal vehicles.</p> <p style="text-align: center;">➔ <u>Further detailed explanation on the benefits of Associate Membership</u></p>	<p>Legal Assistance: Access to fellowship staff paralegals, and caseworkers for those needing assistance in responding properly to a Notice of Deficiency, Lien, Levy or Seizure, or to other correspondence received from the Internal Revenue Service or state taxing agency; or with any other tax related issue requiring assistance. <u>View the Fellowship Staffing and Organizational flow chart for Fellowship a look at services and various departments.</u></p> <p style="text-align: center;">➔ <u>Further detailed explanation of the benefits of Full Membership</u></p>

Exhibit 3

If you need to learn more about the History, Mission, and Purpose of the Save-A-Patriot Fellowship before joining [click here](#).

Further Explanation of Fellowship Services and Benefits Available to Joining Members
A Detailed Comparison

➔ **ASSOCIATE MEMBERSHIP [Limited Services Provided]**

- **\$99 Associate Membership** - initial joining fee.
- **\$99 Annual Membership Renewal** - yearly renewal fee per member (invoiced on anniversary of joining date).

Benefits of the Associate Membership:

- **Affidavit of Revocation and Rescission** - member eligible to purchase this vehicle from the Fellowship Bookstore. Notice Secretary of the Treasury to revoke Social Security Admin. Form SS-5 "Application For Social Security Account Number" - 2 follow-up letters sent.
- **Member Assistance Program - Insurance-like Protection:** After the 6 months member in good standing clause has been the member is eligible for the Members Assistance Program [upgrade to Full Membership is required prior to submitting claim - see Program Agreement link below for further conditions]. Civil coverage compensates a member up to \$150,000 for property illegally confiscated by IRS. Criminal coverage pays beneficiary listed on Fellowship Program Agreement. \$25,000 per year if member is incarcerated. Each member assessed less than \$20 average per month to assist damaged fellow members. **Civil and Criminal coverage could be substantially higher under the newly implemented Victory Express** - see our [Plunder Protection](#) page for more information!
- **4-Issue Subscription to "Reasonable Action"** members-only newsletter (4 issues/year - back issues available since 1987)
- **Access to Headquarters Staff** via phone, mail, fax & 800# interactive voice mail - questions answered based on the law.
- **Access to the Patriot Defense Fund** - \$50 annual fee reimburses member \$10,000 for cost of legal defense in a criminal trial and \$5,000 per appeal if convicted.
- **Access To Fellowship Bookstore** - purchase videos, cassettes, books, IRS code, Treasury Dept. regulations, past issues the members only publication Reasonable Action, etc.

➔ **FULL MEMBERSHIP [Full Services Provided]**

- **\$697 Full Master Membership** - initial joining fee for first membership in a given household.
- **\$100 Co-Membership** - Initial joining fee for spouse and/or additional memberships in same household.
- **\$99 Annual Membership Renewal** - yearly renewal fee per member (invoiced on anniversary of joining date).

Benefits of the Full Membership:

- **Affidavit of Revocation and Rescission** - member eligible to purchase from Fellowship Bookstore. Notice to Secretary of Treasury to revoke Social Security Admin. Form SS-5 "Application For Social Security Account Number" - 2 follow-up letters sent.
- **Member Assistance Program - Insurance-like Protection:** After the 6 months member in good standing clause has been the member is eligible for the Members Assistance Program [Full Membership is required prior to submitting a claim - see Program Agreement link below for further conditions]. Civil coverage compensates a member up to \$150,000 for property illegally confiscated by IRS. Criminal coverage pays beneficiary listed on Fellowship Program Agreement. \$25,000 per year if member is incarcerated. Each member assessed less than \$20 average per month to assist damaged fellow members. **Civil and Criminal coverage could be substantially higher under the newly implemented Victory Express** - see our [Plunder Protection](#) page for more information!
- **4-Issue Subscription to "Reasonable Action"** members-only newsletter (back issues available since 1987).
- **Access to Headquarters Staff** via phone, mail, fax & 800# interactive voice mail - questions answered based on the law.

- Access To Fellowship Bookstore - purchase videos, cassettes, books, IRS code, Treasury Dept. regulations, etc.
- Member Handbook - 3-ring binder provides extensive overview of Fellowship benefits and services, and how to communicate with fellowship staff and headquarters.
- Access to Patriot Defense Fund - \$50 annual fee reimburses member \$10,000 for cost of legal defense in a criminal tax trial and \$5,000 per appeal if convicted.
- Case Development - Upon request of Member, power of attorney given to Fellowship case worker assigned (available by phone or fax Monday-Friday 9-5PM EST) to answer IRS correspondence based on the law.
- National Workers Rights Committee - assistance to member in stopping withholding of taxes in the workplace.
- Full Paralegal Services - some state taxation issues, filing of court motions, criminal investigation, bankruptcy.

You Can Join Right Now!

Download the Membership Program Agreement



To join the Save-A-Patriot Fellowship please download a **Membership Program Agreement**. Please note: *in order to read and print this file your computer requires that you have Adobe Acrobat Reader installed. If you do not have the free software click on the "Get Acrobat Reader" image to find the program download page. If you have trouble downloading the application you may need the latest version of Acrobat Reader.*



...or you may request a Membership Application by mail:

Send a self-addressed, stamped envelope for a copy of the Save-A-Patriot Fellowship Program Agreement to:

Tax Freedom 101
12 Carroll Street - Suite 149C
Westminster Maryland 21157

Enrollment Procedure:

1. Fill out the Save-A-Patriot Fellowship Program Agreement first. If you have any questions regarding the application contact us.
2. Enclose payment as prescribed in the agreement and send funds certified mail return receipt requested to the address indicated on the agreement.



We no longer accept Credit Cards for payment for membership via the Internet because under the USA P.A.T.R.I.O.T. Act we can not assure that your privacy will be maintained by merchant accounts. If you would like to use a major credit card, please obtain a cash advance and then visit any United States Postal Center to obtain a certified USPS postal money order in the amount of the order. Post offices accept payment for Postal Money Orders using cash and debit cards. Retain the postal money order receipt for your records and send orders USPS certified mail return receipt requested. [More detail and directions available here.](#)

Questions? Call:
877-285-2104

Further Membership Details

FULL MASTER MEMBERSHIP: A one-time payment of F\$697 is required for a Full Master Membership. This is a legal defense and support membership which provides access to the Case Development Department (member is assigned a personal case worker to respond under Power of Attorney to correspondence received by the member from the IRS, to make Freedom of Information Act and Privacy Act requests, and other case development work), Paralegal Department assistance (court filings and motions, bankruptcy to stay IRS collection actions, etc.), and access to the National Worker's Rights Committee (assists member with employment related issues such as stopping withholding in the workplace, with state tax issues and with criminal investigations).

MEMBERSHIP ENROLLMENT: Members are enrolled into the Fellowship by exam-certified Independent Representatives. An enrollment commission is retained by the enrolling IR. Many IR's support their families part or full-time through their educational/enrollment activities. An SAPF member in good standing can enroll others into the fellowship and retain a substantial commission for doing so once they have met the criteria of fellowship headquarters.

MEMBERSHIP ID NUMBER: Within a short period from receipt of an application for membership at Fellowship headquarters, the newly accepted member's original, signed application will be returned directly to the member with an assigned membership number written on it, indicating formal acceptance into the Fellowship and eligibility to immediately access appropriate Fellowship services.

A new member does not have to wait for his or her Membership ID no. to be assigned in order to contact headquarters and request services or assistance. For this reason, if a member requires case development work, this may be started immediately (see "Your Case Worker" below).

Please note: No membership lists or copies of application(s) are kept at Fellowship headquarters in order to fully protect the privacy of the membership. All records are kept at undisclosed, redundant off site locations. Likewise, the Fellowship does not make its membership list available to any other party under any circumstances.

CO-MEMBERSHIP: Available under a Full Membership only, additional members of the same household age 18 or over and residing at the same physical address (spouse, adult child, parent or other family member) may join as a Co-Member at the same time as the Master Full Member or at any time in the future by filling out a Fellowship Program Agreement and enclosing a payment of F\$100.

MEMBERSHIP RENEWALS: A payment of F\$99 per member is required each year to renew each separate membership (whether Associate, Full, or Co-Member) and will be billed to the member on the anniversary date of his or her enrollment.

Benefits of Membership

THE AFFIDAVIT OF REVOCATION AND RESCISSION: (to revoke the SS-5 application which resulted in a Social Security Number Account being established) is available to members as are all materials available through the Fellowship Bookstore, including all back issues of "RA", which members are highly encouraged to purchase and study (see the back pages of any recent issue of RA for a current listing of available materials).

MEMBERSHIP NEWSLETTER: The Fellowship publishes an outstanding quarterly newsletter called Reasonable Action (RA) which is available to members only and is a masterpiece of legal analysis and commentary regarding Title 26 (Internal Revenue Code) and IRS regulations, as well as numerous insightful articles dealing with taxation and other issues of concern to members.

A four-issue subscription is included with each Associate and Full Membership and can be renewed annually for F\$35 six additional issues (see mailing label for issue of expiration).

The RA is offset printed by Fellowship staffers in-house, so back issues are usually available. Past RA's are an absolutely indispensable addition to the member's knowledge base and should be studied as part of his or her ongoing education as to the IRS' routine misapplication and violation of the law.

PATRIOT DEFENSE FUND: SAPF also offers a separate Patriot Defense Fund (PDF) - a "fellowship within a fellowship" to defray the cost of defending in a criminal tax trial (F\$10,000) or appealing a conviction (F\$5,000). One must first be a member in good standing of the SAPF to be eligible to join the PDF. Please refer to the PDF membership applications for full details.

<http://www.txfreedm101.com/pages/memberships.htm>

5/4/20

107

These powerful, mutual "protection" programs go a long way towards removing the fear of asserting one's rights in the face of increasingly oppressive taxing authorities. With the financial threat of asserting one's liberty thereby removed by spreading the reimbursement costs among all members, "closet" Patriots are joining the Fellowship in droves.

TELEPHONE CONSULTATION: John Kotmair takes telephone calls from both members and the general public. John is available for in-person appointments in his office at the Fellowship's Westminster, Maryland headquarters.

CASE DEVELOPMENT UNDER POWER OF ATTORNEY: A Full Member has the option of giving Power of Attorney (POA) to Fellowship founder and fiduciary, John Kotmair, and most members do. As soon the new Member's application for membership has been received at Fellowship headquarters, s/he should call the Fellowship to obtain the name of his/her caseworker. This person will be available to answer the member's questions regarding any correspondence received by the member from the IRS.

Under no circumstances will the caseworker provide legal or other tax advice, however s/he will gladly review the member's available options under the law and explain what other members have done in similar circumstances.

Case development is managed under the POA program, where the member's due process rights are asserted by exhausting all the member's available due process rights and administrative remedies by timely responding to all IRS letters, rebutting incorrect presumptions, putting IRS on legal notice of the misapplication of their own code resulting in wrongful procedure against the member, etc.

Under POA, a copy of all IRS correspondence received by the member is immediately forwarded to his or her caseworker, including a copy of the front face of the envelope that it arrived in. **NEVER, EVER SEND ORIGINAL IRS DOCUMENTS TO THE FELLOWSHIP!**

The case worker prepares the proper legal "vehicle" (reply correspondence) on the member's behalf and forwards it to the IRS certified mail, return receipt requested. A copy of this letter is sent to the member with an invoice for the service performed (see "Payments" below).

The case worker will forward a customized POA form. The original POA form must be retained by the member and copied from needed (do not use the original). POA's must be signed in visibly blue ink only (light blue is preferable) as the IRS will claim that POA's signed in black ink may be copies (when clearly they are not - a tiresome but predictable delaying tactic).

The IRS refuses to honor POA's that are over sixty (60) days old, therefore the member under case development must forward or her case worker three (3) current, signed and notarized or co-witnessed POA's at least each forty-five (45) days.

More on the [Power-Of-Attorney program](#).

NATIONAL WORKERS RIGHTS COMMITTEE: The National Workers Rights Committee (NWRC) division will prepare letters behalf of a member with regard to, among other issues, stopping the withholding of income and employment taxes in the workplace.

PARALEGAL WORK: In the event a member should need court motions or other legal actions instituted, SAPF's paralegal department will prepare the proper documents for a reasonable fee. This department also assists members in state tax issues. a list of litigation services [click here](#).

"VEHICLES": Letters generated by SAPF on behalf of members are called "vehicles" which may be responses to correspondence received by the member from the IRS or may be actions the member him/herself initiates. Each vehicle is reviewed by several levels of highly trained SAPF staff for legal and grammatical accuracy. Since vehicles are generated on the member's behalf in a timely manner upon request, with value being thereby advanced to the member prior to their being billed SAPF services, the following timely payment options are offered to keep the Fellowship financially healthy.

PAYMENTS FOR SERVICES AND MATERIALS: Since the Fellowship will not do business with known lawbreakers such as bankers who routinely violate the law when they turn their customers' records and monies (i.e., private property) over to the tax agencies, and to safeguard the financial privacy of all members, all payments to the Fellowship must be made by totally BLANK U.S. Postal Money Orders ONLY (with payor and payee areas left completely blank).

Notes may be made on the receipt after having separated it from the money order itself (top page), and kept for one's records. NOTE: money orders from banks or convenience stores are not accepted.

All payments must be sent to SAPF via certified mail with green card return receipt requested. The postal service has an intern procedure to trace and replace lost or missing money orders. Send cash (FRN's) through the mail at your own risk.

A minimal charge is assessed for the preparation of legal vehicles [ask your assigned caseworker for fee arrangement]. **Import Note:** case work will be suspended during any period of delinquency in making payments for SAPF services which have already been performed.

RECORD KEEPING: It is the member's responsibility to keep good records. All membership documents including (but not limit to) the original membership application; the originals of all IRS and and/or state taxing authority letters received by the member SAPF letters generated under POA on the member's behalf; all SAPF invoices and proofs of payment of same; all postal service certified mailing receipts, and; all books and videos purchased by the member must be kept by you in a safe and secure place. protect the member's privacy, no records are maintained by the Fellowship. Therefore, the emphasis on good filing and record keeping on the part of the member cannot be overemphasized!

TAX FREEDOM 101

The Accelerated Adult Home-Study Program

Thousands of Americans have quit Social Security, and now collect and keep 100% of their earnings!

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This service is being provided by a fellow member of SAPFI!
 Low cost, no advertising, no spam, and reliable. Access mail from
 your email client program [Eudora, Outlook, Pegasus, etc.], or remotely
 through a WebMail compliant browser. Further details [click here](#).

INFORMATION:

- I Formally Announce My Resignation from the Wealth Redistribution League!
Explanation of the Affidavit of Revocation and Rescission Process to Quit Social Security
 by [Bryan Rusch](#), Financial Educator and Independent Representative for the [Save-A-Patriot Fellowship](#)

A Little Q & A to Get Warmed Up

Question: Why the affidavit of revocation and rescission process to quit Social Security?
Answer: We are going to address the issue of quitting Social Security in a moment. First, there are many statements or questions that we hear which are related. We would like to clear up some misunderstandings by responding to the following common questions and statements. By doing this it will also add clarity to the answer of the revocation and rescission process.

Question: How do I get rid of my Social Security Number?
Answer: The number isn't "yours" it's theirs [the government's], they assigned a Social Security Account Number to you at your, your legal guardian, or natural or adoptive parents formal request. The request for an SSN was made on the SS 5 application for Social Security and Tax Account Number.

Question: Can I get all my money back that I paid into Social Security?
Answer: No, not unless you apply for benefits and then meet the terms of eligibility. Even then there is no guarantee that you will get it all back. Remember that Social Security is merely a political promise. Congress could vote to end Social Security if they so desired, and there would be no recourse for those who have participated and already paid in. In today's culture it would be political suicide for a politician to end the grand daddy of entitlement benefits, therefore it is unlikely that this cash cow for the government is going anywhere anytime soon, even if the reports continue to point to Social Security's insolvency. If you like to gamble you can continue to throw 30% or more of your earnings into this black hole, then reach down inside to see what is left when you do meet eligibility.

Question: Do I have to quit Social Security to stop paying the income tax?
Answer: No. Income taxes are not connected to the wage and employment tax [SS tax], they are completely separate. The income tax is mandatory, but limited in its application and to whom it applies. The Social Security tax is voluntary, and you can decide to participate one quarter and not the next. However for you to become vested in SS, it will require you sending in those largely inapplicable 1040's with your SSN, name and earnings information signed under the penalties of perjury.

Question: If I stop filing returns now, and do not quit Social Security can I collect the benefits when I'm ready to retire?
Answer: Maybe. This depends on if you can meet Social Security's eligibility requirements, do not have a levy attached to your account at the time you apply, and of course that is if there is any money to be had in the Social Security "Trust" fund when you are ready to retire. All the money in the SS Trust Fund is already spent at the beginning of each fiscal year, and having a key to the "lock box" won't help. Sorry I couldn't resist.

Question: Can I collect on Medicare and Medicaid benefits if I quit Social Security?

Answer: If you really quit you have no right or entitlement to any Social Welfare programs. You will have to do it the old fashion way. Pay for it yourself.

Question: Should I quit Social Security?

Answer: That depends on a number of situations. Is it economically wise for you to quit at your present age? What your religious beliefs are and have to say about being numbered, and stealing from your neighbors. Do you believe you, your family, and/or community can provide for yourselves? Do you mind continually throwing away thirty percent or more by continuing to participant in SS and hence growing the government sow? There may be more situations but those were the biggies.

Revisiting the First Question

Now let's get back to the main question. Why the affidavit of revocation and rescission process to quit Social Security? In the question you might be asking, what exactly is being revoked and rescinded? The short answer is the application SS-5 is being revoked by your formal declaration of rescinding the signature on the application.

The affidavit is your personal declaration and understanding that something was done (the application process) under certain pretenses that were thought to be mandatory at the time, and now you understand that it was done in error, and that the error which occurred was a result of constructive fraud. We still have not found anyone who has applied for a government number yet who knew exactly what the ramifications were prior, although I'm sure there are some out there who knew.

Constructive fraud is defined as the following: constructive fraud - n. when the circumstances show that someone's actions give him/her an unfair advantage over another by unfair means (lying to or deliberately obfuscating the truth about a citizen's lawful requirements and duties under the law or promoting unnecessary actions to be taken by the citizen to achieve an unfair affect, for example), the court/jury/people may decide from the methods used and the result, that it should treat the situation as if there was actual fraud even if all the technical elements of fraud have not been proven.

Defining the word "constructive" may also help. **Constructive**, adj. a legal fiction for treating a situation as if it were actually so. Some examples help to clarify this term:

a) although there is no written law requiring participation in Social Security for citizens of the 50 states of the Union, Social Security has enacted programs [Enumeration at Birth Program] and given incentives and instructions to hospitals to coerce parents into numbering their children at birth.

b) although there is no written law requiring participation in Social Security for citizens of the 50 states of the Union, the states have made requirements upon the people to be numbered in order to travel, renew occupational licenses, give blood, etc.

c) although Social Security repeatedly reports there is no law requiring participation in Social Security for citizens to live and work in the United States, the United States Congress, and the Internal Revenue Service, by deceptive and misleading words and statements in the Internal Revenue Code, as well as IRS publications and generated news articles have repeatedly deceived the general public into believing that a citizen is required to have a Social Security number to live and work in the United States, and hence they must file returns on their domestic source earnings.

d) although the written law is clear as to the intent of the Congress and is in conformity with the United States Constitution as to our system of taxation, widespread rumors and misinformed public opinion, and the general practice of lawyers, C.P.A.'s and income tax preparers has

misled the public to incorrectly believe that the 16th Amendment to the US Constitution authorized Congress to impose a direct tax on labor, property, exchanges of property, property received as a result of exercising a constitutionally secured right to contract.

Rescinded Therefore Resigned

The actual affidavit of revocation and rescission that has been developed goes into tremendously more detail on Constructive Fraud and past actions of one who unwittingly applied for an SSN, as well as their previous acts of filing returns. The law and Supreme court cases are referenced, cited and interwoven throughout the affidavit which bolster the affiants position.

So what is an agency such as the United States Treasury to do when they receive a detailed explanation of a citizen's sincere understanding of the law (documented with the law) with respect to requirements of obtaining an SSN and personal requirements on the filing of returns?

Well because the government in this case is the proponent of a rule or order, it is their job to rebut the allegations contained within the affidavit and they must prove the challenge to their jurisdiction is incorrect as specified under Section 556D of Title 5 government agencies and employees. If the rule of presumption in this particular case with respect to the affidavit of revocation and rescission is not reversed and no rebuttal is forthcoming from the Treasury then the information as presented within the affidavit will stand to be correct. The government is now required to prove its jurisdiction! Since it has been a consistent practice of the Secretary of the Department of the Treasury not to respond by rebutting the affidavit, they never have by the way, then the allegations and statements within the affidavit can be relied upon to be correct. As they should.

In the future the affidavit can become a beautiful piece of exculpatory evidence (to clear from alleged fault or guilt), which can then be entered into evidence as to why one did not file a return if a criminal charges such as willful failure to file or even tax evasion charges are sought...as rare as that might be. This was the case when one of our members', Donald Paul was acquitted on multiple counts in an *information* under Internal Revenue Code, Section 7203, *Willful failure to file* when he entered the Affidavit of Revocation and Rescission. See Reasonable Action Issue #221, 1996. For a related article on criminal prosecutions you should certainly read, "The Tale of Two Cites". You can read this article available on the Internet by clicking here.

Let me say it is a real education unto itself to actually read this 8 page affidavit prepared by the Save-A-Patriot Fellowship, as yours truly filed this very same document back in April of 1997. After fully understanding the nature of the tax situation and the purpose of Social Security I did not hesitate to send it in certified mail return receipt requested on three separate occasions. I just wanted to make sure they received it if you know what I mean. They did. As usual, no response. Mr. Rubin must have been busy bailing out third world countries that day.

Be A Part of History

The affidavit goes into significant detail of the constructive fraud that has continued to this very day. If the government can not be honest with its citizens as to their actual duties and responsibilities now, it stands to reason that when the house of cards does finally collapse under the weight of "non" compliance, the government will then have to point its finger at yours truly and the thousands of others who have decidedly quit the Wealth Redistribution League in order to keep their fair share. I certainly will be proud to have been recognized as playing a part in destroying Socialism or blatant Communism in this country if and when that day ever comes.

Related Topic. - "The Covered Employee - To Be or Not to Be Covered", The video tape

Lynn Meredith [<http://www.livetaxfree.com>] Freedom Books, a.k.a. Free the People, Sovereignty Pure Trusts and Liberty International

Status: Recently as of late last year a federal grand jury in Los Angeles returned a 35-count indictment against Lynn Meredith that includes charges of conspiring to defraud the Internal Revenue Service and fraudulently using Social Security Numbers and passports.

Advocates that the income tax is voluntary, and to seek refunds from the IRS for past tax returns filed.

Joe Sweet, Jack L. Malone, and The Joy Foundation [<http://www.joyfoundation.com>]

Status: Currently served a Permanent Injunction by the court to halt operations. The Joy Foundation membership left with no support.

The Joy Foundation and their affiliates advocated among other things that the federal income tax is unconstitutional, the income tax and the filing of income tax returns and paying taxes was voluntary.

Brief history: Joe was at one time a Save-A-Patriot Fellowship member. He left the fellowship, struck out on his own, shortly after taking in his possession fellowship educational material and then substantially altering its content and marrying it to erroneous doctrine to suit his own ambitions to market a high priced membership to an undereducated populace. One of the trademark solicitation pitches to attract customers was ... 'none of our members have ever gone to jail.'

Thurston Bell / The National Institute for Taxation Education - NITE [<http://www.nite.org>], David Bosset - Bosset Marketing Inc. [<http://www.bosset.com>], and Tax preparer Harold E. "Hal" Hearn

Status: Currently NITE, Bosset Marketing Inc, Harold E. 'Hal' Hearn, Enjoined by the court to halt operations. NITE membership who utilized Mr. Bell's services left with no support.

All parties above held to the US Sources argument [a.k.a. Section 861], and advocated filing amended tax returns seeking refunds. Bell's clients typically file zero income tax returns with an "asseveration of claimed income" attached, disputing the gross income indicated on the taxpayer's W-2 forms

Brief history: Mr. Thurston P. Bell was at one time a Save-A-Patriot Fellowship [SAPF] paralegal. He left the fellowship, struck out on his own to help create Taxgate and then eventually established and founded NITE.

Some additional history behind Mr. Bell's tenure at SAPF: At the end of Thurston's career at SAPF it was later discovered that Thurston had been talking to and recruiting members and staff from the fellowship without John Kotmair's knowledge. This was in order to solidify Thurston's new internet venture with Rick Haraka of Taxgate. John was unaware of Thurston Bell's recruitment activities until after he left the fellowship. It was later when Thurston began to attack John Kotmair personally, the fellowship, and his family that he was informed of Thurston Bell's recruitment of members and staff of the fellowship while he worked at fellowship headquarters.

If you have not read the January 8th, 2002 issue of The Tax Freedom 101 Report where John Kotmair discusses the working relationship the fellowship had with Thurston Bell regarding his discovery regarding the US source [861 argument] then read about it in the Information section. The title of the article: The Liberty Tree -

September 11th, 861 Argument, and More' available here:
<http://www.taxfreedom101.com/eazines/020108.htm#Information>

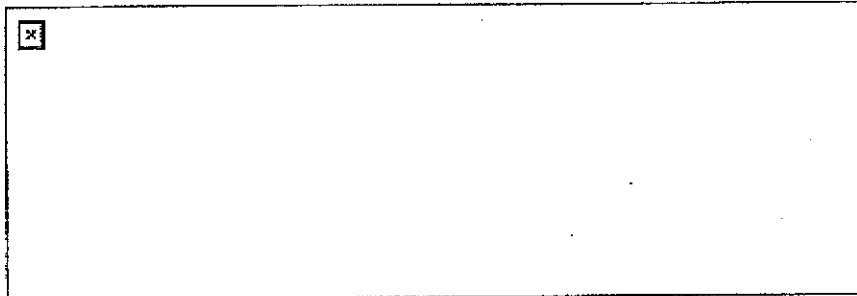
Here's A Tip for Those Still Paying Attention

A Tax Freedom 101 Warning*: If you currently support, or come across any group or organization that currently promotes, advises, advocates, or has stated any of the following items below in the past, or present, or may do so in the future, be warned. These positions include but are not limited to the following:

- **The income Tax is Voluntary**
- **We Need to End the IRS**
- **We Need to Abolish the Internal Revenue Code**
- **The Income Tax is Unconstitutional**
- **No One is Required to File a 1040 Tax Return**
- **Mark the W4 Exempt to Stop Income Tax Withholding**
- **File Zero Returns**
- **Don't, or You're Not Required to File a Tax Return**
- **Amend the Tax Return and Seek a Full Refund of Taxes Paid**
- **Do File a Tax Return**
- **We Need a National Retail Sales Tax, Value Added Tax, Flat Tax, etc.**

* Tax Freedom 101 does not, will not, and has not ever promoted, advised, advocated or stated any of the following items as listed above.

The Only Organization with Defenses Hardened from Previous Government Attacks that Eventually Failed...



The Save-A-Patriot Fellowship
Education – Protection – Fellowship
Together We Must Stand - Or - Separately You Will Be Stood On!!!

A First Amendment Association Since 1984!
Quickly Approaching our 20th Anniversary!
The only organization that successfully withstood an IRS raid then beat them in court!
Now consisting of thousands of protected members in all 50 states!

Offering the finest "adult education" currently available with regards to our constitutional heritage, including a thorough and accurate analysis of the limited liability of the U.S. citizen for internal domestic taxation, as well as access to fellowship staff paralegals, and caseworkers for those needing assistance in responding properly to a Notice of Deficiency, lien, levy or seizure, or to other correspondence received from the Internal Revenue Service or state taxing agency; or with any other tax related issue requiring assistance. Also providing its eligible members who have suffered loss civilly or criminally due to IRS or state taxing agency abuse insurance-like financial protection to

115

There is a web site that was brought to my attention by one of the attendees of the SAPF Saturday night meeting held at the Fellowship Headquarters. The site is entitled Quatloos! Scam & Fraud Exposed, and its web address is www.quatloos.com. I was informed that I was a person most honored therein, having the distinct honor of being exhibited in the Quatloosers Hall of Shame.

This prompted my visit to the Quatloos web site to look it over. There I found that it was owned by a 501(c) 3 corporation named Financial & Tax Fraud Education Associates, Inc., which is reported therein to be the brainchild of a lawyer and stockbroker named Jay D. Adkisson.

Reading the contents of this infamous web site brings an informed person to the conclusion that it smacks of being an IRS / Department of Justice (DOJ) front [editor's note: view details on IRS/DOJ fronts and sound off on Liberty Post]. It made statements about me that were misrepresentations of the facts, half-truths, and outright lies. It contains a list of fifty-one press releases obviously from the DOJ regarding recent criminal tax actions. Prominent individuals within the Patriot community are listed using Thurston Bell's "list of enemies," which, of course, represents them in the worst possible light. Professionals on the list, such as lawyers, are not designated as such, giving any uninformed guest the impression that those on the list are just a reckless bunch of anti-government greedy individuals, not having any knowledge of the law, who just do not want to pay their fair share. In short, the web site is a slick piece of propaganda, the type of propaganda that has a fifth columnist's signature all over it. It is an if you can't confront them with the facts, destroy them with lies and invective web site. When the IRS and DOJ are unable to shut down the Fellowship with their 1993 raid, and their inability to pin a phony "abusive tax shelter" rap on SAPF, they have to depend not only on their "friends" in the media, but also their friends who maintain such web sites.

Because of the Constitutional Republic the Founders and Framers gave us, the socialist revolution can only be successful if it is protracted over a long period of time with the progressive dumbing-down of each generation by the government schools. Our organized educational efforts are certainly interfering with that program. In addition, the effect of the coming hyperinflation, and the ongoing loss of jobs, due to the loss of manufacturers fleeing the country chasing inexpensive labor, will cause more disillusioned Americans to seek the truth of what is really happening to these States united. Wherefore, as I warned many times in the past, Patriot organizations, being a factual source of information about the socialist revolution, have to be silenced and/or destroyed at all costs. How? Their most effective weapon, the IRS's "abusive tax shelter" program.

Section 6700 of the Internal Revenue Code is for combating abusive tax shelters, i.e. those shelters that are set-up as such, but use fraud to gain an advantage for the "tax paying" participant. Nowhere within this code section can it be found that setting up a trust for someone, or showing someone how to file a "0" return, not that I agree with that, is an activity in violation thereof.

The trial balloon for the IRS abusive tax shelter program went up in the 1985 actions against two friends of mine Dennis Kaun of West Allis, Wisconsin (now deceased), and David White, of Minneapolis, Minnesota. Dennis was the head of local affiliate of the National Patriot Association, of which I was one of the Directors before entering the federal prison camp in 1982. Dennis' case was the first one where the federal court misapplied § 6700, contending that tax advice was an "abusive tax shelter," and David's case was the first where the IRS and DOJ contended that helping Patriots to protect their property with a trust was an "abusive tax shelter."

I foresaw this eventuality back in February 1984, when the Fellowship was created, and took the proper steps to preserve the Fellowship's First Amendment umbrella, even though I realized that doing so would cost the Fellowship the ability to earn much needed operating and expansion funding. Otherwise, it could have been advantageous for both the members and the Fellowship to make an asset protection program available.

matched by the covered employer on behalf of the covered employee. The W-2 reflects the rate of withholding by the percentage of taxes withheld to the amount "earned" as determined by the information given by the employed's execution of the W4.

The following is for those who are self-employed for Social Security purposes:

If you received a 1099 from a private citizen or business be aware that the 1099 is being used by companies to claim compensation as a business expense. The private citizen or business will forward this information return to the IRS to substantiate their claim of expense, thereby reducing their perceived tax liability. Some companies "1099" (ten ninety-nine) others for goods besides just services rendered. If the person you have rendered services for does not have a Taxpayer Identification Number (T.I.N) on file for you they may request one. Just because they request a "number" does not mean they're entitled to another's number. Some companies issue W-9's to request the number.

A W-9 is titled, Request for Taxpayer Identification Number. What if you're a "person" not required to have a T.I.N., such as a citizen - what do you do if you receive a W-9? Do not worry, the W-9 lacks an OMB control number. An OMB (Office of Management and Budget) control number is required to be issued to every federal government information form which requests information from a citizen. This procedure was required under the Paperwork Reduction Act of 1980 and named OMB the government watchdog to oversee the various executive agencies who had been requesting and collecting information from citizens not specifically required by law. The Office of Management and Budget uses these control numbers to show that the form is approved to gather information, however only when required by law. A federally issued information retrieval form such as the W-9 which lacks an OMB control number has been ruled to be an unofficial government document, and the courts have ruled that it can be considered bootlegged, and therefore may be ignored. We go into this subject further in The Tax Freedom 101 Accelerated Adult Home Study Program.

Also the W-9 requests the number under the penalties of perjury. The Secretary can only require that someone provide the number pursuant to penalties of perjury under IRC section 3406 subsection (e) paragraph 1. That section is concerned only with respect to interest, dividends, patronage dividends, and amounts subject to broker reporting. The Secretary may require that a TIN required to be furnished under section 3406 "Backup withholding" as specified in subsection (a)(1)(A) of 3406 only in the respect to the applicable code section of 3406(e)1.

Also, why in the left hand corner of the W9 does it instruct the receiver of the W-9 to: "Give form [W-9] to the requester. Do not send to the IRS." where the OMB control number normally would appear? Could it be that the IRS wishes to have plausible deniability that they do not actually require the information being requested? If so why? Could it be that backup withholding would not apply to citizens as well? You can find out in the Tax Freedom 101 Home Study Program.

I think the directions in the upper right hand corner should include the language "If a citizen of the United States, circular file in the closest receptacle."

Have a nice day form W-9.

The following is for those foreigners who are raping this country of its wealth, and the ignorant and not so ignorant citizens who claim "foreign status":

The W-8, titled: "Certificate of Foreign Status" has been used by foreigners to elude known duties, and requirements of paying taxes in areas that are otherwise required (i.e. foreign earned income). The IRS either turns a blind eye to this or they just miss the transactions. Or it may be that the IRS is more concerned with attacking their own citizens over laws which do not apply to them, then actually investigating their foreign buddies. Then of course there are those citizens who are playing the nonresident alien game.

In the purpose section on the W-8 it explains:

"Use Form W-8 or a substitute form containing a substantially similar statement to tell the payer,

A. Before The Hearing

1. Whenever you get an IRS 'Notice of Intent to Levy' or other 'Notices' it is important to check for your appeal rights with the 'Notice.' Typically, you have only **thirty days** from the date of the letter to request a hearing. If you don't get the request in by thirty days you will lose your right to appeal to the US District Court AND collection will not be stayed. **NOTE: collection is normally stayed while in the appeal process.**
2. SAPF's chief caseworker prepared a script to take to an appeals hearing. You will find it to be a very useful 'tool.' Practice with it beforehand.
3. Take a tape recorder to the hearing, and make sure it has fresh batteries.
4. Try to line up witnesses. Many people are afraid of the IRS. Thanks to the IRS Restructuring Act (Public Law 105-206, July 22, 1998) the IRS is now afraid of "US". Remember, § 1203 of this Act states that IRS employees can be fired for misconduct, for violations of **individuals rights secured by the Constitution**, such as denial of due process and other civil rights.

B. At The Hearing

1. Before going into the hearing: Have easily accessible: a copy of the script, Section 7521, your Request for Appeals letter and a tape recorder with fresh batteries.
2. Go over the script so that it is fresh in your mind.
3. Highlight the sentence in your Request for Appeals letter that states that you will record the hearing and bring witnesses.
4. After entering the building and passing through the metal detector, turn on your recorder.
5. Your tape recorder should be **on** when the IRS appeals officers meet you. **Leave it on even though he or she orders you to turn it off.** Make sure you get their name and IRS ID number. You can make this task simple by asking for their card.
6. Show the appeals officer a copy of your Request letter and read the part that states that 'I plan to bring witnesses and record the hearing.' Ask the Appeals Officer if they received the letter dated (state the date of the letter). This is important to preserve the record for any appeal action.
7. Ask them if they are familiar with § 7521, and then read paragraph (a) of § 7521 which states that you have a right to record. This is also important to preserve the record for any appeal action.
8. Don't be intimidated! Remember, You called the hearing. The hearing is your right to due process of law.
9. The IRS Appeals Officer may state that due to the May Memo they can't allow recording any longer. Rebut that allegation with paragraph (a) of § 7521. If they persist, ask to see the law that repealed § 7521. Remember, leave your tape recorder running. **Don't turn it off!**
10. The Appeals officer may give you a choice of either having a hearing without it being recorded, or no hearing at all. In that case repeat paragraph (a) of § 7521, and state that you have a right to record and anything short of that will be **Denial of Due Process of Law.**
11. The IRS will likely terminate the hearing. Hold fast to your position until the IRS terminates the meeting. Don't give up. Keep maintaining your rights. **DO NOT** terminate the meeting. Be sure to get everything on tape -- do not turn off the tape recorder no matter what they say.
12. Read the script (if you get that far). Remind the appeals officer that YOU called the hearing. You have a right to a hearing pursuant to § 6330 and Amendment Five of the United States Constitution. If the IRS terminates the hearing you are being denied Due Process of Law.

COURT LITIGATION SERVICES

ACTION I: CHALLENGING A WRONGFUL NOTICE OF LEVY/LIEN IN COURT
ACTION II: JUDICIAL REVIEW OF WRONGFUL NOTICE OF LEVY/LIEN AND INVOLVEMENT OF IRS EMPLOYEE WHO SIGNED THEM
ACTION III: ENFORCEMENT OF THE HARDSHIP PETITION FOR RELEASE OF LEVY
ACTION IV: SUIT FOR REFUND OF TAXES AFTER DENIAL OF PETITION FOR REFUND
ACTION V: PETITIONING BANKRUPTCY COURT TO STOP COLLECTIONS AND CHALLENGE IRS CLAIM

ACTION I: CHALLENGING A WRONGFUL NOTICE OF LEVY/LIEN IN COURT

The following court actions are prepared by Fellowship paralegals for members to file in United States District Court, State courts, courts of appeal and the U.S. Supreme Court when needed.

The paperwork is prepared and sent to the member with instructions on filing. In certain cases, the IRS is first notified by letter of the member's claim, which is prepared by a caseworker. Aside from bankruptcy, the lawsuits listed are usually a matter of filing paperwork with a court, without appearance in person. After reading this memo, members may call and speak with a paralegal if they have questions about court appearance, potential costs, etc. If there is a financial difficulty, it may be possible to make arrangements to pay by speaking with an Accounting Assistant in our office. The donations associated with each court action represent the member's share of the Fellowship's debt, determined according to Fellowship resources and time used by paralegals to complete the work. The fees are to be forwarded to the office when a lawsuit is requested to be prepared. The court-filing fee for the lawsuit is paid directly to the clerk of court when the member files their paperwork.

The research supporting the suits is largely unavailable or avoided by attorneys, who by the nature of their employment have a vested interest in maintaining favor with their state bar associations and judges. The work is tailored to each member's situation, and does not share the same status as the letter-writing appeals with the Internal Revenue Service (in which the arguments are broken down into separate lines of correspondence on singular issues, and certain replies are anticipated).

In choosing a suit to file, members should give careful thought to their personal financial circumstances, the effect of the IRS actions on their property, and what effect they seek to achieve by their chosen action. All of these considerations can be made by first reading this memorandum, and later speaking with a paralegal. Some members have decided to file suit even though IRS actions did not effect their property significantly, to increase the political pressure in the courts and public exposure of the issues.

In hardship cases, (meaning in cases where a person's principle source(s) of income are being wrongfully levied upon), the filing of a bankruptcy petition is likely to be the only source of immediate relief. Filing a bankruptcy petition will challenge the IRS as a creditor in the court; force them to support their claims; and potentially allow a member to argue the basis of an IRS assessment. This option is likely to be more appealing to members when they understand the possible uses of it - after speaking with a paralegal. More specifics on bankruptcy follow. The other actions available differ somewhat from bankruptcy in terms of their argument(s). They are based on the legal restrictions on IRS assessment and collection authority, advancing a case to potentially set a precedent. The results of a successful case of this type would likely serve to clarify the application of the law and/or reprimand an IRS employee for actions leading up to and including the Notice of Levy/Lien.

The current political climate of the courts is such that judges are (in a number of cases) actively protecting government employees who violate the law. The Fellowship is seeking several avenues of action to inform the public about this situation, and promote introduction of legislation that will correct this wrongful behavior (featured in Reasonable Action Newsletter article). However, until this problem is corrected throughout the country, and citizens have prompt redress of grievances both administratively and judicially, the only "Reasonable Action" is to exercise all rights available under law. In support of that premise, we encourage members to seek judicial appeal of all unlawful actions of certain government employees, once they have exhausted all necessary appeals with the government agency in question. Whenever a judge obviously rules against the law, that is called a fraud on

the court, and the outcome is not conclusive. The record of the administrative appeals and court proceedings should be preserved, for if our joint effort to bring the government back under the law, redress can then be obtained.

ACTION II: JUDICIAL REVIEW OF WRONGFUL NOTICE OF LEVY/LIEN AND INVOLVEMENT OF IRS EMPLOYEE WHO SIGNED THEM

This action is filed to request that a court order IRS employees to obey the laws as written. Additional information including costs for the suit and appeal possibilities may be obtained by calling the paralegal department.

ACTION III: ENFORCEMENT OF THE HARDSHIP PETITION FOR RELEASE OF LEVY

During the latter part of the 1980's, Congress passed an Act called the "Taxpayer's Bill of Rights." As part of that legislation, they made provisions for relief in cases of indiscriminate IRS collection actions causing taxpayers to have difficulty meeting their basic needs and living expenses. Under the new laws taxpayers have a procedure to notify the IRS of a hardship situation and request a release of the (so called) levy. (Note: citizens have Rights secured by the United States Constitution and do not need any such rights to be passed by Congress. Because citizens are not the subject of the Internal Revenue Code, [outside of foreign earned income], taxpayers are the nonresident aliens and foreign corporations not having the Rights secured to citizens. Wherefore, rights within the Internal Revenue Code could be extended to these foreigners by Congress, and when citizens are wrongfully set upon by the IRS employees, there is nothing that prevents them from exercising these particular statutes.)

If their basic living expenses exceed their current assets and income being levied, the IRS is required to release the levy. Members should contact their caseworker to obtain the petition to be filed with the IRS. We have had limited success with this petition as a result of the IRS seeking to unlawfully gain more information than required by law (possibly to start a wrongful assessment for the current period?), as well as demanding the signing of tax returns. In these instances the members have considered filing a lawsuit to enforce it. Since the initial petition costs the same as any power-of-attorney letter, and we have certain cases where it has stopped a levy, we believe it is worth attempting, even if a member doesn't wish to enforce it in court. Additional information including costs for the suit and appeal possibilities may be obtained by calling the paralegal department.

ACTION IV: SUIT FOR REFUND OF TAXES AFTER DENIAL OF PETITION FOR REFUND

When the IRS recommends that a person file a suit to obtain a tax refund, they demand that a person have (1) filed tax returns, (2) paid the full amount of tax allegedly owed, and (3) filed amended returns seeking a refund. It is not offered as a means of bringing a jurisdictional challenge to the agency, but only for purposes of stipulating the proper amount of tax due. As a result of our recent research, we can make this same option available to members who have had property wrongfully taken by Notice of Levy (whether or not they filed tax returns or had the total alleged liability taken).

Under the provisions of law authorizing this petition, a person can challenge the jurisdiction of the agency, including an erroneous assessment and/or erroneous collection action. The petition offers the IRS an opportunity to support their actions and answer the earlier appeals, but notifies them that a lawsuit will be filed in the absence of a reply. Their only reply option is to refund the payments taken by the wrongful levy or be sued for refund. Therefore, members seeking to bring an action for a refund must first file this petition. Once it has been filed and the IRS answers, they should forward the appropriate donation for the suit and contact a Fellowship paralegal if they have any questions. Should the IRS fail to answer, the law allows for a suit to be filed after a period of six months. Members should contact their caseworker to obtain the original petition.

Actions (II) and (III) are based on petitions prepared by a caseworker for a member to send to the Internal Revenue Service. The petitions cost the same as normal power-of-attorney correspondence. If and when the IRS fails to reply to the petition, and members have forwarded payment, the preparation of the lawsuits listed above will begin. Because the same arguments used in Action (I) can be raised here, these actions could proceed into the possible sequence of motions listed under Action I (District Court, Appeals Court, then Supreme Court.)

Members should be aware that a positive ruling in response to the original action filed, without opposing motions from the US, is uncommon. The reasons can be attributable to the judicial climate described earlier. The actions listed are requesting the courts to demand an IRS agent to act lawfully. It is predicated on the earlier and neglected responsibility of the IRS to correct wrongdoing when first notified by a party injured. These actions are filed against IRS agents in their individual capacity, and do not seek any award for damages. They only seek the court's command that the IRS obey the law.

Important Note: No guarantee of a certain outcome can be given by the Fellowship due to the current political climate in the courts. What can be guaranteed is that members will receive assistance in making legally correct arguments, (that can be preserved as explained above), using the latest strategies available for doing so.

ACTION V: PETITIONING BANKRUPTCY COURT TO STOP COLLECTIONS AND CHALLENGE IRS CLAIM

This option is mentioned earlier, but deserves a specific explanation here. Whereas the other actions presented can be delayed by the IRS, the court, etc., as well as their effects on Notices of Levy, this action places an immediate freeze on all IRS collection action(s) upon filing. It requires all property taken previous to the filing to be returned to the petitioner (period set by state laws), and requires the IRS to prove their claim as any other creditor before the court. In addition to challenging the IRS collections, this action provides for challenging the assessment of a tax that led to the issuance of the Notice of Lien/Levy. The IRS's "proof of claim" is challenged when filed, the court is moved for an adversarial hearing. The casework that has been done through power-of-attorney will contain the evidence needed to sustain these proceedings. Should tax returns be demanded by the court during this action, there are options for members who have determined that they have no such legal requirement.

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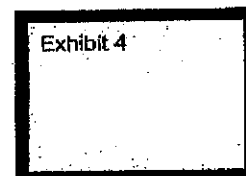
121

Federal Tax Law Basics

How is the tax law structured?

How is the law applied?

- The Internal revenue laws are limited in application.
- The Internal Revenue Code encompasses more than just "income tax."
- The Code is divided into 11 subtitles. The first 5 subtitles each deal with different categories of taxation. The last 6 pertain to "Procedure and Administration" (subtitle F), "Joint Committee On Taxation" (subtitle G), "Financing The Presidential Election Campaign" (subtitle H), the "Trust Fund Code" (subtitle I), "Coal Industry Health Benefits" (subtitle J), and "Group Health Plan Portability" (subtitle K).
- Subtitle "A" is income tax.
- Subtitle "C" is employment tax or social security tax.
- Subtitle "A" is in no way related to subtitle C.
- The W-2 and 1099 "wage" information commonly reported by employers is a function of the tax on wages under subtitle C (not income tax) for the purpose of building credits towards social security. The tax on wages has absolutely nothing to do with the tax on income under subtitle A.
- The "income tax" under subtitle A is an "indirect" tax in the form of an "excise" imposed on certain "activities" or "occupations" and a liability to pay the tax must arise from statute.
- The only statute under subtitle A (income tax) making anyone liable is section 1461 which applies to withholding agents who are required to withhold only from foreign entities like nonresident aliens and foreign corporations.
- The only requirement for an individual to file a return under subtitle A (Income tax) is section 6012(a). The Internal Revenue Service identifies the imposition of the income tax and the type of income that is considered "taxable income" for the purpose of this filing requirement in their request to the U.S. government's Office of Management and Budget (OMB) which must "approve" the administration and enforcement of the applicable regulations. Taxable income for the purpose of this section is limited to certain income that has been "earned" while living and working in certain "foreign" countries or territories. According to the OMB, the return that is required under this section of the Internal Revenue Code is Form 2555 (not the 1040) and it is entitled "Foreign Earned Income." According to the regulations, 26 CFR part 600 to end, the 1040 return is merely a supplemental return or worksheet for the required Form 2555.



— • Treasury Decision 2313 clarifies that the Form 1040 individual income tax return is appropriate for any person acting as a fiduciary for a nonresident alien and receiving interest and/or dividends from the stock of domestic (US) corporations on behalf of that alien.

— • The income tax under subtitle A is mandatory for those mentioned above (but only for those to whom it applies). It is NOT voluntary as some have asserted. Since the law is limited in application, the question of whether it is mandatory or voluntary is superfluous. The question is: to whom, and under what circumstances is the law applied?

— • Certain legal requirements with regard to the wage tax under subtitle C may also be considered mandatory, but only for the payor of the wages (the employer) and even then, only if both the employer and the employee have voluntarily agreed (via application) to participate in the entitlement program. Since neither can be compelled to participate, compliance is said to be voluntary.

The foregoing statements are NOT legal advice. They are merely factual statements about the law.

— [Back to the SAPF home page...](#)



Save-A-Patriot Fellowship

Post Office Box 91, Westminster, MD 21158 Tel. (410) 857-4441 FAX (410) 857-5249

Together We Must Stand -- Or -- Separately You Will Be Stood On!!!

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Received your e-mail this date about IRA withdrawals and reporting the penalty to IRS. I hope the following is of help to you.

IRA accounts and IRA annuities are established under Title 26 United States Code, § 408 (a) and (b) respectively. "Tax Treatment of Distributions" is found in § 408 (d), and states in pertinent part:

(1) In general.—Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Section 72 is found in Subchapter B, Chapter 1 Subtitle A of the Internal Revenue Code. Subchapter B deals with and identifies lists of items of gross income. The income from these items of gross income are taxable, but they must come from a source that is listed in Subchapter N, Chapter 1 Subtitle A. All the sources found therein are foreign. Then, and in that case, if the source of the funds that are deposited in your IRA are foreign, the income therefrom is taxable. If the funds are domestic, then the income is not taxable.

The index for the Internal Revenue Code, copy attached, gives as the only reference to filing of returns, §§ 6047 and 6058. Both sections relate only to Subtitle C employers reporting requirements. The only reference to withholding for IRA purposes is §§ 6652(h) and 3405. Section 6652(h) refers back to § 3405, which again requires the employer employee relationship under Subtitle C.

As for the liability of penalties for excess distribution, the attached index cites § 4980A, which states in pertinent part:



Liability of Tax.—The individual with respect to whom the excess distributions are made shall be liable for the tax imposed by subsection (a). The amount of the tax imposed by subsection (a) shall be reduced by the amount (if any) of the tax imposed by section 72(t) to the extent attributable to such excess distributions.

Section 72(t) states:

10-Percent Additional Tax on Early Distributions From Qualified Retirement Plans.—

(1) Imposition of additional tax.—If any taxpayer receives any amount from a qualified retirement plan (as defined in section 4974(c)), the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

Conclusion:

- a. The income that is taxable is from a foreign source only;
- b. the penalty for early withdrawal is for the taxable income from a foreign source;
- c. the filing of information returns, are those information returns required to be filed by an employer under the provisions of Subtitle C.

Wherefore, there is no tax liability or requirement to file an information return for citizens with source income from within the States of the Union.

If you have any questions please call.

Semper Fidelis ad Libertas, Veritas que Justitia,


John B. Kotmair, Jr., Fiduciary

Enclosure:

Copy of a page from the index of the Internal Revenue Code.

cc:

Gordon Phillips
Bill Huff



Fellowship News

SPREAD THE WORD -- ON TO VICTORY!!!

COVER STORY: SAP's proposed state and federal laws are now going to get a major boost, thanks to David Kramer's leadership of AMERICANS AGAINST JUDICIAL DISTORTION (AAJD), as detailed in this issue's cover story. We at *SAP Headquarters* believe that every *Fellowship* member is a highly motivated citizen or resident alien. Many of you have told us you are in the fight for Liberty because you believe the U.S. Government and the Judiciary has turned against the people, the very citizens it was set up to serve. Now is the time and our proposed laws are your weapons to take back what has been stolen from us. Our country is supposed to be a Republic, governed by Law; through abuse of authority it has become a democracy, a country ruled by men, motivated by power and greed. The evidence of this is the increasing number of obviously wrong court rulings; those can only happen if there is "social engineering" or payoffs involved, or both. Either way, this is an example of the "golden rule": he who has the most gold, rules... Our proposed laws will end this outrage! Please contact David Kramer and put your time and effort to good use for yourself, your children and their children.

NWRC TACKLES WITHHOLDING PROBLEMS: On page 6 of this issue, is the introduction article about *SAP's* new organization, the NATIONAL WORKER'S RIGHTS COMMITTEE (NWRC), dedicated to assisting Patriots who are having problems with employers and/or payers of interest, dividends, and other payments. There is no other group like this in the entire country. Responses that NWRC has already received from letters it has sent out at the request of *SAP* members shows that most lawyers are ignorant of the law! Not one response has seriously challenged the many EXHIBITS of law that accompany each letter. The propaganda begins to dissolve when the written word of the law cannot be refuted.

VEHICLES TO CONVEY PATRIOTS TO YORKTOWN: We have totally revised many of our VEHICLES... (starting at page 19) as needed and have dropped the "non-personalized" versions, now offering only personalized versions. There are certain of the VEHICLES... which are informational and these have been separated out and are identified by alphabet letters rather than numbers. Our exclusive VEHICLES... are now only available to *Fellowship* members. Please have your *SAP* identification number handy when you call. We are also offering a service for FOIA/Privacy Act requests: for 25FRNs per letter, we will handle the mailing, receipt, and follow-up letters. We will need a "power of attorney" from you to accomplish this. Please call *SAP Headquarters* for details. A reminder to those who have not yet filed an AFFIDAVIT OF REVOCATION AND RESCISSION: this is the first step in removing yourself from the presumed jurisdiction of the IRS and state taxing authorities. If you do not break this presumption with the AFFIDAVIT's challenge, their presumption stands. Patriots who have executed affidavits, should press IRS for an answer! Call *SAP Headquarters* today!

TDI ALERT: The IRS is increasingly sending out "first notice" Taxpayer Delinquency Investigation (TDI) inquiries. This is typically a Form 8176 saying they have no record of a return from you for the year(s) listed, and needing your response within 10 days of the date on the form. (The IRS, in its cleverness, waits several days after this notice is dated and printed out, before mailing it.) Our VEHICLE #2 TDI RESPONSE, takes care of this response. However, many of you receiving these letters from the IRS wait until the last moment to call us! It is impossible to get a personalized letter response to you in time to beat the "10-day" limit. Therefore, we are urging all *Fellowship* members to order this VEHICLE... from us at once to have it on hand for immediate use! We'll personalize it, leaving blank your mailing date. (Note: do not use this for a "second notice" TDI letter response; call *SAP HQ* for info.) Be prepared; call *SAP Headquarters* today and place your order.

WORD PROCESSING PROGRAM FOR SALE: A local *Fellowship* member is offering for sale one (never used, in box with all documents, warranty card, sales receipt) WORDPERFECT v5.0 for the IBM- compatible computer user. Both sizes (5 1/4 and 3 1/2) disks are included. Asking price is 150FRN, UPS shipping included. Call *SAP HQ* for details.

TABLE OF CONTENTS ... FEATURES:

SAP CREATES AAJD TO GET BILL PASSED---(Cover Story)	1
"NATIONAL WORKER'S RIGHTS COMMITTEE"	6
INVESTIGATING FRAUDULENT IRS ASSESSMENT PROCEDURES ... by: John B. Kormair, Jr.	9
LEARNING FROM THE BOTKIE DECISION ... by: John Knox.	10

DEPARTMENTS:

<i>Fellowship News</i>	3
VEHICLES TO CONVEY PATRIOTS TO YORKTOWN.	19
BOOK SHOP	22
<i>Reasonable Action</i> Editorial	23

127

problem with the assessment because you had not filed a return and you request abatement. Note that in section 6213 it says within 60 days after such notice. It does not say what notice, so the "notice" could theoretically be any notice and demand for money you receive from the IRS. [Editor's note: John Kotmair's article reveals the identity of the "notice."]

BOTHKIE HAD FILED A FORM 1040

Bothke had filed a Form 1040. As described earlier in this article, he'd assessed himself "zero" tax and requested that the withheld tax be refunded. Attached to the return was a strongly worded protest, claiming, among other rights, the protection of the 5th Amendment to the Constitution.

[EDITOR'S NOTE: The timely filing of a "5th Amendment return" was recently upheld in the 9th Circuit in *United States v. Kimball* (No. 87-1392; 896 F 2d, 1218, decided 2/26/90.) Kimball had been charged with "willful failure to file an income tax return" under section 7203. The Appeals Court ruled, in overturning his conviction, that the "5th Amendment returns" he'd filed were valid returns. SAP Headquarters warns that the filing of any return to the IRS, creates the presumption that you are liable for the tax imposed; the filing of a "5th Amendment return" will not stop the IRS from proceeding with collection activities based on information it obtains on its own. Breaking the presumption with an SAP "AFFIDAVIT OF REVOCATION AND RESCISSION", properly filed and recorded, ends any presumed requirement to file any IRS form, ever. We do not recommend, and never have, nor will ever, the filing of a "5th Amendment" 1040 return, or any illegal act.]

Bothke followed up the IRS's subsequent collection notices with strongly worded protests. This is what the Appeals Court said about these letters, at page 1414:

(17) The IRS failed to construe his protest as a request for abatement because he did not cite this statute [6213(b)(2)]. But the notice to Bothke did not suggest that the IRS expected a statutory reference before it would conclude that the taxpayer's procedural rights under the statute had been triggered. Rather, it indicated that Bothke could challenge the correction merely by "let[ting] us know if you believe the balance due is correct."

(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. Bothke's strongly worded protest should reasonably have been construed as a request for abatement. It seems the IRS proceeded illegally even under its interpretation of the proper procedure to use for his tax return. [Underlines added.]

IRS agent Terry did not interpret Bothke's response letters as a "request for abatement" and went ahead

See BOTHKE Page 18.

SEC. 6213. RESTRICTIONS APPLICABLE TO DEFICIENCIES; PETITION TO TAX COURT.

(a) Time for Filing Petition and Restriction on Assessment.—Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6851, 6852, or 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A or B, chapter 41, 42, 43, or 44 and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action or proceeding under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition.

(b) Exceptions to Restrictions on Assessment.—

(1) Assessments arising out of mathematical or clerical errors.—If the taxpayer is notified that, on account of a mathematical or clerical error appearing on the return, an amount of tax in excess of that shown on the return is due, and that an assessment

(2) Abatement of assessment of mathematical or clerical errors.—

(A) Request for abatement.—Notwithstanding section 6404(b), a taxpayer may file with the Secretary within 60 days after notice is sent under paragraph (1) a request for an abatement of any assessment specified in such notice, and upon receipt of such request, the Secretary shall abate the assessment. Any reassessment of the tax with respect to which an abatement is made under this subparagraph shall be subject to the deficiency procedures prescribed by this subchapter.

(B) Stay of collection.—In the case of any assessment referred to in paragraph (1), notwithstanding paragraph (1), no levy or proceeding in court for the collection of such assessment shall be made, begun, or prosecuted during the period in which such assessment may be abated under this paragraph.

(c) Definitions.—For purposes of this section—

(1) Return.—The term "return" includes any return, statement, schedule, or list, and any amendment or supplement thereto, filed with respect to any tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44.

(2) Mathematical or Clerical Error.—The term "mathematical or clerical error" means—

(A) an error in addition, subtraction, multiplication, or division shown on any return,

(B) an incorrect use of any table provided by the Internal Revenue Service with respect to any return if such incorrect use is apparent from the existence of other information on the return,

(C) an entry on a return of an item which is inconsistent with another entry of the same or another item on such return,

(D) an omission of information which is required to be supplied on the return to substantiate an entry on the return, and

(E) an entry on a return of a deduction or credit in an amount which exceeds a statutory limit imposed by subtitle A or B, or chapter 41, 42, 43, or 44, if such limit is expressed—

(i) as a specified monetary amount, or

(ii) as a percentage, ratio, or fraction,

and if the items entering into the application of such limit appear on such return.

§ 6213(g)(2)



VEHICLES TO CONVEY PATRIOTS TO YORKTOWN



[EDITOR'S NOTE: The numbers and prices have again changed from those of previous issues of RA, and are effective as of 6/1/90. When ordering by phone or letter, please refer to the date of the issue you are referring to, the VEHICLE... number and name, and cost. Because of production costs, we reserve the right to change the listed prices at any time without notice.]

SAP Headquarters has decided that it is in the best interest of the Fellowship to restrict the availability of our exclusive VEHICLES... to the Membership only. Also, effective May 1, 1990, we will provide our VEHICLES... in personalized form only. We will no longer offer non-personalized versions due to the low demand, and to ensure that you are using the proper response for the need at hand.

We have also divided the VEHICLES... into two sections: PERSONALIZED and INFORMATIONAL, as an aid in understanding their use.

To repeat: you must be an **SAP Fellowship** member to receive either the PERSONALIZED VEHICLE, or an INFORMATIONAL VEHICLE.

THE PURPOSE OF SAP'S EXCLUSIVE VEHICLES...: To accelerate the determined march to achieve individual liberty, we have developed the following documents for our Fellowship members' use. The PERSONALIZED VEHICLES... are merge-printed using our computer and letter-quality printer to type out a professional quality letter ready for your signature.

You may order these "VEHICLES..." by either: 1. write to **SAP Headquarters**, referencing the VEHICLE... by number(s) and name and supply the information needed for each (also your telephone number if we have questions), enclose the proper cost of the VEHICLE(s)... in cash or totally blank Postal Money Order; or 2. telephone **SAP Headquarters** M-F, 9 a.m. to 5 p.m. Eastern

time, please have all of the information needed readily at hand.

PERSONALIZED VEHICLES...

#1. AFFIDAVIT OF REVOCATION AND RESCISSION."

IMPORTANT: this "VEHICLE..." must precede all of the following VEHICLES... which are used in conjunction with it.

SAP recommends the use of this (6-page) legal instrument for every U.S. citizen and resident alien who has discovered the fact that there was NO legal requirement to file that first, and any subsequent, income tax return and wants to revoke that and all other Internal Revenue Service documents ever filed (W-4, etc.), and rescind their signature(s) therefrom. The affidavit is an allegation of "constructive fraud" that confronts the presumption of liability, head-on. According to Title 5, United States Code (USC) section 556(d), when jurisdiction is challenged the burden of proof reverts to the government agency, in this case, the IRS.

Two versions of the AFFIDAVIT... are available: 1. including a paragraph with the proper wording to revoke the original Form SS-5 application for the Taxpayer Identification Number/Social Security Number by rescinding your signature therefrom (see *Reasonable Action*, November/December 1989, page 10 for an article on the legal requirement to obtain this number); 2. without the before-mentioned paragraph. Note: the retention of the TIN/SSN causes jurisdictional complications with both State and Federal taxing codes, i.e. Form W-4 entanglement for Patriots working for a wage. (If you have questions, call.)

Cost: 20 FRNs, same price for either version.

Info needed to personalize: your full name, street address, Social Security Number (whether you are revoking Form SS-5 or not); name of both U.S. Senators, name of Congressman from your district.

#2. TAXPAYER DELINQUENCY INVESTIGATION (TDI) LETTER RESPONSE.

This letter is used to respond to the IRS's TDI form letter(s) (typically Letter 1862SC), inquiring about the alleged non-filing of a tax return (typically Form 1040). We suggest that you respond as soon as possible to this, not wait till the last minute to respond. The IRS response time requirement is 10 days. If you miss this response time it is not fatal, it just moves the TDI into the next procedural phase and makes it that much more difficult to overcome. If you do not respond, then it is presumed that you have a filing requirement and that you are delinquent. (This VEHICLE... will help to lay the proper foundation for a criminal defense, if such becomes necessary.)

Cost: 8 FRNs personalized.

Information needed to personalize: your name, address, IRS Service Center (look on your IRS inquiry letter), date of TDI letter, the year(s) mentioned on the TDI letter, name and title of IRS person who signed the letter, name of IRS "person to contact" if any.

#3. FREEDOM OF INFORMATION ACT (FOIA) and PRIVACY ACT REQUEST LETTERS.

[SPECIAL NOTE: If you do not have the time, ability, and/or knowledge of procedure to properly keep track of your requests, **SAP Headquarters** will, for a fee of 25 FRNs per

See VEHICLES Page 20.



VEHICLES TO CONVEY PATRIOTS TO YORKTOWN

Notice:

The IRS routinely drops investigations of individuals based on amount of potential revenue, effect on compliance, and other facts of their personal situation, and issues them Form 2358C letters, informing them that they are not liable for or required to pay a tax for a certain period. This does not mean that a person has found a silver bullet that will work in cases generally. It does indicate that the agency is NOT giving individuals equal protection under the law.

[REDACTED]

[REDACTED]

2007 SECTION 171(b)
 Claiming to be a non-subject
 to withholding

[REDACTED]

[REDACTED]

[REDACTED]

First Follow Up Letter

[REDACTED]

Final Follow Up Letter

[REDACTED]



**ALL IRS MAIL
 MUST BE
 ANSWERED!**

If no response is sent, then under the law of presumption, any allegation contained therein is considered to be correct!

Note: If you have given Power of Attorney, you will want to consult your case-worker before initiating any correspondence on your own.

grace and benevolence. Those who promised continuance of the programs were assured re-election and the rest is history.

WHERE IS OUR FREEDOM NOW?

What happened to our freedom? Does it still exist? Yes—but it must be aggressively exercised. The supreme Court has held that “your rights will NOT be passively protected” and that if you want them, you must “aggressively assert them.”

Yes, we are still free, but that freedom depends on the degree to which we are willing to assert our rights; and, to be totally free, we must resolve to dissolve the link whereby the government can maintain information on the citizens over which it “presumes” jurisdiction. As long as that link persists, enforcement of “perceived” requirements is possible and likely to occur. Moreover, it is even more likely to occur when you consider that many of the personnel who administer the programs have come to accept the notion that there is a legal requirement and do not realize that it is voluntary. These government employees rarely understand our form of government or the limitations on such requirements in respect to the Constitution. With that in mind we now examine the logical basis of that “perceived requirement” and the link that it establishes to a presumption of jurisdiction.

ENFORCEMENT OR VOLUNTARY PARTICIPATION?

If you are free and you have a “right to property”, you cannot be “required by law” to take care of your neighbor, unless of course, you voluntarily contract with that neighbor for the mutual support of one another. The terms of the contract might include financial hardship which would require “old age benefits,” or, “aid to dependent children, etc.” or, whatever other terms of the contract you agree to. A person could participate by mak-

ing application—but a “free” person in a “free” country could not be forced by law to participate.

There certainly is a moral imperative to assist our fellow man in time of need, but such ethical considerations must be limited to specific times and circumstances and dependent upon the willingness of the individual choosing to exercise charity. Such moral obligations are dependent upon factors which can only be assessed by the person who is in a position to give or make donations. Yes, a person may have a moral duty to be charitable, however that obligation does not extend to putting his or her hand into the pocket of some other person to exercise his own charity. That would be theft—certainly hypocrisy!

Yet social programs administered by the government are just that. Charity must begin and end with your own pocket. Otherwise it is not charity at all, and there certainly can be no freedom or right to property if participation is forced by government. Indeed, that is why participation is NOT required, and why there is NO constitutional authority for the government to play the charity game. When it does, it violates the constitution and the natural, inalienable rights to property, given by God. If someone chooses to participate voluntarily in such an arrangement, and applies for such benefits, then it does NOT violate the Constitution—but while voluntary participation solves the legal problem, how do you enforce (encourage as the case may be) something that is voluntary? You can't—unless it is tied in some fashion to a legitimate legal requirement for which jurisdiction exists and whose similar but limited application is constitutional.

So thickens the plot. A body of law that could be systematically misapplied (assuming that it was intentional) would fill the bill nicely; and, the agency of government responsible for administering its provisions (the IRS?) could, with its “broad sweeping powers”, encourage the highest level of “voluntary compliance!” If that expression sounds familiar, consider

this . . . employment taxes fall within the confines of Subtitle C. They are voluntarily deducted from payments made to the employee who has voluntarily chosen to participate (by application) and expects to build credit towards his or her social security entitlement. The IRS has the jurisdiction to administer the provisions of such withholding!

LEGAL QUICK SAND

Now consider the following facts:

1) [REDACTED]

2) [REDACTED]

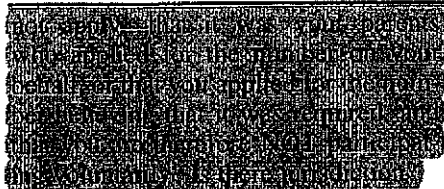
3) It is also a fact that the person who has “voluntarily applied” for the privilege of participating in and receiving social security entitlements, agrees to the terms of participation; and that,

4) The terms of participation require “an accounting” for deductions that the agency (IRS) administers; Therefore, in so doing . . .

5) [REDACTED]

[REDACTED]

131



The questions are entirely irrelevant. The very fact that someone possesses and uses (or has used) the number, is reason enough to "presume" that someone has knowingly and voluntarily contracted to participate in the program. Voluntary participation involves the "jurisdiction" of the agency of government responsible for administering whatever portions of the terms of the agreement are involved (i.e. deductions to build credit toward entitlement). What agency of government has that jurisdiction?—The IRS! Do you want to participate and receive an entitlement? (presumably so—if you have the number) Then you must want deductions to be made from your paycheck! (presumably so—if you have the number) Are you under the jurisdiction of the IRS? (presumably so—if you have the number). Ever wonder why the social security administration will not expunge a person's number, even after a notice of revocation of application has been received? The government does not want to give up its presumption of jurisdiction without a fight.

SOME SPECIFICS

Who can make deductions from your paycheck, and who can have deductions made? Only "employer(s)" and "employee(s)" who are under the jurisdiction of, and have the relationship described for purpose of chapter 24 of the Internal Revenue Code. The relationship is contractually significant when the "employee" with a social security number submits a W-4 to the "employer." Under that circumstance, and that circumstance only, an employer has the "authority" to withhold—not necessarily a legal requirement (by law) to withhold—but an "authority" to withhold—granted not by the law itself—but by the permission of the employee who wishes to enter into the

"relationship" mentioned in section 3402.

The requirement to withhold belongs to the employer—if—he has chosen to participate and receives a W-4 from his employee, but it is the employee who makes the final determination by submitting the W-4. To do so is to create an implied legal obligation (a presumption). The tax associated with the requirement (that is used as the basis for building credits toward entitlement) is then collected from those who choose to voluntarily participate. Provisions for such withholding (even from volunteers) do exist, but they are limited in application as far as actual "requirements" so the question becomes: Who are the required participants?; and, are the voluntary participants subjecting themselves to the same legal requirements as the required participants? More important, do the voluntary participants have "taxable income?" If required participation is limited to nonresident aliens, do U.S. citizens subject themselves to any of the legal requirements imposed on the nonresident alien?

The answer is a little oblique. No, of course not—at least not under the law itself—but everything is based on presumption; and when there is a systematic effort to "encourage voluntary compliance" the presumption that a volunteer is a "required participant" is all that is necessary.

Why? Because the legal requirements of the mandatory participant are taken on by the volunteer who may be "presumed" to be a mandatory participant who is under the law and thus any legal requirements that it might impose. The volunteer faces any misapplication that may, for whatever reason, intentional or unintentional, be perpetuated by the process.

UP TO THE NECK IN QUICK SAND

Nonresident aliens are the only people required to obtain the social security number in order to work in the United States, and thus, they are the only ones required to participate. But

nonresident aliens are also the subject of the income tax. Whoops! The amount of withholding (30%) is geared to those who are the subject of the income tax laws. Since the law is mandatory for those to whom it applies, it could be "presumed" that a participant is "required by law" to participate, and thus the full brunt of withholding is born by those volunteering.

Does this then mean that someone who chooses to volunteer, subjects himself to the same requirement for a "deduction of income tax" that would be required of all nonresident aliens under Subtitle A? No—not necessarily—but again it's irrelevant because the nature of the problem involves a misapplication which has no provision in law to begin with. To errantly and illegally enforce any given provision, the presumption is all that matters.

Section 1441 requires certain deductions from payments made to nonresident aliens. So what are the implications for the U.S. citizen who is NOT a withholding agent, and only a "voluntary participant" for purpose of Subtitle C and social security? Is the citizen eligible for a refund? Perhaps—but what provisions exist for such refunds? Anyone who is eligible for a refund may file a return to claim the amount overpaid, but the amount is still dependent upon the various criteria that would apply to those who are required to file returns, and contingent upon the filing of the return that the "taxpayer" is required to file.

Who is the taxpayer required to file?—the withholding agent! Section 1461 is his liability and it is the only liability in Subtitle A. Therefore, if a return is filed and it is known or otherwise obvious that the filer is a U.S. citizen, is there cause for a "presumption" that he is making payments to nonresident aliens? Indeed, the filing of a return can only substantiate the "presumption" that the filer is a "taxpayer" who has a liability arising from statute.

If the only liability arising from statute is section 1461 (for the withholding agent making payments to nonresident aliens), then the only plau-

ers. Considering that the bulk of his contracts are with the federal government, it should be obvious just how powerless the government is to misapply the provisions of Subtitle C!

On one occasion, an accountant for one of his general contractors asked the company attorney about the legality of Ed's actions. The attorney informed the contractor that Ed was obeying the law but that it was "not politically favorable" and that it could effect future government contracts. In other words, his actions were within the law, but there could be political consequences for not "towing the party line." While that may be true, the fact remains, you are still free if you want to be.

Just don't get a number.



If you are an employer, and the law does not require you to participate, then don't participate. With participation comes the very intervention and control that is now stifling the economy. Even "covered employees" (as previously defined) who have actually applied for the social security benefit need not participate unless they wish to build up credits. This fact can be verified by examining the general provisions in Subtitle F.

We challenge you to find any that relate to Subtitle C. If Subtitle C does not come under the law then it can in no way be imposed. Of course—those who don't pay, don't get any benefit.

—SECRET LAWS —SECRET JURISDICTION?

In the Yokas case, the Court held that when Congress passes a law which involves government agencies and their corresponding jurisdiction over citizens, it is not incumbent upon Congress to detail how that jurisdiction arises over the individual citizen. It is simply "presumed" that it has

jurisdiction and the citizen has the responsibility of petitioning the agency for a jurisdictional ruling about himself. In a free country, this "new deal" concept is ridiculous, and the Court's decision is a tacit acknowledgment that the government has created a jurisdiction, effectively secret in nature, which it withholds from the general public. The non-existence of a requirement notwithstanding, presumptions to the contrary have grown into the belief that there really is a legal requirement to obtain the number, and so to file a return and pay a tax. Common sense should indicate that the social security number is not required. After all, if something is required, there is no need to apply for it—it will be given to you automatically. One only makes application for something that is NOT required, to receive the privilege associated with the application. Most people just don't think. They do not realize that the "privilege" for which they are applying is nothing more than a request to enter into the jurisdiction of the IRS. The government uses the social security number to gain jurisdiction over you, and to keep track of your activities. It can then systematically misapply and illegally enforce provisions of the law to which you may not be subject. That presumption of jurisdiction makes it infinitely more difficult to assert your rights. On the other hand, if someone does not have a social security number it is far less likely that they will be put into a position where they need to assert their rights—but, there are problems for those who refuse to obtain the number. It becomes difficult to save, buy, or sell property. The non-participant is considered an outcast—or worse, a criminal. The average uneducated American often considers the non-participant to be unpatriotic—and though ironic—it is participation that is unpatriotic. Participation actually serves to undermine the limits of authority that the Constitution places on the government; and, it gives the government an authority that it would not ordinarily have. The perpetual misapplication of law that is made possi-

ble by its implementation, and the overall effect that it has on limited government, serves to effectively usurp the Constitution to which the government is subject. The average person does not understand the reason for the number, and therefore, cannot understand the reason for rejecting it.

RESTORING LIBERTY

The system will collapse when people start rejecting the benefit and refuse to use the number. The more people who refuse to participate in voluntary social programs, the less "hold" the government has over the lives of the people. When people reject the number they are free again, and that is the beginning of the end. Not only for socialism, but for world government and a cashless environment. Politicians need the number and the benefits associated with it to buy votes. If they can't buy votes then what happens? We get our freedom back. Graft and influence fade away and we end up with the constitutional government that was intended by the founders. Right now, the tentacles of this numerical nightmare go off in every direction. The one reaching out to grip the drivers license requirement has just been cut off, and the government has recoiled from the adverse public reaction that was so unexpected.

That's just the beginning. With your help, and the education of just a few, things can turn around rapidly. The colleges are filled with disillusioned students who realize that the "benefit" promised by the government is a fleeting dream, and that the government cannot possibly fulfill its obligations.

Former Commissioner (of Social Security) Gwendolyn King stated just before she resigned that unless emergency legislation was forthcoming, the "system" would not survive another 3 years. These college students may not understand the details of what is wrong but they can understand what is happening. They understand that if they do not have to pay and participate, they will have more of their own resources to provide for themselves. When one person refuses to participate and succeeds,

Save-A-Patriot Fellowship
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Tel. (410) 857-4441 / FAX (410) 857-5249

[REDACTED]

[REDACTED]

[REDACTED]

In the next few weeks I will be converting your case file over to a new system called the Case Management System (CMS). The following documents are enclosed for your information:

- Case Management System: Questions and Answers
- Outline of Anticipated Correspondence
- Communication Bridge No. 1
- Communication Bridge No. 2

If you have any questions after reading these documents, please contact me by telephone.

Shon, your caseworker

Exhibit 8

Case Management System: Questions and Answers

What is the Casework Management System?

The Casework Management System (CMS) is a revision of both the Fellowship's methods of case file maintenance and communication with members concerning their case. Innovative techniques in efficiency and accuracy have been applied to all actions being taken by caseworkers handling members' cases. These actions include routine communication with members who call or write about their casework and issuance of summary reports to members based on a monthly review of their case files. Generating CMS reports to members assures members and the department supervisors that work is being completed timely and accurately. Simplified file summaries have also been implemented, allowing more comprehensive reviews of entire case files, both by supervisors as well as paralegals or attorneys preparing a court action in the future.

Why develop a Casework Management System?

For some time, due to staff and financial limitations, caseworkers have not engaged in out-bound telephone calls or written letters to members explaining the actions being taken in their case. This need has been met, to a certain degree, by caseworkers sending members copies of all work done for them. While this did not always give a comprehensive understanding of the direction or status of their case (we cover procedures and the law more fully in our video presentation *Just The Facts*), it was the best method available at the time due to limited resources and the large demand for members' legal work. To revise these procedures as the opportunity presented itself, the CMS system was devised to inform members monthly on the status of their casework.

The second reason for developing CMS is the fact that many of the cases being handled by the power of attorney department have required further development even after the IRS has stopped their active pursuit of the member. Even though members receive fewer IRS notices after the IRS completes their assessment process, nearly every case demands continued casework to finish documenting wrongful procedure. Before a court action can be filed to expose the wrongdoing, all appeal options must be exhausted and all necessary evidence of the wrongdoing must be obtained. Many members are not aware that the "show must go on," and often interpret the filing of a Notice of Tax Lien as a personal defeat. For some reason unaware to us, possibly due to the professional and convincing casework done in their case, it seems they expect an easy resolution within the IRS. What they don't realize is the fact that only when the IRS attempts collection do they have grounds to file suit and expose this wrongdoing. In fact, members should expect the IRS to attempt collection; the primary reason the Fellowship

developed the power of attorney program was in anticipation of this event! Conveying the fact that our purpose is ultimate victory, and that the primary purpose of casework is the preparation of a case for court, can only be done through regular communication with a member. Monthly summary reports apprising them of the status of their casework will go far to involve members in the work being done for them and show them that they are not alone in this struggle. (For a more thorough understanding of the purposes behind case work, read the attached *Communication Bridges* documents 1 & 2.)

How are the expenses for CMS services and letters apportioned? (did he say apportioned?)

Costs of casework have always been billed to members based on Fellowship resources and staff time necessary to complete each action in a member's case. Currently, power of attorney letters are billed at a flat rate of 48 FRNs each, with a 10 FRN discount if paid within 10 days of receipt of invoice. The cost of converting an existing case file to CMS is 45 FRNs. This fee includes the revised setup and review, and the issuance of a summary report on the case status. Each month thereafter a report is issued and billed at a rate of 15 FRNs. This cost covers both the file review and issuance of the report, as well as any other actions taken by the caseworker on a member's case during the month that did not directly result in a letter being written. These actions would include speaking with the member by telephone and in writing, and reviewing mail and notices relating to a member's case that don't require answering.

When is a file transferred to CMS?

Currently all new members are transferred onto CMS at the time that we begin power of attorney work on their behalf. Their first step is to speak with Mark, Head Caseworker, who discusses the facts of their case and initiates their case file. They are then sent introductory information including blank power of attorney authorization forms. The cost for the first-time initiation of a case file, which includes the conversion to CMS described earlier, is currently 100 FRNs. Members who are currently having casework done on their behalf are gradually being converted over to CMS.

Outline of Anticipated Correspondence

For use as a reference for cases in the CMS system

This is a general overview of the expected sequence of IRS letters/responses for investigations being conducted by the power of attorney department. It cannot, due to the unpredictable nature of IRS replies, account for all correspondence that may be necessary to exhaust a member's administrative appeal and prepare their case for court.

PHASE I - IRS NOTICE INVESTIGATION

REQUEST FOR MEETING or FIRST-PARTY "SUMMONS"

Appeals response

Privacy Act request for Individual Master File "Specific"

REQUEST FOR TAX RETURN

Appeals response

3RD PARTY "SUMMONS" TO PRODUCE DOCUMENTS

Member speaks with an SAPF Paralegal about filing a Motion to Quash within 20 days of notice.

30-DAY NOTICE - NOTICE PROPOSING CHANGES / ASSESSMENT

Request for Appeals Conference

Privacy Act request for examiner's notes (Form 4665, etc.)

Privacy Act request for a copy of Substitute for Return

Appeals request for "Substitute for Return" authority

Privacy Act request for AIMS processing documents

90-DAY NOTICE - NOTICE OF DEFICIENCY

Request for Appeals Conference

Privacy Act request for "sources" of income documents

NOTICE "WE CHANGED YOUR ACCOUNT - YOU HAVE AN AMOUNT DUE"

Appeals response

IRS SENDS PROMPT ASSESSMENT BILLING ASSEMBLY

Appeals response

NOTICE OF INTENT TO LEVY

Request for Appeals Conference

Privacy Act request for "authenticated supporting documents" (IRC § 6065)

FINAL NOTICE OF INTENT TO LEVY

Request for Appeals Conference

PHASE II - IRS INTERNAL DOCUMENT INVESTIGATION

Privacy Act request for Certificate of Assessments and Payments.

Privacy Act request for Notice and Demand for Tax.

Privacy Act request for Individual Master File "Complete"

Privacy Act request for Form 23-C Assessment Supporting Document Request

Privacy Act request for Form 870 Agreement

Save-A-Patriot Communication Bridges

Bridge #1: Facts You Should Know About S.A.P. Power-Of-Attorney Casework

Have you ever met someone who seems to have all of the answers but really doesn't know what the questions are? If so, then keep that in mind as you read this letter!

We have found that many members (especially those who are new to the Fellowship) simply do not understand what our power of attorney program is all about. Some are so naive as to think that one letter from SAP will make the IRS go away. I assure you, that is rarely the case. In fact, to put it as bluntly as possible: when we write a letter to the IRS we do NOT even try to make the IRS go away! If you are confused by that statement then this letter is for you—so please read on...

You're probably asking yourself: "If the caseworkers at SAP are not going to make the IRS go away, then why am I giving them power of attorney?" Indeed... the purpose of this letter is to answer that very question and that is why the information contained in this letter is so important. If you want to assert your rights it is absolutely imperative that you know what to expect and that you understand the purpose of the power of attorney program. If you are unable or unwilling to invest the time necessary to understand the process that is about to occur, or what we will be doing to help you, then you will either give up in despair or you will get angry at us because of your own misperception. Please don't put yourself in that position.

The situation is this: One hundred thirty years ago, during *The War Between the States*, Congress passed what was called *The Anti-Injunction Act*. The effect of that legislation was to prevent the Courts from interfering with the actual collection of a tax, and as you might suspect, it complicates matters for people like you who want to assert their rights. The average member thinks: "Since the income tax is limited in application and since my income is obviously not the subject of the tax, why not just ask the Court to enjoin the collection of the tax?" And, that's a good question... but (if you remember how we started this letter) that's NOT the question you should be asking. Instead, ask yourself: "How can the Court enjoin the collection of a tax when the *Anti-Injunction Act* that we just mentioned prevents them from doing so?" The answer is: They can't, and that's why we don't ask the Court to prevent the IRS from collecting a tax. However, the Court does have the jurisdiction to review the IRS assessment procedures to make sure that these procedures were followed.

That being the case... If you are not the subject of the income tax and the IRS has errantly sent you an inquiry, then you have what is called an administrative remedy. These administrative remedies ensure that a person, like yourself, will receive what is called "due process." And, they exist in the form of legal requirements that are imposed on the IRS so that the law will be applied properly. But of course, whether or not those requirements prevent the IRS from hurting

someone depends entirely upon whether or not the individual in question makes the proper protests and/or other requests that are necessary to obtain relief. Do you know the specific remedy for any given IRS inquiry? Probably not! But more important, if you don't know what they are, then how can you possibly pursue them?

When we represent you that is exactly what we do. We request the remedy that is available under the law. So you ask: "Does this make the IRS go away?" No—not necessarily! But then, it is NOT intended to make the IRS go away! You say, "Well... if it doesn't make the IRS go away then why bother???" The answer is very simple: knowing that most IRS employees are ignorant of the law and that they will probably not go away, you are building a case to show the court that the IRS has in fact violated the law that was supposed to give you the remedy you were entitled to.

The important point to remember is that... if you never bothered to make the request in the first place, then the IRS has no requirement to violate and it is presumed that they are doing things correctly. The issue before the Court is NOT whether your income was the subject of the income tax. Rather, the issue before the Court is whether you received due process—and that depends on whether you requested the remedies that were available to you and whether the IRS gave you the opportunity to pursue those remedies. The correspondences that we forward to the IRS on your behalf cite specific administrative due process requirements that impose certain legal obligations on the IRS personnel involved. This effectively puts the IRS employee in a position where he must stop the improper assessment procedure or violate the law in order to move forward with collection. It has been our experience that most IRS employees ignore these legal obligations. However, when they violate those laws relating to due process, a lawsuit becomes possible. But... only if you can document the denial of due process, up to and including, for example, the IRS's failure to send a proper Notice and Demand. That is what we do when we take power of attorney.

So now you might ask: "How much does it cost to document the denial of due process and what happens after it's documented?" The answer is: We charge 45 FRNs per letter plus certified mail costs, for each piece of correspondence that we generate. This drops to 35 FRNs per letter when paid promptly. Sometimes, we do as many as three or four letters per month and sometimes we don't do any at all. However, after that process is complete, and you have exhausted your administrative remedies (assuming the IRS ignores them) then a lawsuit can be filed in order to obtain relief.

Some people get halfway through the process and think that since the IRS hasn't "given up," we must be doing something wrong. Nothing could be further from the truth. The IRS is not going to give up until the Court forces them to give up. Why? Because the IRS counts on people losing their resolve. They count on people being financially unprepared to move forward with a suit. And you know what? The IRS is absolutely correct because a lot of people do just that! If you really want to assert your rights then you need to prove to them that they're wrong! If you want to assert your rights you need to set aside the funds that will be necessary to take that legal battle into Court—and when you do, you've got to have the documentation we've been talking about.

We have struggled for some time with a communication gap. For whatever reason, despite the newsletter that we publish, we have been unable to get this concept across to some of our

members. This letter is the first of a series of standard "member letters" by which we hope to remedy that communication gap. If it has helped you to understand what we are doing, if it has helped to encourage you and/or more fully prepare you for the future we would appreciate hearing from you, either verbally or in writing. We thank you for the truly magnificent stand that you have chosen to take and the efforts that you have put forth thus far. And we pray that you will continue to hold the IRS to the law, if not for yourselves then for your country and for a better future for your children.

If you have any further questions, please call your caseworker at 1-410-857-4441.

Save-A-Patriot Communication Bridges

Bridge #2: Facts about IRS Responses to S.A.P. Power-of-Attorney Casework, or "Why Do They Do the Things They Do?"

Have you ever wondered why, once the Power of Attorney department has responded on your behalf, the IRS either fails to respond, or sends you back a response instead of replying directly to us here at the Fellowship? Have you ever failed to forward any of these responses to us because you expected a different response from the IRS, or thought that the replies were inconsequential? Have you ever wondered what in the world was "going on" with your case in the Power of Attorney department? If so, these and other questions you may have will be addressed in this edition of *Communication Bridges*. Read on, as this applies to you!

The purpose of this memorandum is to elicit your cooperation in the building of your case and to further explain what is necessary for the Power of Attorney department to move your investigation forward. Due to the tremendous workload and time constraints that we face daily, our dedicated staff in this department must constantly keep their attention focused on the development of active cases. If your case becomes inactive, (i.e., when we receive no communication and/or IRS letters from you, or Power-of-Attorney forms), naturally your caseworker becomes concerned, and work on your case may be stopped, as it is not possible for them to continue your investigation without having access to all of the information about your current situation. To continue without adequate feedback from you could weaken your case and be counterproductive.

Have any of the following ever happened to you?

1. You have received no recent correspondence from the IRS.

This often occurs when the IRS has received a letter from our Power of Attorney department. Some members have expressed the belief that "All claims by the IRS must have been 'forgiven and forgotten' since S.A.P. has answered my letters and the IRS hasn't replied." Don't fall prey to this illusory state of complacency, as the IRS may indeed contact you at a later date, and you will want to be as prepared as possible. It is very common to see periods of such "non-communication" from the IRS--some of the longest we've seen being several months or even years. If the IRS has completed an alleged assessment against you and attempted collection wrongfully, and assuming your desire is to challenge wrongful IRS actions even after they may have ceased, this slow time usually requires continued investigative work by your caseworker to prepare for court actions against the IRS employees involved in this bogus assessment/collection. Supplemental to continuing the investigative side of casework, you may also want to use this time

to your advantage by increasing your personal knowledge of tax law. Obviously, the greater your personal knowledge of the law, the more confident and effective you will be in defending yourself against the attacks of those who would take away your freedom. In order for you to stay informed and abreast of the Fellowship's latest successes and the newest developments in our members' ability to pursue due process, please make sure that your subscription to the *Reasonable Action* newsletter is kept up to date. It is an excellent means of self-education, as well as being the primary vehicle for communication with the general membership. Don't leave yourself out in the cold!

2. You received a form letter or other correspondence from the IRS, but chose not to mail it to your caseworker.

Even if it is an obvious form letter, or one that seems unimportant to your case, please forward it to your caseworker despite this; let your caseworker make that determination. He or she has the necessary training and experience to determine if the letter is worthy of a reply. Often, things are not what they seem! Please understand that it is *critical* to the development of your case that you send your caseworker a copy of every piece of correspondence that the IRS sends you, including copies of envelopes, and any attachments included, so that they have enough information to prepare the best response possible. *Any* response from the IRS, no matter how insignificant or irrelevant it may seem to you, may be further evidence of their unwillingness or inability to address the facts at hand, or may serve to document their refusal to follow proper administrative procedures, or their denial of your due process rights. The invaluable expertise of our caseworkers can save you hours of frustration and worry. Rely on them to help you by giving them all the information necessary to fully document and move your case forward.

3. You received a letter from the IRS and believed "on face value" what was stated in the letter.

As many of you are aware, the Internal Revenue Service has been attempting to challenge Mr. Kotmair's Power of Attorney in certain members' cases for well over a year now. As with many letters members receive from the IRS, it is often important to read between the lines of rhetoric with a healthy dose of Internal Revenue Laws and Regulations to clearly understand the nature of what's being said and whether it is authorized by law. It should be noted that the right to assign Power of Attorney to the person of your choosing *predates the constitution*. In addition to this precedent, it just so happens that Internal Revenue Regulations also allow for John's representation of you before the Internal Revenue Service. In fact, *all of the applicable authorities are cited in every letter we send on your behalf*. As for the reasons for the denial, aside from the obvious political pressure being caused within the agency, several causes can be identified. The nature of poor communications within the IRS accounts at least partially for this type of behavior. Another reason that is often argued by the IRS is the fact that the Power of Attorney authorization form signed by members cannot be entered into their computer system that records representative information. You will probably not be surprised when we tell you that their computer system, and the Form 2848 that they request to be completed, do not comply with their regulations governing representation. Without the ability to record John's status as a bona fide officer of an organized group (fiduciary of Save-A-Patriot Fellowship), pursuant to 31 CFR

10.7(a)(2), they are left with maintaining John's representative information in individual case files. No ability to keep centralized records...sounds familiar doesn't it?

If you do not know the facts regarding the law and Mr. Kotmair's right to represent you, you may very well be misled into believing that he cannot do so. At the same time, certain IRS offices have recognized the authorities we cite, and have conducted appeals conferences with John, showing that the offices denying the POA are in violation of the requirement for uniform application of the law. In this situation, it appears the IRS tries to "reinvolve" the member by convincing them that the Power of Attorney is invalid and of no effect. Don't you think the IRS would like nothing better than to be rid of our constant questions about the law and their wrongful procedures?! We can see the political pressure from our letters building in the IRS, particularly when we see a concerted effort like the form letters created specifically for response to the letters from our Power of Attorney department! Talk about effecting a change in the "system"--we are doing it!!

Our knowledge of tax law is so extensive and our point-by-point responses so complete that IRS agents are incapable of responding to us as their own Manuals direct them to do! There is no answer when wrongful actions are taking place... only the kind of silence that speaks volumes. Our letters therefore, serve the dual purpose of documenting the facts regarding your case and educating anyone who reads them. Assuming your case reaches trial, imagine the impact the evidence we have prepared for you will have when jurors, prosecutors and judges have read the truth about the law! The responses that our caseworkers prepare have been known to affect lives! We have members who were former IRS agents, who after their exposure to our responses and their own study of the law, resigned from "the Service" because they could no longer continue to support the unlawful actions of the government in good conscience! The letters the Power of Attorney department prepares on your behalf do make a difference, and we are in the unique position of monitoring these IRS responses daily.

4. Your caseworker has requested information on your behalf. Some time has passed and no responses have been received from the IRS, or your caseworker has not obtained a satisfactory response to the requests, and has submitted additional letters regarding those same requests.

It is the nature of investigation to take time, and it *does* takes time to build your case, as the information we request is very rarely provided in a timely manner. For example, while it is normal for the IRS to reply within six weeks to a letter, in some situations it can take up to a six *months* or longer to obtain a response on any given request. Realizing this fact, it does not serve the member to file continuous Privacy Act lawsuits to force compliance, since the IRS will simply cite excusable delays to the court. So we wait.

Additionally, the investigation on your behalf may need to continue despite the intervals between notices you receive from the IRS. Understanding this will alleviate frustration on your part. If you are unsure of the status of your case, contact your caseworker. The monthly statement program recently initiated will also help keep you up to date on our records concerning your membership.

Save-A-Patriot Fellowship was created so that Patriots could band together to maximize our effectiveness in the fight against tyranny. Therefore, it is vitally important that you continue to keep your caseworker up to date regarding any IRS correspondence received, and keep him/her supplied with current, executed Power of Attorney forms, so that your IRS correspondence can be answered in a timely manner. The knowledge you impart to your caseworker will not only move your case forward, but will also help the Fellowship to assist other Patriots nationwide to assert their rights. Let us hear from you!

Your Fellowship Staff

Concerning:

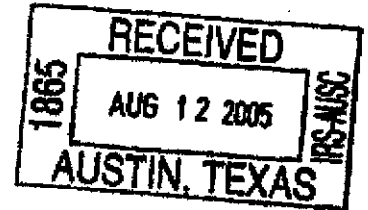
Person making response via attached Power-of-Attorney pursuant to 26 CFR § 301.6103(c)-1, 26 CFR §§ 601.502(a), 601.502(b)(5)(ii) and Treasury Department Circular No. 230, at § 10.7(c)(1)(iv):

John B. Kotmair, Jr., Representative Number: 2605-47815R
P.O. Box 91, Westminster, MD 21158

August 8, 2005

Certified Mail No. 7005 1160 0004 9957 1717

Mr. Richard Auby, Director
Internal Revenue Service Center
3651 S. Interregional Hwy. 35, MS 1002 AUSC
Austin, TX 78741



Re: Attached Notice CP-515 concerning the year 2003.

Dear Mr. Auby:

██████████ has given me Power-of-Attorney to represent him for the purposes of your inquiry. Therefore, all future correspondence should be forwarded to me. Please contain all communications to a written form, so that a permanent record can be maintained.

Your Notice CP-515 does not have an OMB Control Number as required in IRM § 21.3.3.3.1, "OMB Codes for Forms," which states in pertinent part:

"1. Public Law 104-13, Paperwork Reduction Act of 1995, requires that the Office of Management and Budget (OMB) approve forms or documents before they are issued.

2. Items that carry OMB information can be classified into two categories:

1. Information Collection Requests (ICRs)—A form, letter, notice, or other document used to request necessary information from at least 10 taxpayers. Each ICR is assigned a unique OMB number.

2. Document Perfection Requests (DPRs)—Also used to request information from at least 10 taxpayers. However, each DPR is not assigned a unique OMB number. Rather, it carries the OMB number of the document it perfects. An expiration date is not required on DPRs. DPRs include: public-use forms, C (SC), and (SC/SP) letters, draft and dictated letters, CP notices, quick notes, and CNOTES.

Example: ICRs include major tax forms and instructions, public use forms, C, (SC), and (SC/SP) letters, draft and dictated letters, and CP notices.

3. OMB number and expiration date must be typed or computer-generated on ICRs.;

It continues at § 21.3.3.3.1(5):

"5. OMB requires that OMB number and expiration date appear in upper right corner of documents.

6. ICRs must contain Paperwork Reduction Act Notice Language."

Page 1 of 3



2549

146

Because of the lack of an OMB Control Number on your Notice, I am unable to determine what statutory authority you are claiming to act in pursuance thereof; and as the United States Court of Appeals for the 9 Circuit stated in *U.S. v. Smith*, 866 F.2nd 1092 (1989), any government information request form not exhibiting an OMB Control Number is a "bootleg form" and can be ignored.

Even though this is the case at hand, we are giving you the courtesy of this letter to correct the errors within your correspondence. Therefore, we would appreciate your forwarding an OMB approved information request Notice advising us of your claimed statutory authority for this investigative inquiry. If you are claiming that [REDACTED] is subject to some provision within the Internal Revenue Code, would you please cite in detail that provision and how it relates to him. I am enclosing an example of an ICR letter taken from IR Manual 39(69)0. Notice the select location for the display of the required OMB Control Number.

Further, even if your notice had been approved by the Office of Management and Budget, please be aware of the following facts and laws concerning the alleged requirement for [REDACTED] to file an income tax return:

[REDACTED] is a citizen of the State of [REDACTED] and not a 'taxpayer' as that legal term is defined in IR Code Section 7701(a)(14). With reference to withholding, he is not an alien, foreign corporation, officer, director, stockholder or employee of a foreign corporation, withholding agent, nor a citizen of the United States living and working abroad or in a possession of the United States. [REDACTED] does not reside in a federal enclave within any of the States and/or without the States of the Union, nor does he reside in any federal state.

Regarding a specific requirement to file an income tax return, [REDACTED] read Title 26 United States Code § 6012, **PERSONS REQUIRED TO MAKE RETURNS OF INCOME**, which stated as follows:

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

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

[REDACTED] then went to Subtitle A and found that Chapter 1 was **NORMAL TAXES AND SURTAXES**, that Subchapter A was for the purpose of **DETERMINATION OF TAX LIABILITY**, that PART I of Subchapter A was **TAX ON INDIVIDUALS** and further, that § 1 was **TAX IMPOSED**.

In order to find the proper return to use to report any tax liability he checked **PART 602** of the Internal Revenue Regulations. According to the listing for § 1, it appears that the Office of Management and Budget assigned the identifying OMB Control Number 1545-0067 to the tax return to be used. Checking the list of approved forms published by the Office of Management and Budget, it identified that tax form to be Form 2555, **FOREIGN EARNED INCOME**. [REDACTED] has informed me that he did not earn any foreign earned income during this period. If there is some clerical error, or the National Office of the Internal Revenue Service listed the

wrong form to be reviewed on the application for review to the OMB, please notify me and I will relay this information to [REDACTED]

Due to the fact that § 6012 did not list any requirement for Subtitle C, [REDACTED] did not bother to check for any form to be used for employment taxes.

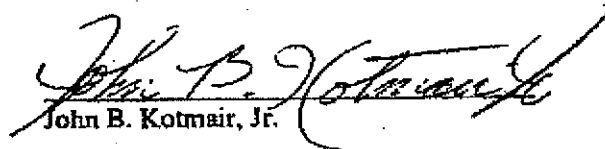
If I do not hear from you within 20 days of your receipt of this response, it will be presumed that the information provided herein accurately reflects the application of requirements to file an income tax return within the Internal Revenue Code. If there is a requirement that [REDACTED] has no knowledge of, please inform me of the IR Code section, and/or make that return pursuant to § 6020(b), under the proper delegation of authority order, sending me a copy of the return so made and the applicable delegation order.

If I do not hear from you within 30 days of your receipt of this letter, it will be presumed that your letter was sent in error and that the matter is closed.

I hereby declare that:

1. I am not currently under suspension or disbarment from practice before the Internal Revenue Service or other practice of my profession by any other authority;
2. I am aware of the regulations contained in Title 31 CFR part 10 concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries and others;
3. I am authorized to represent the individual identified in the power of attorney;
4. I am an individual described in Title 26 Code of Federal Regulation Part 600, at §601.502(a)(1) and (2), §601.502(b)(5)(ii), and Treasury Department Circular No. 230, at § 10.7(c)(1)(iv); and,
5. the original attached Power-of-Attorney is valid under the laws of the State of Maryland.

Under penalties of perjury, I declare that the foregoing is the truth to the best of my knowledge and belief.


John B. Kotmair, Jr.

Enclosures: Original Power-of-Attorney; copy of the Notice CP-515 dated June 27, 2005; 2 page sample of Letter 29(SC/SP)(Rev. 12-81), for IR Manual 3900, "SC Correspondex;" copy of 26 USC § 6012; copy of 26 CFR Part 602; copy of Form 2555.

cc: [REDACTED]

**PRIVACY ACT RELEASE FORM
AND POWER OF ATTORNEY**

Because of the Privacy Act of 1974, written authorization is required by the individual before any information can be given to another individual or organization.

Pursuant to the authority in 26 CFR § 301.6103(c)-1, 26 CFR § 601.502(a)(1) and (2), 26 CFR § 601.502(b)(5)(ii) and Treasury Department Circular No. 230, at § 10.7(c)(1)(iv), this form will give John B. Kotmair, Jr., (Representative Number: 2606-47815R), of Post-Office Box-91, Westminster, Maryland 21158, permission to investigate this matter for me.

I, [REDACTED], a member of the Save-A-Patriot Fellowship, do hereby give to John B. Kotmair, Jr., the Fiduciary of Save-A-Patriot Fellowship, permission to represent, inquire of and procure from the Internal Revenue Service any and all of the records, pertaining to income taxes, to include income tax returns (1040, 1040A, related forms and assessment records) maintained within any of the Internal Revenue Service Offices, regarding the following years: 1990 through and including 2005.

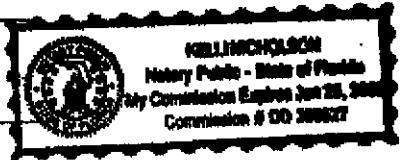
On this 1st day of August, 2005, I hereby certify that I am the individual making this Power of Attorney, to John B. Kotmair, Jr., and that I have a "material interest" in the information within the documents sought.



Subscribed and sworn to before me, a Notary Public, of the State of Florida, County of Palm Beach, on this 1st day of August, 2005.

Kelli Richardson
Notary Public

My Commission Expires On: Jan 25, 2009



Rev. 12/30/96

Concerning:

[Redacted]
[Redacted]
[Redacted] 834

Person making response via attached Power-of-Attorney pursuant to 26 CFR § 301.6103(c)-1, 26 CFR §§ 601.502(a)(1) and (2), 601.502(b)(5)(ii) and Treasury Department Circular No. 230, at § 10.7(c)(1)(iv):

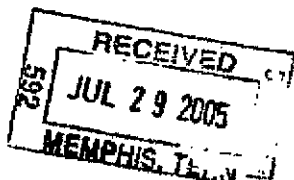
John B. Kotmair, Jr., Representative Number: 2605-47815R
P.O. Box 91, Westminster, MD 21158

July 25, 2005

Certified Mail No. 7005 1160 0004 9957 1342

Re: Attached form Notice CP-518 dated June 13, 2005.

David Alito, Director
Internal Revenue Service Center
Stop 8, 5333 Getwell Road
Memphis, TN 38118



Dear Mr. Alito:

[Redacted] has given me Power-of-Attorney to represent him for the purposes of your investigation. Therefore, all future correspondence should be forwarded to me. Please contain all communications to a written form, so that a permanent record can be maintain.

I responded to a form Notice CP-515 dated April 18, 2005, on behalf of [Redacted] on May 27, 2005, and as of this date I have not received a response from your office.

In that response, I stated that your notice did not display the required OMB Control Number, and also that [Redacted] was not, among other things, a "withholding agent." Therefore he does not have any liability involving Subtitle A income taxes. I further stated that [Redacted] did not receive any foreign earned income during the period in question, and therefore has no requirement to file an income tax return.

The Internal Revenue Manual states, at § 21.3.3.2, entitled "What is Correspondence?":

- 1. Correspondence is all written communications from a taxpayer or his/her representative, excluding tax returns, whether solicited or unsolicited. This includes:
 - 1. Written communications in response to IRS requests for information or data
 - 2. Written communications, including annotated notice responses, that provide additional information or dispute a notice.

Further, § 3.30.123.2.9, entitled "Taxpayer Correspondence," states in pertinent part:



6. All final responses (quality responses) must be initiated within 30 calendar days of the earliest "IRS Received" date. However, every effort should be made to provide quality responses in less time.

1. A quality response is an accurate and professional communication which, based on information provided, resolves the taxpayer's issues, requests additional information from the taxpayer, or notifies the taxpayer we have requested information from outside IRS.

2. A final response is timely when initiated within 30 calendar days of the IRS received date.

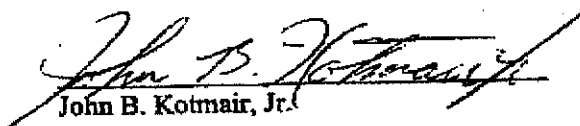
In light of these requirements, will you please inform me as to when I can expect a response to my letter of May 27, 2005?

If I do not hear from you within 30 days of your receipt of this letter, it will be presumed that both TDI Notices were sent in error and that the matter is closed.

I hereby declare that:

1. I am not currently under suspension or disbarment from practice before the Internal Revenue Service or other practice of my profession by any other authority;
2. I am aware of the regulations contained in Title 31 CFR part 10 concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries and others;
3. I am authorized to represent the individual identified in the power of attorney;
4. I am an individual described in Title 26 Code of Federal Regulation Part 600, at §601.502(a)(1) and (2), §601.502(b)(5)(ii), and Treasury Department Circular No. 230, at § 10.7(c)(1)(iv); and,
5. the original attached Power-of-Attorney is valid under the laws of the State of Maryland.

Under penalty of perjury, I declare that the foregoing is true to the best of my knowledge and belief.


John B. Kotmair, Jr.


Enclosures: Original Power-of-Attorney; copy of both TDI Notices; copy of page one of my response dated May 27, 2005.

████████████████████

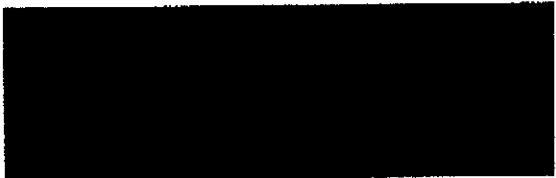
**PRIVACY ACT RELEASE FORM
AND POWER OF ATTORNEY**

Because of the Privacy Act of 1974, written authorization is required by the individual before any information can be given to another individual or organization.

Pursuant to the authority in 26 CFR § 301.6103(c)-1, 26 CFR § 601.502(a)(1) and (2), 26 CFR § 601.502(b)(5)(ii) and Treasury Department Circular No. 230, at § 10.7(c)(1)(iv), this form will give John B. Kotnair, Jr., (Representative Number: 2605-47815R), of Post Office Box 91, Westminster, Maryland 21158, permission to investigate this matter for me.

I,  member of the Save-A-Patriot Fellowship, do hereby give to John B. Kotnair, Jr., the Fiduciary of Save-A-Patriot Fellowship, permission to represent, inquire of and procure from the Internal Revenue Service any and all of the records, pertaining to income taxes, to include income tax returns (1040, 1040A, related forms and assessment records) maintained within any of the Internal Revenue Service Offices, regarding the following years: 2000 through and including 2005.

On this 1st day of July, 2005, I hereby certify that I am the individual making this Power of Attorney, to John B. Kotnair, Jr., and that I have a "material interest" in the information within the documents sought.



Subscribed and sworn to before me, a Notary Public, of the State of Oklahoma, County of Nowata, on this 1st day of July, 2005.

Betha Henry 05004335
Notary Public

My Commission Expires On: 5-5-09

Rev. 12/30/96

Concerning:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Person making response via attached Power-of-Attorney pursuant to 26 CFR § 301.6103(c)-1, 26 CFR § 601.502(a), 26 CFR § 601.502(b)(5)(ii) and Treasury Circular No. 230, at § 10.7(c)(1)(iv):

John B. Kotmair, Jr., Representative Number 2605-47815R
Post Office Box 91, Westminster, MD 21158

July 6, 2005

Certified Mail No. 7004 2890 0004 1912 2625

Scott B. Prentky, Director
Internal Revenue Service Center
1973 Rulon White Blvd.
Ogden, UT 84404

Re: Alleged "Substitute for Return" for the years 1999 and 2000.

Dear Mr. Prentky:

[REDACTED] has received unsigned tax return(s) alleged to be "Substitute for Returns" for the years 1999 and 2000. A careful examination of the document(s) did not reveal any indication of the underlying authority relied upon by the Internal Revenue Service to prepare and process the tax return(s).

Please identify the specific section(s) of law authorizing the creation of these documents by the Internal Revenue Service.


Please reply within 30 days pursuant to Internal Revenue Manual § 3.30.123.2.9.

I hereby declare that:

1. I am not currently under suspension or disbarment from practice before the Internal Revenue Service or other practice of my profession by any other authority;
2. I am aware of the regulations contained in Title 31 CFR part 10 concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries and others;
3. I am authorized to represent the individual identified in the power of attorney;
4. I am an individual described in Title 26 Code of Federal Regulation Part 600, at 26 CFR § 601.502(a)(1) and (2), §601.502(b)(5)(ii) and in Circular 230 at §10.7(c)(1)(iv); and

5. the original attached Power-of-Attorney is valid under the laws of the State of Maryland.

Under penalty of perjury, I declare that the foregoing is true to the best of my knowledge and belief.


John B. Kotmair, Jr.



Enclosures: Original Power-of-Attorney; copy of the tax return(s).

cc: 

**Privacy Act Release Form
And Power of Attorney**

Because of the Privacy Act of 1974, written authorization is required by the individual before any information can be given to another individual or organization.

Pursuant to the authority in 26 CFR 301.6103(c)-1, 26 CFR 601.502(a), 26 CFR 601.502(b)(5)(ii) and Treasury Department Circular No. 230, at 8 10.7(c)(1)(iv), this form will give John B. Kotmair, Jr., (Representative Number: 2605-47815R), of Post Office Box 91, Westminster, Maryland, 21158, permission to investigate this matter for me.


I, , a member of the Save-A-Patriot Fellowship, do hereby give to John B. Kotmair, Jr., the Fiduciary of Save-A-Patriot Fellowship, permission to represent, inquire of and procure from the Internal Revenue Service any and all of the records, pertaining to income taxes, to include income tax returns (1040, 1040A, related forms and assessment records) maintained within any of the Internal Revenue service Offices, regarding the following years: 1992 through and including 2004.

On this 27th day of June 2005, I hereby certify that I am the individual making this Power of Attorney, to John B. Kotmair, Jr., and that I have a "material interest" in the information within the documents sought.



Subscribed and sworn to before me, a Notary Public, of the State of Illinois, County of DuPage, this 27th day of June 2005, that the above named person did appear before me and was identified to be the person executing this document.

Bernadette Zenger
Notary Public

10-25-08
My Commission Expires On

not to be from STRALS
219-78-5845

PRIVACY ACT RELEASE FORM AND POWER OF ATTORNEY

Because of the Privacy Act of 1974, written authorization is required by the individual before any information can be given to another individual or organization.

Pursuant to the authority in 26 CFR § 301.6103(c)-1, 26 CFR § 601.502(a)(1) and (2), 26 CFR § 601.502(b)(5)(ii) and Treasury Department Circular No. 230, at § 10.7(c)(1)(iv), this form will give John B. Kotmair, Jr., (Representative Number: 2605-47815R), of Post Office Box 91, Westminster, Maryland 21158, permission to investigate this matter for me.

I, [REDACTED], a member of the Save-A-Patriot Fellowship, do hereby give to John B. Kotmair, Jr., the Fiduciary of Save-A-Patriot Fellowship, permission to represent, inquire of and procure from the Internal Revenue Service any and all of the records, pertaining to income taxes, to include income tax returns (1040, 1040A, related forms and assessment records) maintained within any of the Internal Revenue Service Offices, regarding the following years: 1997 through and including 2005.

On this 11th day of April, 2005, I hereby certify that I am the individual making this Power of Attorney, to John B. Kotmair, Jr., and that I have a "material interest" in the information within the documents sought.



Subscribed and sworn to before me, a Notary Public, of the State of Maryland, County of Charles, on this 11th day of April, 2005.

[Signature]
Notary Public



My Commission Expires On: October 31st 2007

RECEIVED
SEP 16 2005
FRP 303

Input to EIP Master



Concerning:

[Redacted]

Person making response via attached Power-of-Attorney pursuant to 26 CFR § 301.6103(c)-1, 26 CFR § 601.502(a), 26 CFR § 601.502(b)(5)(ii) and Treasury Circular No. 230, at § 10.7(c)(1)(iv):

John B. Kotmair, Jr., Representative Number 2605-47815R
Post Office Box 91, Westminster, MD 21158

September 16, 2005

Certified Mail No. 7005 1160 0004 9956 8595

Richard E. Byrd, Director
Internal Revenue Service Center
2385 Chamblee Tucker Road
Chamblee, GA 30341

RECEIVED
OCT 05 2005
FRP 303

Re: Letter 2566, dated August 22, 2005.

Dear Mr. Byrd:

This letter is a written protest to the Letter 2566, dated August 22, 2005. It is submitted pursuant to instructions in Internal Revenue Service Publication 5, "Your Appeal Rights and How to Prepare a Protest If You Don't Agree." I want to appeal the examination to the appeals office and I hereby request a conference on behalf of [Redacted] for the year you have proposed an adjustment: 2003. Since this appeal confines its subject matter to challenging the proposed assessment within the scope of the Internal Revenue Laws, as described in Publication 5, an appeals conference is an authorized and available appeal right to [Redacted]. This letter is to serve as the statement of facts and statement of law relied on by the appellant, and the attachment is to serve as the schedule of disputed issues.

First, [Redacted] had no requirement to file any tax returns pursuant to Subtitle A of the Internal Revenue Code (IRC) for the year at issue. According to the regulations published with respect to Subchapter N of that Subtitle, particularly 26 CFR § 1.861-8(f), income must be derived from one of the "specific sources" listed therein (for citizens, such sources are primarily limited to foreign-earned income) before it is considered "gross income" for purposes of the tax laws. None of the amounts shown in the "Tax Calculation Summary" accompanying your letter has been derived from any of those sources. Therefore, no filing requirement was triggered for [Redacted].



If you have determined otherwise, then IRC § 6020(b) provides the procedure by which any such returns are to be made. That section requires all returns made under its authority to be subscribed (that is, signed) by the person making such returns. Therefore, if you are proceeding pursuant to the authority of § 6020(b), please provide a copy of the signed return which was made with respect to [REDACTED] for the year at issue. If you are acting pursuant to some other lawful authority, then please cite such authority in your response.

In the absence of a return—either one signed by [REDACTED] or one signed by a lawful delegate of the Secretary—there is no authority to assess a tax as you threaten in your letter. If you claim to have the authority to assess this proposed tax against [REDACTED], outside the limitations specifically established by IRC § 6201(a)(1), then please cite that authority also.

Mr. Byrd, it appears that you are unlawfully attempting to use deficiency procedures to bypass the requirement of signed returns established by §§ 6020(b)(2) and 6201(a)(1). Such violations are punishable under § 1203 of Public Law 105-206, enacted in 1998.

Further, since "wages" are limited to the application of Subtitle C, deficiency procedures cannot even apply to them, since IRC § 6212(a) limits such procedures to "subtitle A or B or chapter 41, 42, 43 or 44 [subtitle D]" of the Code. Finally, your letter is not verified in accordance with §§ 6061 and 6065.

Mr. Byrd, for the above reasons you can consider this letter as a challenge to your authority. I believe the circumstantial facts involving this matter are reason enough to put you on notice that this is a wrongful assessment procedure. Therefore, we insist that this proposed assessment be abated pursuant to 26 U.S.C. §§ 6213(b)(2) and 6404(a)(3), or otherwise reversed or deleted. In the alternative, forward [REDACTED] case to the Appeals Office, as required by paragraph 5 of § 4.12.1.18 of the Internal Revenue Manual, so that an appeal conference can be scheduled.


I declare that I have examined the statement of facts presented in this protest and in any accompanying schedules and, to the best of my knowledge and belief, it is true, correct, and complete.

I hereby declare that:

1. I am not currently under suspension or disbarment from practice before the Internal Revenue Service or other practice of my profession by any other authority;
2. I am aware of the regulations contained in Title 31 CFR part 10 concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries and others;
3. I am authorized to represent the individual identified in the power of attorney;
4. I am an individual described in Title 26 Code of Federal Regulation Part 600, at 26 CFR § 601.502(a)(1) and (2), §601.502(b)(5)(ii) and in Circular 230 at §10.7(c)(1)(iv); and

5. the original attached Power-of-Attorney is valid under the laws of the State of Maryland.

Under penalty of perjury, I declare that the foregoing is true to the best of my knowledge and belief.


John B. Kotmair, Jr.

Enclosures: Original Power-of-Attorney; copy of Letter 2566, dated August 22, 2005;
Schedule of Disputed Issues.




Schedule of Disputed Issues

- (1) [REDACTED] has no requirement to file any tax return for the year at issue because he received no income from the sources listed in 26 CFR § 1.861-8(f).
- (2) [REDACTED] has not filed a tax return that could be examined. Without this a "deficiency" in the "tax shown by the taxpayer on his return" under 26 USC 6211 cannot be justified, nor can a deficiency assessment be made under 26 USC 6212.
- (3) Internal Revenue Code § 6020(b) provides the procedure to be used when a required return has not been filed, yet the IRS appears to be proceeding under deficiency provisions which cannot apply.
- (4) In the absence of a signed return, the proposed assessment cannot lawfully be made.
- (5) According to the notice, certain amounts alleged to support the assessment were wages, which are limited to the provisions of Subtitle C of the Internal Revenue Code. As such, they are outside of the "deficiency" assessment authority in 26 USC §§ 6211 and 6212.
- (6) The notice received by [REDACTED] was not authenticated pursuant to 26 USC §§ 6061 and 6065.

**PRIVACY ACT RELEASE FORM
AND POWER OF ATTORNEY**

Because of the Privacy Act of 1974, written authorization is required by the individual before any information can be given to another individual or organization.

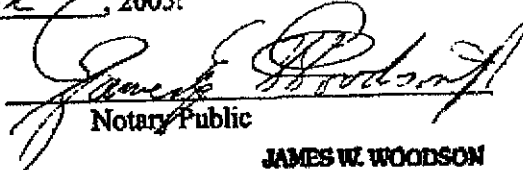
Pursuant to the authority in 26 CFR § 301.6103(c)-1, 26 CFR § 601.502(a)(1) and (2), 26 CFR § 601.502(b)(5)(ii) and Treasury Department Circular No. 230, at § 10.7(c)(1)(iv), this form will give John B. Kotmair, Jr., (Representative Number: 2605-47815R), of Post Office Box 91, Westminster, Maryland 21158, permission to investigate this matter for me.

I,  a member of the Save-A-Patriot Fellowship, do hereby give to John B. Kotmair, Jr., the Fiduciary of Save-A-Patriot Fellowship, permission to represent, inquire of and procure from the Internal Revenue Service any and all of the records, pertaining to income taxes, to include income tax returns (1040, 1040A, related forms and assessment records) maintained within any of the Internal Revenue Service Offices, regarding the following years: 2002 through and including 2005.

On this 6 day of SEPT., 2005, I hereby certify that I am the individual making this Power of Attorney, to John B. Kotmair, Jr., and that I have a "material interest" in the information within the documents sought.



Subscribed and sworn to before me, a Notary Public, of the State of New Jersey, County of Gloucester, on this 6 day of September, 2005.


Notary Public

JAMES W. WOODSON
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Nov. 12, 2008

My Commission Expires On: _____

Concerning:

[REDACTED]

Person making response via attached Power-of-Attorney pursuant to 26 CFR § 301.6103(c)-1, 26 CFR § 601.502(a), 26 CFR § 601.502(b)(5)(ii) and Treasury Circular No. 230, at § 10.7(c)(1)(iv):

John B. Kotmair, Jr., Representative Number 2605-47815R
Post Office Box 91, Westminster, MD 21158

July 29, 2005

Certified Mail No. 7005 1160 0004 9957 1533

Re: "NOTICE OF DEFICIENCY" dated June 7, 2005 and
IR Code § 6404(a)(3), "ABATEMENTS."

Scott B. Prentky, Director
Internal Revenue Service Center
1973 Rulon White Blvd.
Ogden, UT 84404

RECEIVED
AUG 25 2005
FRP 302

Dear Mr. Prentky:

[REDACTED] is in receipt of a document from your office (copy enclosed) that is deficient because it does not contain a "...declaration that it is made under the penalties of perjury" (Internal Revenue Code § 6065), and is devoid of any mention of appeal rights pursuant to Internal Revenue Code § 6404(a)(3). This document purports to be a "NOTICE OF DEFICIENCY," alleging various amounts of money due for the year 2003, but fails the statutory provisions of §§ 6211 and 6212. Therefore, it must be abated pursuant to § 6404(a)(3). The following is my response to this unquestionably wrongful assessment procedure:

Please be advised that [REDACTED] has related to me that he has not submitted any type of tax return forms for the year in question to the Internal Revenue Service for a "DEFICIENCY" to occur in. It is obviously absurd for you to claim that you have the authority to file returns for [REDACTED] create a "DEFICIENCY" within those returns, and then give him "NOTICE" of that "DEFICIENCY."

[REDACTED] denies any requirement to file a tax return under Subtitle A, Chapters 1 and/or 3, i.e., does not have any "Foreign Earned Income," and is not a nonresident alien, officer of a foreign corporation, or involved in any way with a foreign tax exempt organization.

Your citing of Internal Revenue Code §§ 6651(a)(1), 6654(a), and 6651(a)(2) within the attachments to the "NOTICE OF DEFICIENCY" are wrongfully applied pursuant to the Code of Federal Regulations Index. According to this Index these sections apply to Title 27 United States

Exhibit 13

Code, and section 6654(a) relates to Title 26 United States Code Chapter 1, and as exemplified within 26 Code of Federal Regulations Part 600, Section 602.101, that the procedures relate to "Foreign Earned Income." [REDACTED] declared to me that he did not work outside of the States of the Union for the year cited within the "NOTICE OF DEFICIENCY." Therefore, Internal Revenue Code § 6654(e)(2)(C) is applicable to him.

Further, according to 26 CFR § 1.861-1(a):

"Part I (section 861 and following), Subchapter N, Chapter 1 of the Code, and the regulations thereunder determine the sources of income for purposes of the income tax."

26 CFR § 1.861-8(a)(1) states, in part:

"The rules contained in this section apply in determining taxable income of the taxpayer from specific sources and activities under other sections of the Code, referred to in this section as operative sections. See paragraph (f)(1) of this section for a list and description of operative sections."

On the worksheets enclosed with the alleged "NOTICE OF DEFICIENCY," "Non-Employee Compensation, Interest" are listed under the heading "Adjustments to Income." However, no specific sources or payers are shown, so I am unable to determine whether or not the "Non-Employee Compensation, Interest" are derived from the taxable "sources" listed in 26 CFR § 1.861-8(f)(1) and is therefore "taxable income" as defined in the Internal Revenue Code.

According to the form 886-A, "if you need a list of the payers and amounts of the income reported to the Internal Revenue, you may request this information in writing." Therefore, please consider this letter a request for such information.

Such information has already been requested once, within the written protest, dated May 13, 2005, but as of this time, the IRS has failed to provide it. This is in spite of the explicit instructions on the form 886-A, and also found in 31 CFR Pt. 1, Subpt. C, App. B, § 2, which states in pertinent part:

"Individuals are advised that Internal Revenue Service procedures permit the examination of tax records during the course of an investigation, audit, or collection activity. Accordingly, individuals should contact the Internal Revenue Service employee conducting an audit or effecting the collection of tax liabilities to gain access to such records, rather than seeking access under the provisions of the Privacy Act."

The IRS' continuing failure to provide this necessary information prohibits [REDACTED] from being able to effectively exercise his right to due process, since he is being denied access to the basis for the proposed assessment. This denial of due process will adversely affect all subsequent actions, and will be prosecuted to the fullest extent allowed by law.

Further, since [REDACTED] did not file income tax returns made pursuant to "... subtitle A or B or chapter 41, 42, 43, or 44 ..." of the Internal Revenue Code for the year in

question, would you please tell me what statutory procedure(s) you are proceeding under the authority of? Please respond pursuant to IR Manual § 1.2.1.2.34, "Policies of the Internal Revenue Service":

"P-1-156:

"Keeping the taxpaying public informed by communicating provisions of the law in understandable terms...";

"P-1-179:

"Since taxpayers must compute their taxes under a body of laws and regulations, some of the provisions of which are complex, the Service has the responsibility of providing taxpayers with all possible information to assist them in the performance of their obligations." and;

"P-1-180:

"The Service recognizes the people's right to know about their tax laws and the manner in which they are being administrated."

As stated above, the purpose of this letter is to put you on notice of the wrongful assessment procedures and the fact that the notice itself is deficient because:

- (a) the notice does not set forth all of [REDACTED] appeal rights, i.e. section 6404(a)(3);
- (b) the notice is not signed pursuant to section 6065;
- (c) the proposed deficiency does not meet the definition of "deficiency," nor come within the statutory authority of sections 6211 and 6212;
- (d) you have failed to comply with the provisions of section 6501(c)(3) to substantiate your alleged assessment against [REDACTED] and
- (e) the sources of the income listed within the notice are not specified, therefore making it impossible to determine whether [REDACTED] has received "taxable income," i.e., whether such income was derived from the sources listed in 26 CFR § 1.861-8(f)(1).

In addition to the foregoing, [REDACTED] submitted a written protest for appeals consideration in response to the "proposed" assessment dated April 8, 2005, for the same year, on May 13, 2005, and has not received a reply or been afforded his administrative appeal rights. Therefore, the issuance of the alleged "Notice of Deficiency," for the year in question is clear evidence of your denial of due process.

Mr. Prentky, it is quite obvious that this action taken by you, or on your behalf, is a fraudulent misuse of the Internal Revenue Code deficiency/assessment procedures. On behalf of [REDACTED] I am here and now giving you notice that we will tirelessly prosecute any effort to illegally seize any of [REDACTED] property. I am also sending a copy of this letter to Mark W. Everson, Commissioner of Internal Revenue, so that he is properly notified of the wrongful use of the cited statutes and their deficiency/assessment procedures and can also be held accountable. If you or Mr. Everson continue to prosecute this Notice of Deficiency action, and insist that you have the authority to do so, then you should have no objection to executing the enclosed affidavits. If you decline to do so, then it will be presumed that you do not have any such authority and are proceeding wrongfully.

By reason of the above stated facts, I demand that you abate this "assessment" procedure pursuant to § 6404(a)(3), Title 26, U.S. Code.


I hereby declare that:

1. I am not currently under suspension or disbarment from practice before the Internal Revenue Service or other practice of my profession by any other authority;
2. I am aware of the regulations contained in Title 31 CFR part 10 concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries and others;
3. I am authorized to represent the individual identified in the power of attorney;
4. I am an individual described in Title 26 Code of Federal Regulation Part 600, at 26 CFR § 601.502(a)(1) and (2), §601.502(b)(5)(ii) and in Circular 230 at §10.7(c)(1)(iv); and
5. the original attached Power-of-Attorney is valid under the laws of the State of Maryland.

Under penalty of perjury, I declare that the foregoing is true to the best of my knowledge and belief.


John B. Kotmair, Jr.

Enclosures: Original Power-of-Attorney; copy of "Notice of Deficiency" dated June 7, 2005; and affidavits for your and Mr. Everson's execution.

● 
Mark W. Everson, Commissioner
Internal Revenue Service
1111 Constitution Avenue, Rm. 3000
Washington, D.C. 20224

AFFIDAVIT

I, Scott B. Prentky, Director of the Ogden Service Center office of the Internal Revenue Service, do hereby declare under penalty of perjury that the tax liability of [REDACTED] was determined in accordance with Title 26, United States Code, Title 26, Code of Federal Regulations, the Administrative Procedures Act, the Federal Register Act, the Paperwork Reduction Act of 1980, and the policies, procedures, practices, rules, and regulations as incorporated in the various Internal Revenue Manuals.

Scott B. Prentky, Director

Subscribed and sworn to before me, a Notary Public, of the State of _____, County of _____, this ____ day of _____, 20____, that the above named person did appear before me and was identified to be the person executing this document.

Notary Public

My Commission Expires On: _____

AFFIDAVIT

I, Mark W. Everson, Commissioner of the Internal Revenue Service, do hereby declare under penalty of perjury that the tax liability of [REDACTED] as determined in accordance with Title 26, United States Code, Title 26, Code of Federal Regulations, the Administrative Procedures Act, the Federal Register Act, the Paperwork Reduction Act of 1980, and the policies, procedures, practices, rules, and regulations as incorporated in the various Internal Revenue Manuals.

Mark W. Everson, Commissioner

Subscribed and sworn to before me, a Notary Public, of the State of _____, County of _____, this ____ day of _____, 20____, that the above named person did appear before me and was identified to be the person executing this document.


Notary Public

My Commission Expires On: _____

**PRIVACY ACT RELEASE FORM
AND POWER OF ATTORNEY**

Because of the Privacy Act of 1974, written authorization is required by the individual before any information can be given to another individual or organization.

Pursuant to the authority in 26 CFR § 301.6103(c)-1, 26 CFR § 601.502(a)(1) and (2), 26 CFR § 601.502(b)(5)(ii) and Treasury Department Circular No. 230, at § 10.7(c)(1)(iv), this form will give John B. Kotmair, Jr., (Representative Number: 2605-47815R), of Post Office Box 91, Westminster, Maryland 21158, permission to investigate this matter for me.


a member of the Save-A-Patriot Fellowship, do hereby give to John B. Kotmair, Jr., the Fiduciary of Save-A-Patriot Fellowship, permission to represent, inquire of and procure from the Internal Revenue Service any and all of the records, pertaining to income taxes, to include income tax returns (1040, 1040A, related forms and assessment records) maintained within any of the Internal Revenue Service Offices, regarding the following years: 1999 through and including 2004.

On this 28th day of June, 2005, I hereby certify that I am the individual making this Power of Attorney, to John B. Kotmair, Jr., and that I have a "material interest" in the information within the documents sought.



Subscribed and sworn to before me, a Notary Public, of the State of

New Hampshire, County of Carroll, on this 28th day of

June, 2005.

Catherine Floyd
Notary Public

My Commission Expires On: 2-7-10

Rev. 12/30/96

CATHERINE FLOYD, Notary Public
My Commission Expires February 9, 2010

2667

168

Concerning:

Person making response via attached Power-of-Attorney pursuant to 26 CFR § 301.6103(c)-1, 26 CFR § 601.502(a), 26 CFR § 601.502(b)(5)(ii) and Treasury Circular No. 230, at § 10.7(c)(1)(iv):

John B. Kotnair, Jr., Representative Number 2605-47815R
Post Office Box 91, Westminster, MD 21158

January 31, 2005

Certified Mail No. 7004 1160 0002 9216 9747

Re: "NOTICE OF DEFICIENCY" dated December 10, 2004; and
IR Code § 6404(a)(3), "ABATEMENTS."

Kevin Harris, Technical Services Territory Manager, Area 9
Internal Revenue Service Center
1222 Spruce Street
St. Louis, MO 63103

RECEIVED

MAR 08 2005

FRP 303

Dear Mr. Harris:

██████████ is in receipt of a document from your office (copy enclosed) that is deficient because it does not contain a "... declaration that it is made under the penalties of perjury" (Internal Revenue Code § 6065), and is devoid of any mention of appeal rights pursuant to Internal Revenue Code § 6404(a)(3). This document purports to be a "NOTICE OF DEFICIENCY," alleging various amounts of money due for the years 1997 through and including 2002, but fails the statutory provisions of §§ 6211 and 6212. Therefore, it must be abated pursuant to § 6404(a)(3). The following is my response to this unquestionably wrongful assessment procedure:

Please be advised that ██████████ has related to me that he has not submitted any type of tax return forms for the years in question to the Internal Revenue Service for a "DEFICIENCY" to occur in. It is obviously absurd for you to claim that you have the authority to file returns for Mr. Griffith, create a "DEFICIENCY" within those returns, and then give him "NOTICE" of that "DEFICIENCY."

██████████ denies any requirement to file a tax return under Subtitle A, Chapters 1 and/or 3, i.e., does not have any "Foreign Earned Income," and is not a nonresident alien, officer of a foreign corporation, or involved in any way with a foreign tax exempt organization. As you must be aware, §§ 6012, 6211, and 6212 specifically exclude taxes imposed by Subtitle C.

Exhibit 13A

Your citing of Internal Revenue Code §§ 6651(a)(1) and 6654(a) within the attachments to the "NOTICE OF DEFICIENCY" are wrongfully applied pursuant to the Code of Federal Regulations Index. According to this Index these sections apply to Title 27 United States Code, and section 6654(a) relates to Title 26 United States Code Chapter 1, and as exemplified within 26 Code of Federal Regulations Part 600, Section 602.101, that the procedures relate to "Foreign Earned Income." [REDACTED] declared to me that he did not work outside of the States of the Union for the years cited within the "NOTICE OF DEFICIENCY." Therefore, Internal Revenue Code § 6654(e)(2)(C) is applicable to him.

Further, according to 26 CFR § 1.861-1(a):

"Part I (section 861 and following), Subchapter N, Chapter 1 of the Code, and the regulations thereunder determine the sources of income for purposes of the income tax."

26 CFR § 1.861-8(a)(1) states, in part:

"The rules contained in this section apply in determining taxable income of the taxpayer from specific sources and activities under other sections of the Code, referred to in this section as operative sections. See paragraph (f)(1) of this section for a list and description of operative sections."

The items of income listed on the worksheets enclosed with the alleged "Notice of Deficiency" are not derived from the taxable "sources" listed in 26 CFR § 1.861-8(f)(1), and are therefore not "taxable income" as defined in the Internal Revenue Code.

Since [REDACTED] did not file income tax returns made pursuant to ". . . subtitle A or B or chapter 41, 42, 43, or 44. . ." of the Internal Revenue Code for the years in question, would you please tell me what statutory procedure(s) you are proceeding under the authority of? Please respond pursuant to IR Manual § 1.2.1.2.34, "Policies of the Internal Revenue Service":

"P-1-156:

"Keeping the taxpaying public informed by communicating provisions of the law in understandable terms...";

"P-1-179:

"Since taxpayers must compute their taxes under a body of laws and regulations, some of the provisions of which are complex, the Service has the responsibility of providing taxpayers with all possible information to assist them in the performance of their obligations." and;

"P-1-180:

"The Service recognizes the people's right to know about their tax laws and the manner in which they are being administrated."

As stated above, the purpose of this letter is to put you on notice of the wrongful assessment procedures and the fact that the notice itself is deficient, by:

- (a) not stating therein all of Mr. Griffith's appeal rights, i.e. section 6404(a)(3);
- (b) the notice was not signed pursuant to section 6065;

- (c) the proposed deficiency does not meet the definition of "deficiency," nor come within the statutory authority of sections 6211 and 6212;
- (d) your failure to comply with the provisions of section 6501(c)(3) to substantiate your alleged assessment against Mr. Griffith; and
- (e) the items of income listed within the notice were not derived from the taxable sources listed in 26 CFR § 1.861-8(f)(1), and are therefore not "taxable income."

Mr. Harris, it is quite obvious that this action taken by you, or on your behalf, is a fraudulent misuse of the Internal Revenue Code deficiency/assessment procedures. On behalf of [REDACTED] I am here and now giving you notice that we will tirelessly prosecute any effort to illegally seize any of [REDACTED] property. I am also sending a copy of this letter to Mark W. Everson, Commissioner of Internal Revenue, so that he is properly notified of the wrongful use of the cited statutes and their deficiency/assessment procedures and can also be held accountable. If you or Mr. Everson continue to prosecute this Notice of Deficiency action, and insist that you have the authority to do so, then you should have no objection to executing the enclosed affidavits. If you decline to do so, then it will be presumed that you do not have any such authority and are proceeding wrongfully.

By reason of the above stated facts, I demand that you abate this "assessment" procedure pursuant to § 6404(a)(3), Title 26, U.S. Code.

I hereby declare that:

1. I am not currently under suspension or disbarment from practice before the Internal Revenue Service or other practice of my profession by any other authority;
2. I am aware of the regulations contained in Title 31 CFR part 10 concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries and others;
3. I am authorized to represent the individual identified in the power of attorney;
4. I am an individual described in Title 26 Code of Federal Regulation Part 600, at 26 CFR § 601.502(a)(1) and (2), §601.502(b)(5)(ii) and in Circular 230 at §10.7(c)(1)(iv); and
5. the original attached Power-of-Arrowney is valid under the laws of the State of Maryland.

Under penalty of perjury, I declare that the foregoing is true to the best of my knowledge and belief.



John B. Korman, Jr.

Enclosures: Original Power-of-Attorney; copy of "Notice of Deficiency" dated December 10, 2004; and affidavits for your and Mr. Everson's execution.

cc: Keith Griffith

Mark W. Everson, Commissioner
Internal Revenue Service
1111 Constitution Avenue, Rm. 3000
Washington, D.C. 20224

AFFIDAVIT

I, Kevin Harris, Technical Services Territory Manager, Area 9, of the Internal Revenue Service, do hereby declare under penalty of perjury that the tax liability of Keith Griffith was determined in accordance with Title 26, United States Code, Title 26, Code of Federal Regulations, the Administrative Procedures Act, the Federal Register Act, the Paperwork Reduction Act of 1980, and the policies, procedures, practices, rules, and regulations as incorporated in the various Internal Revenue Manuals.

Kevin Harris, Technical Services Territory
Manager, Area 9

Subscribed and sworn to before me, a Notary Public, of the State of _____, County of _____, this ____ day of _____, 20____, that the above named person did appear before me and was identified to be the person executing this document.

Notary Public

My Commission Expires On: _____

ARCHIVE

I, Mark W. Everson, Commissioner of the Internal Revenue Service, do hereby declare under penalty of perjury that the tax liability of Keith Griffith was determined in accordance with Title 26, United States Code, Title 26, Code of Federal Regulations, the Administrative Procedures Act, the Federal Register Act, the Paperwork Reduction Act of 1980, and the policies, procedures, practices, rules, and regulations as incorporated in the various Internal Revenue Manuals.

ARCHIVE

Mark W. Everson, Commissioner

Subscribed and sworn to before me, a Notary Public, of the State of _____, County of _____, this ____ day of _____, 20____, that the above named person did appear before me and was identified to be the person executing this document.

Notary Public

My Commission Expires On: _____

**PRIVACY ACT RELEASE FORM
AND POWER OF ATTORNEY**

Because of the Privacy Act of 1974, written authorization is required by the individual before any information can be given to another individual or organization.

Pursuant to the authority in 26 CFR § 301.6103(c)-1, 26 CFR § 601.502(a)(1) and (2), 26 CFR § 601.502(b)(5)(ii) and Treasury Department Circular No. 230, at § 10.7(c)(1)(iv), this form will give John B. Kotmair, Jr., (Representative Number: 2605-47815R), of Post Office Box 91, Westminster, Maryland 21158, permission to investigate this matter for me.

I, [REDACTED], a member of the Save-A-Patriot Fellowship, do hereby give to John B. Kotmair, Jr., the Fiduciary of Save-A-Patriot Fellowship, permission to represent, inquire of and procure from the Internal Revenue Service any and all of the records, pertaining to income taxes, to include income tax returns (1040, 1040A, related forms and assessment records) maintained within any of the Internal Revenue Service Offices, regarding the following years: 1996 through and including 2005.

On this 20 day of January, 2005, I hereby certify that I am the individual making this Power of Attorney, to John B. Kotmair, Jr., and that I have a "material interest" in the information within the documents sought.

[REDACTED SIGNATURE]

Subscribed and sworn to before me, a Notary Public, of the State of Missouri, County of Jefferson, on this 20 day of January, 2005.

SHAWN D. McCALLISTER
Notary Public - Notary Seal
STATE OF MISSOURI
Jefferson County
My Commission Expires Aug. 10, 2008

[REDACTED SIGNATURE]
Notary Public

My Commission Expires On: August 10, 2008

Rev. 12/31/96

6389

175



Letter Date: DEC 10 2004

Form: 1040
Person to Contact:
C. Dailing
Telephone Number:
(314) 612-4314
Employee Identification Number:
43-15406
In Reply Refer to:
S:C:E:TS:Area 4
Last Day to File a Petition With
the United States Tax Court: MAR 10 2005

Tax Year Ended:	Deficiency	Penalties
December 31, 1997	\$ 9,131	\$ 3,273.00
December 31, 1998	8,902	2,940.75
December 31, 1999	10,831	8,123.25
December 31, 2000	20,855	15,641.25
December 31, 2001	22,624	16,968.00
December 31, 2002	21,908	16,431.00

NOTICE OF DEFICIENCY

We have determined that you owe additional tax or other amounts, or both, for the tax year(s) identified above. This letter is your NOTICE OF DEFICIENCY, as required by law. The enclosed statement shows how we figured the deficiency.

If you want to contest this determination in court before making any payment, you have 90 days from the date of this letter (150 days if this letter is addressed to you outside of the United States) to file a petition with the United States Tax Court for a redetermination of the deficiency. You can get a copy of the rules for filing a petition and a petition form you can use by writing to the address below.

United States Tax Court, 400 Second Street, NW, Washington, DC 20217

The Tax Court has a simplified procedure for small tax cases when the amount in dispute is \$50,000 or less. If you intend to file a petition for multiple tax years and the amount in dispute for any one or more of the tax years exceeds \$50,000, this simplified procedure is not available to you. If you use this simplified procedure, you cannot appeal the Tax Court's decision. You can get information pertaining to the simplified procedure for small cases from the Tax Court by writing to the court at the above address or from the court's internet site at www.ustaxcourt.gov.

Send the completed petition form, a copy of this letter, and copies of all statements and/or schedules you received with this letter to the Tax Court at the above address. The Court cannot consider your case if the petition is filed late. The petition is considered timely filed if the postmark date falls within the prescribed 90 or 150 day period and the envelope containing the petition is properly addressed with the correct postage.

The time you have to file a petition with the court is set by law and cannot be extended or suspended. Thus, contacting the Internal Revenue Service (IRS) for more information, or receiving other correspondence from the IRS won't change the allowable period for filing a petition with the Tax Court.

P.O. Box 66782 - STOP 4700STL/ASU
St. Louis, MO 63166

Letter 531 (DO)

information, or receiving other correspondence from the IRS won't change the allowable period for filing a petition with the Tax Court.

As required by law, separate notices are sent to husbands and wives. If this letter is addressed to both husband and wife, and both want to petition the Tax Court, both must sign and file the petition or each must file a separate, signed petition. If more than one tax year is shown above, you may file one petition form showing all of the years you are contesting.

You may represent yourself before the Tax Court, or you may be represented by anyone admitted to practice before the Tax Court.

If you decide not to file a petition with the Tax Court, please sign the enclosed waiver form and return it to us at the IRS address on the top of the front of this letter. This will permit us to assess the deficiency quickly and can help limit the accumulation of interest.

If you decide not to sign and return the waiver, and you do not file a petition with the Tax Court within the time limit, the law requires us to assess and bill you for the deficiency after 90 days from the date of this letter (150 days if this letter is addressed to you outside the United States).

NOTE: If you are a C-corporation, section 6621(c) of the Internal Revenue Code requires that we charge an interest rate two percent higher than the normal rate on large corporate underpayments of \$100,000 or more.

If you have questions about this letter, you may write to or call the contact person whose name, telephone number, and IRS address are shown on the front of this letter. If you write, please include your telephone number, the best time for us to call you if we need more information, and a copy of this letter to help us identify your account. Keep the original letter for your records. If you prefer to call and the telephone number is outside your local calling area, there will be a long distance charge to you.

The contact person can access your tax information and help you get answers. You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures such as the formal appeals process. The Taxpayer Advocate is not able to reverse legally correct tax determinations, nor extend the time fixed by law that you have to file a petition in the U.S. Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this notice of deficiency. See the enclosed Notice 1214, Helpful Contacts for Your "Notice of Deficiency", for Taxpayer Advocate telephone numbers and addresses.

Thank you for your cooperation.

Sincerely,
Mark W. Everson
Commissioner

By



Kevin Harris
Technical Services Territory Manager

Enclosures:

Explanation of tax changes

Waiver

Notice 1214

Publication 1

P.O. Box 66782 - STOP 4700STL/ASU

St. Louis, MO 63166

Letter 531 (DO)

Impu ↓ 1/2 FFF

Concerning:

[Redacted]

Person making response via attached Power-of-Attorney pursuant to 26 CFR § 301.6103(c)-1, 26 CFR § 601.502(a), 26 CFR § 601.502(b)(5)(ii) and Treasury Circular No. 230, at § 10.7(c)(1)(iv):

John B. Kotmair, Jr., Representative Number 2605-47815R
Post Office Box 91, Westminster, MD 21158

August 26, 2005

Certified Mail No. 7005 1160 0004 9957 0963

Re: CP 504, Notice of Intent to Levy, dated August 1, 2005, concerning 1999.

Scott B. Prentky, Director
Internal Revenue Service Center
1973 Rulon White Blvd.
Ogden, UT 84404

RECEIVED IN CORRES
IRS - OSC -593

AUG 30 2005

OGDEN, UTAH

Dear Mr. Prentky:

[Redacted] has forwarded to me for response the enclosed Notice of Intent to Levy dated August 1, 2005. In addition to the deficiencies of the Notice itself, it appears that it has also been sent to [Redacted] in error. The requirement for this Notice is set out in Internal Revenue Code (IRC) § 6331(d)(1), which states:

"(d) Requirement of notice before levy.--

SEP 13 2005

(1) In general.--Levy may be made under subsection (a) upon the salary or wages or other property of any person with respect to any unpaid tax *only after the Secretary has notified such person in writing of his intention to make such levy.*"
[Emphasis added]

It can be seen that this notice is a necessary step before levy can be made pursuant to subsection (a), which states:

"(a) Authority of Secretary.--If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment

Exhibit 14

178

of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section." [Emphasis added]

This subsection establishes two further requirements that must be met before a levy can lawfully proceed. The first requirement is that the person *must be liable for* the tax. This requirement has not been met in [REDACTED] case. You are surely aware that there is no statute within Title 26 which makes [REDACTED] personally liable for (or subject to) the tax you are attempting to (unlawfully) collect. Therefore, he could not possibly be liable for the tax referenced on your Notice. This lack of statutory liability removes him from the class of persons who are subject to have their property levied upon.

If you contend that [REDACTED] has been made statutorily liable for the tax you are attempting to collect, then we demand that you cite such statute, and explain how such statute relates to him specifically. Unless and until you provide evidence of [REDACTED] statutory liability, any further attempts to collect the amounts referenced in your Notice must be considered to be willful actions, known to have no lawful basis, and thus, outside the scope of your lawful authority. You should be aware that in the case of Bothke v. Fluor Engineers and Constructors, Inc., (713 F.2d 1405), the United States Court of Appeals for the Ninth Circuit held:

"Second, the taxpayer must be liable for the tax. Id. Tax liability is a condition precedent to the demand. Merely demanding payment, even repeatedly, does not cause liability."

Another thing you may want to consider is that this Court also ruled that IRS employees, when acting outside their lawful authority, do not enjoy the immunity they are granted when acting within the scope of that authority. Therefore, actions taken outside of your limited lawful authority will expose you to liability in your personal capacity.

The second requirement to be met before a levy can be made is the sending of a Notice and Demand pursuant to IRC § 6303(a), which states:

§ 6303. Notice and demand for tax

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

[REDACTED] has no record of ever receiving this required Notice and Demand for tax. If you contend that such Notice has been sent, then forward a copy of this Notice, so that he can verify that this requirement has been met. Please also take note that this subsection again clearly establishes that this notice must be sent to the "*person liable for the unpaid tax*," and as previously mentioned, you have yet to provide any evidence that [REDACTED] is statutorily liable for the tax at issue.

Furthermore, on February 20, 2004, I mailed to your offices a Petition for Abatement pursuant to IRC § 6404(a)(3) on behalf of [REDACTED] received by your offices, and as of this date that petition has not been addressed.

In addition to the defects in the process referenced above, the Notice itself is defective. The most glaring of these defects is that the Notice is not signed under penalty of perjury as required by Internal Revenue Code (IRC) § 6065. The words used by Congress in enacting this statute leave no doubt that this requirement applies to ALL returns, declarations, statements, and documents. Otherwise, Congress would have qualified this requirement by making it apply to the documents "required to be made *by the taxpayer* under any provision of the internal revenue laws." Since they did not qualify it in this way, the statute must be construed to include those documents required to be made by the Internal Revenue Service.

Next, this Notice does not comply with the requirements of IRC § 6331(d)(4), which states:

"(d) Requirement of notice before levy.

... (4) Information included with notice.

The notice required under paragraph (1) shall include a brief statement which sets forth in simple and nontechnical terms-

(A) the provisions of this title relating to levy and sale of property,

(B) the procedures applicable to the levy and sale of property under this title,

(C) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals,

(D) the alternatives available to taxpayers which could prevent levy on the property (including installment agreements under section 6159),

(E) the provisions of this title relating to redemption of property and release of liens on property, and

(F) the procedures applicable to the redemption of property and the release of a lien on property under this title."

I could not find this information anywhere in your Notice, thus rendering it invalid. Further, the Notice is also deficient in that it doesn't contain the information required to be included by IRC § 6330(a)(3), relating to due process hearings, thus prohibiting the initiation of any levy actions.

Finally, if you intend to levy against property belonging to [REDACTED] then be aware of IRC § 6502(b), which states:

"(b) Date when levy is considered made.

The *date on which a levy* on property or rights to property *is made shall be the date on which the notice of seizure* provided in section 6335(a) *is given.*" [Emphasis added]

IRC § 6335(a) states:

"(a) Notice of seizure.--As soon as practicable *after seizure of property*, notice in writing shall be given by the Secretary to the owner of the property (or, in the case of personal property, the possessor thereof), or shall be left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such district, the notice may be mailed to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property seized and, in the case of real property, a description with reasonable certainty of the property seized." [Emphasis added]

It is clear from these two sections that a levy is not considered made until AFTER the seizure of property, as only then can a notice of seizure be given. Further, in the case of United States v. O'Dell, (160 F.2d 304), the Sixth Circuit Court of Appeals made the following statements:

"Levy is not effected by mere notice. Hollister v. Goodale, 8 Conn. 332, 21 Am.Dec. 674; Meyer v. Missouri Glass Co., 65 Ark. 286, 45 S.W. 1062, 67 Am.St.Rep. 927; Jones v. Howard, 99 Ga. 451, 27 S.E. 765, 59 Am.St.Rep. 231." [Emphasis added]

"The method for accomplishing a levy on a bank account is the issuing of warrants of distraint, the making of the bank a party, and the serving with notice of levy, copy of the warrants of distraint, and notice of lien. Cf. Commonwealth Bank v. United States, 6 Cir., 115 F.2d 327; United States v. Bank of United States, D.C., 5 F.Supp. 942, 944." [Emphasis added]

Therefore, any Notices of Levy which are not accompanied by copies of the warrants of distraint, and the notices of liens, are fraudulent on their face. Any attempt to use such fraudulent levies to seize [REDACTED] property is a violation of his rights and will be prosecuted to the fullest extent of the law.

In conclusion, the collection actions which you are taking against [REDACTED] are unlawful for the reasons set out herein, and your continuation of such collection actions will henceforth be considered willful actions on your part. This letter will serve as evidence that you have been made aware of the unlawfulness of these actions, so that you can be held personally responsible for any damages your actions cause to [REDACTED]. You should also be aware that IRC § 7214, shown in part below, prescribes criminal penalties for knowingly demanding greater sums than are authorized by law.

§ 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--

... (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 5 years, or both. The court may in its discretion award out of the fine so imposed an amount, not in excess of one-half thereof, for the use of the informer, if any, who shall be ascertained by the judgment of the court. The court also shall render judgment against the said officer or

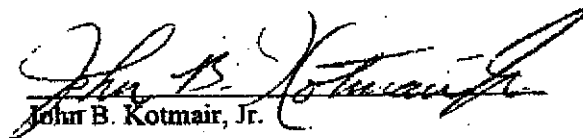
employee for the amount of damages sustained in favor of the party injured, to be collected by execution." [Emphasis added]

Mr. Prentky, I believe the facts involving this matter are reason enough to put you on notice that this is a wrongful assessment procedure, and I am moving you to abate the same. If, at the time of your receipt of this letter, property belonging to [REDACTED] has been taken from third parties, or wrongfully from him, we demand it be returned immediately. If you do not stop this wrongful assessment procedure, or return property that may have been taken, you can be assured [REDACTED] will seek redress in the Federal District Court.

I hereby declare that:

1. I am not currently under suspension or disbarment from practice before the Internal Revenue Service or other practice of my profession by any other authority;
2. I am aware of the regulations contained in Title 31 CFR part 10 concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries and others;
3. I am authorized to represent the individual identified in the power of attorney;
4. I am an individual described in Title 26 Code of Federal Regulation Part 600, at 26 CFR § 601.502(a)(1) and (2), §601.502(b)(5)(ii) and in Circular 230 at §10.7(c)(1)(iv); and
5. the original attached Power-of-Attorney is valid under the laws of the State of Maryland.

Under penalty of perjury, I declare that the foregoing is true to the best of my knowledge and belief.


John B. Kotmair, Jr.

Enclosures: Original Power-of-Attorney; copy of the CP 504, Notice of Intent to Levy, dated August 1, 2005.

[REDACTED]

Susan A. Hansen, Director
Internal Revenue Service Center
201 W. Rivercenter Blvd., Stop 8100G
Covington, KY 41011-0048

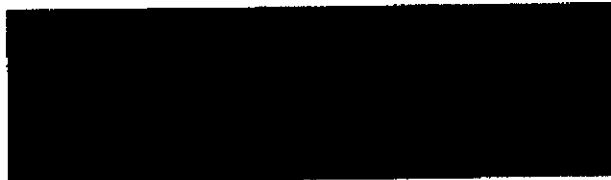
**PRIVACY ACT RELEASE FORM
AND POWER OF ATTORNEY**

Because of the Privacy Act of 1974, written authorization is required by the individual before any information can be given to another individual or organization.

Pursuant to the authority in 26 CFR § 301.6103(c)-1, 26 CFR § 601.502(a)(1) and (2), 26 CFR § 601.502(b)(5)(ii) and Treasury Department Circular No. 230, at § 10.7(c)(1)(iv), this form will give John B. Kotmair, Jr., (Representative Number: 2605-47815R), of Post Office Box 91, Westminster, Maryland 21158, permission to investigate this matter for me.

I, [REDACTED], a member of the Save-A-Patriot Fellowship, do hereby give to John B. Kotmair, Jr., the Fiduciary of Save-A-Patriot Fellowship, permission to represent, inquire of and procure from the Internal Revenue Service any and all of the records, pertaining to income taxes, to include income tax returns (1040, 1040A, related forms and assessment records) maintained within any of the Internal Revenue Service Offices, regarding the following years: 1997 through and including 2005.

On this 18th day of AUGUST, 2005, I hereby certify that I am the individual making this Power of Attorney, to John B. Kotmair, Jr., and that I have a "material interest" in the information within the documents sought.



Subscribed and sworn to before me, a Notary Public, of the State of Ohio, County of Warren, on this 18th day of August, 2005.

William F. Brown
Notary Public

My Commission Expires On:

Rev. 12/30/96



WILLIAM F. BROWN
Notary Public, State of Ohio
My Commission Expires
December 14, 2008

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IRS - OSC -593

AUG 30 2005

OGDEN, UTAH

Form **2555**

Foreign Earned Income

OMB No. 1545-0067

1988

Attachment
Sequence No. 34

Department of the Treasury
Internal Revenue Service

▶ See separate instructions. ▶ Attach to front of Form 1040.

For Use by United States Citizens and Resident Aliens Only.

Name of taxpayer Your social security number

Foreign address (including country) Your occupation

Name of employer ▶

Employer's address U.S. ▶
 Foreign ▶

Employer is (check any that apply) A foreign entity A foreign affiliate of a U.S. company A U.S. company Self Other (specify) ▶

Enter earlier years (after 1981) that you filed Form 2555 to claim either of the exclusions ▶

If you chose to claim an exclusion in an earlier year (after 1981), have you revoked your choice? Yes No
If "Yes," give the type of exclusion and the tax year for which the revocation was effective ▶

Test under which you qualify to claim the exclusion(s) and/or deduction Bona fide residence test (Part I) Physical presence test (Part II) Are you a U.S. citizen? Yes No

Did you maintain a separate foreign residence for your family because of adverse living conditions at your tax home? Yes No

If "Yes," give city and country of the separate foreign residence. Also show the number of days during your tax year that you maintained a second household at that address

List your tax home(s) during your tax year and date(s) established

Complete either Part I or Part II. If an item does not apply, write "NA." If you do not provide the information asked for, any exclusion or deduction you claim may be disallowed.

Part I Taxpayers Qualifying Under Bona Fide Residence Test. (See instructions.)

- 1 Date bona fide residence began _____ ended _____
- 2 Kind of living quarters in foreign country ▶ Purchased house Rented house or apartment Rented room
 Quarters furnished by employer
- 3 Did any of your family live with you abroad during any part of the tax year? Yes No
If "Yes," who and for what period? ▶
- 4a Have you submitted a statement to the authorities of the foreign country where you claim bona fide residence that you are not a resident of that country? (See instructions.) Yes No

OGDEN UT 84201-0030

In reply refer to: 0469530661
June 06, 2005 LTR 3175C
413-19-0414 800000 00 000

17664

BODC: WI

Dear Taxpayer:

This is in reply to your correspondence dated Oct. 21, 2004.

We have determined that the arguments you raised are frivolous and have no basis in law. Federal courts have consistently ruled against such arguments and imposed significant fines for taking such frivolous positions.

You can obtain IRS Publication 2105, *Why do I Have to Pay Taxes?*, from our internet website at www.irs.gov/pub/irs-pdf/p2105.pdf. We also refer you to a document entitled *The Truth About Frivolous Tax Arguments*. It is also on our website at www.irs.gov/pub/irs-utl/friv_tax.pdf. If you do not have internet access, you can obtain copies of these documents from your local IRS office.

There are some people who encourage others to violate our nation's tax laws by arguing that there is no legal requirement for them to file income tax returns or pay income taxes. These people base their arguments on legal statements taken out of context and on frivolous arguments that have been repeatedly rejected by federal courts. People who rely on this kind of information can ultimately pay more in taxes, interest and penalties than they would have paid simply by filing correct tax returns.

People who violate the tax laws also may be subject to federal criminal prosecution and imprisonment. Information about the IRS's criminal enforcement program is available on the internet at www.irs.gov. Once there, enter the IRS keyword: fraud.

The IRS is working with the United States Department of Justice and state taxing authorities to ensure that all taxpayers pay their lawful share of taxes and to seek criminal indictments or civil enforcement actions against people who promote or engage in abusive and fraudulent tax schemes.

The claims presented in your correspondence do not relieve you from your legal responsibilities to file federal tax returns and pay taxes. We urge you to honor those legal duties.

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IRS - OSC - 593

OGDEN, UTAH

If you persist in sending frivolous correspondence, we will not continue to respond to it. Our lack of response to further

[REDACTED]

correspondence does not in any way convey agreement or acceptance of the arguments advanced. If you desire to comply with the law concerning your tax liability, you are encouraged to seek advice from a reputable tax practitioner or attorney.

This letter advises you of the legal requirements for filing and paying federal individual income tax returns and informs you of the potential consequences of the position you have taken. Please observe that the Internal Revenue Code sections listed below expressly authorize IRS employees that act on behalf of the Secretary of the Treasury to: 1.) examine taxpayer books, papers, records, or other data which may be relevant or material; 2.) issue summonses in order to gain possession of records so that determinations can be made of the tax liability or for ascertaining the correctness of any return filed by that person; and 3.) collect any such liability.

General Information on Filing Requirements and Authority to Collect Tax

Title 26, United States Code

- Section 6001 Notice or regulations requiring records, statements, and special returns
- Section 6011 General requirement of return, statement, or list
- Section 6012 Persons required to make returns of income
- Section 6109 Identifying numbers
- Section 6151 Time and place for paying tax shown on returns
- Section 6301 Collection Authority
- Section 6321 Lien for taxes
- Section 6331 Levy and distraint
- Section 7602 Examination of books and witnesses

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IRS - OSC -593

JUN 26 2005

INTERNAL REVENUE CODE SECTION 6702 (FRIVOLOUS INCOME TAX RETURN) PROVIDES:
OGDEN, UTAH

CIVIL PENALTY - If -

- (1) any individual files what purports to be a return of the tax imposed by subtitle A but which -
 - (A) does not contain information on which the substantial correctness of the self-assessment may be judged, or
 - (B) contains information that on its face indicates that the self-assessment is substantially incorrect; and
- (2) the conduct referred to in paragraph (1) is due to -
 - (A) a position which is frivolous, or
 - (B) a desire (which appears on the purported return) to delay or impede the administration of Federal income tax laws, then such individuals shall pay a penalty

0469530661
June 06, 2005 LTR 3175C
413-19-0414 000000 00 000
17666

[REDACTED]

of \$500.00

PENALTY IN ADDITION TO OTHER PENALTIES - The penalty imposed by subsection (a) shall be in addition to any other penalty provided by law.

If you any have questions, please write to us at the address shown at the top of the first page of this letter. Or, you may call us toll free at 1-866-899-9883 between the hours of 8:00 AM and 6:00 PM MST. Whenever you write, please include this letter and, in the spaces below, give us your telephone number with the hours we can reach you. You may also wish to keep a copy of this letter for your records.

Your Telephone Number () _____ Hours _____

Sincerely yours,



Scott Prentky
Field Director, Compliance Services

Enclosure(s):
Copy of this letter
Publication 1
Publication 2105

RECEIVED IN CORRES
IRS - OSC -593

AUG 25 2005

OGDEN, UTAH

Concerning:

Person making response via attached Power-of-Attorney pursuant to 26 CFR § 301.6103(c)-1, 26 CFR § 601.502(a), 26 CFR § 601.502(b)(5)(ii) and Treasury Circular No. 230, at § 10.7(c)(1)(iv):

John B. Kotmair, Jr., Representative Number 2605-47815R
Post Office Box 91, Westminster, MD 21158

August 19, 2005

Certified Mail No. 7005 1160 0004 9957 0734

Scott Prentky, Director
Internal Revenue Service Center
1973 Rulon White Blvd.
Ogden, UT 84404

RECEIVED IN CORRES
IRS - OSC -593

AUG 25 2005

Re: Your Letter 3175C, dated June 6, 2005.

OGDEN, UTAH

Dear Mr. Prentky:

I am in receipt of your letter, dated June 6, 2005, which purports to be a reply to "correspondence dated Oct. 21, 2004." I can only presume that this references my letter, actually dated October 15, 2004, in response to a Letter 2566 from the Atlanta Service Center, dated September 13, 2004, regarding the year 2002. Mr. Prentky, although your letter purports to be a reply to my correspondence, it doesn't address any of the issues presented therein.

In your letter, you state: "We have determined that the arguments you raised are frivolous and have no basis in law. Federal courts have consistently ruled against such arguments and imposed significant fines for taking such frivolous positions." Mr. Prentky, I have already pointed out the basis in the law for the issues I raised in my earlier letters on behalf of [REDACTED]. If you are contending that any of them are wrong, then according to the IRS' Mission Statement, found in IRM § 1.1.1.1, it is your duty to help [REDACTED] understand the law. You can do this by pointing out exactly where you believe any mistakes have been made. It is [REDACTED] intention to comply with all laws as they are written, and I urge you to do the same.

You state further: "The claims presented in your correspondence do not relieve you from your legal responsibilities to file federal income tax returns and pay taxes. We urge you to honor those legal duties." Mr. Prentky, it seems you missed the point of my previous correspondence. The point is that the law does not impose any legal responsibilities or duties upon [REDACTED]. The only section found which establishes a liability for income taxes under Subtitle A is § 1461, and only withholding agents are made liable by that section for the income taxes they withhold from the entities listed in the rest of Chapter 3. That being the case, the various sections you cite in your letter, which are all conditioned on being made liable for the tax, do not apply to [REDACTED] since he is not a withholding agent as that term is defined at § 7701(a)(16).

Page 1 of 3

Cor. Rec'd CM 1 Exam SEP 12 2005



2600

188

Additionally you state, "There are people who encourage others to violate our nation's tax laws by arguing that there is no legal requirement for them to file income tax returns or pay income taxes. These persons base their arguments on legal statements taken out of context and on frivolous arguments that have been repeatedly rejected by federal courts." However, it is not clear from these statements whether you are accusing [REDACTED] of encouraging others to violate tax laws, or whether you are accusing him of violating such laws himself. In either case, he takes such libelous accusations seriously and intends to vigorously pursue all available remedies.

You next state: "If you persist in sending frivolous correspondence, we will not continue to respond to it. Our lack of response to further correspondence does not in any way convey agreement or acceptance of the arguments advanced." Mr. Prentky, it appears that you are refusing to follow the mandates of the Internal Revenue Manual. According to §§ 21.3.3.2(1) and 3.30.123.2.9(2), the IRS is required to issue, within 30 days, a final response to all written communications from taxpayers or their representatives. Can you explain the reasons for your refusal to comply with those provisions?

Finally, you quote IRC § 6702, which penalizes the filing of frivolous income tax returns. However, I am unable to determine why you would cite that provision since it is my understanding that [REDACTED] has not filed any returns for the year 2002, nor anything which "purports to be a return."


Mr. Prentky, as explained herein and in my previous correspondence, [REDACTED] is not a person who is required to deduct and withhold any tax under Chapter 3, and therefore is not a member of that class of persons which Congress specifically made liable for the tax. If you are contending that [REDACTED] has been made liable for (or subject to) a tax by any law of Congress, then you should have no trouble identifying such law(s), so that he may verify its applicability to himself. If you can not identify the specific statute which makes him liable for the taxes at issue, then please state that fact in your reply.

If you fail or refuse to respond as requested within 14 days of your receipt of this letter, it must be presumed that you cannot identify any lawful authority for the actions you are taking, and therefore, such actions must be considered knowing and willful violations of [REDACTED] right to due process.

I hereby declare that:

1. I am not currently under suspension or disbarment from practice before the Internal Revenue Service or other practice of my profession by any other authority;
2. I am aware of the regulations contained in Title 31 CFR part 10 concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries and others;
3. I am authorized to represent the individual identified in the power of attorney;
4. I am an individual described in Title 26 Code of Federal Regulation Part 600, at 26 CFR § 601.502(a)(1) and (2), §601.502(b)(5)(ii) and in Circular 230 at §10.7(c)(1)(iv); and
5. the original attached Power-of-Attorney is valid under the laws of the State of Maryland.

Under penalty of perjury, I declare that the foregoing is true to the best of my knowledge and belief.


John B. Kotmair, Jr.



Enclosures: Original Power-of-Attorney; copy of page one of my original letter, dated October 15, 2004; copy of your letter, dated June 6, 2005.

● [REDACTED]

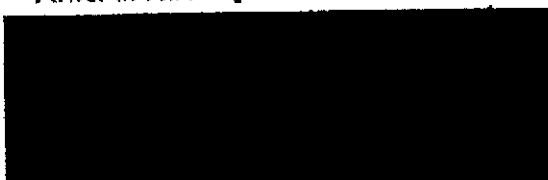
**PRIVACY ACT RELEASE FORM
AND POWER OF ATTORNEY**

Because of the Privacy Act of 1974, written authorization is required by the individual before any information can be given to another individual or organization.

Pursuant to the authority in 26 CFR § 301.6103(c)-1, 26 CFR § 601.502(a)(1) and (2), 26 CFR § 601.502(b)(5)(ii) and Treasury Department Circular No. 230, at § 10.7(c)(1)(iv), this form will give John B. Kotmair, Jr. (Representative Number: 2605-47815R), of Post Office Box 91, Westminster, Maryland 21158, permission to investigate this matter for me.


 a member of the Save-A-Patriot Fellowship, do hereby give to John B. Kotmair, Jr., the Fiduciary of Save-A-Patriot Fellowship, permission to represent, inquire of and procure from the Internal Revenue Service any and all of the records, pertaining to income taxes, to include income tax returns (1040, 1040A, related forms and assessment records) maintained within any of the Internal Revenue Service Offices, regarding the following years: 1999 through and including 2005.

On this 12th day of August, 2005, I hereby certify that I am the individual making this Power of Attorney, to John B. Kotmair, Jr., and that I have a "material interest" in the



Subscribed and sworn to before me, a Notary Public, of the State of Maryland,
County of Harford, on this 12th day of August, 2005.

Deborah Z. Wilson

Notary Public

My Commission Expires On: 9/1/08

Rev. 12-30-06

[REDACTED]

Dear Patriot:

Enclosed is your 1996 IRS Power-of-Attorney (POA) form. Please notice that it does not require a notary, but you need to get two witnesses to sign with you. Hopefully this will save you a few bucks, or at least save you the inconvenience of going to a notary. (We're always looking to save you money if we can.)

Please destroy any outdated forms and use this form only.

If you are one of those who use more than one address, be sure to make it clear which address is to be used for what purpose(s).

Thanks for all you have done in the cause of Liberty, and I hope and trust you will continue to keep up the good fight.

For Liberty, Truth and Justice, your SAFF caseworker,

Shaun

Shaun

PS: Please be sure to read the enclosed important notice and to get back with me about it. Thanks.

(410) 857-4441. (M., W., Th., F., 9:15 AM-5 PM; T., 11 AM-5 PM.)

Exhibit 17

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887-2986
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**PRIVACY ACT RELEASE FORM
AND POWER OF ATTORNEY**

Because of the Privacy Act of 1974, written authorization is required by the individual before any information can be given to another individual or organization.

Pursuant to the authority in 26 CFR §301.6103(c)-1, 26 CFR §601.502(a)(1) and (2), 26 CFR §601.502(b)(5)(ii) and Treasury Department Circular No. 230, at §10.7(a)(2), this form will give John B. Kotmair Jr. (Representative Number: 2605-47815R), of Post Office Box 91, Westminster, Maryland 21158, permission to investigate this matter for me.

I, [REDACTED] (Form SS-5 revoked 12-04-94), a member of the Save-A-Patriot Fellowship, do hereby give to John B. Kotmair Jr., the Fiduciary of the Save-A-Patriot Fellowship, permission to represent, inquire of and procure from the Internal Revenue Service any and all of the records, pertaining to income taxes that agency alleges I owe, to include income tax returns (1040, 1040A, related forms and assessment records) maintained within any of the Internal Revenue Service Offices, regarding the following years: 1977 through and including 1995.

On this _____ day of _____, 1996, I hereby certify that I am the individual making this Power of Attorney, to John B. Kotmair Jr., and that I have a "material interest" in the information within the documents sought.

[REDACTED]

We, the undersigned, hereby affix our signatures in affirmation that the above signed person did identify himself, by State identification, as [REDACTED] and did date and affix his signature to this Power of Attorney on this _____ day of _____, 1996. We affirm this to be true, correct, and complete to the best of our knowledge.

Witness

A Citizen of [state] _____

Witness

A Citizen of [state] _____

Rev. 09/26/95

Important Notice re. IRS Power of Attorney (POA) forms/Casework procedures.

IRS regulations state that the POA forms are valid for only 60 days. Since each letter we send on your behalf must have a current POA form attached, if there are no current forms in your file when I receive work, I will be unable to correspond on your behalf. Please do not jeopardize the progression of your case--keep me supplied with a minimum of three executed ORIGINAL POA forms every 30 days. Use only the latest version (12/7/94 -- check bottom left of form for revision date). Destroy any previous revisions.

✓ We are presently out of current POA forms for you.

✓ Urgent! We have work to do in your behalf, but cannot proceed until forms are received.

✓ Please note! The POA's you last supplied us are from an outdated master.

Help me expedite the investigation of your case by ...

 sending me copies of returns you filed for the tax years.

 not writing on the original IRS correspondence you send us, as it becomes our original, and precious time is wasted making it presentable.

 not using staples on the correspondence you send us.

 sending any concerns re: billings/statements in writing to SAP, Attn: Administration, who handles such matters.

✓ *In order for your investigation to proceed, please contact me to discuss the rate at which we can build your case. We wish to actively move forward, and realize the need to consider your individual financial circumstances before doing so.*

 Please note we will not be responding to the IRS correspondence dated that you mailed us, as it would not strengthen your position to do so.

Thank you!

Please check the status of your invoice # 50013216 and let me know if it has been paid. Also there is # 00013216 for Paula.

VERY IMPORTANT--PLEASE READ

Enclosed is the updated version of the 1997 Power-of-Attorney form authorizing John Kotmair to represent you before the Internal Revenue Service. Please copy and execute three of the enclosed form, retaining one as a blank original, and return the newly executed forms to our office immediately. Please sign and date them in blue ink as proof of original, and have them signed and dated by a notary in the appropriate spaces.

One of the best methods for keeping your file up to date with valid Power-of-Attorney Forms is to mark on your calendar and execute three forms every forty-five days and send them to your caseworker. Some members find it easier to send in a batch every month; use whichever method is more convenient for you.

A significant part of our investigation on your behalf is accomplished by exposing the improper conduct of the IRS, both in their actions against you, as well as in how they reply to our letters. When they fail to reply, or when they do respond, if they send us a letter that adds to the documented wrongful procedures they have used against you, we can immediately respond and preserve the factual evidence that they are attempting to ignore. In order for us to act immediately, we need members to keep their case files up to date with current Power-of-Attorney forms. After this happens repeatedly, it becomes a documented fact in your own personal case that the IRS has not afforded you your lawful due process and administrative appeal rights. This fact, together with information obtained through the Privacy Act requests sent on your behalf, serves to support an action in court against the Internal Revenue Service. Therefore, it is imperative that you stay committed to keeping the forms up to date in your case file.

If the forms are not signed and dated by you (the individual giving over Power-of-Attorney) in blue ink, they will not be considered original, and will need to be replaced.

If the forms are not signed and dated by a notary as stated earlier, they will also not be considered original, and will need to be replaced.

Aside from keeping us up to date on any correspondence you receive from the I.R.S., up-to-date Power-of-Attorney Forms are your greatest responsibility. Thank you for your efforts to support the cause of Liberty. Together we will stand and prevail!

Yours in and for liberty,
Shon



**PRIVACY ACT RELEASE FORM
AND POWER OF ATTORNEY**

Because of the Privacy Act of 1974, written authorization is required by the individual before any information can be given to another individual or organization.

Pursuant to the authority in 26 CFR §301.6103(c)-1, 26 CFR §601.502(a)(1) and (2), 26 CFR §601.502(b)(5)(ii) and Treasury Department Circular No. 230, at §10.7(a)(2), this form will give John B. Kotmair Jr. (Representative Number: 2605-47815R), of Post Office Box 91, Westminster, Maryland 21158, permission to investigate this matter for me.

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On this _____ day of _____, 1997, I hereby certify that I am the individual making this Power of Attorney, to John B. Kotmair Jr., and that I have a "material interest" in the information within the documents sought.

Subscribed and sworn to before me, a Notary Public of the State of _____, County of _____, on this _____ day of _____, 1997.

Notary Public

My Commission Expires On: _____

Dear Fellow Member,

November 10, 1996

The sticker on the envelope alerted you that this is an *urgent* mailing requiring your *immediate* attention and action.

Actually, its more than urgent—its *critical*.

This is the most important letter you have ever received from us, so please read it carefully, right now, and give it your full and undivided attention.

This is a classic "good news, bad news" story.

First, the good news, the *very* good news.

The Save-A-Patriot Fellowship is running more smoothly and efficiently than at any time in our entire twelve year history.

Data management systems, and the trained staffers to utilize them, are in place and fully implemented.

Thanks to these new integrated systems, the response to our Member Assistance Program (MAP) has been phenomenal. We are unique in having designed and implemented a workable mechanism to rescue those amongst us who have gone the furthest in standing toe-to-toe against tyranny.

There is no other organization in this entire country that is administering this type of self-funding, mutual insurance-like protection program to such a degree and with such positive impact.

Our motto: "*Together We Must Stand -- Or -- Separately YOU will be Stood On!!!*" is a living breathing thing.

Today, we stand poised for exponential expansion of our membership base, as the near boiling groundswell of public frustration and outright anger over this second-term, fascism-bound government gravy-train grows daily.

April 15th—just another spring day to our well-educated membership—is right around the corner.

Americans *by the millions* are ready for our message: *Just the Facts*

Tremendous legal battles have been won in the past twelve months: the Donald Paul and Fred Allnut victories over the IRS as detailed in recent editions of *Reasonable Action*.

More recently, just two weeks ago, our N.W.R.C. (the department that helps members with employer problems) won an out-of-court settlement for 2,000.00 FRNs.

And this week, using the same arguments, we won a similar settlement for 12,500.00 FRNs (that's right... you read that correctly: twelve thousand five hundred FRNs). These suits were won against employers who refused to hire a member without a social security number.

The enormous political pressure being exerted by the Fellowship is being felt like never before, as our members' cases continue to pile-up on IRS desks from coast to coast, representing reams of lawful correspondence that IRS officials don't want to touch with the proverbial "ten foot pole."

To wit: over 85% of the cases we are developing for members are now dormant and the IRS is no longer aggressively pursuing the member! The IRS is apparently capitulating to some degree and we're not really sure why. In several cases they took their collection activities right to the point of levy, but after a response from our caseworker, they never actually levied the member. Are they slowing down because they know we're developing a case? Is it because they believe it would be ~~more costly for them to pursue SAP members than ordinary individuals?~~ One thing is sure, it would seem to put much greater value on your membership in Save-A-Patriot.

That's good news, or so it would *seem*.

Now for the bad news:

Our winning streak has caused a financial crisis at the Fellowship.

When the IRS stopped aggressively pursuing members they also cut off the source of revenue that the Fellowship needed to achieve this success. The volume of letters we generate now is a mere *fraction* of what it was as recently as a year ago.

You see, the sword cuts both ways.

Between the correspondence received from the IRS, our responses to those letters, and the copies we forwarded to our members, we've handled nearly 5 million documents in the last 4 years.

But now, with the drastic reduction in the need for casework, there has been a concomitant reduction in operating funds—funds that are needed to meet the weekly payroll of caseworkers and other staffers, and to train others for future expansion.

If you've been a member for any length of time you'll remember that in December of 1993, both the Fellowship headquarters and my private residence were simultaneously raided by armed IRS agents.

What had George Washington warned?: "*Government is force...*"

The Fellowship felt the full, *armed force* of the federal government at its front door.

After one ring, the door of my own home was smashed in with a sledge hammer before Nancy had time to answer it:

This was not "Avon calling."

A shotgun was held to my son's head as he lay on the living room couch.

At headquarters, IRS agents streamed in with 9mm pistols drawn, *loaded with real bullets*.

Office equipment—*YOUR* office equipment: computers, copiers, fax machines, laser printers, filing cabinets, etc., was confiscated.

Private correspondence with members was opened in blatant and arrogant violation of federal postal law.

Our safe was smashed open and 45,000 FRNs of the Fellowship's day-to-day operating funds was stolen.

The IRS objective:

To demoralize our staff, decimate our membership rolls and cause general havoc.

Our response?:

An emergency appeal was broadcast to the membership nationwide.

The immediate and predictable result:

Computers, office hardware, envelopes stuffed with FRNs *and new members* flooded in from all across America.

Thirteen days after the raid, we were back in operation.

The IRS was stunned!

After failing to indict me before the grand jury, the day prior to the raid, the best and brightest within the highest echelons of the IRS had failed miserably in their frontal assault on the Fellowship.

Last year, the US Attorney officially dropped the criminal investigation against me (which was the excuse for the raid).

Now, it is the Fellowship and its members who are pursuing the IRS officials who planned and orchestrated the raid, in *full frontal assault* through the courts.

In a hearing held September 20, 1996, on the Fellowship property that has *still* not been returned, the presiding judge and US attorney agreed *for the record* that no one could question my steadfastness and sincerity in the actions I have taken. This makes it *impossible* for the government to prosecute me again for a tax crime.

Our ongoing objective: to get the government to obey the law.

Here then, is the purpose of this letter.

A second emergency appeal is hereby being made to the Fellowship.

WE ARE BEING RAIDED AGAIN! — THIS TIME *SILENTLY*.

The "plundering tyrants" are now sulking behind silent computers—computers that are no longer generating "*paper bullets*,"—paper bullets that we've geared up to protect members from, and...

When the IRS stopped aggressively pursuing our members they also stopped a major flow of funds to the Fellowship—funds that were used to achieve the legal victories previously mentioned. When they reduced their collection activities, in a sense, they raided us again, but this time it was a *silent raid*—a raid that could starve us to death and force us to close our doors.

We need to learn a brief history lesson: When England's King George failed to take the colonies back with military force and real bullets, he tried to drain them of their economic ability to fight.

Is this the reasoning behind the IRS' second raid against the Fellowship?

...to drain it of its financial resources so that it can no longer afford to fight back?

We cannot—we must not—allow that to happen.

It will no doubt shock many of you to learn that the Fellowship's total cumulative receivables (money still owed to the Fellowship for services performed) from 1992 to the present, now approaches 430,000.00 FRNs!

This figure—*nearly half a million frns*—represents literally thousands of hours of still-unpaid case (and other) work performed for our members over the course of three and a half years in *anticipation of reimbursement*.

Unlike AARP and other such *congenial* service based organizations whose members join in eager anticipation of "benefits," much of SAP's "clientele" has developed from stalwart (if understandably anxious) Americans *already* under duress, under investigation, *under attack*—beleaguered members whose world was being (or *had* already been) stolen out from under them by the IRS and/or its fifty fellow co-conspirators; *sagacious* members who joined SAP to obtain emotional relief, legal and financial assistance and support; *resolute* and *grateful* members who joined in eager anticipation of the opportunity to return such benefits of membership (under our Member Assistance Program) to their damaged "fellows" in true *fellowship*—a huge circle of patriotic Americans holding hands from coast to coast.

~~Remembering the command that we must always remain our brothers' (and sisters) "keeper," we~~ welcomed all such new members into our circle with open arms, *regardless* of their financial situation.

In good faith, we performed the services they requested and *then* invoiced them for the work *already* performed.

Unfortunately, many of these newly internal-robbery-serviced victims simply had no money left with which to pay us—and *still needed more casework done*.

Many of these, often founding members, demonstrated their intent to "catch-up" by taking on an additional job and consistently paid what amounts they could afford.

And we continued to assist and support them in their hour of greatest need.

Some members however, turned out not to be our "*fellows*" after all.

After welcoming our support and *receiving* it; after requesting our assistance in keeping the enemy at bay and *receiving* it; after running up a bill—in some cases a *huge* bill—and *receiving* it, these unscrupulous members simply quit... and walked away.

"They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety." —Benjamin Franklin

In any normal business, common *credit-investigation* practices would pre-screen such undesirable "accounts" *before* taking them on as "customers."

In any normal business, common *accounting* practices would prevent such egregious "accounts receivable" before being allowed to accumulate.

But we are not a business, we are a fellowship.

We cannot operate for profit.

There *are* no profits.

Furthermore, we cannot borrow money as a business can.

We have no credit cards.

We have no credit rating.

Unlike the government, we can't *pretend* to borrow it from someone who *creates* it out of thin air by printing it.

We must operate on a strict *pay-as-you-go* basis (the way the Founders designed our Republic to operate).

The bottom line:

While in its most highly tuned and effective state since its inception, the Fellowship—*your* Fellowship—is currently facing a monumental cash flow crisis.

And, if it is not solved quickly—*very quickly*—we may have to close our doors in January, even if temporarily.

If this happens, we will suffer the loss of dedicated and highly trained, *experienced* staffers faced with no choice but to seek compensation for their services *elsewhere*.

Such attrition of personnel could force us to close our doors *..permanently*.

~~The "silent" raid will have done its work and the IRS will have won by default.~~

Could it be that the IRS, *while currently outflanked and in retreat*, seeks as their latest battlefield maneuver to *appear* to go away for this very purpose? Do they intend to return in hot pursuit when we no longer exist to support our members.

Think about it.

Never, ever, underestimate the cunning, criminal mentality of such an adversary as this.

But back to the point:

Please know that asking for money is repugnant to us.

However, this is not a simple case of "passing a tin cup."

This is not a telethon.

This is reality.

We felt that we needed to be as direct and forthright as possible and respect the intelligence and commitment of our members.

Even though we know some of our weaker members may quit after receiving this letter.

So be it.

Perhaps they, too, were never truly *our fellows* in the first place.

As for the rest of you, we need your help.

If we are to survive and not suffer "*death from a thousand small cuts*," we need your help, and we need it now.

Perhaps finances are tight in your household.

Please pardon the brazen intrusion, but we suggest that if, in the midst of your own family's economic battle, you can still afford cable TV, you can afford to skip a few months and send the difference to us.

With an overworked staff, limited in size to what we can (barely) afford, we cannot pay for much needed repairs on our computer systems at this time, *let alone spare a minute to watch TV*.

Former Mayor Koch of New York City was once seen on TV lamenting the abject failure publicly promoted *voluntary* water conservation campaign, the result of simple—*a* predictable—human nature.

After all, why should *any* apartment dweller or homeowner cut back on *his own* water usage when, in all likelihood, no one around him would be equally noble?

The result?

No one cut back on water and NYC suffered a *real* crisis as water pressure to everyone was curtailed and water lines shut off intermittently:

Had everyone cooperated uniformly, there would have been no interruption in anyone's service.

If you adopt this same mentality, in the belief that your fellow members will cover *your* "fair share" don't be stunned next year if our phone rings... and rings... and rings.

An infusion of capital *right now* will allow us to finalize the implementation of new systems that foresee and prevent "aging" accounts from ever again accumulating, and support our surge forward in obtaining new members.

We have recently been offered radio advertising at "air time" rates commercial advertisers could only *dream* of, yet we cannot afford to purchase the minutes.

We would love to run full page ads in the *Wall Street Journal*, informing millions of Americans about *Just the Facts* behind their lifetime of unwitting "voluntary compliance."

Such ads would undoubtedly bring in hundreds if not *thousands* of new members and an infusion of immediate funding.

But we cannot afford such advertising—*not even close*.

Depending upon your response, this should be our *last* financial crisis ever.

Now is the time to close ranks, circle the wagons and man the ramparts.

After all the blood, sweat and tears, shed by so many for so long, we cannot afford to fail now.

Many members refer to the Fellowship as the most prestigious "patriot organization" in the history of the United States, *not counting those staunch and fearless patriots who conceived and founded these united States*.

Perhaps you agree.

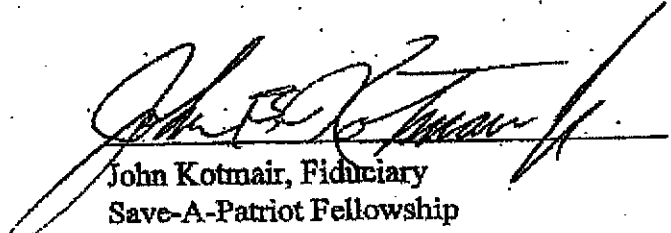
Certainly, you joined us because you believe in the Constitution, you believe in the Rule of Law and you believe in the protection of your natural, God-given right to property—without which, *there can be no Liberty*.

Don't let the IRS win.

Send what you can today.

Send not what you can afford to send, send what you cannot afford NOT to send.

We've enclosed a pre-addressed envelope. Please don't delay.


John Kotmair, Fiduciary
Save-A-Patriot Fellowship

Piercing the Illusion

*Setting straight the misrepresentations that have in
one way or another deprived American citizens of their
Individual Liberties for the past one hundred and forty-
one years.*

By:

*John Baptist Kotmair, Jr.
Fiduciary of the
Save-A-Patriot Fellowship*

First Edition, Registered Number

001216



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Revenue Code by IRS
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function. Those benefiting by the unlawful expansion seem to
always fall back on "I am only following orders."

Ten or so years ago, the Internal Revenue Service Centers in
Philadelphia, Pennsylvania and Ogden, Utah both forwarded to me,
unsolicited, representative numbers that would allow me to
represent anyone before any Internal Revenue Service
administrative hearing. The IRS regulations only allow a
representative to have one number, so I returned the number
forwarded by the Ogden Service Center and kept the one from
Philadelphia.

With this number, I started to represent Fellowship members
at IRS assessment appeals conferences. The process began when
the IRS would send the member a notice of deficiency, which can
only be issued in accordance with § 6212 of Subtitle F. The
argument that I made on the member's behalf was very simple—the
Internal Revenue Service had no statutory authority to issue a
notice of a deficiency assessment to the member in the first place.
Of course, when this was shown to the appeals officer, they were
totally amazed, and the result in 99% of the appeals conferences
was that the assessment process, for reasons known only to the
appeals officer, was at a dead end.

It did not take long for this to be noticed by the hierarchy of
the IRS. I received a letter from the District Director of the
Baltimore IRS Office, notifying me that my representative number
had been revoked. I responded by asking for the formal reason for
this action, and until this day I have not received an answer to this
inquiry. I made Privacy Act requests for all the documents
involving the revocation of the representative number, but I have
been totally stonewalled.

The argument used regarding § 6212 just bolsters the facts
about the federal tax scheme that have been presented to you in this
book. This code section is just one more link in the daisy chain of
evidence proving my point. Section 6212 states in pertinent part:

Internal Revenue Service

Department of the Treasury

District
Director

Balt

District

31 Hopkins Pla.

Baltimore, Md. 21201

► JUN 3 1994

Mr. John B. Kotzair, Jr.
P.O. Box 91
Westminster, Maryland 21158

Dear Mr. Kotzair:

This is to inform you of our final determination that you are ineligible to practice before the Internal Revenue Service Baltimore District Office or before any other office of the Internal Revenue Service. We provided to you notice of our proposed determination of your ineligibility to practice by letter dated May 11, 1993.

Under 26 CFR 601.502 and Treasury Department Circular No. 230, Section 10.3, the following categories of individuals are eligible to practice before the Internal Revenue Service: attorneys, certified public accountants, enrolled agents, enrolled actuaries, and other individuals described in Section 10.7 (including unenrolled return preparers or individuals with whom a special relationship with a taxpayer exists) and Subsection 10.5(c) (individuals who have applied for and received temporary recognition from the Director of Practice).

You have not shown you are an attorney, certified public accountant, enrolled agent, or enrolled actuary. Nor have you provided evidence you are eligible for limited practice as an unenrolled preparer or as one who has a special relationship with a taxpayer. Further, there is no indication you have applied for and received temporary recognition from the Director of Practice.

You have recently asserted that you qualify to represent taxpayers under Subsection 10.7(a)(2) of Circular 230, which states that, "Corporations (including parents, subsidiaries or affiliated corporations), trusts, estates, associations or organized groups may be represented by bona fide officers or regular full-time employees." However, the taxpayers you attempted to represent were not corporations, trusts, estates, associations, or organized groups of which you were a bona fide officer or a regular full-time employee. They, in fact, were individuals for whom representation would be subject to Subsection 10.7(a)(1) of Circular 230. This provision states, "An individual may represent another individual who is his regular full-time employer, may represent a partnership of which he is a member or a regular full-time employee, or may represent without compensation a member of his immediate family." You did not provide



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Mr. John B. Kotnair, Jr.

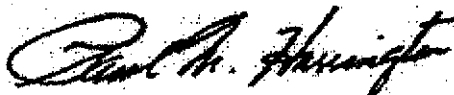
evidence that you met this requirement for any individual for whom you attempted to provide representation.

Finally, you indicated you were assigned a CAF (Centralized Authorization File) number by the Philadelphia Service Center. You stated this supported your contention that you are authorized to represent taxpayers before the Service. Although the CAF number is an identification number for representatives, it is not in itself an indication of authority to practice.

Accordingly, as we advised you in our notice of May 11, 1993, you are ineligible to practice before the Internal Revenue Service since you have not established you are within any of the categories of individuals authorized to practice.

If you have any questions concerning this letter, you may direct your inquiries to Mr. Pat McDonough, Supervisory Attorney, Office of Director of Practice, at (202) 376-1428.

Sincerely yours,



Paul M. Harrington
District Director

cc: All Regional Commissioners
All Chief Compliance Officers
All Service Center Directors
All Compliance Center Directors
All Computing Center Directors
Headquarters Office of Disclosure
MAR Regional Disclosure Officer

0 p 2

206

STATEMENT OF CITIZENSHIP
(in duplicate)

Name: [REDACTED]
address: [REDACTED]

To: [REDACTED]

I am a citizen of the United States of America by birth.

I was born in: [REDACTED]

This statement is provided in duplicate to conform to the provisions of internal revenue regulations which will relieve a withholding agent of any duty to withhold money from payments to a United States citizen and/or resident. The withholding agent is also relieved of any liability, pursuant to the regulations, because money is not withheld.

"Section 1.1441-5 Claiming to be not subject to withholding.

"(a) Individuals. For purpose of Chapter 3 of the code, an individual's written statement that he or she is a citizen or resident of the United States may be relied upon by the payor of the income as proof that such individual is a citizen or resident of the United States. This statement shall be furnished to the withholding agent in duplicate."

The duplicate copy of this statement of citizenship, along with a letter of transmittal, must be sent only to Internal Revenue Service Center, Philadelphia, PA 19255, by the withholding agent, pursuant to 26 Code of Federal Regulations section 1.1441-5.

Thank you,

[REDACTED]

Subscribed and sworn to before me, a Notary Public, for the State
of _____, County of _____, this _____ day of
_____, 19____.

Notary Public

My Commission Expires On: _____

To:

[REDACTED]

August 29, 1994

**SUBJECT: 26 Code of Federal Regulations Part 1, Section 1.1441-5,
"Claiming to be a person not subject to withholding."**

In accordance with Chapter 3, Subchapter A of the Internal Revenue Code (26 USC), Code of Federal Regulations (26 CFR) Section 1.1441-5, and related IRS Publication 515 I hereby provide you with written notice in duplicate that I am a citizen/resident of the United States.

As stated in Publication 515, the accompanying notice in duplicate will relieve you of any duty or liability to withhold any monies from any and all payments due me.

I am a citizen of the State of Florida, and of the United States of America. I am not a non-resident alien, foreign corporation, officer, director, stockholder or employee of a foreign corporation. Nor am I receiving and/or making payments for another person as a broker and/or a nominee.

The attached duplicate copy of the "Statement of Citizenship," along with a letter of transmittal, must be sent to the Internal Revenue Service Center in Philadelphia, Pennsylvania only, for verification as instructed in 26 Code of Federal Regulations, Section 1.1441-5.

Sincerely yours,

[REDACTED]

Enclosures:

Copy, in duplicate, Statement of Citizenship.
Copy of page 2 IRS Publication 515.
Copy of CFR 26, Section 1.1441-5.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

10
CLOSED

FILED

MAR 28 2003

UNITED STATES

Plaintiff,

v.

RICHARD HARAKA, a/k/a
RICK BRYAN, d/b/a TAXGATE,

Defendant.

Civil No. 02-5340 (JAP) 0:30 M
WILLIAM T. WALSH, CLERK

ENTERED
ON
THE DOCKET

MAR 31 2003

ORDER OF PERMANENT INJUNCTION

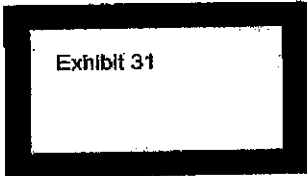
WILLIAM T. WALSH, CLERK
By St (Deputy Clerk)

Plaintiff, the United States, has filed a Complaint for Permanent Injunction against the defendant, Richard Haraka, a/k/a Rick Bryan d/b/a Taxgate. Haraka does not admit the allegations of the complaint, except that he admits that the Court has jurisdiction over him and over the subject matter of this action. By his Consent, which has been previously filed, Haraka waives the entry of findings of fact and conclusions of law, and consents to the entry of this Permanent Injunction.

A. The Court has jurisdiction over this action under 28 U.S.C. Sections 1340 and 1345, and under 26 U.S.C. Sections 7402 and 7408.

B. The Court finds that Haraka has neither admitted nor denied the United States' allegations that Haraka is subject to penalty under 26 U.S.C. Sections 6700 and 6701.

C. It is hereby ORDERED that Richard Haraka, a/k/a Rick Bryan d/b/a Taxgate, and, in addition, his associates, senior members, purported "tax experts," representatives and other affiliates, and all others in active concert or participation with him who receive actual notice of



this Order, are permanently restrained and enjoined from directly or indirectly:

1. Organizing, promoting, marketing, or selling (or assisting therein) any tax shelter, plan, or arrangement known as the "Section 861 argument" or any other abusive tax shelter, plan, or arrangement that advises or encourages taxpayers to attempt to evade the assessment or collection of their correct federal taxes;
2. Engaging in any conduct subject to penalty under IRC § 6700, *i.e.*, making or furnishing, in connection with the organization or sale of an abusive shelter, plan, or arrangement, any statement they know or have reason to know is false or fraudulent as to any material matter;
3. Engaging in any conduct subject to penalty under IRC § 6701, *i.e.*, assisting others in the preparation of any tax returns, forms or any other documents to be used in connection with any material matter arising under the internal revenue laws and which they know will (if so used) result in the understatement of income tax liability;
4. Making false statements about the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by the reason of participating in such tax plans or arrangements;
5. Instructing or advising taxpayers to understate their federal tax liabilities; and
6. Engaging in any conduct that unlawfully interferes with the administration and enforcement of the internal revenue laws, including, but not limited to, any unlawful interference with the assessment and collection of federal taxes.

D. It is further ORDERED that Haraka shall contact by electronic mail, within 10 days

days of the date of this Order, at Haraka's expense:

1. all persons to whom he gave, sold, or distributed, or caused any other person to give, sell or distribute, any materials espousing or relating to the Section 861 argument, "third-party contracting" arrangements, or similar shelters, plans, or arrangements;
2. all persons for whom Haraka prepared or assisted in preparing any federal or state income tax returns or tax-related documents; and
3. all persons who contacted Haraka or Taxgate regarding the schemes marketed through the Taxgate website (in correspondence, verbally (including but not limited to telephonically), or through electronic means);

and shall provide each of those persons with a copy of this permanent injunction.

E. It is further **ORDERED** that Haraka shall immediately, upon entry of this order, use best efforts to determine the mailing addresses and telephone numbers for all of the following:

1. all persons to whom he gave, sold, or distributed, or caused any other person to give, sell or distribute, any materials espousing or relating to the Section 861 argument, "third-party contracting" arrangements, or similar shelters, plans or arrangements;
2. all persons for whom Haraka prepared or assisted in preparing any federal or state income tax returns or tax-related documents; and
3. all persons who contacted Haraka or Taxgate regarding the schemes marketed through the Taxgate website (in correspondence, verbally (including but not

limited to telephonically), or through electronic means).

Haraka shall then mail to the United States by first class mail and via electronic mail within 30 days of the date of this order all information in his possession evidencing the mailing, e-mail addresses and telephone numbers of any of the persons described in this paragraph 'D.'

F. It is further **ORDERED** that Haraka shall contact, in writing by email and first class mail, within 120 days of the date of this Order, at Haraka's expense, all persons who sold, marketed or assisted in the sale of marketing of the Section 861 Argument, "third-party contracting" arrangements, or any other similar plan, arrangement, or scheme on behalf of Taxgate and provide those persons with a copy of the Court's order of permanent injunction.

G. It is further **ORDERED** that Haraka shall file a declaration under penalty of perjury stating that he has complied with the requirements set forth under paragraphs 'D,' 'E' and 'F' above, and including a list of all persons to whom Haraka has sent the required Order and memorandum. Haraka shall file this declaration within 31 days of the date of this Order.

H. It is further **ORDERED** that Haraka shall post this Court's Order of Permanent Injunction beginning at the top of the Taxgate website home page (www.taxgate.com) in 12-point type or larger within 10 days of the date of this Order, for a period of not less than one year. Haraka shall bear all expenses associated with posting the Court's order and maintaining the website during that period.

I. It is further **ORDERED** that Haraka shall, within 15 days of the date of this Order, produce to counsel for the United States Department of Justice, all records in his possession, custody, or control or to which he has access that identify:

(1) the persons to whom he or any of his associates, senior members, purported "tax

experts," representatives or other affiliates gave or sold or otherwise provided, directly or indirectly, any materials related to the Section 861 Argument, "third-party contracting" arrangements, and any other similar plan, arrangement, or scheme;

(2) any persons to whom he or any of his associates, senior members, purported "tax experts," representatives or other affiliates provided materials which may have been used to hinder or delay the assessment or collection of taxes;

(3) all persons who assisted in preparing or selling materials sent to Taxgate clients or potential clients;

(4) all individuals or entities for whom Haraka or his associates, senior members, purported "tax experts," representatives or other affiliates prepared or assisted in preparing any tax-related documents, including without limitation, claims for refund or tax returns,

(5) all persons who purchased or used any other tax shelter, plan, or arrangement in which Haraka has been involved;

(6) all persons who at any time have held themselves out as Taxgate "senior members," "associates" or "tax experts"; and

(7) all persons who sold, marketed or assisted in selling or marketing the Section 861 argument, or any other similar plan, arrangement or scheme in collaboration with or in connection with any affiliation with Taxgate.

J. It is further ORDERED that Haraka shall submit to a deposition upon oral examination, so that the United States can inquire regarding the nature and extent of Taxgate's schemes, the identity and location of all persons who at any time have organized or assisted in the organization of Taxgate, the identity and location of all persons who at any time have sold or assisted in the sale of any interest in any of Taxgate's shelters, plans and arrangements, the identity and location of all persons who at any time have prepared or assisted in the preparation of documents calculated to understate federal tax liabilities, the identity and location of all persons who at any time have assisted other persons who have used baseless arguments and materials to hinder or delay the assessment and collection of federal taxes, the identity and location of all persons who at any time have employed any of Taxgate's shelters, plans and arrangements, the identity and location of all persons who at any time have been Taxgate members, associates, senior members, representatives, agents or other affiliates, the identity and location of all persons who at any time have used Taxgate materials (including documents) which understate such persons' federal tax liabilities, and the identity and location of all persons who at any time have employed any of Taxgate's arguments and materials which may hinder or delay the assessment and collection of federal taxes. In so stating, however, Haraka may raise the Fifth Amendment's privilege against self-incrimination in response to the Government's questions without violating this order. If necessary, the Court will determine whether Haraka is permitted to avail himself of the privilege after a record has been made in deposition.

K. It is further ORDERED that the United States may, without further order of this Court, conduct discovery under the Federal Rules of Civil Procedure to monitor compliance with this injunction.

L. Further, the Court ORDERS that Haraka, and, in addition, his associates, senior members, purported "tax experts," representatives or other affiliates, and any other persons in active concert or participation with Haraka who receive actual notice of this Order, are enjoined from destroying, hiding, dissipating, or altering any documents, including electronic records, that relate in any way to this lawsuit, Taxgate, and/or Taxgate or Haraka's clients.

M. This Court shall retain jurisdiction over this action for the purpose of implementing and enforcing this Permanent Injunction.

J. The case is closed.

Approved by:

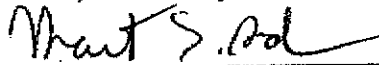
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It is so ORDERED.

Dated: 3/27/03


United States District Court Judge

THE TRUTH ABOUT FRIVOLOUS TAX ARGUMENTS
DECEMBER 2005

I. FRIVOLOUS TAX ARGUMENTS IN GENERAL..... 1

A. The Voluntary Nature of the Federal Income Tax System 1

1. Contention: The filing of a tax return is voluntary. 1

2. Contention: Payment of tax is voluntary. 3

3. Contention: Taxpayers can reduce their federal income tax liability by filing a "zero return." 5

4. Contention: The IRS must prepare federal tax returns for a person who fails to file. 7

5. Contention: Compliance with an administrative summons issued by the IRS is voluntary. 8

B. The Meaning of Income: Taxable Income and Gross Income 9

1. Contention: Wages, tips, and other compensation received for personal services are not income. 9

2. Contention: Only foreign-source income is taxable. 14

3. Contention: Federal Reserve Notes are not income. 16

C. The Meaning of Certain Terms Used in the Internal Revenue Code 17

1. Contention: Taxpayer is not a "citizen" of the United States, thus not subject to the federal income tax laws. 17

2. Contention: The "United States" consists only of the District of Columbia, federal territories, and federal enclaves. 19

3. Contention: Taxpayer is not a "person" as defined by the Internal Revenue Code, thus is not subject to the federal income tax laws. 21

4. Contention: The only "employees" subject to federal income tax are employees of the federal government. 22

D. Constitutional Amendment Claims 23

1. Contention: Taxpayers can refuse to pay income taxes on religious or moral grounds by invoking the First Amendment. 23

2. Contention: Federal income taxes constitute a "taking" of property without due process of law, violating the Fifth Amendment. 24

3. Contention: Taxpayers do not have to file returns or provide financial information because of the protection against self-incrimination found in the Fifth Amendment. 25

4. Contention: Compelled compliance with the federal income tax laws is a form of servitude in violation of the Thirteenth Amendment. 27

5. Contention: The Sixteenth Amendment to the United States Constitution was not properly ratified, thus the federal income tax laws are unconstitutional. 28

6. Contention: The Sixteenth Amendment does not authorize a direct non-apportioned federal income tax on United States citizens. 30



- E. Fictional Legal Bases.....31
 - 1. Contention: The Internal Revenue Service is not an agency of the United States.....31
 - 2. Contention: Taxpayers are not required to file a federal income tax return, because the instructions and regulations associated with the Form 1040 do not display an OMB control number as required by the Paperwork Reduction Act.....31
 - 3. Contention: African Americans can claim a special tax credit as reparations for slavery and other oppressive treatment.....33
 - 4. Contention: Taxpayers are entitled to a refund of the Social Security taxes paid over their lifetime.....34
 - 5. Contention: An "untaxing" package or trust provides a way of legally and permanently avoiding the obligation to file federal income tax returns and pay federal income taxes.....35
 - 6. Contention: A "corporation sole" can be established and used for the purpose of avoiding federal income taxes.....39

- II. FRIVOLOUS ARGUMENTS IN COLLECTION DUE PROCESS CASES...40
 - A. Invalidity of the Assessment.....40
 - 1. Contention: A tax assessment is invalid because the taxpayer did not get a Form 23C.....40
 - 2. Contention: A tax assessment is invalid because the assessment was made from a substitute for return prepared pursuant to section 6020(b), which is not a valid return.....41

 - B. Invalidity of the Statutory Notice of Deficiency42
 - 1. Contention: A statutory notice of deficiency is invalid because it was not signed by the Secretary of the Treasury or by someone with delegated authority.....42
 - 2. Contention: A statutory notice of deficiency is invalid because the taxpayer did not file an income tax return.....43

 - C. Invalidity of Notice of Federal Tax Lien43
 - 1. Contention: A notice of federal tax lien is invalid because it is unsigned..43
 - 2. Contention: A notice of federal tax lien is invalid because it was filed by someone without delegated authority.....44

 - D. Invalidity of Collection Due Process Notice.....44
 - 1. Contention: A collection due process notice is invalid because it is not signed by the Secretary or his delegate.....44
 - 2. Contention: A collection due process notice is invalid because no certificate of assessment is attached.....45

 - E. Verification Given as Required by I.R.C. § 6330(c)(1)46

- 1. Contention: Verification requires the production of certain documents. ...46
- F. Invalidation of Statutory Notice and Demand.....47
 - 1. Contention: No notice and demand, as required by I.R.C. § 6303, was ever received by taxpayer.47
 - 2. Contention: A notice and demand is invalid because it is not signed, it is not on the correct form (such as Form 17), or because no certificate of assessment is attached.....48
- G. Tax Court Authority49
 - 1. Contention: The Tax Court does not have the authority to decide legal issues.49
- H. Challenges to the Authority of IRS Employees.....50
 - 1. Contention: Revenue Officers are not authorized to seize property in satisfaction of unpaid taxes.50
 - 2. Contention: IRS employees lack credentials. For example, they have no pocket commission or the wrong color identification badge.51
- I. Use of Unauthorized Representatives51
 - 1. Contention: Taxpayers are entitled to be represented at hearings, such as collection due process hearings, and in court, by persons without valid powers of attorney.....51
- J. No Authorization Under I.R.C. § 7401 to Bring Action52
 - 1. Contention: The Secretary has not authorized an action for the collection of taxes and penalties or the Attorney General has not directed an action be commenced for the collection of taxes and penalties.....52
- III. PENALTIES FOR PURSUING FRIVOLOUS TAX ARGUMENTS.....53

THE TRUTH ABOUT FRIVOLOUS TAX ARGUMENTS **DECEMBER 2005**

This responds to some of the more common frivolous "legal" arguments made by individuals and groups who oppose compliance with the federal tax laws. The first section groups these arguments under six general categories, with variations within each category. Each contention is briefly explained, followed by a discussion of the legal authority that rejects the contention. The second section responds to some of the more common frivolous arguments made in collection due process cases brought pursuant to sections 6320 or 6330. These arguments are grouped under ten general categories and contain a brief description of each contention followed by a discussion of the correct legal authority. A final section explains the penalties that the courts may impose on those who pursue tax cases on frivolous grounds.

I. FRIVOLOUS TAX ARGUMENTS IN GENERAL

A. The Voluntary Nature of the Federal Income Tax System

1. Contention: The filing of a tax return is voluntary.

Some assert that they are not required to file federal tax returns because the filing of a tax return is voluntary. Proponents point to the fact that the IRS itself tells taxpayers in the Form 1040 instruction book that the tax system is voluntary. Additionally, the Supreme Court's opinion in Flora v. United States, 362 U.S. 145, 176 (1960), is often quoted for the proposition that "[o]ur system of taxation is based upon voluntary assessment and payment, not upon distraint."

The Law: The word "voluntary," as used in Flora and in IRS publications, refers to our system of allowing taxpayers to determine the correct amount of tax and complete the appropriate returns, rather than have the government determine tax for them. The requirement to file an income tax return is not voluntary and is clearly set forth in sections 6011(a), 6012(a), et seq., and 6072(a). See also Treas. Reg. § 1.6011-1(a).

Any taxpayer who has received more than a statutorily determined amount of gross income is obligated to file a return. Failure to file a tax return could subject the noncomplying individual to criminal penalties, including fines and imprisonment, as well as civil penalties. In United States v. Tedder, 787 F.2d 540, 542 (10th Cir. 1986), the court clearly states, "although Treasury regulations establish voluntary compliance as the general method of income tax collection, Congress gave the Secretary of the Treasury the power to enforce the income tax laws through involuntary

for the failure to file penalty, stating that “[his] argument that he is not required to pay tax on compensation for services does not constitute reasonable cause.”

Wheelis v. Commissioner, T.C. Memo. 2002-102, 83 T.C.M. (CCH) 1543-45 (2002) – the court rejected the taxpayer’s frivolous argument that his wages were not taxable based on his belief that “[p]roperty (money) exchanged for property (labor not subject to tax)” is not subject to income taxation. The court stated that such claims have been “consistently and thoroughly rejected” by the courts and imposed a penalty against Wheelis in the amount of \$10,000 for making frivolous arguments.

Carskadon v. Commissioner, T.C. Memo. 2003-237, 86 T.C.M. (CCH) 234, 236 – the court rejected the taxpayer’s frivolous argument that “wages are not taxable because the Code, which states what is taxable, does not specifically state that ‘time reimbursement transactions,’ a term of art coined by [taxpayers], are taxable.” The court imposed a \$2,000 penalty against the taxpayers for raising “only frivolous arguments which can be characterized as tax protester rhetoric.”

2. Contention: Only foreign-source income is taxable.

Some maintain that there is no federal statute imposing a tax on income derived from sources within the United States by citizens or residents of the United States. They argue instead that federal income taxes are excise taxes imposed only on nonresident aliens and foreign corporations for the privilege of receiving income from sources within the United States. The premise for this argument is a misreading of sections 861, et seq., and 911, et seq., as well as the regulations under those sections.

The Law: As stated above, for federal income tax purposes, “gross income” means all income from whatever source derived and includes compensation for services. I.R.C. § 61. Further, Treasury Regulation § 1.1-1(b) provides, “[i]n 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.” I.R.C. sections 861 and 911 define the sources of income (U.S. versus non-U.S. source income) for such purposes as the prevention of double taxation of income that is subject to tax by more than one country. These sections neither specify whether income is taxable, nor do they determine or define gross income. These frivolous assertions are clearly contrary to well-established legal precedent.

In March 2005, a federal district court in Florida barred Gregory T. Mayer from preparing false or fraudulent returns and selling fraudulent tax

schemes relying upon, among other things, the frivolous section 861 argument, which falsely claims that income from sources in the United States is not subject to federal income tax. See http://www.usdoj.gov/opa/pr/2005/March/05_tax_119.htm; see also 2005 TNT 49-63 (Mar. 14, 2005). In August 2005, a federal district court in Florida permanently barred Carel "Chad" Prater and Richard Cantwell from promoting tax-fraud scams relying on the section 861 argument. See http://www.usdoj.gov/opa/pr/2005/September/05_tax_505.html; see also 2005 TNT 204-51 (Aug. 30, 2005).

In May 2005, the Tenth Circuit affirmed the conviction and 108 month sentence of Ernest G. Ambort for willfully aiding and assisting in the preparation of false income tax returns. The basis of the conviction involved seminars conducted by Mr. Ambort where he falsely instructed the attendees that they could claim to be nonresident aliens with no domestic source income, regardless of place of birth, so that they were exempt from most federal income taxes. United States v. Ambort, 405 F.3d 1109 (10th Cir. 2005); see also 2005 TNT 86-10 (May 3, 2005).

In August 2005, a Philadelphia jury convicted Larken Rose on five counts of willful failure to file federal income tax returns based on the frivolous section 861 argument. Mr. Rose faces up to five years in prison for the crimes. See http://www.usdoj.gov/opa/pr/2005/August/05_tax_418.htm; see also 2005 TNT 157-22 (Aug. 12, 2005).

The IRS issued Revenue Ruling 2004-28, 2004-12 I.R.B. 624, which discusses section 911, and Revenue Ruling 2004-30, 2004-12 I.R.B. 622, which discusses section 861, warning taxpayers of the consequences of making these frivolous arguments.

Relevant Case Law:

Great-West Life Assur. Co. v. United States, 678 F.2d 180, 183 (Ct. Cl. 1982) – the court stated that “[t]he determination of where income is derived or ‘sourced’ is generally of no moment to either United States citizens or United States corporations, for such persons are subject to tax under I.R.C. § 1 and I.R.C. § 11, respectively, on their worldwide income.”

Takaba v. Commissioner, 119 T.C. 285, 295 (2002) – the court rejected the taxpayer’s argument that income received from sources within the United States is not taxable income, stating that “[t]he 861 argument is contrary to established law and, for that reason, frivolous.” The court imposed sanctions against the taxpayer in the amount of \$15,000, as well as sanctions against the taxpayer’s attorney in the amount of \$10,500, for making such groundless arguments.

Williams v. Commissioner, 114 T.C. 136, 138 (2000) – the court rejected the taxpayer's argument that his income was not from any of the sources listed in Treas. Reg. § 1.861-8(a), characterizing it as "reminiscent of tax-protester rhetoric that has been universally rejected by this and other courts."

Corcoran v. Commissioner, T.C. Memo. 2002-18, 83 T.C.M. (CCH) 1108, 1110 (2002) – the court rejected the taxpayers' argument that his income was not from any of the sources in Treas. Reg. § 1.861-8(f), stating that the "source rules [of sections 861 through 865] do not exclude from U.S. taxation income earned by U.S. citizens from sources within the United States." The court further required the taxpayers to pay a \$2,000 penalty under section 6673(a)(1) because "they . . . wasted limited judicial and administrative resources."

Aiello v. Commissioner, T.C. Memo. 1995-40, 69 T.C.M. (CCH) 1765 (1995) – the court rejected the taxpayer's argument that the only sources of income for purposes of section 61 are listed in section 861.

Madge v. Commissioner, T.C. Memo. 2000-370, 80 T.C.M. (CCH) 804 (2000) – the court labeled as "frivolous" the position that only foreign income is taxable.

Solomon v. Commissioner, T.C. Memo. 1993-509, 66 T.C.M. (CCH) 1201, 1202 (1993) – the court rejected the taxpayer's argument that his income was exempt from tax by operation of sections 861 and 911, noting that he had no foreign income and that section 861 provides that "compensation for labor or personal services performed in the United States . . . are items of gross income."

3. Contention: Federal Reserve Notes are not income.

Some assert that Federal Reserve Notes currently used in the United States are not valid currency and cannot be taxed, because Federal Reserve Notes are not gold or silver and may not be exchanged for gold or silver. This argument misinterprets Article I, Section 10 of the United States Constitution.

The Law: Congress is empowered "[t]o coin Money, regulate the value thereof, and of foreign coin, and fix the Standard of weights and measures." U.S. Const. Art. 1, § 8, cl. 5. Article I, Section 10 of the Constitution prohibits the states from declaring as legal tender anything other than gold or silver, but does not limit Congress' power to declare the form of legal tender. See 31 U.S.C. § 5103; 12 U.S.C. § 411. In United States v. Rifen, 577 F.2d 1111 (8th Cir. 1978), the court affirmed a conviction for willfully failing to file a return, rejecting the argument that

Federal Reserve Notes are not subject to taxation. "Congress has declared federal reserve notes legal tender . . . and federal reserve notes are taxable dollars." *Id.* at 1112. The courts have rejected this argument on numerous occasions.

Relevant Case Law:

Sanders v. Freeman, 221 F.3d 846, 855 (6th Cir. 2000) – in regard to defendant's argument "that imposing sales tax on the sale of legal-tender silver and gold coins unconstitutionally interferes with Congress's exclusive power to coin money is simply untenable," the court recognized that "most, if not all, of the courts that have considered this issue have held that imposing sales tax on the purchase of gold and silver coins and bullion for cash does not infringe on Congress's constitutional power to coin and regulate currency." See also United States v. Davenport, 824 F.2d 1511, 1521 (7th Cir. 1987).

United States v. Condo, 741 F.2d 238, 239 (9th Cir. 1984) – the court upheld the taxpayer's criminal conviction, rejecting as "frivolous" the argument that Federal Reserve Notes are not valid currency, cannot be taxed, and are merely "debts."

United States v. Rickman, 638 F.2d 182, 184 (10th Cir. 1980) – the court affirmed the conviction for willfully failing to file a return and rejected the taxpayer's argument that "the Federal Reserve Notes in which he was paid were not lawful money within the meaning of Art. 1, § 8, United States Constitution."

United States v. Daly, 481 F.2d 28, 30 (8th Cir.), cert. denied, 414 U.S. 1064 (1973) – the court rejected as "clearly frivolous" the assertion "that the only 'Legal Tender Dollars' are those which contain a mixture of gold and silver and that only those dollars may be constitutionally taxed" and affirmed Daly's conviction for willfully failing to file a return.

Jones v. Commissioner, 688 F.2d 17 (6th Cir. 1982) – the court found the taxpayer's claim that his wages were paid in "depreciated bank notes" as clearly without merit and affirmed the Tax Court's imposition of an addition to tax for negligence or intentional disregard of rules and regulations.

C. The Meaning of Certain Terms Used in the Internal Revenue Code

1. **Contention: Taxpayer is not a "citizen" of the United States, thus not subject to the federal income tax laws.**

Some individuals argue that they have rejected citizenship in the United States in favor of state citizenship; therefore, they are relieved of their

federal income tax obligations. A variation of this argument is that a person is a free born citizen of a particular state and thus was never a citizen of the United States. The underlying theme of these arguments is the same: the person is not a United States citizen and is not subject to federal tax laws because only United States citizens are subject to these laws.

The Law: The Fourteenth Amendment to the United States Constitution defines the basis for United States citizenship, stating that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." The Fourteenth Amendment therefore establishes simultaneous state and federal citizenship. Claims that individuals are not citizens of the United States but are solely citizens of a sovereign state and not subject to federal taxation have been uniformly rejected by the courts.

In December 2004, a federal district court issued a preliminary injunction against Jonathan D. Luman blocking him from selling his "Tax Buster" program. The court found that Mr. Luman's plan falsely tells customers they can avoid paying federal income tax by renouncing their Social Security numbers and becoming sovereign citizens. See <http://www.usdoj.gov/tax/bxdv04789.htm>; see also 2004 TNT 241-23 (Dec. 14, 2004).

Relevant Case Law:

United States v. Hilgeford, 7 F.3d 1340, 1342 (7th Cir. 1993) – the court rejected "shop worn" argument that defendant is a citizen of the "Indiana State Republic" and therefore an alien beyond the jurisdictional reach of the federal courts.

United States v. Sileven, 985 F.2d 962 (8th Cir. 1993) – the court rejected the argument that the district court lacked jurisdiction because the taxpayer was not a federal citizen as "plainly frivolous."

United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993) – the court rejected the Gerads' contention that they were "not citizens of the United States, but rather 'Free Citizens of the Republic of Minnesota' and, consequently, not subject to taxation" and imposed sanctions "for bringing this frivolous appeal based on discredited, tax-protester arguments."

United States v. Sloan, 939 F.2d 499, 500 (7th Cir. 1991), cert. denied, 502 U.S. 1060, reh'g denied, 503 U.S. 953 (1992) – the court affirmed a tax evasion conviction and rejected Sloan's argument that the federal tax laws did not apply to him because he was a "freeborn, natural individual, a

citizen of the State of Indiana, and a 'master' - not 'servant' - of his government."

United States v. Ward, 833 F.2d 1538, 1539 (11th Cir. 1987), cert. denied, 485 U.S. 1022 (1988) - the court found Ward's contention that he was not an "individual" located within the jurisdiction of the United States to be "utterly without merit" and affirmed his conviction for tax evasion.

O'Driscoll v. Internal Revenue Service, 1991 U.S. Dist. LEXIS 9829, at *5-6 (E.D. Pa. 1991) - the court stated, "despite [taxpayer's] linguistic gymnastics, he is a citizen of both the United States and Pennsylvania, and liable for federal taxes."

Bland-Barclay v. Commissioner, T.C. Memo. 2002-20, 83 T.C.M. (CCH) 1119, 1121 (2002) - the court rejected taxpayers' claim that they were exempt from the federal income tax laws due to their status as "citizens of the Maryland Republic," characterized such arguments as "baseless and wholly without merit," and required taxpayers to pay a \$1,500 penalty for making frivolous arguments.

Solomon v. Commissioner, T.C. Memo. 1993-509, 66 T.C.M. (CCH) 1201, 1202-03 (1993) - the court rejected Solomon's argument that as an Illinois resident his income was from outside the United States, stating "[he] attempts to argue an absurd proposition, essentially that the State of Illinois is not part of the United States. His hope is that he will find some semantic technicality which will render him exempt from Federal income tax, which applies generally to all U.S. citizens and residents. [His] arguments are no more than stale tax protester contentions long dismissed summarily by this Court and all other courts which have heard such contentions."

2. Contention: The "United States" consists only of the District of Columbia, federal territories, and federal enclaves.

Some argue that the United States consists only of the District of Columbia, federal territories (e.g., Puerto Rico, Guam, etc.), and federal enclaves (e.g., American Indian reservations, military bases, etc.) and does not include the "sovereign" states. According to this argument, if a taxpayer does not live within the "United States," as so defined, he is not subject to the federal tax laws.

The Law: The Internal Revenue Code imposes a federal income tax upon all United States citizens and residents, not just those who reside in the District of Columbia, federal territories, and federal enclaves. In United States v. Collins, 920 F.2d 619, 629 (10th Cir. 1990), cert. denied, 500 U.S. 920 (1991), the court cited Brushaber v. Union Pac. R.R., 240 U.S. 1,

12-19 (1916), and noted the United States Supreme Court has recognized that the "sixteenth amendment authorizes a direct nonapportioned tax upon United States citizens throughout the nation, not just in federal enclaves." This frivolous contention has been uniformly rejected by the courts.

In May 2005, a federal district judge sentenced Wayne C. Bentson to a four year prison term to be followed by three years of probation, as well as requiring Mr. Benson to pay restitution of over \$1.1 million for falsely advising clients, among other things, that the internal revenue laws only applied to individuals residing in the Virgin Islands, Guam and Puerto Rico. See http://www.usdoj.gov/opa/pr/2005/May/05_tax_275.htm; see also 2005 TNT 97-49 (May 18, 2005).

Relevant Case Law:

United States v. Cooper, 170 F.3d 691, 691 (7th Cir. 1999) – the court sanctioned defendant for filing of frivolous appeal wherein he argued, in pertinent part, that only residents of Washington, D.C. and other federal enclaves are subject to the federal tax laws because they alone are citizens of the United States.

United States v. Mundt, 29 F.3d 233, 237 (6th Cir. 1994) – the court rejected "patently frivolous" argument that defendant was not a resident of any "federal zone" and therefore not subject to federal income tax laws.

In re Becraft, 885 F.2d 547, 549-50 (9th Cir. 1989) – the court, observing that Becraft's claim that federal laws apply only to United States territories and the District of Columbia "has no semblance of merit," and noting that this attorney had previously litigated cases in the federal appeals courts that had "no reasonable possibility of success," imposed monetary damages and expressed the hope "that this assessment will deter Becraft from asking this and other federal courts to expend more time and resources on patently frivolous legal positions."

United States v. Ward, 833 F.2d 1538, 1539 (11th Cir. 1987), cert. denied, 485 U.S. 1022 (1988) – the court rejected as a "twisted conclusion" the contention "that the United States has jurisdiction over only Washington, D.C., the federal enclaves within the states, and the territories and possessions of the United States," and affirmed a tax evasion conviction.

Barcroft v. Commissioner, T.C. Memo. 1997-5, 73 T.C.M. (CCH) 1666, 1667, appeal dismissed, 134 F.3d 369 (5th Cir. 1997) – noting that Barcroft's statements "contain protester-type contentions that have been rejected by the courts as groundless," the court sustained penalties for failure to file returns and failure to pay estimated income taxes.

3. Contention: Taxpayer is not a "person" as defined by the Internal Revenue Code, thus is not subject to the federal income tax laws.

Some maintain that they are not a "person" as defined by the Internal Revenue Code, and thus not subject to the federal income tax laws. This argument is based on a tortured misreading of the Code.

The Law: The Internal Revenue Code clearly defines "person" and sets forth which persons are subject to federal taxes. Section 7701(a)(14) defines "taxpayer" as any person subject to any internal revenue tax and section 7701(a)(1) defines "person" to include an individual, trust, estate, partnership, or corporation. Arguments that an individual is not a "person" within the meaning of the Internal Revenue Code have been uniformly rejected. A similar argument with respect to the term "individual" has also been rejected.

Relevant Case Law:

United States v. Karlin, 785 F.2d 90, 91 (3d Cir. 1986), cert. denied, 480 U.S. 907 (1987) – the court affirmed Karlin's conviction for failure to file income tax returns and rejected his contention that he was "not a 'person' within meaning of 26 U.S.C. § 7203" as "frivolous and requir[ing] no discussion."

McCoy v. Internal Revenue Service, 88 A.F.T.R.2d (RIA) 5909, 2001 U.S. Dist. LEXIS 15113, at *21, 22 (D. Col. Aug. 7, 2001) – the court dismissed the taxpayer's complaint, which asserted that McCoy was a nonresident alien and not subject to tax, describing the taxpayer's argument as "specious and legally frivolous."

United States v. Rhodes, 921 F. Supp. 261, 264 (M.D. Pa. 1996) – the court stated that "[a]n individual is a person under the Internal Revenue Code."

Biermann v. Commissioner, 769 F.2d 707, 708 (11th Cir.), reh'g denied, 775 F.2d 304 (11th Cir. 1985) – the court said the claim that Biermann was not "a person liable for taxes" was "patently frivolous" and, given the Tax Court's warning to Biermann that his positions would never be sustained in any court, awarded the government double costs, plus attorney's fees.

Smith v. Commissioner, T.C. Memo. 2000-290, 80 T.C.M. (CCH) 377, 378-89 (2000) – the court described the argument that Smith "is not a 'person liable' for tax" as frivolous, sustained failure to file penalties, and imposed a penalty for maintaining "frivolous and groundless positions."

**Costs Associated with Processing Frivolous Filings
June, 2004**

Organizational Unit	Function	Emp GS + Salary + Benefits	Hours/ Case	Cost/ Case
W&I Campus Submission Processing	Receive and process returns, claims, correspondence (Open mail, stamp, sort, number, code/dit)	3 30,175	5 min	1.21
W&I & SB/SE Exam FRP Coordinators	Screen potential frivolous filings and forward to FRP	9 57,310	3 min	1.38
SB/SE Ogden Campus Frivolous Return Program	Clertical Screening and processing of frivolous filings SFR/Audit Processing	4 33,805 7 46,851	10 min 3 hours	2.71
SB/SE - Compliance Field	Total Cost for Campus Processing Compliance screening and routing to field SFR's Total Cost for Field Processing	7 46,851 12 89,107	10 min 40 hours	3.75 1,598.27
				<u>1,607.26</u>

- 6702 Penalty Assessments
- Claims, 1040X
- SFR's
- Audits
- Frivolous Correspondence Responses
- Promoter Referrals
- Preparer Penalty Assessments

- SB/SE - Compliance Field
- SB/SE - Compliance Field & Campus Appeals
- SB/SE Counsel
- SB/SE Reporting Enforcement
- SB/SE - Compliance
- SB/SE - Compliance Field and Compliance Policy
- SB/SE

- Promoter Investigations
- Collection
- Appeals Officers
- Counsel
- Technical Advisor
- Issue Management Team
- Tracking
- TEC, C&L, GL, Media Relations, LDC

*General salary tables January 2004 Step 5 + 25% for benefits
Cost/Case = Salary + Benefits / 2080 x Hours/Case

**Additional organizational units that have a direct cost associated with FRP Inventory. Note: the indirect effects of ATAT promotions resulting in non-filed returns cannot be calculated, i.e., non-filers inluded by frivolous promotions, compliant taxpayers dropping out due to awareness of non-compliance, etc.

228

(1) though the letters vary, then is the assessment
 (2) is not correct?
 (3) A: Not if they ask them about a return.
 (4) We ask them where the OMB number is for this
 (5) request.
 (6) Q: With the exception of the return then,
 (7) your position is just that the assessment is not
 (8) correct, therefore the levies —
 (9) A: No. No. Our position is that they
 (10) have no right to make the assessment for that
 (11) particular tax because — it isn't that the
 (12) numbers are incorrect. It's that there was no
 (13) authority for it in the first place under 6212.
 (14) In other words, the law — I just read
 (15) you the law. It clearly shows that.
 (16) Q: And this is because the income is U.S.
 (17) sourced?
 (18) A: No. It has nothing to do with that.
 (19) It has to do with they cannot assess a
 (20) deficiency under 6212. The law doesn't allow
 (21) it.
 (22) I read it to you. Do you want it

(1) again?
 (2) Q: No, no, I don't want it again.
 (3) A: Let me read it again. Maybe you didn't
 (4) understand it.
 (5) Q: I don't want to understand it.
 (6) A: Evidently you didn't understand it if
 (7) you ask me that question.
 (8) Q: I don't need to understand it,
 (9) Mr. Kotmair.
 (10) A: Well, listen, it says —
 (11) Q: I'm just trying —
 (12) A: — if the secretary determines that
 (13) there is a deficiency in respect of any tax
 (14) imposed under subtitle A or B or chapters 41,
 (15) 42, 43 or 44, which are in D, not C, then he is
 (16) authorized to send notice of such deficiency to
 (17) the taxpayer by certified mail or registered
 (18) mail.
 (19) What they send us is from subtitle C,
 (20) and it's not authorized by law. And we notified
 (21) them of that. Is that a crime?
 (22) Is that a crime, Mr. Newman? You can't

(1) answer that, can you? Is that a crime?
 (2) Q: Whether or not it's a crime to send
 (3) letters?
 (4) A: No. Whether it's a crime to ask them
 (5) to obey the law.
 (6) Q: Let me ask the questions.
 (7) A: Right.
 (8) Q: It's your position then that —
 (9) A: It's not my position. I'm reading the
 (10) law.
 (11) Q: — it's because the assessment is based
 (12) on wages?
 (13) A: It's because that's subtitle C,
 (14) employment tax.
 (15) Q: Okay.
 (16) A: Here (indicating). Now, let's look at
 (17) the definition of "employment tax."
 (18) Do you want to see that?
 (19) Q: And that the assessments aren't valid
 (20) because they're assessed on wage income and
 (21) employment taxes?
 (22) A: It's because they're erroneously sent

(1) because they didn't come under the law. I
 (2) didn't say they're not valid. I said they're
 (3) erroneously sent.
 (4) Let me go back here, and we'll find —
 (5) all right. The definition of employment,
 (6) employment tax — "employment" means generally
 (7) any service covered by Social Security performed
 (8) by an employee for his or her employer. That's
 (9) subtitle C.
 (10) Q: Okay. That's fine.
 (11) A: All right. Well, that's the definition
 (12) if you want it. It's right out of your own
 (13) regs. That's all we use as the law. Evidently
 (14) they don't know the law.
 (15) Evidently they don't know the law
 (16) because this man is sitting over here and he's
 (17) not saying a word about what I'm reading, and
 (18) you can't contradict what I'm
 (19) reading (indicating).
 (20) So evidently it's the law.
 (21) Q: The only purpose is to ask questions
 (22) today and it's for me to ask the questions.

229

Page 53

[1] when they're sent out.
[2] Q: And then you send a letter out.
[3] A: Right. It's just the members, whoever
[4] wants us to do that, we do that. But they
[5] request it.
[6] Q: And the letters — I know this is
[7] stated differently in the handbook, but they
[8] range from — it ranges from \$38 to about \$48 —
[9] A: No. It's 40 and 5 for certified mail.
[10] Q: And that's just for the letters.
[11] A: Yeah.
[12] Q: And the other court filings like the
[13] motions —
[14] A: Well, the paralegals of course, you
[15] being a lawyer, you understand that that
[16] couldn't be 40 bucks. You don't know how much
[17] research has got to go in a pleading. You have
[18] to go to the law library, look up the case law.
[19] Q: Now you're speaking about pleadings and
[20] briefs.
[21] A: Right.
[22] Q: And it could cost much, much more?

Page 54

[1] A: Okay. It would cost more than 40 bucks
[2] for a letter. Of course.
[3] Q: But you don't know how much?
[4] A: Of course. How would you know. Of
[5] course I don't charge for them.
[6] Q: Who does charge?
[7] A: Huh?
[8] Q: Who charges?
[9] A: Whomever. Whoever writes the thing.
[10] Q: The paralegal charges?
[11] A: Well, yeah. The paralegal would have
[12] to charge for them.
[13] Q: So the paralegal charges for either the
[14] brief or motion or whatever is filed in the
[15] court, and then they receive the payment from
[16] the member?
[17] A: I would say.
[18] Q: How often —
[19] A: They would give us 25 percent for using
[20] the office and our equipment and the paper and
[21] what have you, which covers that.
[22] Q: So however much they charge, and then

Page 55

[1] the fellowship is given some part of that of
[2] 25 percent?
[3] A: Just for the use of the office and the
[4] equipment and the time.
[5] Q: Right. I understand.
[6] A: Right. That's it.
[7] Q: Who would be responsible for changing
[8] the letters that are sent to the IRS, the ones
[9] that you're saying are —
[10] A: Well, that's casework. That's the
[11] \$40 letter.
[12] Q: Right.
[13] A: Well, if there is a change, then the
[14] caseworkers would bring it to me, and we would
[15] go over it.
[16] Q: The only thing that really changes in
[17] there is the person's name?
[18] A: Obviously.
[19] Q: And where it's being sent?
[20] A: Right.
[21] Q: So who would do that?
[22] A: Change the person's — the caseworker.

Page 56

[1] Q: And how are they paid?
[2] A: They're paid per letter.
[3] Q: From the member.
[4] A: Yeah.
[5] Q: And then the fellowship receives the
[6] entire amount, this is not individually being
[7] paid to the caseworker, right?
[8] A: Well, no. No. The caseworker would
[9] get that, and the fellowship would get a portion
[10] of it for the expenses.
[11] Q: So of these thousands of letters that
[12] are being sent, the caseworker retains some of
[13] the payment and the fellowship retains the
[14] remaining portion of whatever amount.
[15] A: Is this relevant, George?
[16] MR. HARP: He can ask.
[17] THE WITNESS: But is it relevant? I
[18] don't think it's relevant.
[19] I don't think it's relevant at all
[20] because this is a far cry from being an abusive
[21] tax shelter. It has nothing to do with that.
[22] It's not relevant.

Page 108

[1] Q: And I don't understand that again. Can
[2] we talk about that for a minute?
[3] A: All right. Go ahead.
[4] Q: You didn't apply for a CAF number?
[5] A: No. They sent me two of them.
[6] Q: And you describe this in your book.
[7] You received one from the Ogden
[8] service center and you received another one
[9] from another service center, and I don't know
[10] where that is.
[11] A: In Philadelphia.
[12] Q: You returned the one from Ogden?
[13] A: Because in the letter they say I can
[14] only have one.
[15] Q: Because you know you can only have one,
[16] so you sent one back, you kept one?
[17] A: They told me the reason for it was to
[18] track everything because I was using the power
[19] of attorney and claiming to have that because
[20] I'm an officer of an association.
[21] Q: Right. I understand that. I
[22] understand. I'm familiar with the section of

Page 109

[1] circular 230 you're referring to.
[2] A: Okay.
[3] Q: A director of an association can
[4] represent the association before the IRS.
[5] A: An officer I think it says.
[6] Q: But what you're referring to now with
[7] not having a hearing, did some years ago you
[8] receive a letter that said you cannot —
[9] A: They said it was issued in error.
[10] Yes.
[11] Q: But that would be referencing the
[12] second one or both of the letters that you
[13] received authorizing you to practice?
[14] A: No. They sent me — they sent me a
[15] letter telling me to use this number. I got
[16] power of attorney from the individual.
[17] Q: I just want to understand this.
[18] They sent you two letters and you
[19] returned one?
[20] A: Right.
[21] Q: So now there's still one left?
[22] A: Right.

Page 110

[1] Q: And you're saying that with respect to
[2] that one that you kept, which is the number that
[3] you're probably to —
[4] A: According to the circular, which —
[5] like I was arguing with them, is according to
[6] this circular, I should have a hearing to show
[7] where I violated any of the regs. That's what
[8] it says here.
[9] Q: Is that with respect to the
[10] representative number that you're referring to
[11] at the top which is 26 —
[12] A: I suppose because they sent it to me.
[13] Now they want to take it away without giving me
[14] a hearing.
[15] Q: But this happened some years ago?
[16] Because you discuss this in your book.
[17] A: Yeah. Sure, it happened some years
[18] ago. It happened — I don't know where it — it
[19] might have even happened before they raided us.
[20] Q: And that was — so that was —
[21] A: '93.
[22] Q: '93.

Page 111

[1] It may have happened before 1993?
[2] A: It may have.
[3] In fact they still send us letters
[4] talking about representation that the
[5] caseworkers get.
[6] Q: The IRS sends you letters?
[7] A: Yeah. They have our number still
[8] listed there.
[9] In fact, one told us yesterday she's
[10] receiving —
[11] Q: Can I ask you to clarify that? You're
[12] saying the IRS sends you letters that have
[13] taxpayer information because you sent in a power
[14] of attorney?
[15] A: I don't know exactly. I'd have to
[16] check it out. In fact I didn't — we'll try to
[17] locate the letters and send them to you.
[18] Q: I'm just asking you about the statement
[19] that you just made.
[20] Are they sending you letters saying
[21] that you're not authorized to practice?
[22] A: No.

Page 112

Page 114

[1] Q: Or is it they're sending you
[2] information as if you sent in a power of
[3] attorney?
[4] A: As if the number was — they still look
[5] at it. Some offices still look at the number;
[6] some don't.
[7] Q: That's what I was asking.
[8] A: Right.
[9] Q: So they still send you information as
[10] if there's a representative number or not.
[11] So with respect to this second CAF
[12] number, at some point in time — and it may have
[13] been more than 15 years ago, it may not have
[14] been, but sometime between 10-15. We don't know
[15] really know when — you got another letter
[16] saying that you are not authorized to practice
[17] or send letters in —
[18] A: Then I went back to them — no. I got
[19] a letter saying that the number was sent in
[20] error.
[21] Q: Oh, okay. You got a letter saying —
[22] A: Then I went back to them and said,

[1] revoked, them saying it was revoked.
[2] Q: So they told you that it was revoked?
[3] A: No, I don't — I'm not even — I think
[4] that they said — I'm thinking back all these
[5] years — that the number was issued in error.
[6] "Revoked" is just a figure of speech to make it
[7] simple for the reader.
[8] Q: Okay. But that's how you refer —
[9] A: I'm not sure if they said that or not.
[10] I'm just — it's just a way of expressing it to
[11] the reader in the book.
[12] Q: No. I understand that.
[13] A: Okay.
[14] Q: And I'm just explaining to you that
[15] that's how I'm expressing it because you refer
[16] to it as being revoked in your book.
[17] A: But I'm telling you don't put real
[18] credence on that.
[19] Q: You received a letter saying —
[20] A: To the best of my recollection, they
[21] said it was issued in error.
[22] Q: Okay.

Page 113

Page 115

[1] well, I have the right to represent as an
[2] officer of an association, and we started
[3] arguing about that. But they never gave me any
[4] hearing. They just said you can't represent
[5] anybody, but I'm saying I was representing them
[6] as an officer of the association. That's what
[7] the letters say.
[8] Q: And this is —
[9] A: So they never did revoke that ability
[10] under that section. They just — just stopped.
[11] Q: Right.
[12] A: They stopped writing to me. They
[13] wouldn't argue anymore. They wouldn't give me a
[14] hearing.
[15] Q: I only — I refer to it that way,
[16] Mr. Kotmair, because you in your book — excuse
[17] me —
[18] A: A book is not a law brief.
[19] Q: No. But that's how you refer to it —
[20] A: I understand.
[21] Q: — as being revoked.
[22] A: Well, them saying — not that it was

[1] A: To be revoked, obviously, according to
[2] this circular, I'd have to make some kind of an
[3] act against the regs or commit some kind of a
[4] fraudulent act for the revocation, which I
[5] would have to have a hearing for it, which I
[6] never had a hearing. I never had any due
[7] process.
[8] Q: And when you write these letters where
[9] you're taking power of attorney or when you sign
[10] them, this would be how you're referring to
[11] acting as the fiduciary for the fellowship.
[12] A: No, No.
[13] Q: No?
[14] A: Not at all.
[15] Q: Whereas a director —
[16] A: No, not at all. Not at all.
[17] The — as I just take power of
[18] attorney, not as the fiduciary, but just by —
[19] they gave me power of attorney just like if they
[20] give anybody else a power of attorney. I have
[21] the right to use that power of attorney, is what
[22] I'm saying, under this circular, being an

Page 132

[1] Wouldn't you say so, Mr. Greenstein?
[2] MR. GREENSTEIN: "Greenstein."
[3] THE WITNESS: I'm sorry.
[4] Mr. Greenstein.
[5] BY MR. NEWMAN:
[6] Q: So these letters, there's about a
[7] thousand letters sent to the IRS responsive to
[8] these types of inquiries a year?
[9] A: I don't know if it's a thousand. I
[10] don't know. I don't know how many it would be,
[11] but I doubt if it's a thousand. I very
[12] seriously doubt if it's a thousand. I'd have
[13] writer's cramps.
[14] Q: From signing your name?
[15] A: Yeah.
[16] And I don't have writer's cramps.
[17] Q: Can I ask you to look at page 2 of
[18] what's marked as Exhibit 12.
[19] A: All right.
[20] Q: The paragraph that you have listed
[21] under the indented quotation for 26 CFR 1.861-8.
[22] A: Right.

Page 133

[1] Q: What you have written in the letter
[2] there is: "On the worksheets enclosed with the
[3] alleged notice of deficiency, wages is listed
[4] under the heading Adjustments to Income.
[5] However, no specific sources" —
[6] A: Where — maybe I'm at the wrong place.
[7] Where are we at now?
[8] Q: This is Exhibit 12, what's marked as
[9] page 2 by your numbering system.
[10] A: All right. I'm on page 2. And what
[11] paragraph? Where are we at?
[12] Q: (Counsel indicating.)
[13] A: Oh, right here (indicating)?
[14] Q: Yes.
[15] A: "On the worksheets enclosed..."
[16] Q: "...with the alleged notice of
[17] deficiency, wages is listed under the heading
[18] Adjustments to Income. However, no specific
[19] sources or payers are shown, so I am unable to
[20] determine whether or not the wages are derived
[21] from the taxable sources listed in section
[22] 26 CFR 1.861-8(d)(1) and are therefore taxable

Page 134

[1] income as defined in the Internal Revenue Code."
[2] A: Well, that's a factual statement I
[3] guess.
[4] Q: That the income that's listed on I
[5] guess what will be the Form 886A is derived from
[6] sources —
[7] A: From wages, which would be subtitle C.
[8] Q: Okay. And they aren't listed in
[9] section 861, so —
[10] A: Wages are not listed there, no.
[11] Q: So the dispute ultimately is the
[12] taxability of this person's wage income?
[13] A: Well, if they would dispute it. They
[14] don't dispute anything. They won't discuss the
[15] law.
[16] So I don't know if you want to call it
[17] a dispute. It's just me making these
[18] allegations which they never answer.
[19] Q: Between this individual and the IRS,
[20] the dispute is —
[21] A: Well, if — yeah, between this
[22] individual and me having the power of attorney.

Page 135

[1] So I'm arguing for the power of
[2] attorney.
[3] Q: No. I understand.
[4] A: Right. Okay.
[5] If they would just come back and give
[6] us some kind of an answer, you know, it would be
[7] great.
[8] Q: And would you please look at the power
[9] of attorney, and you have it titled Privacy Act
[10] Release Form and Power of Attorney, which is the
[11] last page of this document.
[12] A: All right.
[13] Q: This power of attorney is substantially
[14] the same for this type of letter —
[15] A: I believe it is the same, isn't it?
[16] Q: — in that, again, this individual is
[17] giving you permission to investigate for him
[18] matters relating to all records pertaining to
[19] income taxes, to include income tax returns,
[20] Form 1040, 1040A and related forms and
[21] assessment records.
[22] A: Right.

Page 144

Page 146

(1) Q: They're responding to the individual,
(2) regardless of whether or not I —

(3) A: But they don't address anything.

(4) Q: — the correctness of the arguments
(5) that you are presenting in the letters, they
(6) just respond to the individual. I don't know
(7) what the letters say.

(8) But they are — they may or may not be
(9) responding, only to the individual —

(10) A: But they don't respond to —

(11) Q: — to you?

(12) A: — what I'm saying to them. They don't
(13) respond to it.

(14) Q: To the arguments that you're
(15) presenting?

(16) A: Right. They don't show us where the
(17) arguments are wrong.

(18) Q: Right. That's what I was asking.

(19) A: Right. If they'd come back and just
(20) show us where we're wrong, show us what we're
(21) overlooking —

(22) Q: Yeah. I understand.

(1) for it, but the individual members — say it's
(2) one that is very diligent. Then he would send
(3) in any response and every response that he's
(4) receiving from the IRS?

(5) A: Right.

(6) Q: And if one is not so diligent?

(7) A: Normally that's what they do.

(8) Q: So it's up to them, but on average —

(9) A: Yeah. We don't instruct them, but they
(10) do.

(11) Q: On average, if it's, you know, the
(12) range of a particular person, but they are
(13) sending you the responses that they receive from
(14) the IRS?

(15) A: Right.

(16) Q: And on the most part all of the
(17) responses from the IRS disregard the
(18) arguments —

(19) A: We have never, have never had anything
(20) from the IRS disputing what we're saying,
(21) showing where we're wrong. Never. They ignore
(22) and go forward as though we hadn't said

Page 145

Page 147

(1) A: Really.

(2) Q: So if they are responding to these
(3) arguments, they would send it to the
(4) individual?

(5) A: But the individual sends it to us.

(6) Q: So the individual keeps you apprised of
(7) any —

(8) A: Oh, yeah. Of course.

(9) Q: Any document that they're receiving
(10) from the IRS, they would send it to you then to
(11) respond?

(12) A: They would send it in. Yes.

(13) Q: Okay. So the caseworkers individually
(14) signed to a particular individual would be aware
(15) of any document that the IRS sends them?

(16) A: Well, whatever, whatever the
(17) individual sends to us. You know, you get
(18) some — you know, you have — individuals are
(19) individuals. Some people will say they'll take
(20) care of that tomorrow and they never do, you
(21) know.

(22) Q: And it's their — they're responsible

(1) anything.

(2) Q: So the arguments that you're presenting
(3) aren't — and I think you can say that you
(4) probably agree with this — isn't appealing to
(5) the IRS and they don't agree with it?

(6) A: I imagine. If they had something to
(7) show us where we're wrong, I imagine they would
(8) send it.

(9) Q: And I know that you state in the
(10) handbook — and I can't refer to the specific
(11) section right now — that there's an adverse
(12) political climate with respect to any kind of
(13) judicial proceeding.

(14) A: Adverse political climate to judicial
(15) proceedings? In what respect?

(16) Q: That if someone were to go to court
(17) with one of these arguments, that they may
(18) expect an adverse ruling if they were to
(19) present this argument in court, would that be
(20) accurate?

(21) A: Well, you know, I think the word — to
(22) answer that, I think the word "frivolous" is

234

(1) The tax court — the only person —
(2) reason you go to the tax court is to appeal the
(3) numbers, try to reduce the numbers of the
(4) liability. You accept the liability and argue
(5) about the numbers.

(6) Q: Okay.

(7) A: That's what you go to tax court for.

(8) Q: And what about district court? Are you
(9) aware of any members that petitioned any
(10) district court for any proposed liability?

(11) A: Not off the top of my head. I don't
(12) know. I'm —

(13) Q: Just generally.

(14) A: No. I couldn't answer that
(15) truthfully.

(16) Q: No.

(17) A: No. I couldn't give you any idea on
(18) that.

(19) Q: Not a specific person. I guess I was
(20) just asking generally.

(21) But would the caseworker be aware if
(22) they were petitioning the district court?

(1) Q: And the IRS is not responsive and
(2) they're not accepting these arguments.

(3) A member would not call and ask, you
(4) know, what do I do next, what court do I go to?
(5) They don't answer questions like that?

(6) A: Well, if they called in and said, What
(7) do we do next? then we would send them back to
(8) the paralegals. And if they wanted to go to
(9) court, then the paralegals would draft a brief
(10) for them.

(11) Q: So then they would go to district
(12) court?

(13) A: Yeah. But all we'd be doing is the
(14) paralegals would draft the brief for them if
(15) they wanted to do that. If they wanted to hire
(16) the paralegal to draft the brief to go to
(17) court, then the paralegal would probably do
(18) that.

(19) Q: I understand.

(20) And they would draft it for them and
(21) then they would go to court?

(22) A: Right.

(1) A: No.

(2) Q: With respect to —

(3) A: No. They just work with the agency.

(4) Q: With the IRS?

(5) A: Yeah.

(6) Q: Oh, okay. But they wouldn't ask about
(7) what they need to do if they wanted to petition
(8) district court or tax court, any court?

(9) A: What they — no.

(10) Q: What the procedures were or where they
(11) needed to go. No?

(12) A: No. They would — if somebody — I
(13) don't understand your question.

(14) Q: If it ended with the administrative
(15) appeal with the IRS, if —

(16) A: If somebody called in and just a
(17) general conversation?

(18) Q: No.

(19) If someone called in — this is a
(20) member, and you've pretty much exhausted all the
(21) administrative remedies.

(22) A: All right.

(1) Q: So would the paralegal then —

(2) A: They would either — well, I guess — I
(3) guess it could happen either way. It could
(4) happen where they hired an attorney and the
(5) paralegal would do the work for the attorney.

(6) We've found that most attorneys don't
(7) understand the tax code, so a lot of them are
(8) glad for us to do the paralegal work for them.

(9) So if a member hired an attorney, then
(10) the paralegal would work for the attorney.

(11) Q: So the paralegal would then be
(12) assigned to the case and be aware if the person
(13) was actually filing a complaint in district
(14) court?

(15) A: I imagine.

(16) Q: And they individually would just have
(17) that knowledge?

(18) A: If they did the complaint and sent it
(19) to the individual, I'm sure the individual would
(20) come back to them.

(21) Q: And keep them aware of what's happening
(22) in the case?

Page 160

Page 162

[1] A: Oh, of course. If they don't, I think
[2] they're crazy or just wasting their filing fee;
[3] right?

[4] Q: If you don't —

[5] A: If they file a petition and don't
[6] follow it through on anything, then they're
[7] wasting their filing fee.

[8] Q: What you're referring to, though, is
[9] them keeping —

[10] A: The individual.

[11] Q: — the individual keeping the
[12] fellowship apprised of what's happening with the
[13] litigation?

[14] A: Oh, sure. Because they're the ones
[15] handling it either pro se or through a lawyer.

[16] Q: And just to change topics here for just
[17] a moment, one of the documents that you offer is
[18] a rescission or revocation —

[19] A: Revocation and rescission.

[20] Q: You don't charge for that, that's just
[21] available to members; is that right?

[22] A: They might charge a fee for printing it

[1] clear — or if you could just explain if you're
[2] referring to the social security number?

[3] A: Well, first off, there's no requirement
[4] for any citizen to make an application for a
[5] social security number. Right? You're familiar
[6] with the Alton case.

[7] Q: Yeah.

[8] A: Right? Which has never been
[9] overturned.

[10] And if you go to section — Title 42
[11] section 405, it says right in there that the
[12] secretary of social security shall issue a
[13] social security number to all aliens when
[14] entering the country and to all their
[15] applicants, because they can't force citizens to
[16] get a social security number.

[17] The Social Security Administration will
[18] tell you that. If you write them, they'll write
[19] back and tell you. If you don't use a
[20] social security number, then you can't build
[21] credits towards benefits to retire on.

[22] So anyway, because when I became 18 —

Page 161

Page 163

[1] OUT.

[2] Q: So it's just printing it out?

[3] A: Yes.

[4] Q: And the person, it's up to them to deal
[5] with it in any way that they can?

[6] A: Right.

[7] Q: But I'll ask you explain that.

[8] That's revoking your own —

[9] A: No. It doesn't revoke anything.

[10] Q: Explain it to me then so it's in your
[11] words.

[12] A: In other words —

[13] Q: And can I ask you first —

[14] A: You watched Just the Facts. We address
[15] it in Just the Facts.

[16] Q: I didn't watch the whole thing.

[17] A: Oh, now you confess.

[18] Q: No. I told you I didn't watch the
[19] whole thing.

[20] A: That's all right. I'm kidding you.

[21] Q: What you're referring to is the
[22] social security number. I just want to make it

[1] right? — and I wanted to get a job, I go to the
[2] grocery store and the grocer says, Well, before
[3] I can hire you, you've got to have a
[4] social security number. Well, to an 18-year-old
[5] kid, I'm thinking, well, I guess I have to have
[6] this number to go to work. So I get it, bring
[7] it back to him. Right? But that's not the law
[8] at all.

[9] So you know, you know it's a settled
[10] fact of law that if you do something as a
[11] minor — right? — and you — and it's in error,
[12] you're not bound by that as a minor. You've got
[13] to be an adult.

[14] So any act that's committed like that,
[15] according to the courts, which we cite in the
[16] affidavit, that act can be revoked, so you're
[17] actually revoking the application and rescinding
[18] your signature from it.

[19] Q: So you're revoking your application for
[20] a social security number?

[21] A: Your act that you committed in error as
[22] a minor.

Page 164

[1] Q: Is getting and applying for a
[2] social security number?
[3] A: The application. Right. And they
[4] don't want to have that number, so they revoke
[5] their act and rescind their signature from that
[6] application. That's all — that's it.
[7] Q: Okay. And then following through on
[8] that, then revoking your application for a
[9] social security number then would —
[10] A: No. It revokes — yeah. Okay. Go
[11] ahead. You're right.
[12] Q: Then that would allow you to —
[13] A: Allow you to what?
[14] Q: I want to put it in a way that we're
[15] both on the same page as far as what you're
[16] requesting.
[17] Is that —
[18] A: I'm not — it's not requesting
[19] anything.
[20] Q: Not you. The individual —
[21] A: He wouldn't request anything.
[22] Q: Well, if he was revoking his

Page 165

[1] application for a social security number —
[2] A: He's giving notice of that.
[3] Q: Okay. Then his social security tax
[4] would not be required to be withheld by his
[5] employer; is that right?
[6] A: Well, I guess if he doesn't have a
[7] number — did you ever look on the application
[8] for a W-7 for a TIN?
[9] Q: Yes. I'm just asking you what the
[10] effect of this is. I don't want to take too
[11] long —
[12] A: Well, the effect of it is he's telling
[13] the government, the secretary of the treasury
[14] and whomever else that he's revoking that and
[15] he's no longer going to use that social security
[16] number.
[17] Q: And the effect of that would be that he
[18] wouldn't have to have social security tax
[19] withheld at any point?
[20] A: Well, anything in subtitle C requires
[21] the number.
[22] Q: So the revocation —

Page 166

[1] A: The fact that — as I went over before,
[2] right here it tells you employment taxes are
[3] social security taxes and everything in
[4] employment is in there.
[5] Q: So the revocation would also apply to
[6] income tax that was withheld by the employer?
[7] A: Well, there's no income tax withheld in
[8] subtitle C.
[9] It's titled that, but if you go to
[10] 7806, it says the titles are not the law.
[11] Q: I just want to ask you —
[12] A: You're talking about 3402.
[13] Q: No, I'm not. I'm asking you about the
[14] revocation, because you — you have argued
[15] before employers that —
[16] A: Argued before employers?
[17] Q: In disputes between an employee and an
[18] employer that may have been —
[19] A: We have — we have shown the employer
[20] the law.
[21] Q: Where they may have terminated the
[22] individual because they have not provided a

Page 167

[1] social security number?
[2] A: Well, I guess some employers will do
[3] that.
[4] Q: Okay.
[5] A: Right.
[6] Q: So this revocation, it would apply to
[7] the income tax that is withheld, whether it's
[8] correctly or incorrectly withheld in your
[9] position —
[10] A: Well, in subtitle — every tax in
[11] subtitle C requires a W-4 and a number.
[12] Q: That's what I'm asking.
[13] It's just that the result of the
[14] revocation would also apply to the wage taxes
[15] that are withheld by the employer; is that
[16] right?
[17] A: What is generally called the income
[18] tax, but that's just in the heading, which is
[19] not law, because if you go to section 7806, it
[20] says headings are not law, not to be considered
[21] as law.
[22] Q: I understand that. I'm just asking the

Page 180

(1) answer, but do you recognize this document?

(2) A: I guess it's part of it. You know,
(3) like I don't have it committed to memory.

(4) Q: Okay. In the first paragraph, it's the
(5) second — the third sentence — and again, I
(6) just want to make it clear that the only
(7) question I'm asking is whether or not I'm
(8) accurately stating what is written here — is
(9) that caseworkers and paralegals assist members
(10) in developing cases and can provide the facts
(11) and the evidence that will allow a member to
(12) seek administrative and judicial remedy.

(13) A: That's their purpose.

(14) Q: Okay. Would you please turn to what's
(15) marked as Plaintiff's Exhibit 17.

(16) Okay. I'm going to ask you to refer to
(17) the portion under the heading
(18) Breaching/Overcoming Employer Obstacles.

(19) A: All right.

(20) Q: I know that we've already discussed
(21) this, but what is written here — and again just
(22) tell me if I'm accurately stating what's

Page 182

(1) Q: And the statement of citizenship, that
(2) relates to the social security revocation or —

(3) A: No. The statement of citizenship is
(4) from the social security regs.

(5) Q: My only question is: Is that separate
(6) from the revocation of the social security
(7) number? Is that a separate document?

(8) A: Well, that has nothing to do with it.
(9) There are two. One is pursuant to the IRS
(10) regs, and the other one is an affidavit
(11) generated by the member himself, whoever else
(12) does it.

(13) Q: So the affidavit would simply state
(14) that they are a citizen of this country?

(15) A: As it's — well, it's cited — it used
(16) to be in the 515 publication where it would tell
(17) them that, you know, that's what you do.

(18) And it comes out of 1441 and it says,
(19) if you're a resident or a citizen of the
(20) United States and not subject to withholding,
(21) you give the withholding agent a statement of
(22) citizenship, and he's relieved from withholding

Page 181

(1) written — "If your employer will not accept
(2) your statement of citizenship or comply with the
(3) laws pertaining to citizens who claim their
(4) lawful exemption from income tax, contact the
(5) National Workers Rights Committee for
(6) assistance. They will provide you with a
(7) response."

(8) A: They respond with the laws that we've
(9) covered so far.

(10) Q: That — I'm just asking if that's
(11) accurately —

(12) A: Yes.

(13) Q: — written — or I read what is
(14) accurately written there.

(15) A: Right.

(16) Q: And the response they provide is sent
(17) to the employer?

(18) A: Yes. We recite the law to the
(19) employers as we showed you before.

(20) Q: Right.

(21) A: What the employer does is his
(22) business.

Page 183

(1) the tax.

(2) Q: Is this a form that you prepared or is
(3) this —

(4) A: No. It's from the Internal Revenue
(5) Service regs. It's from the regulations.

(6) Q: The regulations don't have forms.

(7) A: Oh, no, there's no form. It just
(8) tells them to do a statement of citizenship, so
(9) it's just a statement saying that they're a
(10) citizen.

(11) Q: That's what I'm asking.

(12) A: Right.

(13) Q: Is it — you're referring to the
(14) regulations, but this is — this isn't a federal
(15) form that they're submitting.

(16) A: No. The regs tell them to just tell
(17) them, the withholding agent, that you're a
(18) citizen.

(19) Q: Right.

(20) So it's an affidavit that you — did
(21) you prepare the affidavit?

(22) A: No.

Page 208

11 Q: So I would assume that this would be
12 something that would be available only to a full
13 member?
14 A: No. No. To anybody.
15 Q: It could be anybody?
16 A: Anybody who's a member.
17 Q: Okay. Do you still answer questions
18 like this?
19 A: Do I still answer questions like that?
20 Do I give opinions?
21 Q: Yes.
22 A: I give opinions. I give lectures every
23 Saturday night and I talk about all these things
24 as you saw in the video. That's no different
25 than this.
26 In other words, I'm just citing what
27 the law says. The person that I cite that to
28 should be responsible enough to go check me out,
29 and then they act accordingly. From — because
30 they're an adult.
31 Q: I understand.
32 A: Okay. That's the answer.

Page 209

1 Q: So you still receive inquiries like
2 this from members and you may respond to them?
3 A: If somebody asks me a question about
4 the law, then I'll answer the law, yeah, but
5 I'm not giving them any advice. That's not
6 advice.
7 Q: No. I understand that. I just
8 wondered if you were still responding to
9 questions like this just because this letter is
10 so dated —
11 A: When we have these lectures and they
12 ask questions, then if I can answer them then,
13 if I have the availability of the code and
14 everything, I'll show them right where it is —
15 Q: Okay.
16 A: — where it's cited. And they — then
17 they can check it out for themselves.
18 We tell everybody to check out what we,
19 you know, what we're saying. You know, you got
20 to — if you're a responsible adult, that's your
21 responsibility, right? Don't take our word for
22 it. Check it out for yourself.

Page 210

1 Q: I just want to go back to a statement
2 that you made earlier, Mr. Kotmair, in reference
3 to some court cases that were petitioned, and
4 not necessarily by your members, where you used
5 the term "frivolous" as it was used in a court
6 opinion.
7 A: I said that it's far beyond the
8 definition of "frivolous" the way it's being
9 used. That's because in order to be frivolous,
10 according to my research of the word, the court
11 would have to show in detail why the argument
12 does not fit within the law, and they're not
13 doing that. They're not addressing the law at
14 all.
15 So when a court does that — I don't
16 care where the court is — then I would say
17 that's wrong.
18 Q: Are you aware of courts using that term
19 in reference to members of the fellowship that
20 have petitioned either district court or the tax
21 court?
22 A: No. Not myself. But I know it's been

Page 211

1 used around the country with even people that
2 are not even members.
3 Q: But you're not aware of it being used
4 in reference to members —
5 A: No. I don't recall any. Not at all.
6 If it has been, it's, you know, it's not my
7 recollection or it slipped my recollection, but
8 I don't recall that. Normally we don't usually
9 get that far.
10 Q: As to going to court you mean?
11 A: Yeah.
12 Q: Okay.
13 A: So no. It's — it could have, but I
14 don't recall.
15 But I've heard it thrown around and
16 I've seen cases that lawyers and people send me
17 that I read where that term is used, and
18 according to the way it's supposed to be used,
19 it's not being used that way. They're not
20 showing where the argument put forth is
21 frivolous in regards to the law itself, and
22 that's what they're supposed to do, and I don't

[1] we already talked about today.
 [2] A: Which one is this one
 [3] here (indicating)?
 [4] Q: This one specifically was the one that
 [5] was sent to the substitute for return unit.
 [6] A: Okay. All right.
 [7] Q: But we talked about three letters. One
 [8] related to notices of deficiency and the other
 [9] one related to notices of liens.
 [10] A: Levy.
 [11] Q: Levy?
 [12] A: Levy, right.
 [13] Q: This --
 [14] A: Right.
 [15] Q: My question only relates to the sending
 [16] of these letters, that the staff or you would be
 [17] aware that these are being sent relating to the
 [18] person's income tax, proposed liabilities or
 [19] levies by the IRS because you're sending them
 [20] directly to the IRS?
 [21] A: Yeah. They gave us power of attorney
 [22] to represent them as to the documents they

[1] because it -- how can it be germane to the
 [2] action at hand?
 [3] Q: You're referring to this case?
 [4] A: Yeah. I don't -- nobody has told us
 [5] this is illegal. All it is is citing the law.
 [6] That's all it's doing, is citing the law.
 [7] If we can't cite the law to the
 [8] Internal Revenue Service, then we're in poor
 [9] shape in this country.
 [10] Q: I don't have any --
 [11] A: I think we better question ourselves.
 [12] MR. NEWMAN: I don't have any more
 [13] questions.
 [14] Do you have any, George?
 [15] MR. HARP: I don't think I've got --
 [16] I've got maybe -- let me see this now.
 [17] EXAMINATION
 [18] BY MR. HARP:
 [19] Q: Mr. Kotmair, do you recall the
 [20] approximate date or time that you last actually
 [21] represented somebody at one of the assessment
 [22] hearings that we talked about earlier?

[1] receive from the IRS.
 [2] Q: And they are still continuing to send
 [3] these letters?
 [4] A: I don't see any reason why not to. I
 [5] don't think it's against the law.
 [6] Q: But I'm just asking that --
 [7] A: Right.
 [8] Q: -- they are still continuing to send
 [9] them.
 [10] A: We have never been told to stop sending
 [11] them because it's against the law.
 [12] Q: My question was just if they are still
 [13] continuing to send them.
 [14] A: Of course.
 [15] Q: It hasn't abated for any reason.
 [16] A: There has been no reason to abate it.
 [17] Q: Okay.
 [18] A: I mean, do you -- did you know of any
 [19] person that told us to stop?
 [20] Q: My question was just --
 [21] A: I understand that, but my question to
 [22] you is -- I don't think the question is germane

[1] A: Well, that was back in the early to
 [2] mid-'90s. I don't remember the year.
 [3] MR. HARP: Okay. I really don't have
 [4] anything else.
 [5] MR. NEWMAN: I'm finished.
 [6] (Time noted: 1:28 p.m.)
 [7] (Reading and signature not waived.)
 [8]
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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No.
)	
JOHN BAPTIST KOTMAIR, JR., d/b/a)	
SAVE-A-PATRIOT FELLOWSHIP,)	
NATIONAL WORKERS RIGHTS)	
COMMITTEE, and AMERICAN)	
CONTRACTING SERVICES,)	
)	
Defendant.)	

DECLARATION OF EVAN J. DAVIS

1. I am a trial attorney with the Department of Justice's Tax Division in Washington, D.C.

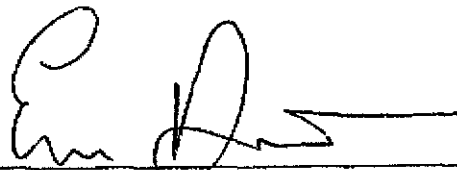
2. I am assigned to the case of *United States v. Thurston Paul Bell, individually and doing business as National Institute for Taxation Education*, Civil Action No. 1:CV-01-2159 (M.D. Pa.).

3. In the course of that litigation, on February 13, 2002, I took the deposition of Raymond D. Berglund, who had been a customer of both Bell and the Save-A-Patriot Fellowship.

4. A copy of the deposition transcript is attached as Exhibit 1.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 5th day of May, 2005.



EVAN J. DAVIS

1 Q Let's take a brief tour of your history of taxes.

2 A Starting when?

3 Q Starting in the -- let's say the early 1990s. Were

4 you filing what I'm going to call regular tax

5 returns, not making any arguments about the

6 taxability of wages in the early 1990s?

7 A That's true.

8 Q Was there a point at which you started arguing that

9 your income was not taxable in a way?

10 A Yes.

11 Q About what time did that start?

12 A 1996.

13 Q When did you first learn about or hear of

14 Thurston Bell?

15 A I originally heard about an organization called Save

16 a Patriot.

17 Q What is that organization?

18 A An organization that believes that American citizens

19 are not liable for the income tax.

20 Q How did you find out about Save a Patriot?

21 A Through an acquaintance that I had back in 1996, and

22 I don't even remember his name at this point.

23 Q So did you contact Save a Patriot in 1996?

24 A Yes.

25 Q And is that when you learned about Thurston Bell?

14

1 A Thurston Bell was the caseworker that was put on my

2 case.

3 Q What was the purpose of having a caseworker on your

4 case?

5 A To prepare any documents that needed to be sent to

6 the IRS or the Wisconsin Department of Revenue.

7 Q Do you remember the first contact you had with

8 Thurston Bell?

9 A I know that I contacted him. As far as what words

10 were exchanged, I can't remember.

11 Q When you contacted Save a Patriot, had you already

12 begun arguing that your wages were not taxable?

13 A No.

14 Q What advice did Thurston Bell give to you when he was

15 working for Save a Patriot regarding your taxes? And

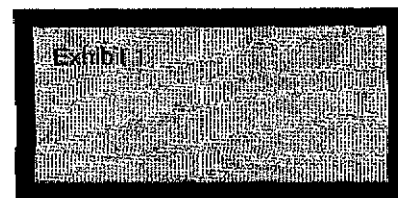
16 I'd like you to be as detailed as possible.

17 A Contacting Save a Patriot was consent that you

18 believed in what they were touting. So when there

19 was any kind of conversations between Thurston and I,

20 it was already assumed that I believed the same



21 things that Save a Patriot was propagating.

22 As far as advice, there was certain -- there was
23 a certain format to be followed that Save a Patriot
24 had already developed, and I was plugged into that
25 system, and at that point any work that was being
15

1 done as far as any requests from the IRS or any other
2 federal agency was done by Thurston Bell, Save a
3 Patriot.

4 Q To the best of your recollection, what did
5 Thurston Bell actually do for you while he worked at
6 Save a Patriot?

7 A He prepared any documents that needed to be sent to
8 the IRS. At this point my memory only can recall
9 that certain requests were made under the Freedom of
10 Information Act, which at this point is all that I
11 can remember.

12 Q Did you file a timely 1996 federal income tax return?

13 A No, I did not.

14 Q Why not?

15 A Because I felt that if I was going to pursue this
16 course, that I needed to take a stand and not file.

17 Q Had you contacted Save a Patriot prior to the
18 April 15th, 1997 deadline for filing your 1996 taxes?

19 A Yes.

20 Q What role, if any, did Thurston Bell play in your
21 decision to not file for 1996?

22 A I don't remember.

23 Q Do you remember what role Save a Patriot played in
24 your decision not to file?

25 A Other than providing information that agreed with how
16

1 I felt, that's the only role they played.

2 Q Do you recall any specific conversations with
3 Thurston Bell while he was working at Save a Patriot
4 about the taxability of wages and other income?

5 A I can't remember any specific conversations, but I'm
6 sure that the subject of whether or not we were
7 liable to pay the tax came up during the course of
8 our conversations.

9 Q And what was your understanding of Mr. Bell's
10 position on that issue?

11 A That U.S. citizens did not need to pay the income
12 tax.

13 Q Did Mr. Bell give you any tax advice while he worked
14 at Save a Patriot?

15 A Other than following the prescribed procedures that
16 *were outlined in the Save a Patriot pattern of how*
17 things were done, no.

18 Q Maybe you can give me a little more detail about the
19 pattern of Save a Patriot.

20 A As I said before, the only thing that I can remember
21 ever being done for me was having Freedom of
22 Information Act requests prepared for me.

23 Q Did Thurston Bell know that you -- did you tell
24 Thurston Bell that you did not file your 1996 federal
25 income tax return timely?

17
1 A Yes, I did tell him. At what point I don't remember.

2 Q When you were first assigned to Thurston Bell as your
3 caseworker, did he explain what his training was?

4 A No.

5 Q Did you ever ask?

6 A No.

7 Q Why not?

8 A I didn't think there was a course that was being
9 taught.

10 Q Did Bell mention how long he'd been working with Save
11 a Patriot when you contacted him?

12 A I don't remember.

13 Q How did he represent his qualifications, if at all?

14 A I don't remember him representing any qualifications.

15 *The only thing that I do remember is bragging about*
16 *his achievements.*

17 Q Such as?

18 A Helping Joe citizen avoid paying taxes or any number
19 of other things that could happen as a result of not
20 paying taxes, like the IRS coming in, foreclosing on
21 a home or something of that nature.

22 Q And Bell suggested that he had been successful in
23 stopping that process?

24 A Stopping things of that nature.

25 Q Did you form an impression about how knowledgeable he
18

1 was --

2 A Yes.

3 Q -- during the time that he worked at Save a Patriot?

4 A Yes.

5 Q What was that impression?

6 A That he knew what he was talking about.

7 Q And what was that impression based on?

8 A Conversations by phone between him and me.

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No. WMN 05 CV 1297
)	
JOHN BAPTIST KOTMAIR, JR., et al.,)	
)	
Defendants.)	

DECLARATION OF JOSEPH NAGY

This declaration and attached exhibits are submitted under 28 U.S.C. § 1746.

1. I am resident of the state of California and was a member of the Save-A-Patriot Fellowship (SAPF) from 2001 through 2004.

2. I paid \$925 to an SAPF representative to be a member fo the Save-A-Patriot Fellowship along with \$100 paid by my spouse.

3. During the period that I was a member SAPF provided me materials stating that federal income tax does not apply to U.S. citizens working in the United States.

4. SAPF also informed me that U.S. citizens are not subject to income and employment tax withholding requirements because U.S.-source income is not subject to taxation. This information was reported to me in SAPF's promotional materials, handbook, and the *Reasonable Action* newsletter.

5. As a member, SAPF offered to provide several services to assist in reducing the amount of taxes I was required to pay. These services included filing court pleading, bankruptcy petitions, and writing letters to the IRS contesting my requirement to pay taxes or report

domestic income.

6. I did not file an income tax return for 2001 because I relied on SAPF's materials which stated that U.S. citizens are not subject to income and employment tax withholding requirements because U.S.-source income is not subject to taxation.

7. I also relied on the SAPF staffs' assurances that they could assist in representing me before the IRS, and John B. Kotmair, Jr., could represent me before the IRS and state taxing authorities in failing in failing to file and pay taxes, and in contesting those liabilities.

8. In 2004, the IRS mailed me a notice requesting my delinquent 1999-2002 income tax returns. In addition to not filing for these years I also did not file a 2003 income tax return.

9. As an SAPF member, I responded to the IRS through letters purchased from SAPF, fee of \$48 per letter, which were signed by John B. Kotmair, Jr.

10. In addition to this letter, SAPF sold me letters to send to the California Franchise Tax Board related to state income tax liabilities, which were not signed by John B. Kotmair, Jr. The SAPF staff instructed me to sign the letters sent to the California Franchise Tax Board.

11. The letters I purchased from SAPF, which were sent to the IRS, stated that John B. Kotmair, Jr., was "not currently under suspension or disbarment from the IRS."

12. The letter I purchased which stated because I "did not receive any foreign earned income during the period in question" there was no "requirement to file an income tax return."

13. The taxes I owed for 1999-2002 were since assessed by the IRS and I received other correspondence. I responded to all IRS inquiries through letters from SAPF, which were signed by John B. Kotmair, Jr.

14. After the IRS sent a notice for a due process hearing I contacted SAPF. The SAPF staff offered to provide me written responses to anticipated questions from the IRS Appeals Officer, although I never received this document.

15. The SAPF staff also offered to file court pleadings if the due process hearing did not resolve my income tax liabilities.

16. I would not have purchased SAPF's services if I knew the staff was not authorized to file pleading on my behalf in court.

17. I would not have purchased letters from SAPF contesting my federal income tax liabilities, signed by John B. Kotmair, Jr., had I known he was not authorized to represent me before the IRS.

18. I am now retired, living on Social Security, and have paid the thousands of dollars of income tax liabilities which have resulted from my failing to file a 1999-2003 income tax returns.

19. I am no longer a member of SAPF and have filed all income tax returns.

20. The United States has not offered me anything in exchange for providing this declaration.

I declare under penalty of perjury the foregoing is true and correct. Executed this 25th day of June, 2006.


JOSEPH NAGY

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No. WMN 05 CV 1297
)	
JOHN BAPTIST KOTMAIR, JR., et al.,)	
)	
Defendants.)	

DECLARATION OF CAMILLE NAGY

This declaration and attached exhibits are submitted under 28 U.S.C. § 1746.

1. I am resident of the state of California and was a member of the Save-A-Patriot Fellowship (SAPF) from 2001 through 2004.
2. I paid \$100 to an SAPF representative to be a member of the Save-A-Patriot Fellowship along with \$925 paid by my husband Joseph Nagy.
3. During the period that I was a member SAPF provided me materials stating that federal income tax does not apply to U.S. citizens working in the United States.
4. SAPF also informed me that U.S. citizens are not subject to income and employment tax withholding requirements because U.S.-source income is not subject to taxation. This information was reported to me in SAPF's promotional materials, handbook, and the *Reasonable Action* newsletter.
5. SAPF offered to provide me several services to assist in reducing the amount of taxes I was required to pay. These services included filing court pleading, bankruptcy petitions, and

writing letters to the IRS contesting my requirement to pay taxes or report domestic income.

6. I did not file an income tax return for 2001 because I relied on SAPF's materials which stated that U.S. citizens are not subject to income and employment tax withholding requirements because U.S.-source income is not subject to taxation.

7. I also relied on the SAPF staff's assurances that SAPF and John B. Kotmair, Jr., could assist in representing me before the IRS and state taxing authorities.

8. In 2004, the IRS mailed me several notices requesting my delinquent income tax returns.

9. As an SAPF member, I responded to the IRS through letters purchased from SAPF, for a fee of \$48 per letter, which were signed by John B. Kotmair, Jr.

10. In addition to these letters, SAPF sold me letters to send to the California Franchise Tax Board related to state income tax liabilities, which were not signed by John B. Kotmair, Jr. The SAPF staff instructed me to sign the letters sent to the California Franchise Tax Board.

11. The letters I purchased from SAPF, which were sent to the IRS, stated that John B. Kotmair, Jr., was "not currently under suspension or disbarment from the IRS."

12. The letter I purchased, which were sent to the IRS, stated that because I "did not receive any foreign earned income during the period in question" there was no "requirement to file an income tax return."

13. The taxes I owed for 2001 were since assessed by the IRS and I received other correspondence. I responded to all IRS inquiries through letters from SAPF, which were signed by John B. Kotmair, Jr.

14. After the IRS sent a notice for a due process hearing I contacted SAPF. The SAPF

staff offered to provide me written responses to anticipated questions from the IRS Appeals Officer, although I never received this document.

15. The SAPF staff also offered to file court pleadings if the due process hearing did not resolve my income tax liabilities.

16. I would not have purchased SAPF's services if I knew the staff was not authorized to file pleadings on my behalf in court.

17. I would not have purchased letters from SAPF contesting my federal income tax liabilities, signed by John B. Kotmair, Jr., had I known he was not authorized to represent me before the IRS.

18. I am now retired, living on Social Security, and have paid the thousands of dollars of income tax liabilities which have resulted from my failing to file a 2001 income tax return.

19. I am no longer a member of SAPF and have filed all income tax returns.

20. The United States has not offered me anything in exchange for providing this declaration.

I declare under penalty of perjury the foregoing is true and correct. Executed this 15th day of June, 2006.


CAMILLE NAGY

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

JOHN BAPTIST KOTMAIR, JR., et al.,)

Defendants.)

Civil No. WMN 05 CV 1297

DECLARATION OF NICHOLAS TAFLAN

This declaration and attached exhibits are submitted under 28 U.S.C. § 1746.

1. I am resident of the state of Ohio and was a member of the Save-A-Patriot Fellowship (SAPF) from 1995 through 2006.

2. I paid an initial membership and annual renewal for each year that I was a member.

3. During the period that I was a member, SAPF provided me materials stating that federal income tax does not apply to U.S. citizens working in the United States.

4. SAPF also informed me that U.S. citizens are not subject to income and employment tax withholding requirements because U.S.-source income is not subject to taxation. This information was reported to me in SAPF's promotional materials, handbook, and the *Reasonable Action* newsletter.

5. During the period I was a member, SAPF also provided me with an "Affidavit of Revocation" and "Statement of Citizenship." I do not recall whether I paid for these documents but they were provided to me from SAPF.

6. In 1999, I was employed as a pharmacist at Rite-Aid Corporation and earned \$82,598.59 in wages, had taxable income of \$62,765.14, and I was liable for \$15,101.00 of income taxes.

7. For the calendar year 1999, I presented my employer with the "Affidavit of Revocation" and "Statement of Citizenship" and requested that Rite Aid discontinue withholding employment and income taxes from my wages.

8. I did not file an income tax return for 2000 or 2001 because I relied on SAPF's materials which stated that U.S. citizens are not subject to income and employment tax withholding requirements because U.S.-source income is not subject to taxation.

9. For the calendar year 2000, I received wage income in the amount of \$86,401.29, had taxable income of \$63,797.10, and I was liable for \$15,331.00 of income taxes.

10. For the calendar year 2001, I received wage income in the amount of \$84,586.11, had taxable income of \$61,859.12, and I was liable for \$14,408.00 of income taxes.

11. SAPF offered to provide several other services to me to assist in reducing the amount of taxes I was required to pay. These services included filing court pleadings, bankruptcy petitions, and writing letters to the IRS contesting my requirement to pay taxes or report domestic income.

12. The staff at SAPF assisted me in filing a bankruptcy petition in the U.S. Bankruptcy Court for the Northern District of West Virginia on June 16, 2003, in Case no. 5:03-bk-02170.

13. The bankruptcy petition that the staff at SAPF assisted me in preparing is attached as Exhibit 1.

14. I also filed several motions in this bankruptcy case which SAPF prepared and

provided to me. These motions or other filings include:

- (a) A motion to extend time filed on June 30, 2003, which is attached as Exhibit 2;
- (b) A motion for contempt filed on October 27, 2003, which is attached as Exhibit 3;
- (c) A motion for sanctions filed on October 27, 2003, which is attached as Exhibit 4;
- (d) An objection to the IRS's proof of claim filed on November 18, 2003, which is attached as Exhibit 5;
- (e) A complaint in an adversary proceeding filed on January 13, 2004, which is attached as Exhibit 6;
- (f) Two oppositions filed on January 13, 2004, which are attached as Exhibits 7 and 8;
- (g) A motion to reconsider filed on January 26, 2004, which is attached as Exhibit 9;
- (h) A motion to amend filed on January 26, 2004, which is attached as Exhibit 10;
- (i) A notice of appeal filed on February 4, 2004, which is attached as Exhibit 11;
- (j) A motion to reconsider filed on February 6, 2004, which is attached as Exhibit 12;
- (k) A motion to stay pending appeal filed on February 6, 2004, which is attached as Exhibit 13;
- (l) An Appellee designation filed on February 17, 2004, which is attached as Exhibit 14;
- (m) A motion to recuse filed on May 28, 2004, which is attached as Exhibit 15; and
- (n) A motion to reconsider filed on July 9, 2004, which is attached as Exhibit 16.

15. I paid the staff at SAPF for preparing, or assisting in the preparation, of the documents described in paragraph 14.

16. I was not promised anything in exchange for providing this declaration.

I declare under penalty of perjury the foregoing is true and correct. Executed this 9th day
of June, 2006.


NICHOLAS TAFLAN

Name of Debtor (If individual, enter Last, First, Middle) Taflan, Nicholas Matthew	NAME OF JOINT DEBTOR (Spouse) (Last, First, Middle) Taflan, Patricia Louise
ALL OTHER NAMES used by the debtor in the last 6 years (including married, maiden and trade names)	ALL OTHER NAMES used by the joint debtor in the last 6 years (include married, maiden and trade names)
SOC. SEC./TAX I.D. NO. (if more than one, state all) 271-44-1901	SOC. SEC./TAX I.D. NO. (if more than one, state all)
STREET ADDRESS OF DEBTOR (No. and street, city, state, zip) 55951 Key Bellaire Rd. Bellaire, Ohio 43906	STREET ADDRESS OF JOINT DEBTOR (No. and street, city, state, zip) 55951 Key Bellaire Rd. Bellaire, Ohio 43906
COUNTY OF RESIDENCE OR PRINCIPAL PLACE OF BUSINESS Belmont	COUNTY OF RESIDENCE OR PRINCIPAL PLACE OF BUSINESS Belmont
MAILING ADDRESS OF DEBTOR (if different from street address)	MAILING ADDRESS OF JOINT DEBTOR (if different from street address)

LOCATION OF PRINCIPAL ASSETS OF BUSINESS DEBTOR (if different from addresses listed above)

Information Regarding the Debtor (Check the Applicable Boxes)

VENUE (Check any applicable boxes)

Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

Type of Debtor (Check all boxes that apply) <input checked="" type="checkbox"/> Individual(s) <input type="checkbox"/> Railroad <input type="checkbox"/> Corporation <input type="checkbox"/> Stockbroker <input type="checkbox"/> Partnership <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Other	Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box) <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 11 <input checked="" type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Sec. 304 - Case ancillary to foreign proceeding
Nature of Debts (Check one box) <input checked="" type="checkbox"/> Consumer/Non-Business <input type="checkbox"/> Business	Filing Fee (Check one box) <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (Applicable to individuals only) Must attach signed application for court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.
Chapter 13 Small Business (Check all boxes that apply) <input type="checkbox"/> Debtor is a small business as defined in 11 U.S.C. § 101 <input type="checkbox"/> Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)	

Statistical/Administrative Information (Estimates only)

Debtor estimates that funds will be available for distribution to unsecured creditors.

Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

Estimated Number of Creditors	1-15	16-49	50-99	100-199	200-999	1000-over
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Estimated Assets	\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Estimated Debts	1 to \$0,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

THIS CRIME IS FOR COURT USE ONLY

2003 JUN 16 A
 FILED
 US DISTRICT COURT
 NORTHERN DISTRICT OF OHIO

VOLUNTARY PETITION (part 2) <i>(This page must be completed in every case)</i>		Name of Debtor(s)	
Prior Bankruptcy Case Filed Within Last 8 Years (if more than one, attach additional sheet)			
Petitioner:	Case Number:	Date Filed:	
Pending Bankruptcy Case filed by any Spouse, Partner or Affiliate of this Debtor (if more than one, attach additional sheet)			
Name of Debtor:	Case Number:	Date Filed:	
District:	Relationship:	Judge:	
Signatures			
<p style="text-align: center;">Signature(s) of Debtor(s) (Individual/Joint)</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct. If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7 I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p><input checked="" type="checkbox"/> <u>[Signature]</u> Signature of Debtor</p> <p><input checked="" type="checkbox"/> <u>[Signature]</u> Signature of Joint Debtor</p> <p><u>740-676-0277</u> Telephone Number (if not represented by attorney)</p> <p><u>6/16/03</u> Date</p>		<p style="text-align: center;">Signature(s) of Debtor (Corporation/Partnership)</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor. The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p><input checked="" type="checkbox"/> _____ Signature of Authorized Individual</p> <p>_____ Printed Name of Authorized Individual</p> <p>_____ Title of Authorized Individual</p> <p>_____ Date</p>	
<p style="text-align: center;">Signature of Attorney</p> <p><input checked="" type="checkbox"/> _____ Signature of Attorney for Debtor(s)</p> <p>_____ Printed Name of Attorney for Debtor(s)</p> <p>_____ Firm Name</p> <p>_____ Address</p> <p>_____ Telephone Number</p> <p>_____ Date</p>		<p style="text-align: center;">Signature of Non-Attorney Petition Preparer</p> <p>I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.</p> <p>_____ Printed Name of Bankruptcy Petition Preparer</p> <p>_____ Social Security Number</p> <p>_____ Address</p> <p>_____ Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document.</p> <p>If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.</p> <p>_____ Signature of Bankruptcy Petition Preparer</p> <p>_____ Date</p> <p>A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both, 11 U.S.C. § 110; 18 U.S.C. § 158.</p>	
<p style="text-align: center;">Exhibit A</p> <p>(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)</p> <p><input type="checkbox"/> Exhibit A is attached and made a part of this petition.</p>			
<p style="text-align: center;">Exhibit B</p> <p>(To be completed if debtor is an individual whose debts are primarily consumer debts)</p> <p>I, the attorney for the persons named in the foregoing petition, declare that I have informed the petitioner that (he or she) may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, and have explained the relief available under each such chapter.</p> <p><input checked="" type="checkbox"/> _____ Signature of Attorney for Debtor(s)</p> <p>_____ Date</p>			

UNITED STATES BANKRUPTCY COURT

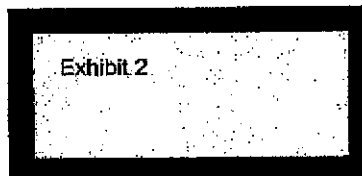
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

In Re: NICHOLAS M. TAFLAN and PATRICIA L. TAFLAN, Debtors
CHAPTER 13 MOTION FOR ENLARGEMENT OF TIME

FILED
2003 SEP 30 AM 9:01
CASE NO: 03-bk-02170

MOTION FOR ENLARGEMENT OF TIME TO FILE SCHEDULES AND PLAN

COMES NOW, Nicholas M. Taflan and Patricia L. Taflan, Debtors, in propria persona, in the captioned case under Chapter 13 and moves this Court for Enlargement of Time to file their Schedules and Plan and for that provides the following:

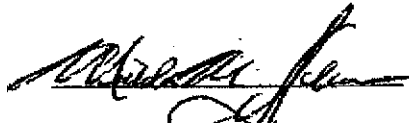


1. Debtors filed their voluntary petition on June 16, 2003.
2. This Court has jurisdiction over this matter by virtue of Debtor's having filed a voluntary petition (11 United States Code (11 U.S.C. § 302)) seeking protection under Chapter 13 in this venue.
3. Debtors are working on their schedules and plan.
4. Debtor's are not seasoned attorneys and are unfamiliar with litigation and the law, being laymen. As such, they should be afforded a degree of latitude with respect to their pleadings and time limits within which to prepare their pleadings and therefore requests more time to complete their Schedules. See *Haines v. Kerner*, 404 U.S. 519.
5. FRBP Rule 9006(b) Enlargement - states in pertinent part: *the court for cause shown may at any time in its discretion(1) with or without motion or notice order the period enlarged if the request is made before the expiration of the period originally prescribed ...*
6. Therefore, based on the aforementioned rule, Debtors are requesting enlargement of time to file their Schedules and Plan.
7. Debtors are proceeding in propria persona, are inexperienced in filing pleadings and desire to ensure that the Schedules and Plan are absolutely correct.
8. Debtors will be able to properly complete the Schedules and Plan to their Petition and file them on or before the 15th day of July, 2003.

Wherefore Debtors pray that the time to file the Schedules and Plan to their Petition be enlarged for Debtors to

properly complete and file the necessary paperwork.

Respectfully submitted this 30th day of June 2003.



Nicholas M. Taffan
55951 Key-Bellaire Rd.
Bellaire, Ohio 43906
phone 740-676-0277



Patricia L. Taffan
55951 Key-Bellaire Rd.
Bellaire, Ohio 43906
phone 740-676-0277

UNITED STATES BANKRUPTCY COURT

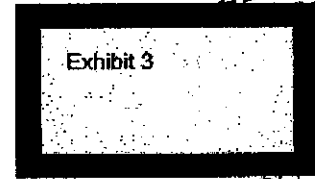
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

In Re: **NICHOLAS M. TAFLAN and PATRICIA L. TAFLAN, Debtors** CASE NO:5:03-bk-02170
CHAPTER 13 MOTION FOR CONTEMPT AND SANCTIONS

COMES NOW, Nicholas M. Taflan and Patricia L. Taflan, Debtors, in propria persona, in the captioned case under Chapter 13 to submit a Motion for Contempt and Sanctions for violation of Title 11 United States Code § 362 (a) (4) and (a) (6) which operates as a stay, applicable to all entities, of-

- (4) any act to create, perfect, or enforce any lien against property of the estate; and**
- (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;**

and for that provides the following:



- 1. Debtors filed their voluntary petition on June 16, 2003.**
- 2. US Premier FCU, the Respondent herein, is an unsecured non priority creditor.**
- 3. On or about June 20, 2003 Debtors received a billing statement from US Premier FCU. (Exhibit A)**
- 4. On or about June 30, 2003 Debtors returned the stub from the June 20, 2003 billing statement with a letter informing US Premier FCU our bankruptcy filing.**
- 5. On or about July 5, 2003 Debtors received a "past due" letter from US Premier FCU, dated July 1, 2003. (Exhibit B)**
- 6. On or about July 7, 2003 Debtors received a second "past due" letter from US Premier FCU, dated July 2, 2003. (Exhibit C)**
- 7. On July 14, 2003 Debtors received a "Proof of Claim" from US Premier FCU, dated July 8, 2003. (Exhibit D)**
- 8. On July 23, 2003 Debtors served the Chapter 13 Plan to all creditors. US Premier FCU was served at two of their addresses as per the Court's listing. Debtor's also mailed a copy of the Chapter 13 Plan to US Premier FCU's 3rd address at P.O. Box 31279, Tampa, Florida. (Exhibit E)**

9. On or about July 25, 2003 Debtor's received a statement from US Premier FCU, dated July 22, 2003. (Exhibit F)
10. On or about August 25, 2003 Debtor's received a statement from US Premier FCU, dated August 21, 2003. (Exhibit G)
11. On or about September 25, 2003 Debtor's received a statement from US Premier FCU, dated September 22, 2003. (Exhibit H)
12. On September 29, 2003 a Bill Young from US Premier Federal Credit Union left a message to call him at 800-328-1500, extension 332.
13. The continued by the creditor US Premier FCU since July 5, 2003 has caused emotional distress to the Debtor's. It is clearly harassment by the creditor.
14. Creditor US Premier FCU violated § 362(6) by performing an act as part of the collection process. Section 362(6) prohibits any act to collect, assesses or recover...a claim that arose before the petition was filed.
15. This is a willful violation of the stay which is punishable by Title 11 U.S.C. § 362 (h) which says:

(h) An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.
16. The aforementioned Exhibits should leave little doubt that creditor US Premier willfully repeated violated the automatic stay, in spite of several notifications.
17. The filing of a Proof of Claim by creditor US Premier listing Debtor's case number, in this Court is proof that US Premier knew of the filing of the Ch. 13 petition.
18. Section 362(h) provides that an individual injured by any willful violation of the stay is entitled to recover actual damages, including costs and attorney's fees, and in appropriate circumstances, punitive damages. This was affirmed by the Court in In re Chateaugay Corp., 920 F.2d 183 (2nd Cir. 12/10/1990) where it stated:

Congress may have concluded that this consideration, as well as others, warranted an explicit code provision to punish stay violations and compensate debtors, in addition to civil contempt, when the debtors are individuals. Section 362(h) expands upon the discretionary nature of contempt proceedings by stating not only that "individual[s] . . . shall recover actual damages," but also that "in appropriate...

19. Further, a willful violation of the stay in the context of § 362(h) does not require an intent to violate nor an awareness that the conduct was prohibited by the stay. It suffices that the violator knew of the existence of the stay, and that he intentionally did the violating act. See In re Atlantic Business and Community Corp., 901 F.2d 325 (3d Cir. 04/18/1990) where the Court stated:

The bankruptcy courts have construed "willful" as used in the code to mean an intentional or deliberate act done with knowledge that the act is in violation of the stay ...

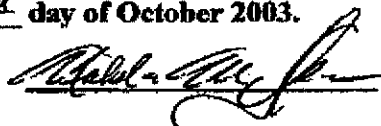
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A "willful violation" does not require a specific intent to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant's actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was "willful" or whether compensation must be awarded.


WHEREFORE, the Debtor's, Nicholas M. Taflan and Patricia L. Taflan, prays that this Court:

- (a) enjoin the above creditor, US Premier FCU, from willful violation of the Automatic Stay, Title 11 U.S.C. § 362(a), and;
- (b) impose such sanctions upon the Creditor(US Premier FCU), as the Court deems just and proper pursuant to § 362 (h), and;
- (c) order US Premier FCU To Show Cause why they are not in contempt of Court.

Respectfully submitted this 27th day of October 2003.



Nicholas M. Taflan
55951 Key-Bellaire Rd.
Bellaire, Ohio 43906
phone 740-676-0277



Patricia L. Taflan
55951 Key-Bellaire Rd.
Bellaire, Ohio 43906
phone 740-676-0277

CERTIFICATE OF SERVICE

WE, NICHOLAS M. TAFLAN and PATRICIA L. TAFLAN, CERTIFY THAT ON THIS _____ DAY OF OCTOBER 2003, HAVE CAUSED TO BE SERVED UPON THE PARTIES LISTED BELOW A TRUE COPY OF THE FOREGOING DEBTOR'S PLEADINGS BY PLACING SAID COPY IN AN ENVELOPE WITH THE PROPER POSTAGE AFFIXED THERETO, SEALING SAME AND PLACING IT IN THE UNITED STATES POSTAL SERVICE.

**Clerk, U.S. Bankruptcy Court
For the Northern District of West Virginia
12th and Chapline Streets
Post Office Box 70
Wheeling, WV 26003**

**CH 13 Trustee
P.O. Box 8531
South Charleston, West Virginia 25303**

**US Premier FCU
Attn: J. Alvater
6462 Little River Tpke
Alexandria, VA 22312-1411**

Cert. Mail No. 7002 - 0460 - 0002 - 1984 - 4032

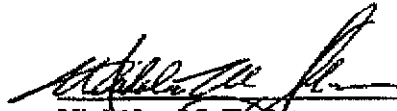
**US Premier FCU
PO Box 31279
Tampa, FL 33631-3279**

**US Premier FCU
Attn: Customer Service
P.O. Box 30495
Tampa, FL 33630**

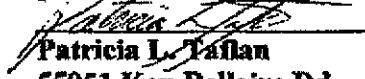
**CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF WV**

2003 OCT 27 PM 2:09

FILED



**Nicholas M. Taflan
55951 Key-Bellaire Rd.
Bellaire, Ohio 43906
phone 740-676-0277**



**Patricia L. Taflan
55951 Key-Bellaire Rd.
Bellaire, Ohio 43906
phone 740-676-0277**

To Whom It May Concern:

June 30, 2003

Please be advised that on June 16, 2003 a petition for bankruptcy was filed for:

Nicholas M. & Patricia L. Taflan
55951 Key-Bellaire Rd
Bellaire, Ohio 43906

case no: 5:03-bk-02170

In: U.S. Bankruptcy Court - Northern District of W. Va.
12th & Chaplain St.
Wheeling, W. Va. 26003
304-233-1655

The Taflan's have been advised not to make any more payments on this account until further notice.

Should you wish to inquire about this matter you may contact the Bankruptcy Court personally.

Appreciate your consideration in this matter.....

acct. # - 5438 290/ 710/ 3004

MAILED 7/3/03 → (CUSTOMER SERVICE
Bx 30485
TAMPA FL 33630) + STUB PYMT ADDRESS
Bx 31279
TAMPA, FL 33631

264

M/c

7/23/03 We sent "plan" for (D)

FORM B19 (Official Form 10) (4/01)

UNITED STATES BANKRUPTCY COURT <u>N. District</u> DISTRICT OF <u>VA</u>		PROOF OF CLAIM
Name of Debtor <u>Nicholas M TALLAN</u>	Case Number <u>503BK 02170</u>	<p>To 2 addresses (300 on) ORIG Use sent to Customer Services (see plan on?)</p> <p>(D)</p>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <u>US PREMIER FCU</u>	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input checked="" type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	THIS SPACE IS FOR COURT USE ONLY
Name and address where notices should be sent: <u>US PREMIER FCU 6462 LITTLE RIVER TPRE ALEXANDRIA VA 22312-1411</u>	Telephone number: <u>703-914-8700 x 308</u>	
Account or other number by which creditor identifies debtor: <u>92326</u>	Check here if this claim <input type="checkbox"/> replaces a previously filed claim, dated: _____ <input type="checkbox"/> amends _____	
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input checked="" type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other _____	<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)	
2. Date debt was incurred: <u>6/96</u>	3. If court judgment, date obtained: _____	
4. Total Amount of Claim at Time Case Filed: \$ <u>8,037.18</u> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
5. Secured Claim. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____	6. Unsecured Priority Claim. <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). *Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.	
7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.	THIS SPACE IS FOR COURT USE ONLY	
8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		
Date <u>7/23/03</u>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <u>[Signature] Credit MGR</u>	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

J. Altwater

265

LIVE Database Area - Creditor Mailing Matrix

Case No: 5:03 - bk - 02170

(E)

Search Results

Alexandria, VA 22312-1411

Case Number: 5:03-bk-02170

U.S. Dept of Education
Direct Loan Servicing Ctr
Rm 1009
Utica NY 13304-4609

Bank One Delaware, NA
Ba First USA
c/o Weinstein, Trejnor and Riley, P.S.
2101 4th Avenue, Suite 500
Seattle, WA 98121

(2)

US Premier MC
Box 30493
Tampa FL 33630 Dup.

(3)
7/23 =
(Cym Address)
Box 31279
Tampa, FL
33631-3279

Chevy Chase Bank
6151 Chevy Chase Drive
Lanham MD 20707

United States Trustee
2025 United States Courthouse
300 Virginia Street East
Charleston, WV 25301

Citizens Savings Bank
201 South 4th St Box 10
Martins Ferry OH 43935

Helen M. Morris
P.O. Box 4535
South Charleston, WV 25303

East Ohio Regional Hospital
2000 Hoff Street
Wheeling WV 26003

Nicholas Matthew Tallon
55951 Key Belaire Road
Bethune, OH 43906

First USA
Box 94014
Palatine IL 60094-9014

Patricia Louise Tallon
55951 Key Belaire Road
Bethune, OH 43906

IRS Levy
IRS/ACS CMP Stop 5027
Attn: CDFI
Box 219420
Kansas City MO 64121

Total Labels: 18

MBNA America
Box 15036
Wilmington DE 19850

RAA Aid Payroll
Box 3165
Harrisburg PA 17105

River Health Ent.
2000 Hoff Street
Wheeling WV 26003

Sarah R. Landon MD
Box 394
St. Clairsville OH 43950

State National Bank
Box 182149
Columbus OH 43218-2149

CHAPTER 13 PLAN
SERVED TO ABOVE LIST
7/23/03
[Signature]

(1) U.S. Premier FCI
6462 Little River Tpce.

<https://ecf.wvnb.circ4.dcn/cgi-bin/CredMatrixC>

<https://ecf.wvnb.circ4.dcn/cgi-bin/CredMatrixCase.pl?24>

UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

In Re: NICHOLAS M. TAFLAN and PATRICIA L. TAFLAN, Debtors CASE NO:5:03-bk-02170
CHAPTER 13 MOTION FOR CONTEMPT AND SANCTIONS

COMES NOW, Nicholas M. Taflan and Patricia L. Taflan, Debtors, in propria persona, in the captioned case under Chapter 13 to submit a Motion for Contempt and Sanctions for violation of Title 11 United States Code § 362 (a) (4) and (a) (6) which operates as a stay, applicable to all entities, of-

(4) any act to create, perfect, or enforce any lien against property of the estate; and

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

and for that provides the following:

Exhibit 4

1. Debtors filed their voluntary petition on June 16, 2003.
2. US Premier FCU, the Respondent herein, is an unsecured non priority creditor.
3. On or about June 20, 2003 Debtors received a billing statement from US Premier FCU. (Exhibit A)
4. On or about June 30, 2003 Debtors returned the stub from the June 20, 2003 billing statement with a letter informing US Premier FCU our bankruptcy filing.
5. On or about July 5, 2003 Debtors received a "past due" letter from US Premier FCU, dated July 1, 2003. (Exhibit B)
6. On or about July 7, 2003 Debtors received a second "past due" letter from US Premier FCU, dated July 2, 2003. (Exhibit C)
7. On July 14, 2003 Debtors received a "Proof of Claim" from US Premier FCU, dated July 8, 2003. (Exhibit D)
8. On July 23, 2003 Debtors served the Chapter 13 Plan to all creditors. US Premier FCU was served at two of their addresses as per the Court's listing. Debtor's also mailed a copy of the Chapter 13 Plan to US Premier FCU's 3rd address at P.O. Box 31279, Tampa, Florida. (Exhibit E)

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF WV

2003 OCT 27 PM 2:08

FILED

9. On or about July 25, 2003 Debtor's received a statement from US Premier FCU, dated July 22, 2003. (Exhibit F)
10. On or about August 25, 2003 Debtor's received a statement from US Premier FCU, dated August 21, 2003. (Exhibit G)
11. On or about September 25, 2003 Debtor's received a statement from US Premier FCU, dated September 22, 2003. (Exhibit H)
12. On September 29, 2003 a Bill Young from US Premier Federal Credit Union left a message to call him at 800-328-1500, extension 332.
13. The continued by the creditor US Premier FCU since July 5, 2003 has caused emotional distress to the Debtor's. It is clearly harassment by the creditor.
14. Creditor US Premier FCU violated § 362(6) by performing an act as part of the collection process. Section 362(6) prohibits any act to collect, assesses or recover...a claim that arose before the petition was filed.
15. This is a willful violation of the stay which is punishable by Title 11 U.S.C. § 362 (h) which says:

(h) An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.
16. The aforementioned Exhibits should leave little doubt that creditor US Premier willfully repeated violated the automatic stay, in spite of several notifications.
17. The filing of a Proof of Claim by creditor US Premier listing Debtor's case number, in this Court is proof that US Premier knew of the filing of the Ch. 13 petition.
18. Section 362(h) provides that an individual injured by any willful violation of the stay is entitled to recover actual damages, including costs and attorney's fees, and in appropriate circumstances, punitive damages. This was affirmed by the Court in In re Chateaugay Corp., 920 F.2d 183 (2nd Cir. 12/10/1990) where it stated:

Congress may have concluded that this consideration, as well as others, warranted an explicit code provision to punish stay violations and compensate debtors, in addition to civil contempt, when the debtors are individuals. Section 362(h) expands upon the discretionary nature of contempt proceedings by stating not only that "individual[s] . . . shall recover actual damages," but also that "in appropriate...

19. Further, a willful violation of the stay in the context of § 362(h) does not require an intent to violate nor an awareness that the conduct was prohibited by the stay. It suffices that the violator knew of the existence of the stay, and that he intentionally did the violating act. See In re Atlantic Business and Community Corp., 901 F.2d 325 (3d Cir. 04/18/1990) where the Court stated:

The bankruptcy courts have construed "willful" as used in the code to mean an intentional or deliberate act done with knowledge that the act is in violation of the stay ...

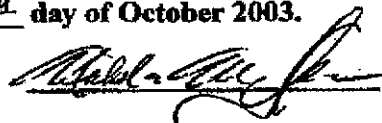
and In re Bloom, 875 F.2d 224 (9th Cir. 02/09/1989) the Court stated:

A "willful violation" does not require a specific intent to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant's actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was "willful" or whether compensation must be awarded.

WHEREFORE, the Debtor's, Nicholas M. Taflan and Patricia L. Taflan, prays that this Court:

- (a) enjoin the above creditor, US Premier FCU, from willful violation of the Automatic Stay, Title 11 U.S.C. § 362(a), and;
- (b) impose such sanctions upon the Creditor(US Premier FCU), as the Court deems just and proper pursuant to § 362 (h), and;
- (c) order US Premier FCU To Show Cause why they are not in contempt of Court.

Respectfully submitted this 27th day of October 2003.



Nicholas M. Taflan
55951 Key-Bellaire Rd.
Bellaire, Ohio 43906
phone: 740-676-0277



Patricia L. Taflan
55951 Key-Bellaire Rd.
Bellaire, Ohio 43906
phone 740-676-0277

CERTIFICATE OF SERVICE

WE, NICHOLAS M. TAFLAN and PATRICIA L. TAFLAN, CERTIFY THAT ON THIS _____ DAY OF OCTOBER 2003, HAVE CAUSED TO BE SERVED UPON THE PARTIES LISTED BELOW A TRUE COPY OF THE FOREGOING DEBTOR'S PLEADINGS BY PLACING SAID COPY IN AN ENVELOPE WITH THE PROPER POSTAGE AFFIXED THERETO, SEALING SAME AND PLACING IT IN THE UNITED STATES POSTAL SERVICE.

**Clerk, U.S. Bankruptcy Court
For the Northern District of West Virginia
12th and Chapline Streets
Post Office Box 70
Wheeling, WV 26003**

**CH 13 Trustee
P.O. Box 8531
South Charleston, West Virginia 25303**

**US Premier FCU Cert. Mail No. 7002 - 0460 - 0002 - 1984 - 4032
Attn: J. Alvater
6462 Little River Tpke
Alexandria, VA 22312-1411**

**US Premier FCU
PO Box 31279
Tampa, FL 33631-3279**

**US Premier FCU
Attn: Customer Service
P.O. Box 30495
Tampa, FL 33630**


**Nicholas M. Taflan
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Bellaire, Ohio 43906
phone 740-676-0277**

**Patricia L. Taflan
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Bellaire, Ohio 43906
phone 740-676-0277**

FILED
2003 OCT 27 PM 2:09
**CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF WV**

UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

In Re: NICHOLAS M. TAFLAN and PATRICIA L. TAFLAN, Debtors
NO:5-03-bk-02170 CHAPTER 13 OBJECTION TO PROOF OF CLAIM (IRS) CASE

**DEBTOR'S OBJECTION TO PROOF OF CLAIM (IRS)
and
MOTION TO REQUIRE CREDITOR IRS TO PROVIDE ALL UNDERLYING
AGREEMENTS PROVING THEIR CLAIM AS REQUIRED
(FEDERAL RULES OF BANKRUPTCY PROCEDURE RULE 3001)**

FILED
2003 NOV 18 PM 4:27
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF WEST VIRGINIA

COMES NOW, Nicholas M. Taflan and Patricia L. Taflan, in propria persona, in the captioned case to file this objection to proof of claim (IRS) and to move the Court for an order requiring the Internal Revenue Service to provide all underlying documents or agreements to pay a debt that any disputed creditor would be required to submit and for that provides the following:

1. This Court has jurisdiction over this matter by virtue of debtor having filed a voluntary petition (11 United States Code (11 U.S.C. § 302)) seeking protection under Chapter 13 on or about June 16, 2003, in this venue.

2. The Internal Revenue Service on or about November 14, 2003 served an inaccurate, and thereby false and fraudulent, "PROOF OF CLAIM FOR INTERNAL REVENUE TAXES" (EXHIBIT A) (dated November 14, 2003) alleging a tax liability of \$ 119,818.38 described as follows:

"SECURED CLAIMS	\$23,720.00"
"UNSECURED PRIORITY CLAIMS	\$85,000.00"
"UNSECURED GENERAL CLAIMS	\$11,098.36"



3. The Proof of Claim as filed is fraudulent and contains numerous unsupported allegations, to wit: One (1) "SECURED CLAIM" (Notice of Federal tax lien filed under internal revenue laws before petition date), Three (3) "UNSECURED PRIORITY CLAIMS under section 507 (a) (8) of the Bankruptcy Code" for a period in which no assessment date is listed (*return not filed*) and One (1) "UNSECURED GENERAL CLAIM" for a period for year 1996 that alleges no tax due (in contrast to an alleged tax due for the same assessment date under Secured Claims). Plainly these are inaccurate and therefore fraudulent claims.

4. The claim in the case at bar was purportedly prepared in an office of the Internal Revenue Service, Insolvency Group, P. O. Box 1040, Stop 2202, Parkersburg, West Virginia 26102. It must be presumed that that office of the Internal Revenue Service maintains no delegation order authorizing the signing of a proof

of claim and in fact the claim in the instant case is therefore invalid. The signer of the "Proof of Claim," "Linda Simon" Insolvency Manager, did not print her name as required by law (signature unreadable). In the absence of a delegation order authorizing the act, the act would be void ab initio. In the event the preparing party alleges they were granted authority to prepare and sign the "CLAIM" by the authority of the Internal Revenue Manual that would not be a valid defense. The courts have consistently held that the provisions of the Internal Revenue Manual are only directory not mandatory and therefore have no force of law.

5. Nicholas M. Taflan and Patricia L. Taflan have not filed any type of tax returns for the years (1996, 2000, 2001 and 2002) which are included in the fraudulent claim filed on behalf of the Internal Revenue Service. The alleged claims for the tax periods of 1996, 2000, 2001 and 2002 are all based upon fraudulent assessments (estimates do not qualify as assessment pursuant to 26 U.S.C. § 6203, nor to "unassessed liabilities by definition"). An assessment may be made pursuant to 26 U.S.C. § 6201 "of all taxes...imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law." Debtor's filed no return for any of the periods (1996, 2000, 2001 and 2002), were not required to purchase or pay any kind of tax by stamp, therefore the assessments must have been fraudulently based upon an unknown process and are obviously inaccurate and invalid.

6. The Proof of Claim is wrong in its allegation that debtor's "failed to file the returns for the estimated periods." Debtor's have paid all taxes that they have been made liable for and have filed all returns they have been required to do. (Note: Vernie Kuglin also requested that the IRS show her where she was made liable to pay income taxes. The IRS could not and she was acquitted of all the IRS's wrongful allegations of her owing an income tax. See Case No 03-20111-M1, U.S. District Court, Western District of Tennessee, Western Division)

7. The challenged claim, in the case at bar, must be a "Claim Based on a Writing" pursuant to Federal Rules of Bankruptcy Procedure (FRBP) Rule 3001(c) and as such requires additional documentation as verification of the "Claim."

8. The Internal Revenue Service is merely a disputed creditor in the case at bar and as a creditor with a disputed claim, the burden of proof falls upon the creditor.

9. This pleading is not filed in accordance with FRBP Rule 7003, as affirmative relief is sought. Debtors sincerely seek the assistance of the Court in requiring creditor Internal Revenue Service to provide the same documentation as any other disputed creditor would have to provide to prove a claim, merely the proper documents are sought to verify the Claim of the Internal Revenue Service. The Internal Revenue Service has not

provided proper verification of its claim and an appropriate and acceptable accounting for the moneys paid or seized in the past. Therefore, Debtor's will convene an adversarial proceeding to seek affirmative relief from the claim, if the IRS does not provide authenticated documentation to verify its claim. Debtor's demands that the IRS provide documentation to verify its assessments pursuant to 26 U.S.C. 6203 and 26 C.F.R. § 301.6203-1.

10. The IRS has clearly not followed its prescribed Code (Title 26 U.S.C.) as set forth in 26 U.S.C. 6203 which is cited here:

Sec. 6203. - Method of assessment

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

11. The IRS has clearly not followed its prescribed Regulations (Title 26 C.F.R..) as set forth in 26 C.F.R. § 301.6203-1 which is cited here:

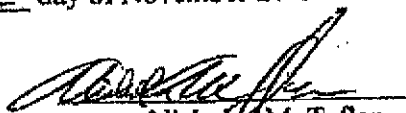
Method of assessment states:

The district director and the director of the regional service center shall appoint one or more assessment officers. The district director shall also appoint assessment officers in a Service Center servicing his district. The assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment. *The amount of the assessment shall, in the case of tax shown on a return by the taxpayer, be the amount so shown, and in all other cases the amount of the assessment shall be the amount shown on the supporting list or record.* The date of the assessment is the date the summary record is signed by an assessment officer. If the taxpayer requests a copy of the record of assessment, he shall be furnished a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable, and the amounts assessed.

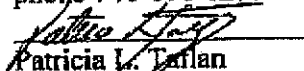
THE FOREGOING PREMISES CONSIDERED the Debtor's respectfully demands this Court require the Internal Revenue Service to provide the same documentary evidence to prove their claim; that any other

creditor with a disputed claim would have to supply.

Respectfully submitted this 18th day of November 2003.



Nicholas M. Taflan
55951 Key-Bellaire Rd.
Bellaire, Ohio 43906
phone 740-676-0277



Patricia L. Taflan
55951 Key-Bellaire Rd.
Bellaire, Ohio 43906
phone 740-676-0277

CERTIFICATE OF SERVICE

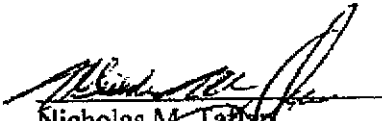
WE, NICHOLAS M. TAFLAN and PATRICIA L. TAFLAN, CERTIFY THAT ON THIS _____ DAY OF NOVEMBER 2003, HAVE CAUSED TO BE SERVED UPON THE PARTIES LISTED BELOW A TRUE COPY OF THE FOREGOING DEBTOR'S PLEADINGS BY PLACING SAID COPY IN AN ENVELOPE WITH THE PROPER POSTAGE AFFIXED THERETO, SEALING SAME AND PLACING IT IN THE UNITED STATES POSTAL SERVICE.

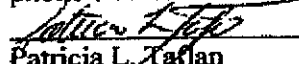
Clerk, U.S. Bankruptcy Court
For the Northern District of West Virginia
12th and Chapline Streets
Post Office Box 70
Wheeling, WV 26003

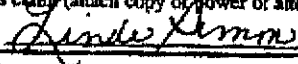
CH 13 Trustee
P.O. Box 8531
South Charleston, West Virginia 25303

Internal Revenue Service
Insolvency Group
P.O. Box 1040, Stop 2202
Parkersburg, WV 26102

US Premier FCU
Attn: J. Alyater
6462 Little River Tpke
Alexandria, VA 22312-1411


Nicholas M. Taflan
55951 Key-Bellaire Rd.
Bellaire, Ohio 43906
phone 740-676-0277


Patricia L. Taflan
55951 Key-Bellaire Rd.
Bellaire, Ohio 43906
phone 740-676-0277

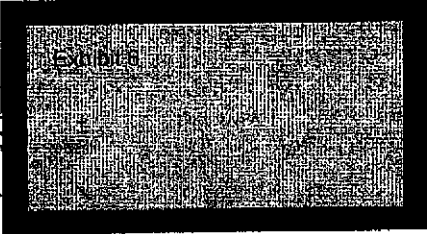
UNITED STATES BANKRUPTCY COURT <u>NORTHERN</u> DISTRICT OF <u>WV</u>		PROOF OF CLAIM
Name of Debtor NICHOLAS M & PATRICIA L TAFLAN		Case Number 5:03-BK-02170
Name of Creditor (The person or entity to whom the debtor owes money or property): Department of the Treasury - Internal Revenue Service		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.
Name and address where notices should be sent: Internal Revenue Service Internal Revenue Service P. O. Box 1040 Stop 2202 Parkersburg, WV 26102 Telephone number: (304) 420-6482 Creditor #:		
Account or other number by which creditor identifies debtor: see attachment		
THIS SPACE IS FOR COURT USE ONLY		
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input checked="" type="checkbox"/> Taxes <input type="checkbox"/> Other		<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)
2. Date debt was incurred: see attachment		3. If court judgment, date obtained:
4. Total Amount of Claim at Time Case Filed: \$ <u>119,818.38</u> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
5. Secured Claim. <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input checked="" type="checkbox"/> Real Estate <input checked="" type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other <u>see below</u> Value of Collateral: \$ <u>see below</u> <small>* All of debtor(s) right, title and interest to property - 28 U.S.C. § 6321.</small> Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ <u>23,720.00</u>		6. Unsecured Priority Claim. <input checked="" type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ <u>85,000.00</u> Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input checked="" type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <small>* Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		THIS SPACE IS FOR COURT USE ONLY
8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
9. Date-Stamped Copy: To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		
Date 11/14/2003	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):  insolvency Manager	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

276

8-104 (Rev. 2/89)		ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)	
PLAINTIFFS NICHOLAS M. TAFLAN and PATRICIA L. TAFLAN		DEFENDANTS INTERNAL REVENUE SERVICE SALLY D. PAPE LINDA SIMON JOHN DOE			
ATTORNEYS (Firm Name, Address, and Telephone No.) SAME - TAFLANS - PRAPZIA PERINI 55751 KEY-BELLAIRE RD. BELLAIRE, OHIO 43706		ATTORNEYS (If Known) PATRICK M. FLATLEY			
PARTY (check one box only) <input type="checkbox"/> 1 U.S. PLAINTIFF <input checked="" type="checkbox"/> 2 U.S. DEFENDANT <input type="checkbox"/> 3 U.S. NOT A PARTY					
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) TO DETERMINE THE VALIDITY OF A NOTICE OF FEDERAL TAX LIEN, NOTICE OF LEVY AND PROOF OF CLAIM, F.R.B.P. RULE 7001(2), 26 USC § 6203 26 CFR § 301.6203-1.					
NATURE OF SUIT (Check the one most appropriate box only)					
<input checked="" type="checkbox"/> 454 To Recover Money or Property <input type="checkbox"/> 455 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property <input type="checkbox"/> 456 To obtain approval for the sale of both the interest of the estate and of a co-owner in property <input type="checkbox"/> 424 To object to or to revoke a discharge 11 U.S.C. § 727		<input type="checkbox"/> 455 To revoke an order of confirmation of a Ch. 11, Ch. 12 or Ch. 13 Plan <input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. § 523 459 <input type="checkbox"/> 434 To obtain an injunction or other equitable relief <input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan		<input type="checkbox"/> 458 To obtain a declaratory judgment relating to any of foregoing causes of action <input type="checkbox"/> To determine a claim or cause of action removed to a bankruptcy court <input type="checkbox"/> 498 Other (specify) <input type="checkbox"/> 499 Hardship Discharge (Student loan)	
ORIGIN OF PROCEEDINGS (Check one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed Proceeding <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another Bankruptcy Court		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23			
DEMAND NEAREST THOUSAND \$ <u>NONE</u>		OTHER RELIEF SOUGHT <u>PROVIDE DOCUMENTATION</u>		CLASS ACTION DEMAND	
BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES					
NAME OF DEBTOR <u>IRFLAN, NICHOLAS & PATRICIA</u>		BANKRUPTCY CASE NO. <u>0303 BR-62170</u>			
DISTRICT IN WHICH CASE IS PENDING <u>NORTHEAST-N.Y.</u>		DIVISIONAL OFFICE		NAME OF JUDGE <u>E. FRIENDLII</u>	
RELATED ADVERSARY PROCEEDING (IF ANY)					
PLAINTIFF		DEFENDANT			
DISTRICT		DIVISIONAL OFFICE		NAME OF JUDGE	
FILING FEE (Check one box only.) <input type="checkbox"/> FEE ATTACHED <input type="checkbox"/> FEE NOT REQUIRED		SIGNATURE OF ATTORNEY			
DATE		PRINT NAME		SIGNATURE OF ATTORNEY	

FILED

2003 JUN 13 PM 3:17



ADVERSARY PROCEEDING COVER SHEET (Reverse Side)

This cover sheet must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney) and submitted to the Clerk of the court upon the filing of a complaint initiating an adversary proceeding.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. This form is required for the use of the clerk of the court to initiate the docket sheet and to prepare necessary indices and statistical records. A separate cover sheet must be submitted to the clerk of the court for each complaint filed. The form is largely self explanatory.

Parties. The names of the parties to the adversary proceeding exactly as they appear on the complaint. Give the names and addresses of the attorneys if known. Following the heading "Party," check the appropriate box indicating whether the United States is a party named in the complaint.

Cause of Action. Give a brief description of the cause of action including all federal statutes involved. For example, "Complaint seeking damages for failure to disclose information, Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq.," or "Complaint by trustee to avoid a transfer of property by the debtor, 11 U.S.C. § 544."

Nature of Suit. Place an "X" in the appropriate box. Only one box should be checked. If the cause fits more than one category of suit, select the most definitive.

Origin of Proceedings. Check the appropriate box to indicate the origin of the case:

1. Original Proceeding.
2. Removed from a State or District Court.
4. Reinstated or Reopened.
5. Transferred from Another Bankruptcy Court.

Demand. On the next line, state the dollar amount demanded in the complaint in thousands of dollars. For \$1,000 enter "1," for \$10,000 enter "10," for \$100,000 enter "100," if \$1,000,000, enter "1000." If \$10,000,000 or more, enter "9999." If the amount is less than \$1,000, enter "0001." If no monetary demand is made, enter "XXXX." If the plaintiff is seeking non-monetary relief, state the relief sought, such as injunction or foreclosure of a mortgage.

Bankruptcy Case in Which This Adversary Proceeding Arises. Enter the name of the debtor and the docket number of the bankruptcy case from which the proceeding now being filed arose. Beneath, enter the district and divisional office where the case was filed, and the name of the presiding judge.

Related Adversary Proceedings. State the names of the parties and the six digit adversary proceeding number from any adversary proceeding concerning the same two parties or the same property currently pending in any bankruptcy court. On the next line, enter the district where the related case is pending, and the name of the presiding judge.

Filing Fee. Check one box. The fee must be paid upon filing unless the plaintiff meets one of the following exceptions. The fee is not required if the plaintiff is the United States government or the debtor. If the plaintiff is the trustee or a debtor in possession, and there are no liquid funds in the estate, the filing fee may be deferred until there are funds in the estate. (In the event no funds are ever recovered for the estate, there will be no fee.) There is no fee for adding a party after the adversary proceeding has been commenced.

Signature. This cover sheet must be signed by the attorney of record in the box on the right of the last line of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is *pro se*, that is, not represented by an attorney, the plaintiff must sign.

The name of the signatory must be printed in the box to the left of the signature. The date of the signing must be indicated in the box on the far left of the last line.

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

In Re: NICHOLAS M. TAFLAN and PATRICIA L. TAFLAN, Debtors-Plaintiffs v. SALLY D. PAPE,
LINDA SIMON and JOHN DOE, INTERNAL REVENUE SERVICE, Defendants. CASE NO.
5:03-bk-02170 CHAPTER 13 ADVERSARY PROCEEDING NO:

COMES NOW, Nicholas M. Taflan and Patricia L. Taflan, Debtors-Plaintiffs, in propria persona, in the captioned case under Chapter 13 and they respectfully show and prove to the Court as follows:

1. This action is filed pursuant to F.R.B.P Rule 7003.
2. This Court has jurisdiction over this matter by virtue of debtors-plaintiffs having filed a voluntary petition (11 United States Code (11 U.S.C. § 302)) seeking protection under Chapter 13 on June 16, 2003 in this venue.
3. This adversary proceeding is filed pursuant to F.R.B.P. Rule 7001 (2) To determine the validity of a "Notice of Levy on Wages, Salary and Other Income" issued on May 5, 2003, by Creditor-Defendant IRS and signed by "Sally D. Pape," (Exhibit A) and;
4. To determine the validity of a "Proof of Claim" filed in this action on or about November 14, 2003, signed by a "Linda Simon" Insolvency Manager, no IRS Badge given, claiming a liability of \$119,818.38 (Exhibit B).
5. To determine the validity of a Notice of Federal Tax Lien listed on the Proof of Claim dated November 14, 2003, for year 1996 and assessed March 22, 1999.

PLAINTIFFS

6. That, Nicholas M. Taflan and Patricia L. Taflan, are citizens of the State of Ohio, their address is 55951 Key-Bellaire Road., Bellaire, Ohio 43906.

DEFENDANTS

7. That "Sally D. Pape" (signature) is Operations Manager, Collections, Internal Revenue Service, P.O. Box

279

219236, Kansas City, Missouri 64121-9236.

8. That Linda Simon is Insolvency Manager, [signer of alleged Proof of Claim, dated November 14, 2003] Special Procedures Branch, Internal Revenue Service, P.O. Box 1040, Stop 2202, Parkerburg, West Virginia 26102.

9. John Doe, address unknown.

STATEMENT OF CLAIM

10. Debtors-Plaintiffs did file a bankruptcy petition on June 16, 2003, and named the Internal Revenue Service (hereinafter IRS) and the as disputed creditor.

11. Debtors-Plaintiffs disputed a Notice of Levy, pertaining to year 1996, issued on May 11, 2003.

12. Creditor-Defendant IRS has not substantiated its "Notice of Levy" with any authenticated documentation.

13. Creditor-Defendant IRS filed a Proof of Claim in this action on or about November 14, 2003, signed by a "Linda Simon" Insolvency Manager, claiming a liability of \$119,818.38, and as such has not proven any liability of Debtors-Plaintiffs with authenticated documentation pursuant to the Federal Rules of Evidence Rule 901 et seq.

14. Debtors-Plaintiffs filed an Objection to the Proof of Claim (IRS) on or about November 19, 2003.

15. Debtors-Plaintiffs requested the assistance of the Court in requiring creditor Internal Revenue Service to provide the same documentation as any other disputed creditor would have to provide to prove a claim. Merely the proper documents are sought to verify the Claim of the Internal Revenue Service.

16. Rather than provide the proper documents to verify and prove its Proof of Claim, as required pursuant to Rule 3001(c), the U.S. Attorney filed his Motion to Dismiss the Objection to Proof of Claim, dated December 11, 2003.

17. The U.S. Attorney alleged that Debtor's Objection was a contested matter.

18. Because no documentation was provided as requested and the U.S. Attorney deemed this a contested matter, Debtors-Plaintiffs herewith file their adversarial proceeding.

19. The IRS has clearly not followed its prescribed Code (Title 26 U.S.C.) as set forth in 26 U.S.C. 6213(b)

(2) which is cited here:

(A) Request for abatement. Notwithstanding section 6404(b), a taxpayer may file with the Secretary within 60 days after notice is sent under paragraph (1) a request for an abatement of any assessment specified in such notice, and upon receipt of such request, the Secretary shall abate the assessment. Any reassessment of the tax with respect to which an abatement is made under this subparagraph shall be subject to the deficiency procedures prescribed by this subchapter.

(B) Stay of collection. In the case of any assessment referred to in paragraph (1), notwithstanding paragraph (1), no levy or proceeding in court for the collection of such assessment shall be made, begun, or prosecuted during the period in which such assessment may be abated under this paragraph.

20. The IRS has clearly not followed its prescribed Code (Title 26 U.S.C.) as set forth in 26 U.S.C. § 6404

(a)(3) which is cited here:

The Secretary is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which-

(3) is erroneously or illegally assessed.

21. Mr. Taflan requested an abatement pursuant to IRC §6404(a)(3) as documented herein. The IRS had ample time to abate their "Notice of Levy" as required by law, but instead chose to continue collection activities. Instead the IRS issued numerous "Notice of Levy." Clearly the IRS did not follow administrative procedure as set forth by law and violated due process.

22. The IRS has clearly not followed its prescribed Code (Title 26 U.S.C.) as set forth in 26 U.S.C. § 6212 which is cited here in pertinent part:

(a) In general. If the Secretary determines that there is a deficiency in respect of any tax imposed by subtitle A or B or chapter 41, 42, 43 or 44, he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail.

23. The "deficiency" assessment is erroneous due to the fact that employment (wage) taxes under Subtitle C cannot be included in the deficiency authority of 26 USC § 6212. According to 26 USC § 6211, only a tax return filed by a taxpayer and later found to be deficient, can be subject to deficiency assessment.

24. The IRS has clearly not followed its prescribed Regulations (Title 26 C.F.R.) as set forth in 26 C.F.R. § 601.102.

25. The IRS has clearly not followed its prescribed Code (Title 26 U.S.C.) as set forth in 26 U.S.C. 6203 which is cited here:

Sec. 6203. - Method of assessment

The assessment shall be made by recording the liability of the

taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary. Upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of the assessment.

26. The IRS has clearly not followed its prescribed Regulations (Title 26 C.F.R.) as set forth in 26 C.F.R. § 301.6203-1 which is cited here:

Method of assessment states:

The district director and the director of the regional service center shall appoint one or more assessment officers. The district director shall also appoint assessment officers in a Service Center servicing his district. The assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment. *The amount of the assessment shall, in the case of tax shown on a return by the taxpayer, be the amount so shown, and in all other cases the amount of the assessment shall be the amount shown on the supporting list or record.* The date of the assessment is the date the summary record is signed by an assessment officer. If the taxpayer requests a copy of the record of assessment, he shall be furnished a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable, and the amounts assessed.

27. That actions of District Director, Internal Revenue Service, and Operations Manager, Collections and Insolvency Manager, Special Procedures Branch, as stated in paragraphs 11 through 26, to wit, deprived the plaintiff of a portion of his right to due process as guaranteed by Article V of the United States Constitution.

28. Debtors-Plaintiffs filed an Objection to the Proof's of Claim issued by the IRS.

29. Pursuant to Federal Rules of Bankruptcy Procedure (FRBP) Rule 3001(c), the Proof of Claim require additional documentation as verification of the "Claim."

30. The actions of "Sally D. Pape," Linda Simon and John Doe as stated in paragraph 26, to wit, deprived the Debtors-Plaintiffs of a portion of their right to due process as guaranteed by Article V of the United States Constitution.

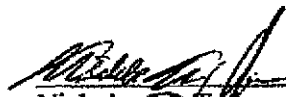
RELIEF REQUESTED

WHEREFORE, Debtors-Plaintiffs demands judgment against the Internal Revenue Service, Sally D. Pape, Linda Simon and John Doe as follows:

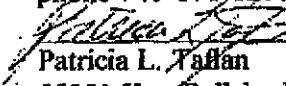
- 1) an ORDER that the District Director and Chief, Special Procedures Branch and Sally D. Pape, and Linda Simon provide complete authenticated documentation to support all alleged assessments against Debtor-Plaintiff for years 1996, 2000, 2001 and 2002, pursuant to 26 U.S.C. § 6203 and 26 C.F.R. § 301.6203-1.
- 2) an ORDER that the Internal Revenue Service substantiate its Proof of Claim dated November 14, 2003 with authenticated documentation pursuant to the Federal Rules of Evidence Rule 901 et seq. and 26 U.S.C. § 6065 and pursuant to Federal Rules of Bankruptcy Procedure (FRBP) Rule 3001(c) or abate all alleged assessments against Debtor-Plaintiff for years 1996, 2000, 2001 and 2002, if they cannot be substantiated in law and fact to this Court.
- 3) an Order that the defendants pay costs and reasonable attorney fees to the Debtor-Plaintiff for prosecuting this action; and
- 4) other such relief that this Court should deem just and equitable.

THE PLAINTIFFS DEMAND A TRIAL BY JURY.

Dated this 13th day of January, 2004, at Wheeling, West Virginia



Nicholas M. Taffan
55951 Key-Bellaire Rd.
Bellaire, Ohio 43906
phone 740-676-0277



Patricia L. Taffan
55951 Key-Bellaire Rd.
Bellaire, Ohio 43906
phone 740-676-0277

U.S. BANKRUPTCY COURT
NORTH DISTRICT OF OHIO
FILED
2004 JAN 13 PM 1:17

Notice of Levy on Wages, Salary, and Other Income

DATE: 05/11/2003

TELEPHONE NUMBER SECONUM 00045

IRS ADDRESS:

INTERNAL REVENUE SERVICE

P.O. BOX 219236

KANSAS CITY, MO 64121-9236

OF IRS OFFICE:

TOLL FREE

1-800-829-7650

WI

NAME AND ADDRESS OF TAXPAYER:

NICHOLAS TAFLAN

55951 KEY BELLAIRE RD

BELLAIRE OH 43906-9530515

A

TO: P

23-1940651

DPC05

RITE AID OF OHIO INC

PO BOX 3165

HARRISBURG PA

17105-0042650

IDENTIFYING NUMBER(S):

TAFL N 00



Kind of Tax	Tax Period Ended	Unpaid Balance of Assessment	Statutory Additions	Total
1040A	12-31-1996	\$ 25,901.57	\$ 11,400.90	\$ 37,302.47

Total Amount Due ▶ \$ 37,302.47

06/05/2003

We figured the interest and late payment penalty to _____

Although we have told you to pay the amount you owe, it is still not paid.

This is your copy of a Notice of Levy we have sent to collect this unpaid amount. We will send other levies if we don't get enough with this one.

This levy requires the person who received it to turn over to us: (1) your wages and salary that have been earned but not paid yet, as well as wages and salary you earn in the future until this levy is released, and (2) your other income that the person has now or is obligated to pay you. These are levied to the extent they are not exempt as explained on the back of Part 5 of this form.

If you decide to pay the amount you owe now, please bring a guaranteed payment (cash, cashier's check, certified check, or money order) to the nearest IRS office with this form, so we can tell the person who received this levy not to send us your money. If you mail your payment instead of bringing it to us, we may not have time to stop the person who received this levy from sending us your money.

If you have any questions, or want to arrange payment before other levies are issued, please call or write us. If you write to us, please include your telephone number and the best time to call.

Please see the back of Part 5 for instructions.

Signature of Service Representative *[Signature]*

Title **Operations Manager, Collection**

284

Proof of Claim for Internal Revenue Taxes

Department of the Treasury/Internal Revenue Service

Form 10
Attachment

B
11

In the Matter of: **NICHOLAS M & PATRICIA L TAFLAN**
55951 KEY BELLAIRE ROAD
BELLAIRE, OH 43906

Docket Number	5:03-BK-02170
Type of Bankruptcy Case	Chapter 13
Date of Petition	06/16/2003

The United States has not identified a right of setoff or counterclaim. However, this determination is based on available data and is not intended to waive any right to set off against this claim debts owed to this debtor by this or any other federal agency. All rights of setoff are preserved and will be asserted to the extent lawful.

Secured Claims (Notices of Federal tax lien filed under internal revenue laws before petition date)

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Penalty to Petition Date	Interest to Petition Date	Notice of Tax Lien Filed: Date Office Location
[REDACTED]	INCOME	12/31/1996	03/22/1999	\$13,316.33	\$8,727.09	\$1,676.58	05/14/2003 Belmont County
Total Amount of Secured Claims:							\$23,720.00

Unsecured Priority Claims under section 507(a)(8) of the Bankruptcy Code

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
[REDACTED]	INCOME	12/31/2000	1 RETURN NOT FILED	\$30,000.00	\$0.00
[REDACTED]	INCOME	12/31/2001	1 RETURN NOT FILED	\$27,000.00	\$0.00
[REDACTED]	INCOME	12/31/2002	1 RETURN NOT FILED	\$28,000.00	\$0.00
Total Amount of Unsecured Priority Claims:					\$85,000.00

Unsecured General Claims

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
[REDACTED]	INCOME	12/31/1996	03/22/1999	\$0.00	\$11,098.36
Total Amount of Unsecured General Claims:					\$11,098.36

1. ESTIMATED TAX CLAIMS HAVE BEEN FILED BECAUSE THE DEBTOR HAS FAILED TO FILE THE RETURN(S) FOR THE ESTIMATED PERIOD. AS SOON AS THE DEBTOR FILES THE RETURN(S) WITH THE I.R.S. AS REQUIRED BY LAW, THIS CLAIM WILL BE ADJUSTED AS NECESSARY.

286

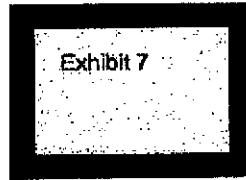
UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

In Re: NICHOLAS M. TAFLAN and PATRICIA L. TAFLAN, Debtors | CASE
NO: 5:03-bk-02170 CHAPTER 13 **OPPOSITION TO DEFENDANT'S MOTION TO DISMISS FOR IMPROPER VENUE**

OPPOSITION TO DEFENDANT'S MOTION TO DISMISS FOR IMPROPER VENUE

COMES NOW, Nicholas M. Taflan and Patricia L. Taflan, Debtors, in propria persona, in the captioned case under Chapter 13 and file their Opposition to Defendant's Motion to Dismiss for improper venue and for that provides the following:



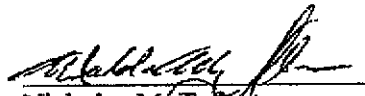
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2004 JUN 13 PM 3:13
U.S. BANKRUPTCY COURT
NORTH DISTRICT OF WEST VIRGINIA


1. Debtors filed their voluntary petition on June 16, 2003.
2. This Court has jurisdiction over this matter by virtue of Debtor's having filed a voluntary petition (11 United States Code (11 U.S.C. § 302)) seeking protection under Chapter 13 in this venue.
3. Debtor works for Rite Aid Corporation (Rite Aid), that has stores in Ohio and West Virginia. He presently works, as a pharmacist, for a Rite Aid store in Ohio, but has worked for Rite Aid stores in West Virginia, in the same capacity. Therefore, his principal place of business is the Rite Aid stores in Ohio and West Virginia, in which he works.
4. Debtor filed in this venue because he considers Rite Aid stores in Ohio and West Virginia as his principle place of business and therefore venue is proper pursuant to 28 U.S.C. § 1408.
5. Debtor is a licensed pharmacist in both Ohio and West Virginia and can be called upon by Rite Aid to work in either Ohio and West Virginia..
6. Debtor notes that because section 1408 lists four alternative venues, a debtor who resides in one state, but does business in another, may file a bankruptcy case in either district. (In re Broady, 247 B.R. 470 (B.A.P. 8th Cir. 2000).
7. An exception to the general venue rules can occur under 28 U.S.C. § 1412. That section provides that even if venue is proper in the district where suit has been brought, the litigation may be transferred to any other district in the interest of justice and for the convenience of the parties. See In Good Hope Refineries, Inc., 4 B.R.

8. Based on the above, Debtor's aver that venue is proper and that the Court should retain the case. If the Court transfers the case, Debtors would move that Court for a change of venue because the nearest court would be over 3 hours away, definitely not convenient for Debtors. Any move would be prejudicial for the Defendants since the IRS and US Attorney has offices near each court.

WHEREFORE, Debtor's pray that this Court will deny Defendant's Motion to Dismiss for improper venue and retain this case in the interests of justice and for convenience of the parties and other such relief that this Court should deem just and equitable.

Respectfully submitted this 13th day of January 2004.


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phone 740-676-0277


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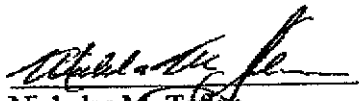
CERTIFICATE OF SERVICE

WE, NICHOLAS M. TAFLAN and PATRICIA L. TAFLAN, CERTIFY THAT ON THIS 13th DAY OF JANUARY 2004, HAVE CAUSED TO BE SERVED UPON THE PARTIES LISTED BELOW A TRUE COPY OF THE FOREGOING DEBTOR'S PLEADINGS BY PLACING SAID COPY IN AN ENVELOPE WITH THE PROPER POSTAGE AFFIXED THERETO, SEALING SAME AND PLACING IT IN THE UNITED STATES POSTAL SERVICE.

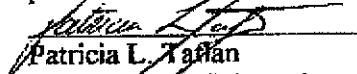
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CH 13 Trustee
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South Charleston, West Virginia 25303

Patrick M. Flatley
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U.S. POSTAL SERVICE
NORTHWEST DISTRICT OF WEST VIRGINIA

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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA



In Re: NICHOLAS M. TAFLAN and PATRICIA L. TAFLAN, Debtors
NO:5:03-bk-02170 CHAPTER 13 OPPOSITION TO MOTION OF U.S. ATTORNEY TO DISMISS
DEBTOR'S OBJECTION TO PROOF OF CLAIM (IRS) CASE

**OPPOSITION TO MOTION OF U.S. ATTORNEY TO DISMISS DEBTOR'S OBJECTION TO
PROOF OF CLAIM (IRS)**

COMES NOW, Nicholas M. Taflan and Patricia L. Taflan, in propria persona, in the captioned case to file this opposition to the Motion of the U.S. Attorney to Dismiss Debtor's objection to proof of claim (IRS) and to move the Court for an order requiring the Internal Revenue Service to provide all underlying documents or agreements to pay a debt that any disputed creditor would be required to submit and for that provides the following:

1. This Court has jurisdiction over this matter by virtue of Debtor's having filed a voluntary petition (11 United States Code (11 U.S.C. § 302)) seeking protection under Chapter 13 on or about June 16, 2003, in this venue.

2. The Internal Revenue Service on or about November 14, 2003 served an inaccurate, and thereby false and fraudulent, "PROOF OF CLAIM FOR INTERNAL REVENUE TAXES" (EXHIBIT A) dated November 14, 2003) alleging a tax liability of \$ 119,818.38 described as follows:

"SECURED CLAIMS	\$23,720.00"
"UNSECURED PRIORITY CLAIMS	\$85,000.00"
"UNSECURED GENERAL CLAIMS	\$11,098.36"

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U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF WEST VIRGINIA

3. Debtor's file a timely Objection to the IRS Proof of Claim on or about November 19, 2003.

4. The U.S. Attorney filed his Motion to Dismiss the Objection to proof of Claim, dated December 11, 2003.

5. The U.S. Attorney alleged that Debtor's Objection was a contested matter and that The US Attorney and Attorney General should have been served pursuant to Rule 7004. However, Debtor's were merely asking for documentation that would support the IRS Proof of Claim pursuant to Rule 3001(c).


6. Debtor's stated in paragraph 8 that: *This pleading is not filed in accordance with FRBP Rule 7003, as affirmative relief is sought. Debtors sincerely seek the assistance of the Court in requiring creditor Internal Revenue Service to provide the same documentation as any other disputed creditor would have to provide to prove a claim, merely the proper documents are sought to verify the Claim of the Internal Revenue*

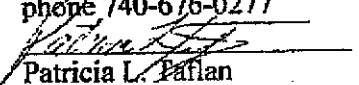
Service. Debtor's did not initiate adversarial proceedings at that time. Therefore they did not serve additional parties.

7. Debtor's are not seasoned attorneys and are unfamiliar with litigation and the law, being laymen. As such, they should be afforded a degree of latitude with respect to their pleadings and time limits within which to prepare their pleadings and therefore requests more time to complete their Schedules. See *Haines v. Kerner*, 404 U.S. 519.

WHEREFORE, Debtor's move this Court to Deny the U.S. Attorney's Motion to Dismiss Debtor's Objection to Proof of Claim and to move the Court for an order requiring the Internal Revenue Service to provide all underlying documents or agreements to pay a debt that any disputed creditor would be required to submit and other relief that is just and proper.

Respectfully submitted this 13th day of January 2004.


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CERTIFICATE OF SERVICE


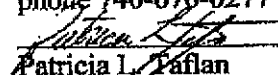
WE, NICHOLAS M. TAFLAN and PATRICIA L. TAFLAN, CERTIFY THAT ON THIS 13th DAY OF JANUARY 2004, HAVE CAUSED TO BE SERVED UPON THE PARTIES LISTED BELOW A TRUE COPY OF THE FOREGOING DEBTOR'S PLEADINGS BY PLACING SAID COPY IN AN ENVELOPE WITH THE PROPER POSTAGE AFFIXED THERETO, SEALING SAME AND PLACING IT IN THE UNITED STATES POSTAL SERVICE.

Clerk, U.S. Bankruptcy Court
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Patrick M. Flatley
Asst. U.S. Attorney
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John Ashcroft
Attorney General of the United States
10th and Constitution Ave., N.W.
Washington, DC 20530


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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

In Re: NICHOLAS M. TAFLAN and PATRICIA L. TAFLAN, Debtors

NO:5:03-bk-02170 CHAPTER 13 MOTION TO RECONSIDER ORDER DISMISSING PETITION

FILED
2004 SEP 26 AM 10:43
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF WV

MOTION TO RECONSIDER ORDER DISMISSING PETITION
(pursuant to Rule 9023)

COMES NOW, Nicholas M. Taflan and Patricia L. Taflan, Debtors, in propria persona, in the captioned case under Chapter 13 and file their Motion to Reconsider Order Dismissing Petition, pursuant to Rule 9023, and for that provides the following:



1. Debtors filed their voluntary petition on June 16, 2003.
2. This Court has jurisdiction over this matter by virtue of Debtor's having filed a voluntary petition (11 United States Code (11 U.S.C. § 302)) seeking protection under Chapter 13 in this venue.
3. This Court held a hearing on January 13, 2004, to consider a motion to dismiss *Chapter 13 case for improper venue by the Internal Revenue Service. The Court, for reasons fully set forth on the record, and in accordance with this Court's prior decision in the case of Robert J. Erchak, No. 92-30807, issued its Order to Dismiss this case. The Court did not address the issue of venue at the hearing.*
4. This Court stated that: *My ruling has been and will continue to be, if you don't file tax returns, you can't file Chapter 13.*(Transcript p.17, lines 10-12) and: *the Court finds that the chapter 13 case will be dismissed for failure to abide by the law and file the tax returns, which is a standard of this court.* (Transcript p. 18, lines 7-9)
5. This Court cited its prior decision in the case of Robert J. Erchak, supra. That case was a Chapter 11 case and was dismissed because *The Court believes that the debtor [Erchak] intends to delay, for as long as possible, the effect of the levy on his property.* Debtor's, in the case at bar, challenged the IRS "Proof of Claim," because the claim must be a "Claim Based on a Writing" pursuant to Federal Rules of Bankruptcy Procedure (FRBP) Rule 3001(c) and as such requires additional documentation as verification of the "Claim." The IRS has not supplied any such documentation.

6. The CH 13 Trustee, Ms. Morris did not issue a notice to Debtor's that required them to file returns. At the hearing, on January 13, 2004, she stated that: and thought that there were outstanding returns missing that I was going to order to be filed, but the debtors have the opinion that they are not require to file tax returns.

(Transcript p.11, lines 10-12)

7. Nor did this Court order Debtor's to file any tax returns.

8. Debtor's did not disobey any lawful court order.

9. Rule 9023 allows for a court to alter or amend its judgment if there is newly discovered evidence or previously unavailable evidence. This is certainly true in the case at bar.

10. Debtor's note that if a person is required to file and doesn't, then the Secretary is required to file for him as given in Title 26 U.S.C. § 6020(b) which is given here:

(b) Execution of return by Secretary.

(1) Authority of Secretary to execute return. If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise. (Emp added)

(2) Status of returns. Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

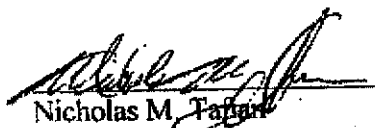
WHEREFORE, if Debtor's are required to file returns, then the Secretary should make returns for us pursuant to § 6020(b).

Debtor's did not file any returns for the years 1996, 2000, 2001 and 2002 because they had no liability and no requirement to do so because they had NO taxable income pursuant to 26 C.F.R. § 1.861-8(f)(1).

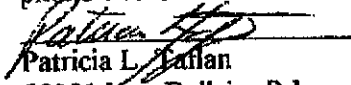
HOWEVER, if the Court orders Debtor's to file returns we will do so.

Wherefore Debtor's pray that the Court's Order entered herein be reconsidered, and a hearing be held on the matter, and that it have such other and further relief as is just.

Respectfully submitted this 26th day of January 2004.



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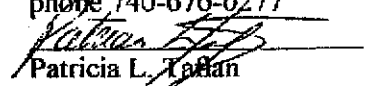
CERTIFICATE OF SERVICE

WE, NICHOLAS M. TAFLAN and PATRICIA L. TAFLAN, CERTIFY THAT ON THIS 26th DAY OF JANUARY 2004. HAVE CAUSED TO BE SERVED UPON THE PARTIES LISTED BELOW A TRUE COPY OF THE FOREGOING DEBTOR'S PLEADINGS BY PLACING SAID COPY IN AN ENVELOPE WITH THE PROPER POSTAGE AFFIXED THERETO, SEALING SAME AND PLACING IT IN THE UNITED STATES POSTAL SERVICE.

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U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF WV

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

Exhibit 14

In Re: NICHOLAS M. TAFLAN and PATRICIA L. TAFLAN, Debtors, CASE NO: 5:03-bk-02170
CHAPTER 13

DESIGNATION OF CONTENTS FOR INCLUSION IN RECORD ON
APPEAL AND STATEMENT OF ISSUES ON APPEAL

COMES NOW, Nicholas M. Taflan and Patricia L. Taflan, Debtors, in propria persona, in the captioned case under Chapter 13 and the instant action hereby files this Designation of Contents for inclusion in the Record on Appeal and Statement of Issues on Appeal and for that provides the following:

DESIGNATION OF CONTENTS

1. Debtor's voluntary petition for Chapter 13 protection filed on June 16, 2003. (Exhibit A)
2. The Internal Revenue Service (IRS) on or about November 14, 2003 served (but did not file) a Proof of Claim For Internal Revenue Taxes. (Exhibit B)
3. Debtor's Objection to Proof of Claim (IRS) and Motion to Require Creditor IRS to Prove all Underlying Agreements Proving Their Claim As Required, filed on November 18, 2003. (Exhibit C)
4. Motion to Dismiss for Improper Venue by US Attorney on behalf of IRS filed on December 11, 2003. (Exhibit D)
5. Motion to Dismiss Debtor's Objection to Proof of Claim (IRS) filed on December 11, 2003. (Exhibit E)
6. Notice of Hearing, dated December 15, 2003, to hear Debtor's Objection to Proof of Claim, IRS Motion to Dismiss for Improper Venue and Motion to dismiss Objection to Proof of Claim, scheduled for January 13, 2004. (Exhibit F)
7. Debtor's Opposition to Motion to Dismiss for Improper Venue filed January 13, 2004. (Exhibit G)
8. Debtor's Opposition to Motion of US Attorney to Dismiss Debtor's Objection to Proof of Claim filed January 13, 2004. (Exhibit H)
9. Debtor's adversarial proceeding filed on January 13, 2004 to determine the validity of the IRS' claims. (Exhibit I)

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NORTHWEST DISTRICT OF WEST VIRGINIA

297

10. Hearing held on January 13, 2004 to hear Debtor's Objection to Proof of Claim, IRS Motion to Dismiss for Improper Venue and IRS Motion to Dismiss Objection to Proof of Claim. (Exhibit J)
11. Debtor's fact sheet on their requirement to file returns, presented to the Court at the January 13, 2004 hearing. (Exhibit K)
12. Order entered on January 14, 2004 dismissing this case, with Memorandum Opinion. (Exhibit L)
13. Docket for case through and including January 14, 2004. (Exhibit M)
14. Transcript of hearing held on January 13, 2004. (Exhibit N)
15. Order dismissing Debtor's adversarial Proceeding entered January 22, 2004. (Exhibit O)
16. Motion to Reconsider Order dismissing this case filed on January 26, 2004. (Exhibit P)
17. Motion to Amend Findings or Make Additional Findings filed on January 26, 2004. (Exhibit Q)
18. Order Denying Motion to Reconsider entered on January 27, 2004. (Exhibit R)
19. Debtor's Notice of Appeal filed on February 4, 2004. (Exhibit S)
20. Motion to Reconsider Order Denying Motion to Reconsider filed on February 6, 2004. (Exhibit T)
21. Motion For Stay Pending Appeal filed on February 6, 2004. (Exhibit U)

STATEMENT OF THE ISSUES

1. Whether the Court erred when it did not apply the law as it is written, but instead showed its bias for the IRS and admitted as much at the hearing.
2. Whether the Court erred when it did not state what the "standard of this court" is and how it was applied to the dismissal of Debtor's case.
3. Whether the Court erred when it based its dismissal in part in accordance with the Court's prior decision in the case of Robert J. Erchak, No. 92-30807, which did not apply to this case.
4. Whether the Court erred when it did not show how Debtor's disobeyed any lawful court order, making their case subject to dismissal.
5. Whether the Court erred when it found that the chapter 13 case will be dismissed for failure to abide by the law and file the tax returns, which is a standard of this court, but did not provide any order of the Court to

file returns or motions to dismiss for failure to file.

6. Whether the Court erred when it did not state how Debtor's did not "abide by the law" and yet gave this as a reason as a basis to dismiss this case.


7. Whether the Court erred when it did not address the three issues set forth on the December 15, 2003 notice of hearing (Exhibit F), but instead concentrated discussion on confirmation of Debtor's plan.

8. Whether the Court erred when it failed to make and issue its Findings of Fact and Conclusions of Law, used as a basis for its Order dismissing this case. And whether the Court erred when it did not clearly state the factual findings supporting legal conclusions for its Order.

Respectfully submitted this 12th day of February 2004.



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CERTIFICATE OF SERVICE

WE, NICHOLAS M. TAFLAN and PATRICIA L. TAFLAN, CERTIFY THAT ON THIS 17th DAY OF FEBRUARY 2004, HAVE CAUSED TO BE SERVED UPON THE PARTIES LISTED BELOW A TRUE COPY OF THE FOREGOING DEBTOR'S PLEADINGS BY PLACING SAID COPY IN AN ENVELOPE WITH THE PROPER POSTAGE AFFIXED THERETO, SEALING SAME AND PLACING IT IN THE UNITED STATES POSTAL SERVICE.

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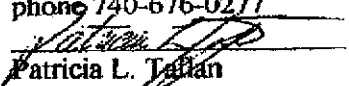
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2004 FEB 17 AM 9:05
U.S. BANKRUPTCY COURT
WV

RELIEF REQUESTED

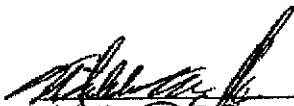


WHEREFORE, Debtors-Plaintiffs demands judgment against the Internal Revenue Service, Sally D. Pape, Linda Simon and John Doe as follows:

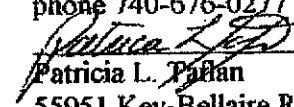
- 1) an ORDER that the District Director and Chief, Special Procedures Branch and Sally D. Pape, and Linda Simon provide complete authenticated documentation to support all alleged assessments against Debtor-Plaintiff for years 1996, 2000, 2001 and 2002, pursuant to 26 U.S.C. § 6203 and 26 C.F.R. § 301.6203-1.
- 2) an ORDER that the Internal Revenue Service substantiate its Proof of Claim dated November 14, 2003 with authenticated documentation pursuant to the Federal Rules of Evidence Rule 901 et seq. and 26 U.S.C. § 6065 and pursuant to Federal Rules of Bankruptcy Procedure (FRBP) Rule 3001(c) or abate all alleged assessments against Debtor-Plaintiff for years 1996, 2000, 2001 and 2002, if they cannot be substantiated in law and fact to this Court.
- 3) an Order that the defendants pay costs and reasonable attorney fees to the Debtor-Plaintiff for prosecuting this action; and
- 4) other such relief that this Court should deem just and equitable.

THE PLAINTIFFS DEMAND A TRIAL BY JURY.

Dated this 15th day of January, 2004, at Wheeling, West Virginia



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Your honor, I see no reason why there should be a change in venue. The IRS is simply trying to delay the exposure of the truth by making it inconvenient for me. The truth can be found in this court just as easily as in any other court across the nation. Since the IRS knows the truth, why delay the inevitable?

Now, I am not an unintelligent man. I, too have had 9 years of college, yet I consider myself of average intelligence. So I should be able to understand the Constitution of these United States and the IRS code as it is written just as easily as any one else in this court room. But two fact remain illusive to me. Number 1: Where in the 26 Code section A is it written that a Unites States citizen, working in these 50 states of the union for a United States corporation, is liable for tax on his income? And number 2: If a United States citizen, working in these 50 states of the union for a US corporation, is liable, what form is required to file a return? You see, the only the only person I can find who is specifically made liable in 26Code Section A, is a withholding agent who is limited to withhold under section 1461 and only for sections 1441(withholding of tax on non-resident aliens), 1442(withholding of tax on foreign corporations), and 1443(foreign tax-exempt organizations). A withholding agent has no direction to withhold anything in the way of federal taxes from a citizen of the United States.

Now unless the IRS can show me and show this court, they're wasting the courts' time, your honor. And if there were a change in venue, additional court time would be wasted on an assumption that is not written in the law.

FILE RETURNS

Your Honor, We have searched the code and we can find no statute where we are required to file, and the **only section of the Code which makes a person liable to pay income taxes is Title 26 U.S.C. § 1461** which is given here:

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

The only statute that makes a requirement for an individual to file is 26 U.S.C. § 6012 which states in pertinent part:

(a) General rule.

Returns with respect to income taxes under subtitle A shall be made by the following:

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

And under Subtitle A, 26 U.S.C. § 1. states in pertinent part:

(a) Married individuals filing joint returns and surviving spouses.
There is hereby imposed on the taxable income of (Emphasis added)-

And if a person is required to file and doesn't, then the Secretary is required to file for him as given in Title 26 U.S.C. § 6020(b) which is given here:

(b) Execution of return by Secretary.

(1) Authority of Secretary to execute return. If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise. (Emp added)

(2) Status of returns. Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

WHEREFORE, if we are required to file returns, let the Secretary make returns for us pursuant to § 6020(b). Let the Court take judicial notice of § 1461 and § 6020(b) of Title 26.

We did not file any returns for the years 1996, 2000, 2001 and 2002 because we had no liability and no requirement to do so because we had **NO taxable income as stated above AND pursuant to 26 C.F.R. § 1.861-8(f)(1).**

HOWEVER, if the Court orders us to file returns we will do so.

① I am a citizen of these United States, not a "taxpayer"
I do not wish to be referred to as a "taxpayer"

K

② I would make the assumption that if any one part in a legal document were to be false or fraudulent, it would make the whole document in its entirety false or fraudulent. Let me point out 2 items in the IRS proof of claim document which are false and fraudulent.

A - we are dealing here only with the IRS claim that I owe taxes from 1996, Not with any other years.

B. - They use the words "failed" to file for the years 2000, 2001, 2002. I didn't fail to file - I'm not required to file, and have not filed a return since 1995 and do not intend to do so.

③ I would like to challenge this court (or the U.S. attorney) to show me where, in 26 USC Subtitle A, it is written that any one other than a "withholding agent" has been made liable for the tax on income. The "withholding agent" being made liable to withhold income tax from non-resident aliens under section 1441, foreign corporations under 1442, and certain foreign tax-exempt organizations under 1443.

WHY WE DON'T HAVE INCOME

Title 26, Section 61 is Gross Income (Exhibit F) (1986 VERSION OF THE CODE) and is defined as follows:

(a) General definition.

Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

- (1) Compensation for services, including fees, commissions, fringe benefits, and similar items;
- (2) Gross income derived from business;
- (3) Gains derived from dealings in property;
- (4) Interest;
- (5) Rents;
- (6) Royalties;
- (7) Dividends;
- (8) Alimony and separate maintenance payments;
- (9) Annuities;
- (10) Income from life insurance and endowment contracts;
- (11) Pensions;
- (12) Income from discharge of indebtedness;
- (13) Distributive share of partnership gross income;
- (14) Income in respect of a decedent;
- (15) Income from an interest in an estate or trust.

Note: The source law of Section 61 as revealed in the footnote of this section in the 1954 version of the IRC is section 22(a), and is unchanged from the 1939 version. The *CFR INDEX PARALLEL TABLE 1991* lists the enabling section, per "26 U.S.C. (1939 I.R.C.)," as *Title 26 Part 519*. Income under this section pertained only to foreign earned income from Canada, and as of 1993 that Treaty no longer exists, and never will again due to NAFTA. This section of law is now related to *Title 7* which has to do with Agriculture

And note that Section 61 is derived from IRC section 22 of the 1939 Code and is essentially unchanged. Section 22 reads as follows:

And Sec. 22 GROSS INCOME, (a) General Definition is given in pertinent part as — "Gross Income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service....(Emp added)

WHEREFORE, any salaries, wages or compensation for personal services that we receive can not be gross income. They do not fit the definition. They are not derived.

Exhibit 14 (continued)

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* * *

PROCEEDINGS

Tuesday, January 13, 2004, 1:59 p.m.

* * *

THE COURT: We have to wait for Ms. Morris. I thought we were ready.

I don't know that we can do anything without -- these are all confirmation plans.

Which case are you here on, Mr. Flatley?

MR. FLATLEY: Taflan case, Your Honor.

THE COURT: Taflan. Okay.

Let's see.

Okay. You all are Mr. and Mrs. Taflan?

MS. TAFLAN: Yes.

THE COURT: Let's take the part -- your part of it, because there seems to be quite a difference in the numbers, which is the biggest problem I see.

Okay. Skipping through the technical aspects for just a minute, let me ask Mr. Flatley: What do your records show that they owe in the way of taxes from the IRS's records?

MR. FLATLEY: Well, Your Honor,

306

1 attached to our Objection to the Confirmation of the
2 Plan is the --

3 THE COURT: Okay. I only have your
4 motion. Hold on. I'll go get it.

5 I was looking at the other motion.

6 Okay. Now, I recognize...

7 The Proof of Claim?

8 MR. FLATLEY: Yes, Your Honor. It's
9 attached as Exhibit 1 to our Objection to the
10 Confirmation of the Plan. And, of course, the Taflans
11 have filed an Objection to the Proof of Claim, but, as
12 noted, Your Honor, the total amount of the claim is
13 almost \$120,000, but a lot of that is estimated
14 because there are three tax years for which 1040
15 returns have not been filed. Those are noted as the
16 "Unsecured Priority Claims" in the total amount of
17 \$85,000.

18 Without the returns being filed, of course, we
19 are unable to reduce those sums to an exact figure.
20 And, in part, the Objection to Confirmation is based
21 on the failure to file for those three years, such
22 that we cannot reduce the unsecured priority claim to
23 a sum certain.

24 THE COURT: Okay. If we just take the

1 amount that is due -- before we get into those
2 years -- let's just look at the first line.

3 MR. FLATLEY: Yes, Your Honor.

4 THE COURT: That's 19- -- for 1996
5 assessed in 1999, there was \$13,316. Can I assume
6 that the '96 was filed and that's where you got those
7 numbers?

8 MR. FLATLEY: It's my understanding,
9 Your Honor, that this was a substitute return.

10 THE COURT: Okay. How about ninety- --
11 I'm going to come to you all in just a minute.
12 I want to figure out what they think and then I'm
13 going to find out...

14 Taxes are our big problem here, obviously.
15 How about '97? '98?

16 MR. FLATLEY: Those are not listed on
17 the Proof of Claim because they are not susceptible to
18 our recapture under the Bankruptcy Code. And it's my
19 understanding that there are missing returns from
20 those years too. But we are not claiming those as
21 part of this bankruptcy because we cannot reach back
22 far enough under the Bankruptcy Code. Now, whether
23 there may be other issues related to unfiled years
24 outside of bankruptcy is another issue.

308

1 THE COURT: Okay.

2 MR. FLATLEY: But, at least with
3 respect to the Bankruptcy Code, we can't reach back
4 that far to include those years.

5 THE COURT: But is it your
6 understanding, from whatever information you have,
7 that we don't have '97, '98, '99, either?

8 MR. FLATLEY: That's correct, Your
9 Honor.

10 THE COURT: Okay.

11 So the last one we have is 1996, and it was a
12 substituted return?

13 MR. FLATLEY: That's right, Your Honor.

14 THE COURT: Okay.

15 Anything else on the taxes that you noticed
16 from your -- on the face of it that you should point
17 out to me?

18 MR. FLATLEY: I don't think so, Your
19 Honor. I believe that our Objection to the Plan, of
20 course, relates to the Plan, not necessarily to the
21 Proof of Claim.

22 Now, separately we have addressed some
23 pleadings, at least in response to the Objection to
24 the Proof of Claim by the Taflans, but those largely

309

1 speak for itself.

2 The real problem, as I see it with the Proof
3 of Claim as it currently exists, is -- at least with
4 respect to the unsecured priority claim -- those are
5 estimated figures. At least I am led to believe by
6 IRS that there has been withholding by virtue of Mr.
7 Tafian's employment so that if returns were filed and
8 a reconciliation occurred, it may be that some if not
9 all of this -- well, I can't say all -- but some may
10 be adjusted, perhaps even downward.

11 THE COURT: Okay.

12 MR. FLATLEY: So, again, without having
13 returns in hand, as is the normal practice of this
14 course -- or court, in terms of Chapter 13
15 proceedings, it's just very difficult to know what the
16 final liability would be.

17 THE COURT: Okay. So we have -- I'm
18 just talking about the tax aspect of it, because the
19 claim -- they do an estimated tax.

20 I have a rule in Chapter 13s that all of the
21 attorneys that practice here know, and I'm sure the
22 other judges do the same thing, it isn't difficult,
23 that you have to have your tax returns filed because
24 if you don't, I don't know how much you owe. And then

1 I don't know how much you need to pay back.

2 Now, let me ask you to start off with, on the
3 1997 -- let me see. I have to look here. 2000, 2001,
4 and 2002. Do you all contend that you have filed
5 those with the government and they don't have them?

6 MR. TAFLAN: Your Honor, we are not
7 required to file. We have not failed to file, we are
8 not required to file.

9 THE COURT: Okay. The only thing I'm
10 asking is, do they -- do you think they have the
11 returns? See, that's happened sometimes --

12 MR. TAFLAN: No. They do not have --

13 THE COURT: -- that they have the
14 returns --

15 MR. TAFLAN: We have not filed returns.

16 THE COURT: Okay. Not filed.

17 MR. TAFLAN: We are not required to
18 file returns.

19 THE COURT: Okay.

20 Now, do you disagree with -- you must have
21 filed one back in 1999, is that --

22 MR. TAFLAN: We did not. No.

23 MS. TAFLAN: No, sir.

24 MR. TAFLAN: No, sir, we did not.

1 THE COURT: How about '96?

2 MR. TAFLAN: No, sir. We did not.

3 THE COURT: Okay. Somehow they got a
4 tax due, and it looks like it came from a return of
5 \$13,000. Do you see that on the Proof of Claim? Do
6 you know how that came about? I thought that was from
7 your tax return.

8 MR. TAFLAN: We did not file a tax
9 return, Your Honor, in 1995 or subsequent years, once
10 we learned -- according to what the Internal Revenue
11 Service says in their documents.

12 THE COURT: Okay.

13 MR. TAFLAN: So we did not -- we did
14 not return -- we did not file a return because we
15 found out that we were not required to file. At that
16 point on, what they say, I guess, is what they say.
17 We have -- we have record of them filing a substitute
18 for return in the years 1995 and 1997.

19 THE COURT: Okay.

20 MR. TAFLAN: There was nothing filed --
21 there was no record of any sort, either a substitute
22 of return or otherwise, for 1996.

23 THE COURT: Okay.

24 So it was -- the substituted return was

1 actually prepared by the Internal Revenue Service?

2 MR. TAFLAN: That's true.

3 THE COURT: Okay.

4 Now, let me see from your bankruptcy petition
5 -- which I don't have.

6 Are you working?

7 MR. TAFLAN: Yes.

8 THE COURT: And where do you work?

9 MR. TAFLAN: I work for Rite Aid
10 Corporation in Bellaire, Ohio.

11 THE COURT: And Mrs. Taflan, do you
12 work?

13 MS. TAFLAN: No, sir.

14 THE COURT: Okay. Okay.

15 I suspect I'm going to get around to this. I
16 didn't look at this as the type of -- I had considered
17 this, that you just didn't get your tax return filed
18 and thought you'd have them here today.

19 Are you under the impression that you are not
20 required to file any returns even though you are
21 employed by Rite Aid Corporation as an employee?

22 MR. TAFLAN: That's true.

23 THE COURT: And is that a
24 constitutional reason somewhere?

1 MR. TAFLAN: That is true. Yes, sir.

2 THE COURT: Okay.

3 Ms. Morris, I just wanted to -- do you --

4 This is our Chapter 13 trustee.

5 You might as well come on up.

6 I just took the first case that we had,
7 because I noticed that the Internal Revenue Service
8 had made an objection and Mr. Flatley was here and I
9 had not looked at it in advance to see what kind of
10 objection it was, and thought that there were
11 outstanding returns missing that I was going to order
12 to be filed, but the debtors have the opinion that
13 they are not required to file tax returns.

14 So...

15 Let's see.

16 You're not represented by anybody? Have not
17 been represented by anybody?

18 MR. TAFLAN: True. True.

19 THE COURT: I have had some cases in
20 the past of the -- certain groups that indicate that
21 they do not wish to file returns, and, normally, I get
22 memorandums from them. Have you filed anything on
23 your behalf as to why you don't think you should be
24 required to file a return? Should I have that?

1 MR. TAFLAN: I did not file anything as
2 to why, Your Honor, but I do have some documentation
3 with me, if I could present it as judicial notice.

4 THE COURT: That's what we're here to
5 look at, to see why -- it is assumed by me in most of
6 the cases that I come in to --

7 MR. TAFLAN: If -- if -- if I may make
8 a statement, Your Honor, then I will present to you
9 the statement.

10 THE COURT: You may.

11 MR. TAFLAN: Okay.

12 I see no reason why there should be a change
13 in venue, of course, this is the whole ball of wax,
14 here. I am not -- I am not an unintelligent man, and
15 I, too, have had nine years of college, yet I consider
16 myself of average intelligence. So I should be able
17 to understand the Constitution of these United States
18 and the Internal Revenue Service Code as it is written
19 just as easily as anyone else in this courtroom.

20 But two facts remain elusive to me, Your
21 Honor. Number one, where in the 26 Code, Section A,
22 is it written that a United States citizen, working in
23 these fifty states of the Union, for a United States
24 corporation, is liable for the payment of income tax?

1 And, Number two, if a United States citizen
2 working in these fifty states of the Union for a
3 United States corporation is liable, what form is
4 required to file a return?

5 You see, the only place -- the only person I
6 can find who is specifically made liable in 26
7 Section -- 26 Code Section A, is a withholding agent,
8 who is limited to withhold under Sections 1461, and
9 only for Sections 1441, Withholding of Tax on
10 Nonresident Aliens, of which I am not; 1442,
11 Withholding a Tax on Foreign Corporations, which my
12 company is not, nor am I; and, 1443, Foreign
13 Tax-Exempt Organizations. Withholding agent has no
14 direction to withhold anything in the way of federal
15 taxes from a citizen of the United States.

16 May I present this to you?

17 THE COURT: You may. You may.

18 MR. TAFLAN: (Tendering)

19 THE COURT: And we'll mark it --

20 Do you have a copy of that, Mr. Flatley?

21 MR. FLATLEY: I do not, Your Honor.

22 MR. TAFLAN: I have additional copies.

23 THE COURT: I will -- if you can give

24 him a copy and we'll mark this as Exhibit -- Debtors'

1 Exhibit 1.

2 * * *

3 (Debtor's Exhibit No. 1 marked
4 for purposes of identification.)

5 * * *

6 THE COURT: If you can give Mr. Flatley
7 a copy of that, I'd appreciate it.

8 MR. TAFLAN: And I have one other thing
9 to bring up too.

10 Mr. Flatley mentioned that I was -- I failed
11 to file tax returns. Section 1.1-1 is tax imposed.
12 The OMB number assigned to this section is 1545-0067.
13 Section 16 -- I'm sorry. 6012-0 is persons required
14 to make returns. OMB number to this -- assigned to
15 this section is 1545-0067. Sounds easy enough.

16 According to 6012-0, you are required to file
17 the form with OMB number 1545-0067 and the tax in
18 Section 1.1-1 also says you must file the form with
19 the same OMB number. There is one problem. The form
20 that has OMB number 1545-0067 is Form 2555, Foreign
21 Earned Income, not Form 1040. It also says at the top
22 of Form 2555, that it is used only for U.S. citizens
23 and resident aliens only, but it is foreign earned
24 income. I have no foreign earned income.

1 So what file -- what form am I to use as far
2 as filing taxes?

3 THE COURT: Okay. Do you want to
4 submit that also?

5 MR. TAFLAN: I could submit this also.

6 (Tendering)

7 So you see, Your Honor, I don't really believe
8 that a United States citizen, working in the United
9 States, under the Constitution -- incidentally, the
10 constitutional laws have not been repealed. And it is
11 my thinking that if you have a law on the book that
12 says, "No, you don't have to do this," and then you
13 have another law, the 16th Amendment, it says,
14 supposedly says, that, "Yes, we are going to do this,"
15 don't they have to get rid of this law over here first
16 before they can change it to this law? That's my
17 understanding.

18 And the United States Supreme Court, ruling on
19 the 16th Amendment, said that that does not give the
20 Treasury Department any additional right to tax
21 anyone.

22 So I'm relying on that Constitution, plus the
23 16th Amendment, plus the United States Supreme Court
24 decision on the 16th Amendment as my basis for being

1 where I am at today.

2 So I would like to find out where in the
3 Internal Revenue Code that a United States citizen,
4 working in the United States, working in the fifty
5 United States, is made liable for the payment of
6 income taxes?

7 THE COURT: Okay. I have been on the
8 bench, nigh onto twenty years. I've had three people
9 who have exactly espoused the same view that you have.
10 In each case, I have advised them that such a position
11 has been declared invalid by the United States Supreme
12 Court. And that as a Bankruptcy Court, I don't have
13 the authority nor do I want the authority to reverse
14 the United States Supreme Court.

15 In those instances, the party served jail
16 time. I warn you of that.

17 There are 240 million people in the United
18 States. About 300 to 10,000, somewhere in there, it's
19 a real big number, because I never can have a handle
20 on it, have insisted that they do not have to pay
21 income taxes.

22 This issue won't be decided by me, because I
23 am four steps down, or maybe even five, from the
24 United States Supreme Court. I am bound by the laws.

1 I have issued three opinions already that indicate
2 that you have to pay taxes. You have to file the
3 returns.

4 So my advice to you is, that as an intelligent
5 man of nine years of college, that you spend some time
6 perhaps and talk to a lawyer, because I think the
7 information that you are giving me is incorrect. I'm
8 not going to look it up. I've issued three opinions.
9 I'll go copy it again, and I'll issue another opinion.

10 My ruling has been and will continue to be, if
11 you don't file your tax returns, you can't file for
12 Chapter 13. The reason being, if you owe money on
13 your taxes -- and I don't know how much they are until
14 you file a return -- if you don't file a return, the
15 Internal Revenue Service estimates the return, which
16 is where we end up with \$126,000, which can't possibly
17 be paid in the Chapter 13.

18 I will issue you the written ruling that I
19 have issued before in cases where people don't believe
20 that they should pay taxes. I would admit to a
21 certain amount of bias, because I pay taxes. I will
22 admit to a further amount of bias. Of all of the
23 people I know, you are the only one I know that
24 doesn't pay taxes or believe that he has to pay taxes,

1 setting aside the three that have been in my
2 courtroom.

3 * * *

4 So without further discussion, without any
5 input from the government -- I've been through the
6 cases before -- Mr. Flatley, the Court finds that the
7 Chapter 13 case will be DISMISSED for failure to abide
8 by the law and file the tax returns, which is a
9 standard in this court. That being the case, I won't
10 address the venue, because that's a very different
11 proposition which has other ramifications to it that
12 really aren't relevant to this case.

13 So, Mr. Taflan, Ms. Taflan, your case is
14 DISMISSED. You are no longer in the province of the
15 bankruptcy court. You have the right, of course, to
16 appeal that to the district court.

17 MR. TAFLAN: We do?

18 THE COURT: Yes, you do.

19 MR. TAFLAN: Yes, I will. I will
20 appeal it.

21 THE COURT: And, maybe at a higher
22 level you'll get some relief, but it can't be -- can't
23 be had here.

24 Okay. I'll do an order.

321

IRS SERVICE CENTER
PHILADELPHIA, PA 19255

96-9044-28-016-59
DATE OF THIS NOTICE:
NOV 05, 1990

JOHN B KOTHAIR JR

PO BOX 91
WESTMINSTER MD 21157

REPRESENTATIVE NUMBER:
2605-47815R

YOU HAVE BEEN ASSIGNED A REPRESENTATIVE NUMBER.

WE HAVE A POWER OF ATTORNEY AUTHORIZING YOU TO ACT FOR A TAXPAYER. WE ARE RECORDING THIS AUTHORIZATION ON A COMPUTERIZED FILE. FOR IDENTIFICATION PURPOSES, WE HAVE ASSIGNED YOU THE NUMBER SHOWN ABOVE. IT IS YOUR PERMANENT REPRESENTATIVE IDENTIFICATION NUMBER. PLEASE REFER TO THIS NUMBER IN ANY COMMUNICATION WITH THE IRS ABOUT THE TAXPAYER'S ACCOUNT. IF YOU HAVE BEEN AUTHORIZED TO ACT FOR MORE THAN ONE TAXPAYER, USE THE SAME NUMBER IN COMMUNICATIONS REGARDING ANY OF THEIR ACCOUNTS. IN ADDITION, PLEASE INCLUDE THIS NUMBER WHEN SUBMITTING FUTURE POWER OF ATTORNEY AUTHORIZATIONS. ALSO INCLUDE THIS NUMBER WITH YOUR NAME AND ADDRESS ON ANY DOCUMENTS YOU FURNISH IRS AS A REPRESENTATIVE FOR THESE TAXPAYERS.

IF YOU MAINTAIN MORE THAN ONE OFFICE OR MAILING ADDRESS, YOU MUST SELECT ONE TO WHICH ALL OF YOUR POWER OF ATTORNEY RELATED CORRESPONDENCE CAN BE SENT. DO NOT SUBMIT A POWER OF ATTORNEY IN THE FUTURE WITH A DIFFERENT ADDRESS UNLESS YOU INTEND TO CHANGE YOUR ADDRESS PERMANENTLY.

IF YOU HAVE ANY QUESTIONS ABOUT THIS NUMBER OR ITS USE, PLEASE LET US KNOW. IF YOU HAVE BEEN ASSIGNED MORE THAN ONE REPRESENTATIVE IDENTIFICATION NUMBER, PLEASE RETURN COPIES OF THE NOTICES THAT ASSIGNED THE NUMBER SO WE CAN ASSIGN YOU A SINGLE NUMBER. WE WILL ASSIGN THE FIRST NUMBER OF THE TWO OR MORE THAT HAVE BEEN RECORDED FOR YOU. WE HAVE ENCLOSED AN ENVELOPE FOR YOUR CONVENIENCE.

THANK YOU FOR YOUR COOPERATION.



CP-547 (1-85)

Exhibit 4

322

In addition to Agent Rowe's declaration, which contains conclusory allegations and new "facts," Plaintiff is introducing five affidavits from witnesses never before identified, discussed *infra*. Plaintiff cannot now rely on affidavits filed with its motion for summary judgment to satisfy the Rule 9(b) requirement that fraud be pled with particularity, as such affidavits are not formal pleadings. *Miller v. Gain Financial, Inc.* 995 F.2d 706 (App. 7th Cir. 1993). Any attempt to amend the complaint via affidavits is violative of the Federal Rules of civil procedure and such material should be stricken from the record.

Specifically, these new allegations include all allegations and evidence relative to: (a) Defendant Kotmair's representative status before the Internal Revenue Service, and any statements Defendants have made regarding said status,⁹ (b) the "Affidavit of Revocation and Rescission"¹⁰ and the "Statement of Citizenship," and statements made by SAPF regarding said documents,¹¹ (c) "the § 861 argument" and the "U.S.-Source" "tax-fraud scheme(s),"¹² including the filing of court pleadings advocating these "arguments," or that Defendant knows that the IRS views the "arguments" as frivolous, (d) the provision of "tax advice,"¹³ including allegations that Defendant advises members not to report or pay taxes, (e) the contention that "Kotmair claims to be a tax law expert,"¹⁴ (f) "assisting members in evading federal income and employment tax payment requirements,"¹⁵ (g) Defendant "knowing" that "two former employees, Thurston Bell and Richard Haraka," were enjoined for "identical conduct,"¹⁶ (h) the number

⁹ Introduced in Rowe's Declaration, Docket 43, at ¶ 37.

¹⁰ Plaintiff repeatedly and erroneously terms this the "Affidavit of Revocation" in its complaint.

¹¹ Introduced in Plaintiff's motion for summary judgment, at p. 3.

¹² *Ibid.*, at p. 2.

¹³ *Ibid.*, at p. 5.

¹⁴ *Ibid.*, at p. 2.

¹⁵ *Ibid.*, at p. 3.

¹⁶ *Ibid.*, at p. 7.

of SAPF members for whom letters are written,¹⁷ (i) IRS estimates of the costs of handling letters sent to them,¹⁸ (j) the contention that Defendant “market[s] a line of tax evasion products and services,” also called “commercial products,”¹⁹ (k) the sending of “threatening” letters and filing complaints against employers,²⁰ (l) the contention that SAPF operates as, or describes itself as, a “business,”²¹ and (m) the independent representatives of SAPF.²²

III. Failure to identify witnesses bars their testimony and related evidence.

Defendant also objects to all testimony and evidence introduced by Plaintiff via the five individual affidavits appended to its motion, on the grounds of FRCP Rule 37(c)(1). The affidavits are those of: Joseph Nagy, Camille Nagy, Nicholas Taflan, Amzi Sherling, and Evan Davis.

FRCP Rule 37(c)(1) *prohibits* the use of witnesses on a plaintiff’s motion when, as here, it fails to disclose their identities as required by Rule 26(e)(1).²³ Defendants specifically *requested the identities* of all potential witnesses in discovery,²⁴ and Plaintiff identified only Defendant Kotmair.²⁵ After

¹⁷ *Ibid.*, at p. 7.

¹⁸ *Ibid.*, at p. 7.

¹⁹ *Ibid.*, at p. 23

²⁰ *Ibid.*, at p. 4.

²¹ Introduced in Rowe’s declaration, ¶ 8.

²² Introduced in Plaintiff’s motion for summary judgment, at p. 2.

²³ Rule 37(c)(1) states: “(1) A party that without substantial justification fails to disclose information required by Rule 26(a) or 26(e)(1), or to amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed.”

Rule 26(e)(1) states: “(1) A party is under a duty to supplement at appropriate intervals its disclosures under subdivision (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.”

²⁴ Exhibit 5, US answer to interrogatory 3, at p.2.

²⁵ Exhibit 5, US answer to interrogatory 3, at p.2, and Exhibit 4, US Rule 26(a)(1) disclosures.

filed the instant suit in order to engage in a fishing expedition, attempting to uncover wrongs, acquire relevant information, and then introduce it all by affidavit later. Yet, Rule 9(b)'s purpose is to prevent just this type of conduct, *i.e.*, the filing of suits that simply hope to uncover relevant information during discovery, or the filing of conclusory complaints as a pretext for using discovery to uncover wrongs.⁷

Again, Rule 9(b)'s requirement of particularity is satisfied only if the complaint sets forth precisely the statement(s) made, the time, place and person responsible for each statement, the content of the statement and its effect on plaintiff and what the defendant gained from the fraud.⁸ In the present case, Plaintiff has not only failed to allege these particularities in its complaint; it has refused at every turn to even narrow the broad allegations of the complaint — until just now, when it is attempting to amend and particularize the complaint by affidavit, further discussed *infra*. The complaint is conclusory; it contains not a single specific claim upon which relief can be granted, and Defendant is entitled to summary judgment in its favor on all counts.

II. Plaintiff is barred from amending complaint via affidavit.

Defendants object to the expansion of the original complaint by the inclusion of additional allegations in the motion for summary judgment and additional facts outside the original pleadings. With respect to pleadings, FRCP Rule 15(a) provides as follows:

“Rule 15. Amended and Supplemental Pleadings

(a) AMENDMENTS. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. ...”

⁶ See Docket 50, p. 17.

⁷ See *Doyle v. Hasbro, Inc.*, 103 F.3d 186 (1st Cir. 1996); *Toner v. Allstate Insurance Co.*, 821 F.Supp 276 (D.C. Del. 1993); *Fujisawa Pharmaceutical Co., Ltd. v. Kapoor*, 814 F.Supp.720 (N.D. Ill. 1993).

⁸ See *Official Publications, Inc. v. Kable News Co., Inc.* 775 F.Supp 631 (S.D.N.Y. 1991).

In addition to Agent Rowe's declaration, which contains conclusory allegations and new "facts," Plaintiff is introducing five affidavits from witnesses never before identified, discussed *infra*. Plaintiff cannot now rely on affidavits filed with its motion for summary judgment to satisfy the Rule 9(b) requirement that fraud be pled with particularity, as such affidavits are not formal pleadings. *Miller v. Gain Financial, Inc.* 995 F.2d 706 (App. 7th Cir. 1993). Any attempt to amend the complaint via affidavits is violative of the Federal Rules of civil procedure and such material should be stricken from the record.

Specifically, these new allegations include all allegations and evidence relative to: (a) Defendant Kotmair's representative status before the Internal Revenue Service, and any statements Defendants have made regarding said status,⁹ (b) the "Affidavit of Revocation and Rescission"¹⁰ and the "Statement of Citizenship," and statements made by SAPF regarding said documents,¹¹ (c) "the § 861 argument" and the "U.S.-Source" "tax-fraud scheme(s),"¹² including the filing of court pleadings advocating these "arguments," or that Defendant knows that the IRS views the "arguments" as frivolous, (d) the provision of "tax advice,"¹³ including allegations that Defendant advises members not to report or pay taxes, (e) the contention that "Kotmair claims to be a tax law expert,"¹⁴ (f) "assisting members in evading federal income and employment tax payment requirements,"¹⁵ (g) Defendant "knowing" that "two former employees, Thurston Bell and Richard Haraka," were enjoined for "identical conduct,"¹⁶ (h) the number

⁹ Introduced in Rowe's Declaration, Docket 43, at ¶ 37.

¹⁰ Plaintiff repeatedly and erroneously terms this the "Affidavit of Revocation" in its complaint.

¹¹ Introduced in Plaintiff's motion for summary judgment, at p. 3.

¹² *Ibid.*, at p. 2.

¹³ *Ibid.*, at p. 5.

¹⁴ *Ibid.*, at p. 2.

¹⁵ *Ibid.*, at p. 3.

¹⁶ *Ibid.*, at p. 7.

of SAPF members for whom letters are written,¹⁷ (i) IRS estimates of the costs of handling letters sent to them,¹⁸ (j) the contention that Defendant “market[s] a line of tax evasion products and services,” also called “commercial products,”¹⁹ (k) the sending of “threatening” letters and filing complaints against employers,²⁰ (l) the contention that SAPF operates as, or describes itself as, a “business,”²¹ and (m) the independent representatives of SAPF.²²

III. Failure to identify witnesses bars their testimony and related evidence.

Defendant also objects to all testimony and evidence introduced by Plaintiff via the five individual affidavits appended to its motion, on the grounds of FRCP Rule 37(c)(1). The affidavits are those of: Joseph Nagy, Camille Nagy, Nicholas Taflan, Amzi Sherling, and Evan Davis.

FRCP Rule 37(c)(1) *prohibits* the use of witnesses on a plaintiff’s motion when, as here, it fails to disclose their identities as required by Rule 26(e)(1).²³ Defendants specifically *requested the identities* of all potential witnesses in discovery,²⁴ and Plaintiff identified only Defendant Kotmair.²⁵ After

¹⁷ *Ibid.*, at p. 7.

¹⁸ *Ibid.*, at p. 7.

¹⁹ *Ibid.*, at p. 23

²⁰ *Ibid.*, at p. 4.

²¹ Introduced in Rowe’s declaration, ¶ 8.

²² Introduced in Plaintiff’s motion for summary judgment, at p. 2.

²³ Rule 37(c)(1) states: “(1) A party that without substantial justification fails to disclose information required by Rule 26(a) or 26(e)(1), or to amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed.”

Rule 26(e)(1) states: “(1) A party is under a duty to supplement at appropriate intervals its disclosures under subdivision (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.”

²⁴ Exhibit 5, US answer to interrogatory 3, at p.2.

²⁵ Exhibit 5, US answer to interrogatory 3, at p.2, and Exhibit 4, US Rule 26(a)(1) disclosures.

(App. 4th Cir. 1996). A court “may therefore strike portions of an affidavit that are not based upon the affiant’s personal knowledge, contain inadmissible hearsay or make generalize and conclusory statements.” *Cox v. County of Prince William*, 249 F.3d 295 (App. 4th Cir., 2001).

In deposition, Plaintiff’s counsel asserted that Rowe was incompetent to provide testimony regarding fraud, and further asserted that she could not identify false statements, since that was a legal conclusion, as discussed *supra*. Further, the job description given by Plaintiff for Rowe’s position³⁴ relates in its entirety to tax examination, that is, auditing large and complex returns. Nevertheless, none of the paragraphs of Rowe’s declaration are stated as her personal knowledge; only three paragraphs mention something she personally did and therefore is competent to testify to: ¶¶ 58–59 and 37. She states that she “has reviewed” the materials of another agent, and so she is apparently relaying her own impressions of an investigation conducted by someone else; this is hearsay. Despite the fact that stating something is false is a conclusory allegation, one that Rowe is not competent—according to Plaintiff’s counsel—to even make, it is startling that fully 15 paragraphs of the complaint contain allegations that something is “false” or “falsely states” or “falsely advises.” Fully 14 paragraphs make the conclusory allegation that activities SAPF is engaged in are all a “part of the scheme.” Rowe also sets forth paragraph after paragraph with numbers of letters received by the IRS from Defendant, but does state in what manner she gained this information, nor how she gained any of the information presented, except to make bald allegations as to what they are—many of the documents entered are not authenticated. Finally, there are many discrepancies between her statements and Plaintiff’s motion for summary judgment. One example may serve to illustrate the types of errors within the entire affidavit — too numerous to mention here—and the motion as well:

Estimated cost to the treasury

Without laying a foundation that Agent Rowe compiled the data and/or generated the numbers pursuant thereto, or even alleging that she is the custodian of such records, Agent Rowe is not competent to provide figures relative to the estimated cost to the treasury. In coming up with an estimate of the alleged cost to the U.S. Treasury, Plaintiff makes contradictory statements. On page 7 of its memorandum, Plaintiff claims that “[t]he IRS has identified 864 SAPF members.” However, Rowe, at ¶ 41 of her declaration, testifies that Defendants “sent at least 846 protest letters to the IRS.” At ¶ 42, Rowe claims that “Kotmair purported to represent at least 305 individuals.” Although Rowe has offered no evidence to support either of these claims, her testimony in these two paragraphs seems to be that 846 letters were sent on behalf of 305 members. Plaintiff likewise offers no evidence to support its claim of having identified 864 members, and the similarity between that number and the number of letters claimed in Rowe’s declaration suggests that Plaintiff used the wrong number from that declaration. At any rate, there is certainly some discrepancy in the numbers used to support Plaintiff’s estimate of costs.

Later, at ¶ 67, Rowe again refers to “the 846 letters” in estimating the administrative costs of processing the letters. However, in ¶ 68, the 846 letters mysteriously transforms into 846 members, for the purposes of estimating the costs of preparing substitutes for returns. Thus, at best, it appears that the amount calculated in that paragraph is overstated by at least 275 percent.

Further, Exhibit 35, the worksheet showing the alleged costs, is not only unsigned, but has no indication of the person who prepared it, nor has Rowe even testified as to how she acquired it. Certainly, neither Rowe, nor anyone else, has sworn that the information it contains is true. Further, Rowe’s job description gives no indication that this is her function. Neither has any evidence been

³⁴ Exhibit 5, US answer to SAPF’s interrogatory 6.

Those telemarketers were engaging in false commercial speech—they were ripping people off. SAPF engages in no conduct that even remotely approximates such illegal activities. Collecting donations and keeping nearly all of it has nothing in common with the political speech SAPF engages in.

Insofar as Plaintiff asserts on page 22 of its motion, that appellate courts have addressed First Amendment challenges to injunctions in the context of abusive tax shelter cases, citing *United States v. Estate Preservation Services* (202 F.3d 1093(2000)) and *United States v. Schiff* (379 F.3d 621 (2004)): the former case was an action against financial planners who were allegedly giving abusive tax-shelter advice; and the latter, a business that had nothing in common with a First Amendment unassociated political organization.

E. Impeding and interfering with the administration of the tax laws

There are two main currents that run throughout all of Plaintiff's pleadings in this case: fraud and the intention to impede the administration of the tax laws. The nonspecific allegations of fraud have been discussed *supra*. Plaintiff's general allegations of impeding the IRS are equally without merit. For the most part, they are based on a fallacious legal theory that anything that does not "advance the IRS examination" "interfere[s] with the enforcement of the internal revenue laws."⁷⁸ In other words, a person interferes merely by not helping the IRS.

According to this theory then, a person interferes with the IRS by requesting an appeals hearing in response to a notice from the IRS proposing an increase in their tax liability,⁷⁹ even though IRS Publication 5 clearly states: "If you don't agree with any or all of the IRS findings given you, you may request a meeting or a telephone conference with the supervisor of the person who issued the findings. If

⁷⁸ See Plaintiff's memorandum, page 20 and FN60.

⁷⁹ See Rowe's declaration, ¶29.

you still don't agree, you may appeal your case to the Appeals Office of IRS.⁸⁰ This is precisely what the letter—identified as Exhibit 12 attached to Rowe's declaration—is intended to accomplish.⁸¹ In fact, it cites that publication as the basis for the request. Nevertheless, Plaintiff asserts that the delay (which is simply the natural result of providing for the appeal) interferes with the enforcement of the tax laws, and must therefore be enjoined.⁸² Likewise for the rest of the letters attached to Rowe's declaration. All are designed to take advantage of the various opportunities that Congress has established for contesting actions taken by the IRS. If availing oneself of such Congressional remedies is subject to injunction, then Congress' efforts to protect the public thereby is in vain.

The bottom line is that Plaintiff's legal theory is simply wrong. Invoking those remedies does not impede or interfere with the administration of the tax laws. In fact, Congress enacted a law with respect to impeding tax administration, which states:

§ 7212. Attempts to interfere with administration of internal revenue laws

(a) Corrupt or forcible interference

Whoever corruptly or by force or threats of force (including any threatening letter or communication) endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under this title, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or endeavors to obstruct or impede, the due administration of this title, shall, upon conviction thereof, be fined not more than \$5,000, or imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person convicted thereof shall be fined not more than \$3,000, or imprisoned not more than 1 year, or both. The term "threats of force", as used in this subsection, means threats of bodily harm to the officer or employee of the United States or to a member of his family.

⁸⁰ See Exhibit 15, IRS' Publication 5, "Your Appeal Rights and How To Prepare a Protest If You Don't Agree."

⁸¹ Unfortunately, the IRS routinely refuses to grant the requested appeal hearing.

⁸² Using the same logic, Plaintiff could equally claim that petitioning the Tax Court pursuant to IRC § 6213(a) should be enjoined.

Congress, in enacting this statute, prohibits only such impediment of tax administration as is done "corruptly or by force or threats of force." Notably, Plaintiff never cites this law in any of its pleadings. This is certainly because Plaintiff knows that Defendants' actions do not fall within the scope of this law. Instead, Plaintiff uses vague general allegations⁸³ as the basis for Count II of its complaint.

V. Scope of IRC § 7402(a)

Count II of Plaintiff's complaint relies on the provisions of IRC § 7402 for the purposes of enjoining the activities of the Defendants. This statute states, in relevant part:

"§ 7402. Jurisdiction of district courts

(a) To issue orders, processes, and judgments.—The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction, and of *ne exeat republica*, orders appointing receivers, and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws."
[emphasis added]

The Plaintiff has cited, within the four corners of its complaint, IRC §§ 6700 and 6701, and none other, so as to invoke jurisdiction under IRC § 7402. However, Plaintiff proposes that it was the intent of Congress to "enjoin interference with tax enforcement even when such interference does not violate any particular tax statute,"⁸⁴ citing *United States v. Ernst & Whinney*, 735 F2d 1296 (1984), and *U.S. v. Kaun*, 633 F.Supp 406 (E.D. Wis. 1986).

In *United States v. Ernst & Whinney, supra*, the 11th Circuit overturned a decision by the District Court of Georgia which held that some "underlying Code section must directly create some duty on the

⁸³ One such allegation is on page 4, where Plaintiff states that Defendant sends "threatening letters" to employers. See Rowe's declaration, Exhibit 23 for the only example Plaintiff supplied. Defendant is confident that if the Court reads that letter, it will see that it is not "threatening."

⁸⁴ Plaintiff's memorandum, p. 20.

part of the defendant sought to be enjoined" under § 7402(a).⁸⁵ The 11th Circuit, in overturning that well-reasoned decision, does no more than dismiss it out of hand, resting on some of the same cases considered and rejected by the lower court.

"We reject the district court's narrow construction of § 7402(a) and hold that there need not be a showing that a party has violated a particular Internal Revenue Code section in order for an injunction to issue. The language of § 7402(a) encompasses a broad range of powers necessary to compel compliance with the tax laws. See *United States v. First National Bank*, 568 F.2d 853, 855-56 (2d Cir.1977); *Brody v. United States*, 243 F.2d 378, 384 (1st Cir.1957)."

However, the "broad range of powers" quote taken from *First National City Bank* and *Brody* were made in the context of cases where the same argument was never raised. Thus, these two cases do not support the decision of the 11th Circuit above.

In *Brody, supra*, at p. 384, the First Circuit stated:

"In addition to the support which § 7604(b) gives to the order of January 10, the general grant of jurisdiction contained in § 7402 of the Code independently supplies ample authority for the order. * * * It would be difficult to find language more clearly manifesting a congressional intention to provide the district courts with a full arsenal of powers to compel compliance with the internal revenue laws. That the Revenue Service never purported to act under § 7402 in issuing its original summons to the taxpayer or in filing its petition with the district court is entirely irrelevant to the district court's jurisdiction."

The issue of whether any underlying statute must be cited was never raised in *Brody*, and so was not properly before the court. In fact, § 7402 was never cited by either party in the case. Rather, the court's dicta concerning that section was sua sponte.

The 2nd Circuit in *United States v. First National City Bank, supra*, ruled that § 7402(a) gives the district courts jurisdiction to enforce Internal Revenue Service jeopardy levies by summary proceedings. The only argument raised by appellant with respect to IRC § 7402(a) in that case was that it authorized

⁸⁵ *United States v. Ernst & Whinney*, 549 F.Supp. 1303, 1311 (D.C. Ga. 1982).

only "writs and orders" ancillary to plenary civil actions, and not the enforcement of levies. The court stated, "We hold, as the Third Circuit did in *United States v. Mellon Bank*, 521 F.2d 708, 710-11 (3 Cir. 1975) that [§] 7402(a) authorized the summary enforcement proceedings in the district court." *First National City Bank, supra*, p. 856. Just like in *Brody*, however, appellant never raised the issue of an underlying statute to be enforced, and so that issue was never decided by the court. Defendants do not dispute that the courts have broad powers to compel compliance with IRS laws, only that it is necessary to cite which tax laws are being violated or must be complied with, in order for an injunction to issue.

The court in *Ernst & Whinney, supra*, at p. 1300, went on to state:

"It has been used to enjoin interference with tax enforcement even when such interference does not violate any particular tax statute. See *United States v. Ekblad*, 732 F.2d 562 (7th Cir.1984) (§ 7402 used to enjoin individual's harassment of IRS agents designed to hinder their effectiveness); *United States v. Hart*, 701 F.2d 749 (8th Cir.1983) (same); *United States v. VanDyke*, 568 F.Supp. 820 (D.Or.1983) (same). Furthermore, the statute has been relied upon to enjoin activities of third parties that encourage taxpayers to make fraudulent claims. *United States v. Landsberger*, 692 F.2d 501 (8th Cir.1982); *United States v. May*, 555 F.Supp. 1008 (E.D.Mich.1983). These cases demonstrate that § 7402(a) does give the district court the power to enjoin Ernst's activities as a tax adviser." [emphasis added]

Likewise, the issue of the necessity of an underlying statute to be enforced pursuant to § 7402(a) was also never raised in any of these cases. In *Ekblad*, the appellant raised only general jurisdictional issues which were rejected by the court by referring to § 7402(a). In *Hart, supra*, p. 749, appellant's jurisdictional argument was that "inferior federal courts ... have no 'civil jurisdiction over a sovereign citizen.'" That court also referred to § 7402(a) in rejecting the argument. In *VanDyke*, the court specifically cited § 7402(a) as its authority to enjoin defendants there from filing "common-law liens" against federal employees, but the only issue mentioned by the court was one raised by a co-defendant that "he was not subject to courts convened under Article III of the United States Constitution, only

courts convened under Article I.” (*supra*, p. 822, FN2) The only reference to § 7402(a) in *United States v. Landsberger*, *supra*, p. 502, is this opening statement of the court’s opinion:

“Pursuant to sections 7402(a) and 7407 of the Internal Revenue Code, title 26, the district court, the Honorable Robert G. Renner presiding, permanently enjoined Gerald J. Landsberger from engaging in fraudulent and deceptive conduct that substantially interfered with the proper administration of the tax laws.”

The lower court in that case noted that “it ha[d] jurisdiction to grant such an injunction under both sections 7402(a) and 7407 of the Internal Revenue Code.” *United States v. Landsberger*, 534 F.Supp. 142, 144 (1982). Not only does the record of that case not reflect any issue being raised concerning 7402(a), but since the court found that both sections cited conferred jurisdiction, there would have been no reason to consider one. Finally, in *United States v. May*, the court again held that both §§ 7402(a) and 7407 conferred jurisdiction to issue an injunction against the defendant, but the only arguments May raised with respect to § 7402(a) were “that he [was] the victim of selective prosecution and that the First Amendment prevents the prior restraint the government seeks,” *supra*, p. 1010.

Plaintiff also cites *United States v. Kaun*, 633 F.Supp. 406 (E.D.Wis. 1986) to support its contention that it is unnecessary to specify the particular statute it seeks to have enforced pursuant to § 7402(a). The court alludes to a number of jurisdictional issues raised by defendant in that case, but never indicates that the above issue was one of them. Nonetheless, citing the *Brody*, *First National City Bank*, *May*, and *Landsberger* cases—already discussed above—the court did discuss at some length the jurisdictional aspects of that section. It said in part:

“By its very terms, this statutory provision authorizes the federal district courts to fashion appropriate, remedial relief designed to ensure compliance with both the spirit and the letter of the Internal Revenue laws—all without enumerating the many, particular methods by which these laws may be violated or their intent thwarted. ... Moreover, the Court’s jurisdiction in this litigation is further established by Sections 6700 and 7408 of Title 26 of the United States Code—provisions enacted by Congress as part of the Tax

Equity and Fiscal Responsibility Act of 1982, commonly known as TEFRA.” *Supra*, at p. 409.

However, while the court did say that § 7402(a) did not have to enumerate the many ways the tax laws might be violated, it did *not* say that it was unnecessary to cite the particular tax law alleged to have been violated. Moreover, the court also used § 7408 to establish its jurisdiction to issue the injunction. In rejecting Kaun’s contention on appeal “that the district court had no statutory authority to enter an injunction against him,” (*supra*, p. 1145) the 7th Circuit affirmed the lower court’s injunction, but most explicitly did *not* consider the lower court’s reliance on § 7402(a):

“We conclude that the injunction against *Kaun* was proper under § 7408. We therefore need not consider whether the district court’s action was also proper under § 7402(a), which authorizes a district court, at the request of the United States, to issue such injunctions and other judgments and decrees ‘as may be necessary or appropriate for the enforcement of the internal revenue laws,’ I.R.C. § 7402(a) (1982).” *Supra*, at p. 1147.

In summary, the only court shown to have fully considered the issue of the necessity of an underlying statute to enforce by the authority given in § 7402—the Georgia District Court in *Ernst & Whinney*, 549 F.Supp. 1303—agreed with Defendant in the instant case. The 11th Circuit overturned that decision on the basis of cases that do not actually support their reversal. Defendants pray this Court will follow the lead of the former and disregard the latter.

CONCLUSION

The general nature of much of Plaintiff’s Motion for Summary Judgment renders it insufficient, in regard to FRCP Rule 9(b), to warrant the injunctive relief Plaintiff seeks. Its broad characterizations do not apprise Defendant of the necessary elements of any alleged violation of law, and its attempt to amend its complaint via its summary judgment motion prejudices Defendant in preparing a defense against such charges. In spite of this, Plaintiff has not demonstrated any violation of 26 U.S.C. § 6700 and § 6701.

Q And you're referring to your copy of?
A Of the member handbook.
Q The member handbook from the Save-A-Patriot Fellowship?
A Correct. That's correct, page 10.
Q Okay. Can you read us what that line that you're talking about?
A Okay. Code section 7701 A(16) defines the withholding agent as one who is required to withhold income taxes from non-resident aliens under code section 1441. And I'm going to paraphrase the code sections, 1442, 43, 44, 1443 and 1446. But 1461 was left out, which includes residents.
Q Okay.
MR. KOTMAIR: 1461 includes residents?
THE DEPONENT: It's citizen, yeah, United States citizens.
MR. KOTMAIR: 1461 says citizens?
THE DEPONENT: Yes.
MR. KOTMAIR: I see.
BY MR. HARP:
Q Okay. Does anything else in there strike you as being misleading?
A Well, I mean I could --
Q Probably come up with --
A We could probably argue a good deal if I went through and checked every code section referenced, so.
Q Okay. But nothing else just leaps out, or comes to mind or anything like that?
A No, just from a review of, you know, the handbook.
Q Okay. We'll go off the record for a minute.

As shown above in paragraphs 52 and 55, Rowe states she is competent in determining non-compliance (or violations) of the federal tax laws. I submit to this Court that § 1461 states as follows:

Liability for withheld tax.

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

57. The records of SAPF indicate that former member Joseph Nagy, a witness for the Plaintiff, joined SAPF on or about August 6, 2001. Said records also show (as does his declaration) that Joseph Nagy stopped filing federal tax returns in 1999.

58. The records of SAPF indicate that former member Camille Nagy, a witness for the Plaintiff, joined SAPF on or about June 6, 2003. Said records also show (as does her declaration) that Camille Nagy stopped filing federal tax returns in 2001.

59. I have never represented Joseph Nagy or Camille Nagy before a state taxing authority, nor had I ever claimed that I could or would do so.

60. Neither I nor SAPF staff has ever offered to provide services to Joseph or Camille Nagy, nor to any other person, to assist them in reducing the amount of taxes they were required to pay.

61. Neither I nor SAPF staff file lawsuits before the Executive Office for Immigration Review, Office of the Chief Administrative Hearing Officer ("OCAHO"), nor do we assist anyone in filing any such actions. Neither I nor SAPF have assisted anyone in over eight years in any such filings; nor do we have any intention to do so in the future.

ofell - New in Putnam.



The Save-A-Patriot Fellowship

- Independent Representative Policy Agreement -

Dear Fellow Member,

Congratulations on passing the *Independent Representative Certifying Examination*. May you experience the deepest rewards in joining with hundreds of Independent Representatives nationwide, bearing the gift of *truth* to your friends and neighbors. To maintain the accuracy and integrity that are the hallmarks of the *Save-A-Patriot Fellowship*, this *Policy Agreement* contains policies, procedures, and provisions which are imperative for every Independent Representative to understand. Please read this *Policy Agreement* carefully and do not sign this agreement unless you fully understand and agree with all of the policies, procedures and provisions contained within.

Mail (do NOT fax) this original, signed *Policy Agreement* to:

Gordon Phillips, National Representative, P.O. Box 104, Medfield, Massachusetts (MA) 02052.

IR Name, Address, Phone (initial in all indicated spaces and sign at end of Page 9)

Full Name W. LARRY CLAYBORNE
Mailing Address P.O. Box 952
City / Town LOCUST GROVE State VA Zip 22508
Day Phone (540) 972-0357 Eve Phone (540) 972-0357

1) Independent Representatives

Independent Representatives, henceforth referred to as IR's, are those who have been recommended by another IR or by someone at SAPP HQ to hold that position. Furthermore, they have passed the *Certifying Examination* administered by the National Representative. By signing this *Policy Agreement*, any potential IR acknowledges that he/she has met these requirements and is entitled to hold the position of Independent Representative. It is understood that the SOLE purpose of an IR is to assist a potential member in making an EDUCATED decision about joining the Fellowship. Technically, once someone has joined the Fellowship, the IR no longer has a reason to even communicate with that member. However, there are many reasons why a relationship may continue after a person has been enrolled. It is imperative, therefore, that any future communications between the member and the IR be restricted to the information set forth by the Fellowship, whenever and wherever possible, when discussing the tax laws. By their signature, IR's agree to uphold this policy to the best of their ability. IR's are independent contractors, working in their own capacity, and are not employees, agents, partners, joint venturers or representatives of the *Save-A-Patriot Fellowship* headquarters staff or of their mentor. They are not authorized to act on behalf of or to legally bind the *Save-A-Patriot Fellowship*, its staff or members, or other persons, nor will the Fellowship be held responsible for any misrepresentations and/or criminal acts committed by any IR. The Fellowship will assist anyone damaged due to a criminal act committed by an IR in prosecuting that particular IR to the fullest extent of the law.

Initial WLC

2) Un-taxing? De-taxing?

Under no circumstances are IR's or staff members permitted to refer to Fellowship assistance as "*un-taxing*" or "*de-taxing*" or any other similar phrase. The phrase itself carries with it the connotation that something is being done to cancel or *nullify* an existing legal requirement. Obviously, if the individual is contending they are not the subject of the law and have no legal requirement to file a return or pay a tax then there is no existing legal requirement to "*un-do*". More succinctly, it is the law that imposes a tax. If the law imposes a tax, then it is incumbent upon those who are subject to the law to comply with its provisions (i.e. file the return and pay the tax). If the law does not impose a tax on a specific object, subject, or activity then there is nothing to "*un-tax*". If an IR represents Fellowship services as a process of *un-taxing*, then this could be construed to imply that the Fellowship is somehow able to cancel a statutory taxing provision. That is not the case, therefore IR's must refrain from using

339

the term. NOTE: previous signatures on tax returns do create a "presumption" that a statutory requirement exists, however presumptions are not statutes and may be rebutted - actual legal requirements cannot. Therefore, if anything is to be *un-done* it is the presumption and not a taxing statute! Semantics are the fine line between being correct and being incorrect. Any IR found in violation of this policy will be immediately terminated.

Initial WFC

3) The Fellowship Does Not Remove Liens Or Levies - Nor Does It Abate Assessments

Since the Fellowship does not execute liens or levies or make assessments it is impossible for the Fellowship to *remove* them. Only the IRS can undo what the IRS has done. Fellowship caseworkers and paralegals assist members in developing cases and can provide the facts and the evidence that will allow a member to seek administrative and judicial remedy. It cannot guarantee that any given agency of government or court will adhere to or enforce the law, or that appeals will be unnecessary. IR's may explain that the Fellowship assists members in administrative and legal actions to remove liens and levies or to prepare a proper request for abatement, but under no circumstances will an IR suggest or imply that the Fellowship will remove liens or levies. IR's who do not understand the difference should contact the SAPF National Representative for an explanation. Any IR found in violation of this policy will be immediately terminated.

Initial WFC

4) The Fellowship Cannot Stop IRS Collection Activity

Only a Court can stay such action, and even then only under the bankruptcy laws. The Fellowship paralegal department is intimately familiar with the available remedies for accomplishing a stay of collection until such time as quiet title may be affected. IR's can explain that the Fellowship assists members in seeking such remedy, but under no circumstances will an IR suggest or imply that the Fellowship will stop the collection. IR's who do not understand the difference should contact the SAPF National Representative for an explanation. Any IR found in violation of this policy will be immediately terminated.

Initial WFC

5) The Fellowship Does Not Determine Whether Any Given Person Has A Requirement To File A Return Or A Liability To Pay A Tax

The individual in question is the *only* one who can make that decision. An IR can show someone the law and explain the limited application of the law but legal decisions must be left to the individual. Under no circumstances will IR's give legal advice or "consult" with members or prospective members. Any IR found in violation of this policy will be immediately terminated.

Initial WFC

6) Under No Circumstances Will An IR Answer A Member's Questions Pertaining To Specific Technical Procedures Of The Various Departments Of The Fellowship

The procedures performed by the Fellowship on behalf of members are very technical and exact. They are also continually updated. The IR does not have the need, nor does the Fellowship have the time and ability to keep all IR's updated on these procedures and changes. Any IR found in violation of this policy will be immediately terminated.

Initial WFC

7) Under No Circumstances Will IR's Call Prospective Members "Collect" To Solicit Membership

Most people consider such tactics rude. If an IR cannot exercise common sense it is doubtful that he or she is capable of accurately representing the Fellowship and will be immediately terminated.

Initial WFC

8) Submitting A W-4 "Exempt" Is Not The Proper Way For A U.S. Citizen Or Resident Alien To Claim That S/He Is "Not Subject To Withholding"

Under no circumstances will an IR tell a prospective member or any other member to file a W-4 "exempt" or a W-4 with a large number of deductions on it. IR's who do not understand why should contact the SAPF National Representative for an explanation. Any IR found in violation of this policy will be immediately terminated.

Initial WFC

IN THE UNITED STATES DISTRICT COURT FOR
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, *
Plaintiff *
vs. * Civil No.:
JOHN BAPTIST KOTMAIR, JR., et al. * WMN 05 CV 1297
Defendant *
* * * * *

DEPOSITION OF:

Joan Rowe

The deposition of Joan Rowe was taken on behalf of the Defendants on Tuesday, February 14, 2006, commencing at 2:06 p.m. at the U.S. Attorney's Office, 32 South Charles Street, Baltimore, Maryland before Lynne Livingston, a Notary Public.

Tel. 410.534.0851

Deposition Specialists
2043 East Joppa Road, Suite 389
Baltimore, Maryland 21234

Fax 410.534.0658

Exhibit 2

341

APPEARANCES:

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610 Marshall Street
Suite 619
Shreveport, LA 71101
On Behalf of the Defendants

Thomas M. Newman, Esq.
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044
On Behalf of the Plaintiff

John Baptist Kotmair, Jr., Pro Se
12 Carroll Street
Westminster, MD 21157

Also Present: Daniel Greenstein

INDEX

	PAGE
Examination by Mr. Harp	3
Examination by Mr. Kotmair	24
Examination by Mr. Newman	26
Plaintiff's Exhibit 1 Identified	26

PROCEEDINGS

1
2
3
4
5
6
7
8
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WHEREUPON,

Joan Rowe

the witness called for examination, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. HARP:

Q Would you state your name and address, please? And you can use your office address.

A Okay. My name is Joan Rowe, R-O-W-E, and my Internal Revenue Service address is 31 Hopkins Plaza, Room 1010, Baltimore, Maryland 21201.

Q Okay. Miss Rowe, for the record here, I'm George Harp. I'm the attorney for Sav-A Patriot Fellowship. We have Thomas Newman here, who you know is representing the government. John Kotmair is here in his own capacity pro se in this matter, and Mr. Daniel Greenstein, who you know, is also here present at the deposition.

Okay. Obviously, you work for the IRS. How long have you been employed?

1 transaction, yeah. I mean they range from --
2 of course now I can't think of a good example.

3 Q Well, there's got to be some guidance
4 in the manual or something that y'all go by on
5 that, isn't there?

6 MR. NEWMAN: I think she answered
7 that.

8 BY MR. HARP: Okay.

9 Q Well, I mean obviously I mean 6700
10 does mention a few things in it that are
11 required elements. So you know it refers to
12 plans and arrangements and that kind of thing.
13 I mean somebody at the IRS goes through it and
14 makes sure that at least those minimal
15 elements are present?

16 A Well, yes, when we develop these
17 penalty situations or any investigation under
18 6700 there are certain elements that we look
19 for. We look for false statements, we look
20 for knowledge of the false statements, and we
21 look for their cause and effect. Are they
22 causing a tax loss, so.

23 Q Okay. And so obviously somebody at
24 the IRS applied this to Sav-A-Patriot

1 Fellowship and/or Mr. Kotmair because a
2 referral was done?

3 A Correct.

4 Q Okay. And one of the things that we
5 wanted to do or are trying to do, and entitled
6 to do before this thing goes to trial is to
7 try to elicit and discover the evidence and
8 testimony that the government intends to use
9 against us when we go to trial.

10 And so I guess my next question or two
11 is sort of directed along those lines, with
12 respect to Sav-A-Patriot Fellowship, what in
13 particular were y'all claiming that they were,
14 and it may have been several things, were
15 doing that was illegal and in violation of
16 6700?

17 MR. NEWMAN: To be clear, there isn't
18 anything that anyone is claiming is illegal,
19 that this is a 6700 violation is a civil
20 lawsuit.

21 MR. HARP: Right. Okay. But the
22 violation from a 6700 that's, I just, and she
23 may not know. I don't know, but --

24 MR. NEWMAN: To be clear, you're just

1 asking what documents she reviewed?

2 MR. HARP: I'm not asking her for a
3 legal opinion here, either.

4 MR. NEWMAN: Right.

5 MR. HARP: But I would like to get
6 some input from her on that.

7 MR. NEWMAN: Of what documents were
8 reviewed?

9 MR. HARP: Yeah, and what in
10 particular so that we can kind of narrow the
11 focus on our defense.

12 THE DEPONENT: Well, mainly I looked
13 through the membership, what did you call it?
14 It has a name. Membership --

15 MR. HARP: Handbook.

16 THE DEPONENT: Handbook. That's
17 correct.

18 BY MR. HARP:

19 Q Okay. And that was the main thing you
20 looked through?

21 A That's correct.

22 Q Okay. And do you recall whether you
23 reviewed any of the other documents that were
24 from SAP?

1 A I saw some of the newsletters. And I
2 did glance at the website but just the first
3 page. So I didn't get into that.

4 Q Well, I mean with all due respect and
5 all, I mean basically the decision had been
6 made on it before you got hold of it so --

7 A Correct.

8 Q Okay. Would it be your testimony that
9 you would be in concurrence, after your review
10 of the file would be in concurrence with the
11 referral, the decision to refer?

12 A Based on what I saw, I don't know, I
13 believe so.

14 Q Okay. And can you recall and do you
15 have knowledge of anything from the file
16 related to a particular instance of fraud or
17 alleged fraud that you came across?

18 MR. NEWMAN: That question calls for a
19 legal conclusion that she would have to
20 determine what is fraud. And I don't think
21 she's competent to testify as to that.

22 MR. HARP: Okay.

23 MR. NEWMAN: She can testify as to
24 what she reviewed and the procedures, but

1 determining whether something is or isn't
2 fraud, she can't make that determination.

3 MR. KOTMAIR: Well, how did she bring
4 a referral if she couldn't determine a
5 violation of the law? Well, I understand, but
6 she said she agreed with the referral --

7 MR. NEWMAN: I'm not answering any
8 questions --

9 MR. KOTMAIR: Well, you're the one --

10 MR. NEWMAN: If you want to ask her
11 questions, that's fine, but she can't answer
12 that kind of question --

13 MR. KOTMAIR: Sir, you're --

14 MR. NEWMAN: Testifying in court --

15 MR. KOTMAIR: What you're saying is
16 that IRS agents just arbitrarily without even
17 looking at the statute, and saying the statute
18 was violated here, just say that's a violation
19 without understanding it. Is that what you're
20 saying?

21 MR. NEWMAN: I'm not saying that.

22 MR. KOTMAIR: All right. Well, that's
23 what it appears.

24 COURT REPORTER: Is that on that

1 record?

2 MR. KOTMAIR: Yeah, leave it on the
3 record. Yeah, everything's on the record.
4 Nothing's hidden.

5 BY MR. HARP: Okay.

6 Q Well, somebody at the IRS, I mean
7 there are lots of people that work there and
8 they have experts down there. Somebody had to
9 make a determination of whether something is
10 fraudulent or not to make the referral.

11 A I'm not sure fraudulent is the right
12 word, I don't think:

13 MR. KOTMAIR: No fraud, no crime.

14 BY MR. HARP:

15 Q Well, one of the allegations is in
16 paragraph five of the complaint, that SAPF an
17 unincorporated association also organizes and
18 sells tax fraud schemes designed to assist
19 customers in evading their federal tax
20 liabilities and interfering with the
21 administration of the internal revenue laws.

22 I mean all we're trying to find out
23 is, I mean that's pretty nebulous --

24 A Is that from our complaint?

1 Q Yes. Yes. We're just trying to
2 narrow it down so that we can focus on what we
3 need to defend on this, so.

4 A Well, the things that I've read from
5 the handbook that pertain to that seem to be
6 the employment. Is it a leasing sector or
7 another portion of SAP that takes over the
8 employment, I don't want to call it tax, but
9 the employment, the payroll duties of
10 companies.

11 Q Employee leasing? I think I --

12 A Let's talk --

13 Q There are employee leasing companies,
14 but I don't think, I haven't run across
15 anybody doing any of that kind of thing here.
16 So I don't know. If it is, this is the first
17 I've heard of that, so. But I mean that may
18 be but --

19 I mean are you aware that, I mean
20 there were three websites that were involved
21 originally in the complaint. There was Tax
22 Freedom 101.com, Tax Truth For You.com and
23 then the Sav-A-Patriot.org. We don't have
24 any, we've never had anything to do with

1 anything other than Sav-A-Patriot.org.

2 A That's the only website I happened to
3 look at.

4 Q The Sav-A-Patriot?

5 A This morning, right.

6 Q Okay.

7 MR. KOTMAIR: Is that the first time
8 you looked at it was this morning?

9 THE DEPONENT: Yes, sir.

10 BY MR. HARP:

11 Q Okay. So I was wondering if maybe you
12 picked up the employee leasing thing off of
13 one of the other websites?

14 A No, I don't know.

15 Q Okay.

16 A Maybe -- I don't know. ASC, is it
17 called?

18 MR. KOTMAIR: I don't know.

19 THE DEPONENT: I thought that was from
20 the handbook. No, it wasn't. It was -- it
21 was from some of the other items. Okay.

22 I did notice some misleading
23 statements with regard to 3121 employment tax
24 where mention was made of the aliens, that it

1 applied only to aliens or foreign persons.
2 And I thought that was misleading because of
3 other sections were left out.

4 BY MR. HARP:

5 Q Okay. Can you maybe locate that in
6 here right now?

7 A On page 10, if it's the same copy that
8 we all have.

9 Q And you're referring to your copy of?

10 A Of the member handbook.

11 Q The member handbook from the Sav-A-
12 Patriot Fellowship?

13 A Correct. That's correct, page 10.

14 Q Okay. Can you read us what that line
15 that you're talking about?

16 A Okay. Code section 7701 A(16) defines
17 the withholding agent as one who is required
18 to withhold income taxes from non-resident
19 aliens under code section 1441. And I'm going
20 to paraphrase the code sections, 1442, 43, 44,
21 1445 and 1446. But 1461 was left out, which
22 includes residents.

23 Q Okay.

24 MR. KOTMAIR: 1461 includes residents?

1 THE DEPONENT: It's citizen, yeah,
2 United States citizens.

3 MR. KOTMAIR: 1461 says citizens?

4 THE DEPONENT: Yes.

5 MR. KOTMAIR: I see.

6 BY MR. HARP:

7 Q Okay. Does anything else in there
8 strike you as being misleading?

9 A Well, I mean I could --

10 Q Probably come up with --

11 A We could probably argue a good deal if
12 I went through and checked every code section
13 referenced, so.

14 Q Okay. But nothing else just leaps
15 out, or comes to mind or anything like that?

16 A No, just from a review of, you know,
17 the handbook.

18 Q Okay. We'll go off the record for a
19 minute.

20 (Off the record)

21 MR. HARP: Okay. Well, I'll tender
22 this witness on behalf of SAP.

23 MR. NEWMAN: Sorry?

24 MR. HARP: I'll tender the witness on

1 behalf of SAP, so I guess --

2 MR. NEWMAN: Okay.

3 MR. HARP: Mr. Kotmair, do you have --

4 BY MR. KOTMAIR:

5 Q Yeah, I would like to ask you, do you
6 recall anything else in the handbook that
7 comes to mind that you thought was a false
8 statement?

9 MR. NEWMAN: She can't -- she can't
10 testify as to a false statement because what
11 you're asking her to do is draw a conclusion
12 that the statement is false.

13 MR. KOTMAIR: So she has to --

14 MR. NEWMAN: She can testify as to the
15 document --

16 MR. KOTMAIR: She has to bring this or
17 she has to come forward with the charge. In
18 order to charge you've got to determine if
19 something's false or not to bring it for
20 referral.

21 MR. NEWMAN: The lawsuit brings
22 forward the charges and that's it. She cannot
23 make a legal determination --

24 MR. KOTMAIR: When she makes the

1 referral she has already --

2 MR. NEWMAN: No, she has not.

3 MR. KOTMAIR: Concluded that something
4 is wrong.

5 MR. NEWMAN: No, she --

6 MR. KOTMAIR: In other words, why did
7 she make a referral if nothing was wrong?

8 MR. NEWMAN: She reviews documents and
9 that's it.

10 MR. KOTMAIR: And she makes a decision
11 within that document if it's a false statement
12 or not.

13 MR. NEWMAN: It's not a legal
14 conclusion. She cannot --

15 MR. KOTMAIR: Well, I don't --

16 MR. NEWMAN: She cannot testify as to
17 legal conclusions.

18 BY MR. KOTMAIR: All right, let me put
19 it.

20 Q In your mind it was a false statement?

21 MR. NEWMAN: You can't answer that
22 because that, what happens in your mind is
23 privileged. It's a deliberative process.

24 BY MT. KOTMAIR: All right.

To: John
Sent by the Award Winning Cheyenne Bitware
06/28/2006 11:40 FAX 2025146770

From: george harp 4242090

06/28/06 14:04:18 Page 2 of 3

TAX/CENTRAL

002/005



U.S. Department of Justice

Tax Division

Please reply to: Civil Trial Section, Central Region
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Washington, D.C. 20044

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DJS-35-10644
CMN 2004106494

June 28, 2006

George E. Harp, Esq.
610 Marshall St., Ste. 619
Shreveport, LA 71101
Fax: (318) 424-2060

Re: *United States v. John Baptist Kotmair, Jr., et al.*, WMN 05 CV 1297 (D. Md.)

Dear Mr. Harp:

I am writing to provide the addresses of those customers of SAPP who have provided declarations in support of the United States' motion for summary judgment. I had previously mailed these declarations to you with a hard copy of the motion.

Mr. Joseph & Mrs. Camillo Nagy
14544 Ryan St.
Sylmar, California 91342

Mr. Nicholas Taflan
35951 Key-Bellaire Road
Bellaire, Ohio 43906

In addition, I am also addressing the contention raised in your response in opposition to the United States' motion for discovery violations that the identity of these individuals was withheld. I spoke with these individuals prior to filing the motion after calling numerous customers of SAPP. Moreover, I have not discussed with these individuals, or the other SAPP customers that I have contacted, whether they would be witnesses in this case.

Sincerely yours,

THOMAS M. NEWMAN
Trial Attorney
Civil Trial Section, Central Region

Exhibit 3

356

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civil No. WMN 05 CV 1297
)
 JOHN BAPTIST KOTMAIR, JR., et al.,)
)
 Defendants.)

UNITED STATES' RULE 26(a)(1) INITIAL DISCLOSURES

Pursuant to Federal Rule of Civil Procedure 26(a)(1), the United States makes the following initial disclosures:

(A). The following individuals have information that the United States may rely on in support of its claims:

- Defendant John Kotmair. Kotmair has knowledge of defendants' tax-fraud schemes.
- Defendants' customers. Their names and contact information are in defendants' possession, and have been requested by the United States in its discovery requests. Defendants' customers have knowledge of defendants' tax-fraud schemes.

(B). The United States may rely on the following documents in support of its claims:

- Correspondence the IRS has received from defendant John Baptist Kotmair, Jr., on behalf of third-parties.
- Printouts of the www.save-a-patriot.org website.
- Printouts of the www.taxfreedom101.com website.
- Printouts of the www.taxtruth4u.com website.

Exhibit 4

357

• *The Tax Freedom 101 Report*

• *Reasonable Action*

(C)-(D) These categories of information are inapplicable to this action.

ROD J. ROSENSTEIN
United States Attorney



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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civil No. WMN 05 CV 1297
)
 JOHN BAPTIST KOTMAIR, JR., et al.,)
)
 Defendants.)

**UNITED STATES' RESPONSE TO DEFENDANT SAVE-A-PATRIOT'S
FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Plaintiff, the United States of America, responds as follows to defendant Kotmair's First Set of Interrogatories and Production of Documents:

Interrogatory No. 1. Please identify each person participating or assisting in the formulation of the answers to these interrogatories.

Response to Interrogatory No. 1.

Thomas M. Newman, Trial Attorney, Tax Division, U.S. Department of Justice, Post Office Box 7238, Ben Franklin Station, Washington, D.C. 20044.

Interrogatory No. 2. Please identify persons you intend to use as a witness at trial and a brief summary of their testimony.

Response to Interrogatory No. 2. The United States objects that Interrogatory No. 2 is premature and that the requested information is protected work-product (until disclosure is required under the pre-trial order). The United States has not yet identified its trial witnesses. The United States' Rule 26(a)(1) Initial Disclosures contains a list of individuals who may have information that the United States may rely upon to support its claims, and includes a summary of the subject matter of their knowledge.

Exhibit 5

359

Interrogatory No. 3. Please identify persons you may call as a witness at trial and a brief summary of their expected testimony or possible testimony from each.

Response to Interrogatory No. 3. The United States objects that Interrogatory No. 3 is premature and that the requested information is protected work-product (until disclosure is required under the pre-trial order). The United States has not yet identified its trial witnesses. The United States' Rule 26(a)(1) Initial Disclosures contains a list of individuals who may have information that the United States may rely upon to support its claims, and includes a summary of the subject matter of their knowledge.

Interrogatory No. 4. Please identify all documents you intend to introduce at trial.

Response to Interrogatory No. 4. The United States objects that Interrogatory No. 4 is premature and that the requested information is protected work-product (until disclosure is required under the pre-trial order). The United States has not yet identified its trial Exhibits. Under Local Rule 106.2(h) a list of exhibits to be introduced at trial must be disclosed in the pre-trial order, which is due five days before the pre-trial conference. As no pre-trial conference has been set, this request is premature. Notwithstanding this objection, the United States' Rule 26(a)(1) Initial Disclosures contains a list of exhibits that the United States may rely upon to support its claims.

Request for Production No. 1. Please provide a copy of any items referred to in your response to interrogatory No. 4.

Response to Request for Production No. 1. The United States previously supplied Defendants with copies of the items referred to in its initial disclosure on November 14, 2005. To the extent the request is for materials in preparation for trial, the United States objects that

Interrogatory No. 8. Please list all documents reviewed by or relied upon by the persons in No. 6 above who investigated or conducted an investigation in order to prosecute this lawsuit.

Response to Interrogatory No. 8. The information contained in defendants' websites, correspondence sent by defendants to the IRS, and defendants' membership handbook.

Interrogatory No. 9. Please list all documents reviewed by or relied upon by the persons in No. 6 above who participated in the decision making process to prosecute this lawsuit.

Response to Interrogatory No. 9. The information contained in defendants' websites, correspondence sent by defendants to the IRS, and defendants' membership handbook.

Interrogatory No. 10. Please list and identify all documents and other tangible evidence you are relying upon to determine I.R.C. § 6700 fraud.

Response to Interrogatory No. 10. The United States objects to the use of the term "fraud" as stated in this request. I.R.C. § 6700 provides for penalties if an individual makes "false or fraudulent" statements regarding a material matter. Any false or fraudulent statements made by defendants are contained in their websites, correspondence sent by defendants to the IRS, defendants' membership handbook, petitions that defendants filed on behalf of employees before the Executive Office for Immigration Review and the U.S. Equal Employment Opportunity Commission, and any bankruptcy petitions filed by defendants on behalf of SAPP members.

Request for Production No. 3. Please provide a copy of any items referred to in your response to Interrogatory No. 9.

Response to Request for Production No. 3. The United States provided all documentation responsive to Interrogatory No. 9, with the exception of bankruptcy petitions and

5. Admit that Defendants state in their Membership Handbook that the federal income tax is only imposed on foreign activities.

Response: Denied. The handbook a) restates only what is found in the Internal Revenue Code, various decisions by the courts, and other legal authorities, and b) that Plaintiff has taken the statements out of context.

6. Admit that Defendants state in their Membership Handbook that "taxable income" is limited to income earned while living and working in foreign countries.

Response: Denied. The handbook a) restates only what is found in the Internal Revenue Code, various decisions by the courts, and other legal authorities, and b) that Plaintiff has taken the statements out of context. The actual, relevant statement in context, bolded and italicized, is noted in attachment #1, as referenced in Request for Admission #5.

"Further, the 'underlying regulations' referred to in the Membership Handbook for section 6012(a), at 26 CFR § 602.101(c) (1988 edition), lists the OMB Control number designated for § 1.1-1 of the Regulations (that is, then, the OMB control number designated for Section 1 of the Internal Revenue Code) as 1545-0067, identifying the form to be used for Section 1 as form 2555, entitled 'Foreign Earned Income.' Subsequently, for § 1.6012-0, the same form and OMB number are listed as to be used for section 6012(a)."

7. Admit that Defendants state in their Membership Handbook that a citizen or resident alien working within one of the 50 "union States" is not legally required to file a Form 1040.

Response: Denied. The handbook a) restates only what is found in the Internal Revenue

Code, various decisions by the courts, and other legal authorities, and b) that Plaintiff has taken the statements out of context. The entire quote -- which is a summary of the facts outlined in the response to Request for Admission #6.

- 8. Admit that Defendants state in their printed material or website that: "The tax on wages has absolutely nothing to do with the tax on income."

Response: Denied. The handbook a) restates only what is found in the Internal Revenue Code, various decisions by the courts, and other legal authorities, and b) that Plaintiff has taken the statements out of context. The entire quote from the handbook and on the website at www.save-a-patriot.org/basics/basics.html is noted as follows:

"The W-2 and 1099 'wage' information commonly reported by employers is a function of the tax on wages under subtitle C (not income tax) for the purpose of building credits towards social security. The tax on wages has absolutely nothing to do with the tax on income under subtitle A."

- 9. Admit that Defendants state in their printed material or website that: "The 'income tax' ... is an 'indirect' tax in the form of an 'excise' imposed on certain 'activities' or 'occupations' ..."

Response: Save-A-Patriot Fellowship denies, in that the handbook and website (and other printed material, insofar as it exists) merely restate what the Supreme Court has said in various decisions. The entire quote from the handbook and on the website at www.save-a-patriot.org/basics/basics.html is noted as follows:

"The 'income tax' under subtitle A is an 'indirect' tax in the form of an 'excise' imposed on certain 'activities' or 'occupations' and a liability to pay the tax must arise from statute."

- 10. Admit that Defendants state in their printed material or website that: The "wage tax ... may ... be considered mandatory, but only for the payor of the wages (the employer)

and even then, only if both the employer and the employee have voluntarily agreed (via application) to participate in the entitlement program ... [N]either can be compelled to participate."

Response: Denied. The handbook a) restates only what is found in the Internal Revenue Code, various decisions by the courts, and other legal authorities, and b) that Plaintiff has taken the statements out of context. The entire quote from the handbook and on the website at www.save-a-patriot.org/basics/basics.html is noted as follows:

"Certain legal requirements with regard to the wage tax under subtitle C may also be considered mandatory, but only for the payor of the wages (the employer) and even then, only if both the employer and the employee have voluntarily agreed (via application) to participate in the entitlement program. Since neither can be compelled to participate, compliance is said to be voluntary.

"The foregoing statements are NOT legal advice. They are merely factual statements about the law."

11. Admit that Defendants state in their printed material or website that: "the internal Revenue Code is limited in application. It cannot (per constitutional restriction) ... does not ... and never has been ... applied against the United States citizen who is living and working within the 50 states of the union. That individual is neither the subject nor the object of the tax - and neither is his income."

Response: Denied. The entire quote is a) taken out of context, and b) only appears on the website at www.save-a-patriot.org/files/view/agentdoc.html and at www.save-a-patriot.org/articles/confess.html as part of a reproduced article, "IRS Agent Confesses," from an edition of the Reasonable Action newsletter, which was originally printed in 1992. Said article contains political speech and opinion.

12. Admit that Defendants' statements with regard to federal income tax laws stated in paragraphs 5-11 is disseminated to members in the Membership Handbook, to the public at the website located at www.save-a-patriot.org and in the "Reasonable Action" newsletter published by Defendants.

Response: Save-A-Patriot Fellowship denies, in that the statements mentioned are misquoted, and, as clarified in responses to Requests for Admissions #5 through #11, appear sometimes in the *Reasonable Action* newsletter, sometimes on the website, OR sometimes in the membership handbook. None of the statements appear in all published documents.

13. Admit that Defendants publish a document titled Save-A-Patriot Fellowship "Program Agreement."

Response: Save-A-Patriot Fellowship admits that it publishes a "Program Agreement."

14. Admit that the "Program Agreement" published by Defendants includes the "Patriot Defense Fellowship," which provides monetary compensation, paid in federal reserve notes (dollars), to SAPF members that are criminally prosecuted for violating state or federal tax laws.

Response: Denied. The Patriot Defense Fellowship is a separate fellowship available to SAPF members. Further, Defendants do not offer any payments and the Patriot Defense Fellowship is not a fund, as the Request for Admission #14 implies. Rather, the Patriot Defense Fellowship members agree to help one another directly in recouping the legal expenses of defending themselves against criminal prosecution in tax cases only.

15. Admit that Defendants offer payments up to 15,000 federal reserve notes (dollars) if a

7

member is convicted in a criminal tax case as part of the "Patriot Defense Fellowship."

Response: Denied. The Defendants do not offer any payments. Rather, Patriot Defense Fellowship members agree to reimburse one another directly up to 10,000 federal reserve notes for costs related to defending themselves against prosecution and up to 5,000 federal reserve notes for costs related to filing an appeal for any conviction.

16. Admit that the reimbursement payments to members through the "Patriot Defense Fellowship" offered by Defendants is conditioned on the member's resistance to the criminal investigation, court proceedings, or any other government agency throughout the process.

Response: Save-A-Patriot Fellowship denies, in so far as Defendants do not offer any reimbursement payments. Rather, the Patriot Defense Fellowship members assist one another. The condition for this assistance is that "said member, to the best of his/her ability, resisted at every step throughout the criminal investigation, and all other agency and court proceedings, according to the terms of the PDF Program Agreement." In the context of that agreement, a vigorous legal defense is the "resistance" required.

17. Admit that Defendants provide a program called the "Victory Express" which reimburses SAPF members filing a claim for losses of property, cash, and incarceration resulting from the confiscation of the member's property by the IRS or prosecution of the SAPF member for a federal tax crime.

Response: Denied. The Defendants do not provide a program which reimburses members. Rather, Save A Patriot Fellowship members pledge to reimburse one another directly for the losses of property "incurred from illegal confiscation by the

IRS" and to help one another when incarcerated. "Victory Express" is a "what if" program and has never been in effect.

18. Admit that Defendants describe the Member Assistance Program called the "Victory Express" as giving members "insurance-like protection" against IRS levies and seizures and against criminal convictions for tax crimes. Defendants promise that the Member Assistance Program/Victory Express will pay members "above and beyond" the value of property seized by the IRS and will pay the beneficiaries of members convicted for tax crimes \$25,000 per year while the member is incarcerated.

Response: Denied. The Defendants do not reimburse members, and that Save-A-Patriot Fellowship "promise[s]" nothing, other than a pro rata claim will be mailed to each and every member. It is admitted that SAPF describes the contributions members make directly to each other to compensate for losses of property to the IRS as "insurance-like protection." Deny, in that "above and beyond" represents speculation and hope, rather than promises of fact. The phrase, "above and beyond" only occurs in a *fictional* article in the "Special Edition" of the Reasonable Action Newsletter and is qualified, furthermore, by the following footnote to the article: "The "press release" above is a fictional depiction only. It shows what could actually occur once the Save-A-Patriot Fellowship reaches its goal of 100,000 members." See attachment #4.

19. Admit that Defendants advertise that a SAPF member making a claim under the "Victory Express" would be entitled to 10 federal reserve notes (dollars) from every member of SAPF.

Response: Denied. Save-A-Patriot Fellowship members making an approved request are entitled only to having the claim mailed to each and every member.

20. Admit that Defendants advertise that a SAPF member making a claim under the "Victory Express" for property confiscated by the IRS would be entitled to a profit if the value of the property is less than the payments to the member for the claim.

Response: Denied.

21. Admit that Defendants make payments to members filing claims under the "Victory Express" following a determination by Defendants that the claimant resisted and delayed the investigation by the taxing agency or the criminal investigation.

Response: Denied. The Defendants do not offer any reimbursement payments. Rather, Save-A-Patriot Fellowship members assist one another directly. The condition for this assistance, if in pursuance of a "civil" claim, is that "said member, to the best of his/her ability, has taken advantage of every agency appeal procedure and court proceeding lawfully possible" These appeal and court procedures are provided for all Americans by presently existing statutes and regulations. The language of Request for Admission #21, "resisted and delayed the investigation of the taxing agency" is found nowhere within the Program Agreement.

The condition for membership assistance, if in pursuance of a "criminal" claim, is that "said member, to the best of his/her ability, resisted and delayed the tyrants at every step through the criminal investigation and all other agency and court proceedings . . . feasible." In the context of the agreement, a vigorous legal defense is the "resistance" required.

22. Admit that Defendants request that members retain physical proof detailing their resistance to the state or federal taxing agency for both the "Patriot Defense Fellowship" and the "Victory Express."

Response: Save-A-Patriot Fellowship admits, in so far as the word "resistance," as explained in the response to Request for Admission #21, refers to a member's vigorous legal defense.

23. Admit that Defendants provide a service called "Court Litigation Service" which provides documents and assistance to members for challenging a notice of lien/levy action sent by the IRS, filing suits for refund of taxes, and preparing bankruptcy petitions to stop IRS collection.

Response: Denied.

24. Admit that Defendants sell SAPF members an "Affidavit of Revocation and Rescission," which consists of letters to the Secretary of the United States Treasury purporting to revoke the member's application for a Social Security number.

Response: Save-A-Patriot Fellowship admits that an "Affidavit of Revocation and Rescission" is made available to SAPF members. It denies, however, that the "Affidavit" "consist[s] of letters to the Secretary of the United States Treasury purporting to revoke the member's application for a Social Security Number." The only letter sent to the Secretary of the United States Treasury states:

"Would you please be so kind as to forward the enclosed asseveration to the appropriate governmental office(s) so that proper notice can be taken thereof its content, and suitable action to comply with its mandate therewith. If I do not hear from you, or any of your delegates, within ninety days (90), I will presume that my statements are correct and that you do not have any rebuttal."

25. Admit that Defendants inform SAPF members that laws regarding the withholding of income tax from American citizens working in the 50 United States cannot be found in the Internal Revenue Code.

Response: It is denied that Save-A-Patriot Fellowship informs SAPF members that such

specified in § 1.1441-1(e)(4)(ii), regardless of when the certificate is obtained.

[T.D. 8734, 62 FR 53452, Oct. 14, 1997, as amended by T.D. 8804, 63 FR 72185, 72188, Dec. 31, 1998]

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53452, Oct. 14, 1997, § 1.1441-5 was revised, effective Jan. 1, 1999. By T.D. 8804, 63 FR 72183, Dec. 31, 1998, the effectiveness of § 1.1441-5 was delayed until Jan. 1, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 1.1441-5 Claiming to be a person not subject to withholding.

(a) *Individuals.* For purposes of chapter 3 of the Code, an individual's written statement that he or she is a citizen or resident of the United States may be relied upon by the payer of the income as proof that such individual is a citizen or resident of the United States. This statement shall be furnished to the withholding agent in duplicate. An alien may claim residence in the United States by filing Form 1078 with the withholding agent in duplicate in lieu of the above statement.

(b) *Partnerships and corporations.* For purposes of chapter 3 of the Code a written statement from a partnership or corporation claiming that it is not a foreign partnership or foreign corporation may be relied upon by the withholding agent as proof that such partnership or corporation is domestic. This statement shall be furnished to the withholding agent in duplicate. It shall contain the address of the taxpayer's office or place of business in the United States and shall be signed by a member of the partnership or by an officer of the corporation. The official title of the corporate officer shall also be given.

(c) *Disposition of statement and form.* The duplicate copy of each statement and form filed pursuant to this section shall be forwarded with a letter of transmittal to Internal Revenue Service Center, Philadelphia, PA 19255. The original statement shall be retained by the withholding agent.

(d) *Definitions.* For determining whether an alien individual is a resident of the United States see §§ 301.7701(b)-1 through 301.7701(b)-9 of this chapter. An individual with respect to whom an election to be treated as a resident under section 6013(g) is in effect is not, in accordance with § 1.1441-1, a resident for purposes of this section. For definition of the terms "foreign partnership" and "foreign corporation" see section 7701(a) (4) and (5) and § 301.7701-5 of this chapter. For definition of the term "United States" and for other geographical definitions relating to the Continental Shelf see section 638 and § 1.638-1.

(Approved by the Office of Management and Budget under control number 1545-0795)

(Secs. 1441(c)(4) (80 Stat. 1553; 26 U.S.C. 1441(c)(4)), 3401(a)(6) (80 Stat. 1554; 26 U.S.C. 3401(a)(6)), and 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954)

[T.D. 6500, 25 FR 12076, Nov. 26, 1960, as amended by T.D. 6908, 31 FR 16773, Dec. 31, 1966; T.D. 7277, 38 FR 12742, May 15, 1973; T.D. 7842, 47 FR 49842, Nov. 3, 1982; T.D. 7977, 49 FR 36834, Sept. 20, 1984; T.D. 8160, 52 FR 33933, Sept. 9, 1987; T.D. 8411, 57 FR 15241, Apr. 27, 1992]

§ 1.1441-6 Claim of reduced withholding under an income tax treaty.

(a) *In general.* The rate of withholding on a payment of income subject to withholding may be reduced to the extent provided under an income tax treaty in effect between the United States and a foreign country. Most benefits under income tax treaties are to foreign persons who reside in the treaty country. In some cases, benefits are available under an income tax treaty to U.S. citizens or U.S. residents or to residents of a third country.

See paragraph (b)(5) of this section for claims of benefits by U.S. persons. If the requirements of this section are met, the amount withheld from the payment may be reduced at source to account for the treaty benefit. See also § 1.1441-4(b)(2) for rules regarding claims of reduced rate of withholding under an income tax treaty in the case of compensation from personal services.

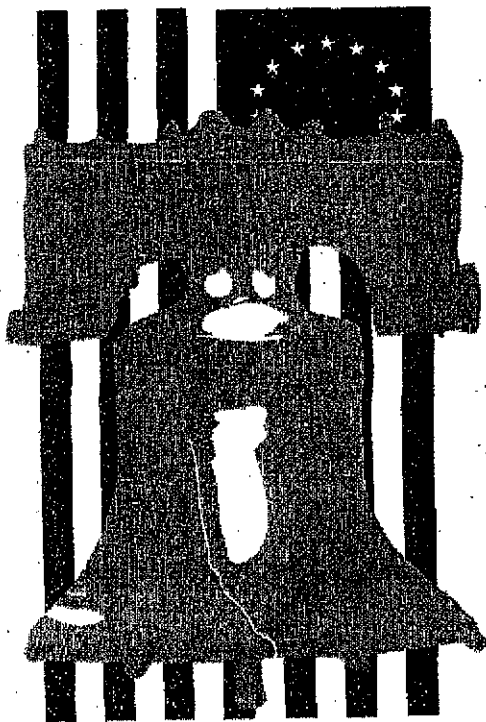
(b) *Reliance on claim of reduced withholding under an income tax treaty—(1) In general.* Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim that a beneficial owner is entitled to a reduced rate of withholding based upon an income tax treaty if, prior to the payment, the withholding agent can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441-1(e)(1)(ii) (not including 1.1441-1(e)(1)(ii)(A)(2) relating to documentary evidence). Except as otherwise provided in paragraph (b)(2) or (3) of this section, for purposes of this paragraph (b)(1), a beneficial owner withholding certificate described in § 1.1441-1(e)(2)(i) is valid only if it includes the beneficial owner's taxpayer identifying number and certifies that the taxpayer



Publication 515
(Rev. Dec. 1990)

Withholding of Tax on Nonresident Aliens and Foreign Corporations

This publication is a reprint of the 1989 revision. However, an *Addendum to Publication 515* has been added to the end of this publication. The addendum updates this publication through September 1990.



Introduction

If you control, or are responsible for, the receipt, disposal, custody, or payment of the items of income discussed in this publication, you must withhold income tax on them. If you are required to withhold the tax, you become the taxpayer liable for its payment, especially if the alien who receives the income fails to satisfy the U.S. tax liability. You may be a tenant, manager, broker, agent, fiduciary, or spouse, but if you meet the withholding requirements, you are a withholding agent liable for the tax discussed here.

If you need information on a subject not covered in this publication, check our other free publications or write to: Internal Revenue Service, Assistant Commissioner (International), Attention: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024. To order publications and forms, call our toll-free number 1-800-828-FORM(3676).

Withholding of Tax

Most income that is **effectively connected** with the conduct of a trade or business in the United States by a nonresident alien or a foreign corporation is subject to the same income tax rates that apply to U.S. citizens, residents, and domestic corporations. For an explanation of **effectively connected income**, see *Definition of effectively connected income* discussed under *Withholding Exemptions and Reductions*, later.

Investment and other fixed or determinable annual or periodic income from sources within the United States, such as wages, rents, dividends, and interest, that is **not effectively connected** with the conduct of a trade or business in the United States is subject to a 30% tax rate, or lower treaty rate, whether or not the taxpayer also engages in a trade or business in the United States.

For example, you must withhold at 30%, or lower treaty rate, on payment of rents, dividends, interest, and other fixed or determinable annual or periodic income from sources within the United States. If this income is effectively connected with the conduct of a trade or business in the United States, the person entitled to the income may claim exemption from withholding by filing a statement to that effect with you. See *Form 4224*, discussed later.

Different withholding rules apply to a partnership's payments of effectively connected income to foreign partners, and to dispositions of U.S. real property interests by foreign persons. See *Partnership Withholding on Effectively Connected Income*, and *U.S. Real Property Interest*, later.

Withholding Agent

Any person required to withhold the tax is a withholding agent. A withholding agent may be an individual, a trust, estate, partnership, corporation, government agency, association, or tax-exempt foundation, whether domestic or foreign. Withholding agents include U.S. citizens and residents, and also foreign nominees and fiduciaries that are residents of treaty countries that require their nationals to withhold additional U.S. tax according to tax treaty provisions. Generally, the person who pays or conveys the item of U.S. source income to an alien entity or individual, or to the entity or individual's foreign or domestic agent, is liable for the tax and must withhold.

It does not matter on whose behalf the withholding agent makes the payments. An agent may be making payments on the agent's own behalf as a lessee or mortgagor of property, or other obligor, or an agent may be paying on behalf of another fiduciary, etc. If the withholding agent appoints a

duly authorized agent to act on its behalf, the withholding agent is required to file a notice of the appointment with the Internal Revenue Service, Assistant Commissioner (International), 950 L'Enfant Plaza South, S.W., Washington, DC 20024. The notice must be filed before the first payment with respect to which the authorized agent is to act. If the duly authorized agent becomes insolvent or fails to deposit the withheld tax, the withholding agent is still liable.

For example, the local U.S. promoter of an entertainment event featuring a nonresident alien performer is usually the withholding agent. However, in the case of an extensive tour of the United States, a corporation or agency representing the performer may become the withholding agent for the entire tour if notice of the appointment is filed with the Internal Revenue Service.

Resident or domestic fiduciaries of trusts or estates are withholding agents on payments to beneficiaries who are nonresident alien individuals, foreign partnerships, or foreign corporations. Since the total amounts allocable to a beneficiary cannot be determined until the end of the tax year, the fiduciary must withhold tax on all distributions during the tax year. If tax is withheld before the income is actually distributed, withholding is not required when that income is later distributed.

The spouse of a nonresident alien, if the spouses are domiciled in a community property state, is required to act as a withholding agent for the nonresident alien's interest in the spouse's community income arising from within the United States.

A former spouse must withhold tax on alimony or other payments to the other former spouse, if the spouse receiving the payments is a nonresident alien at the time the payments are made.

Foreign nominees and fiduciaries. Under certain tax treaties, a foreign nominee or fiduciary in a treaty country may have to withhold additional U.S. tax from U.S. source dividends, interest, and other income.

For example, a Swiss nominee is required under Swiss law to withhold 30% of the gross dividend minus the 15% that has been withheld by the withholding agent in the United States.

Except for Canada, foreign nominees and fiduciaries must send the additional U.S. tax withheld to their own tax authorities, accompanied by whatever form may be prescribed by their national tax agencies. In turn, treaty tax authorities send the additional tax to the Internal Revenue Service Center, Philadelphia, PA 19255.

Canadian nominees and fiduciaries send the additional U.S. tax withheld, in U.S. currency, directly to the Internal Revenue Service Center in Philadelphia, accompanied by an annual Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*. The U.S. deposit rules, discussed later, do not apply to these foreign withholding agents.

For specific details on the procedures and types of U.S. source income on which additional withholding is required, foreign nominees and fiduciaries should contact the taxing authority of their country.

Persons Subject to Withholding

An individual who is not a U.S. citizen or resident is a nonresident alien. The term includes a nonresident alien fiduciary. Nonresident aliens are subject to the withholding provisions discussed in this publication.

Resident alien. An alien is considered a U.S. resident and not subject to the withholding provisions discussed in this publication if the alien meets either the green card test or the substantial presence test for the calendar year.

Green card test. An alien is a resident if the individual was a lawful permanent resident of the United States at any time during the calendar year. This is known as the "green card" test because these aliens hold immigrant visas ("green cards").

Substantial presence test. An alien is also considered a U.S. resident if the individual meets the substantial presence test for the calendar year. Under this test, the individual must be physically present in the United States on at least:

- 1) 31 days during the current calendar year, and
- 2) 183 days during the current year and the 2 preceding years, counting all the days of physical presence in the current year, but only $\frac{1}{2}$ the number of days of presence in the first preceding year, and only $\frac{1}{3}$ the number of days in the second preceding year.

You generally do not count days the alien is in the United States as a teacher, student, or trainee on an "F," "J," or "M" visa.

For more information on resident and nonresident status, the tests for residence, and the exceptions to them, see Publication 519, *U.S. Tax Guide for Aliens*.

Nonresident alien individuals married to U.S. citizens or resident aliens may choose to be treated as resident aliens for income tax purposes. However, these individuals are considered nonresidents for purposes of withholding taxes on nonresident aliens.

A foreign corporation or partnership is one that does not fit the definition of a domestic corporation or partnership. A **domestic corporation or partnership** is one that was created or organized in the United States, or under the laws of the United States or of any state.

Guam or Northern Mariana Islands corporations. A corporation created or organized in, or under the laws of, Guam or the Commonwealth of the Northern Mariana Islands (CNMI) is not considered a foreign corporation for the purpose of withholding tax for the tax year if:

- 1) At all times during the tax year less than 25% in value of the corporation's stock is owned, directly or indirectly, by foreign persons, and
- 2) At least 20% of the corporation's gross income is derived from sources within Guam or the CNMI for the 3-year period ending with the close of the preceding tax year of the corporation (or the period the corporation has been in existence, if less).

Virgin Islands and American Samoa corporations. A corporation created or organized in, or under the laws of, the Virgin Islands or American Samoa is not considered a foreign corporation for the purposes of withholding tax for the tax year if:

- 1) At all times during the tax year less than 25% in value of the corporation's stock is owned, directly or indirectly, by foreign persons,
- 2) At least 65% of the corporation's gross income is effectively connected with the conduct of a trade or business in the Virgin Islands, American Samoa, Guam, the CNMI, or the United States for the 3-year period ending with the close of the tax year of the corporation (or the period the corporation or any predecessor has been in existence, if less), and
- 3) No substantial part of the income of the corporation is used, directly or indirectly, to satisfy obligations to a person who is not a bona fide resident of the Virgin Islands, American Samoa, Guam, the CNMI, or the United States.

Note: The provisions discussed above for Virgin Islands and American Samoa corporations are extended to Guam and CNMI corporations when an implementing agreement is in effect between

the United States and each of those possessions. For further information, write to the Internal Revenue Service, Assistant Commissioner (International), 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

Resident of Puerto Rico. Even if an alien is a bona fide resident of Puerto Rico for the entire year and is required to pay taxes generally in the same way as a U.S. citizen, the alien is treated as a nonresident alien for the withholding rules explained here. This alien will be entitled to a credit against U.S. income tax for any income tax withheld under these rules.

A nonresident alien trustee, administrator, or executor of a trust or an estate is treated as a nonresident alien, even though all the beneficiaries of the trust or estate are citizens or residents of the United States.

Foreign private foundation. A private foundation that was created or organized under the laws of a foreign country is a foreign private foundation. Gross investment income from sources within the United States paid to a qualified foreign private foundation is subject to withholding of a 4% excise tax rather than the ordinary statutory 30% income tax. For more information on foreign private foundations, see Publication 578, *Tax Information for Private Foundations and Foundation Managers*.

Other foreign organizations, associations, and charitable institutions. An organization is not precluded from being exempt from income tax under section 501(a) of the Internal Revenue Code merely because it was formed under foreign law. Generally, you do not have to withhold tax on payments of income to such foreign tax-exempt organizations if the Internal Revenue Service has determined that they are not foreign private foundations.

Payments to these organizations, however, must be reported on Form 1042S, *Foreign Person's U.S. Source Income Subject to Withholding*, even though no tax is withheld.

You must withhold tax on the unrelated business income (as described in Publication 598, *Tax on Unrelated Business Income of Exempt Organizations*) of foreign tax-exempt organizations in the same way that you would withhold tax on similar income of nonexempt organizations.

Withholding Exemptions and Reductions

You should withhold any required tax if facts indicate that the individual, or the fiduciary, to whom you are to pay the income is a nonresident alien. If you fail to withhold tax, you are still liable for payment of the tax, especially if the alien fails to satisfy the U.S. tax liability. However, the alien may be allowed an exemption from withholding or a reduced rate of withholding as explained here.

Evidence of residence. If an individual gives you a written statement, in duplicate, stating that he or she is a citizen or resident of the United States, and you do not know otherwise, you may accept this statement and are relieved from the duty of withholding the tax. Or, an alien may claim U.S. residence by filing with you, in duplicate, Form 1078, *Certificate of Alien Claiming Residence in the United States*. Holders of visas that do not permit permanent residence in the United States should write to the Internal Revenue Service, Assistant Commissioner (International), Attention: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, for advice about filing a Form 1078 and, if filing Form 1078 is proper, about the need to make estimated tax payments.

A U.S. bank that is a payer of income subject to withholding may decide whether to accept an individual's proof of U.S. citizenship or residence given through a foreign bank to which income is paid. If the U.S. bank accepts this proof, it will not be liable for payment of tax if later it is shown that the individual was in fact a nonresident alien. If it accepts the proof, however, the U.S. bank must file an information return on Form 1042S showing the name, address, identifying number, and the particular securities of the actual owner, and indicating that it is relying on proof submitted by the foreign bank as its basis for not withholding.

Partnerships and corporations. You may rely on a written statement from a partnership or corporation claiming that it is not foreign as proof that the partnership or corporation is domestic and thus not subject to withholding tax. The statement must be given to you in duplicate. It must contain the taxpayer's employer identification number, the address of the taxpayer's U.S. office or place of business, and it must be signed by a member of the partnership or by an officer of the corporation. The official title of the corporate officer also must be given.

Where to send statements and Form 1078. You must forward the duplicate copy of each statement or form, together with a letter of transmittal, to the Internal Revenue Service Center, Philadelphia, PA 19255. You must keep the original statement or form for your records.

Withholding exemption for undue administrative burden. No withholding is required from fixed or determinable annual or periodic income paid to a foreign partnership or corporation engaged in trade or business in the United States if the foreign partnership or corporation establishes, to the satisfaction of the district director in whose district the related books and records are kept, that withholding would impose an undue administrative burden for the tax year and that the collection of the tax will not be jeopardized by not withholding.

The withholding exemption is available to a foreign partnership or corporation only if it receives a determination from the district director stating that the exemption applies and provides you with a copy of the determination.

Generally, withholding will impose an undue administrative burden only if:

- 1) The person entitled to the income, such as a foreign insurance company, receives income from you on securities issued by a single corporation, some of which is, and some of which is not, effectively connected with the conduct of a trade or business within the United States, and
- 2) It is unduly difficult to determine the effective connection because of the circumstances under which the securities are held.

Withholding requirements for inhabitants of the Virgin Islands. You need not withhold tax on payments to a person who at the time of payment reasonably expects to meet the income tax obligations for that particular income under section 28(a) of the Revised Organic Act of the Virgin Islands. That section provides that all persons who are permanent residents of the Virgin Islands will meet their U.S. tax obligations by paying to the Virgin Islands their tax on income from all sources both within and outside the Virgin Islands. For this purpose the term "person" includes an individual, partnership, or corporation.

To avoid withholding, a payee must notify you by letter, in duplicate (a separate letter is required each year), that the payee expects to meet U.S. income tax obligations on all income to be paid by you during the calendar year under section 28(a) of the Revised Organic Act of the Virgin Islands. This letter of notification authorizes you to pay the income for the calendar year without deducting the tax. You must forward the duplicate copy of

each letter of notification, with a letter of transmittal, to the Internal Revenue Service, Assistant Commissioner (International), Attention: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

Withholding on income effectively connected with a trade or business in the United States. Other than effectively connected taxable income of a partnership that is allocable to its foreign partners, or income from the disposition of a U.S. real property interest, you do not need to withhold tax on income if:

- 1) The income is effectively connected with the conduct of a trade or business in the United States (see definition, later) by the person entitled to the income,
- 2) The income is includible in the recipient's gross income, and
- 3) A statement claiming exemption, such as Form 4224, has been filed by the person entitled to the income, as discussed later.

This **no withholding** rule applies to income for services performed by a foreign partnership or foreign corporation (other than a corporation described in the following discussion), but does not apply to compensation for personal services performed by an individual.

Despite the no withholding rule, you must withhold tax from payments to a foreign corporation for services if all of the following apply:

- 1) The foreign corporation otherwise qualifies as a personal holding company for income tax purposes,
- 2) The foreign corporation receives amounts under a contract for personal services of an individual whom the corporation has no right to designate, and
- 3) 25% or more in value of the outstanding stock of the foreign corporation at some time during the tax year is owned, directly or indirectly, by or for an individual who has performed, is to perform or may be designated as the one to perform, the services called for under the contract.

Definition of effectively connected income. Generally, when a nonresident alien individual or foreign corporation engages in a trade or business in the United States, all income from sources within the United States other than fixed or determinable annual or periodic income (such as wages, interest, dividends, and rent) and certain similar amounts is considered effectively connected with a U.S. business. Fixed or determinable annual or periodic income and similar amounts may or may not be effectively connected with a U.S. business.

The factors to be considered in establishing whether fixed or determinable annual or periodic income and similar amounts from U.S. sources are effectively connected with a U.S. trade or business include:

- 1) Whether the income is from assets used in or held for use in the conduct of that trade or business, or
- 2) Whether the activities of that trade or business were a material factor in the realization of the income.

Form 4224. Nonresident alien individuals, fiduciaries, foreign partnerships, or foreign corporations engaged in trade or business in the United States at any time during their tax year must notify you as withholding agent as to the items of income for the tax year that will be effectively connected with a trade or business in the United States. They can do this by using Form 4224, *Exemption from Withholding of Tax on Income Effectively Connected with the Conduct of a Trade or Business in the United States*.

Withholding on certain gambling winnings. Winnings of a nonresident alien from wagers on blackjack, baccarat, craps, roulette, or big-6 wheel are not subject to income tax or 30% withholding tax.

Investment Income of Foreign Governments and International Organizations

Investment income earned by a foreign government in the United States, subject to certain exceptions, is not included in the gross income of the foreign government and is not subject to U.S. withholding tax. Investment income means income from investments in the United States in stocks, bonds, or other domestic securities; financial instruments held in the execution of governmental financial or monetary policy; and interest on money deposited by a foreign government in banks in the United States.

Income received by a foreign government from the conduct of a commercial activity or from sources other than those stated above, is subject to withholding. In addition, income received from a controlled commercial entity (including gain from the disposition of any interest in a controlled commercial entity) and income received by a controlled commercial entity is subject to withholding.

International organizations are also exempt from withholding tax on income from investments in the United States in stocks, bonds, or other domestic securities, and from interest on money deposited in the United States.

Form 8709. Foreign governments and international organizations may file Form 8709, *Exemption From Withholding on Investment Income of Foreign Governments*, with you to claim exemption from withholding on investment income. Form 8709 is not required by the Internal Revenue Service, and there is no obligation on the foreign government or international organization to file the form with you, or on you to ask for the form to be filed. However, as the withholding agent, you must determine if the exemption from withholding is allowable. If you fail to obtain Form 8709 and fail to establish otherwise that the income was exempt from withholding, you will be liable for the tax.

You may request Form 8709 from the government or organization before you pay the income. If you do not receive a completed Form 8709, you may withhold. If you obtain Form 8709, you will be protected from liability except if either of the following applies:

- 1) You know or have reason to know that the government or organization is not eligible for the exemption from taxation under Internal Revenue Code section 892 either because it does not qualify as a foreign government or international organization, or the income does not qualify for the exemption, or
- 2) You know or have reason to know that any of the facts or assertions on Form 8709 may be false.

If you accept Form 8709 and later determine that one of the above situations applies, you must promptly notify, in writing, the Director, Office of Compliance, Assistant Commissioner (International), 950 L'Enfant Plaza South, S.W., Washington, DC 20024, and must withhold on any amounts not yet paid. You must also withhold if the office shown above notifies you that the government or organization or the income may not be eligible for exemption from taxation.

Do not send Form 8709 to the IRS. Keep the form for at least 4 years after the end of the year in which the income to which it applies is paid.

Treaty Benefits

Residents of certain foreign countries may be entitled to reduced rates of, or exemption from, tax under an applicable tax treaty between the country of which they are residents and the United States. These foreign residents, generally, must notify you as withholding agent that they are residents of a country with which the United States has an income tax treaty and that they, therefore, qualify for reduced rates of, or exemption from, income tax withholding.

The exemptions from, or reduced rates of, U.S. tax vary between countries and as to specific items of income. As a result, before disbursing this income, you must consult the provisions of the tax treaty that apply to the country of the nonresident taxpayer to whom you are making the payment.

If an applicable treaty does not cover a particular type of income, or if no treaty exists with the country of which the alien is a resident, you must withhold on the income at the statutory rates shown in this publication. If the payment of income is covered by a treaty, however, you must follow the provisions of that treaty.

If a nonresident alien individual has made an election with his or her U.S. citizen or resident spouse to be treated as a U.S. resident for income tax purposes, the nonresident alien may not claim to be a foreign resident to obtain the benefits of a reduced rate of, or exemption from, U.S. income tax under an income tax treaty.

Tables at the end of this publication show the countries with which the United States has income tax treaties and the rates of withholding applicable in cases where all conditions of the particular treaty articles are satisfied.

Foreign payee's status. If, as a withholding agent, you are not able to easily determine the relationship between yourself and a foreign payee or the relationship of a foreign payee and a foreign corporation, you should withhold at a rate of 30%. The 30% rate also applies if you are unable to determine whether the alien is a nonresident or a resident of the United States.

Form 1001. A foreign payee may claim an exemption or reduced tax rate by filing Form 1001, *Ownership, Exemption, or Reduced Rate Certificate*. In the case of income (other than dividends and compensation for personal services) that is subject to a reduced rate of tax or exemption from withholding under an income tax treaty, the payee should file Form 1001 as soon as practicable for any period of 3 successive calendar years during which such income is expected to be received. For interest on coupon bonds, the payee should file the form each time a coupon is presented for payment.

The payee must use a separate Form 1001 for each type of income, except for income received from a trust, estate, or investment account. A payee who receives income from a trust, estate, or investment account uses a separate Form 1001 for each different trust, estate, or investment account, regardless of how many types of income are received.

If, after filing Form 1001, an owner ceases to be eligible for the benefits of the treaty for such income, the owner must promptly notify you as the withholding agent by letter. When any change occurs in the ownership of the income as recorded on the books of the payer, the exemption from, or reduction in the rate of, withholding of U.S. tax no longer applies unless the new owner of record also is entitled to a reduced or exempt rate of tax under a treaty and properly files Form 1001 with you.

If you have reason to know that an owner of income is not eligible for treaty benefits claimed on a Form 1001, you should disregard the form and withhold tax at the statutory rate. However, prior to the time when you have reason to have

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For Additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW Washington, DC 20503.

1. Agency/Subagency originating request SOCIAL SECURITY ADMINISTRATION	2. OMB control number a. 0980-0066 b. <input type="checkbox"/> None
3. Type of information collection (check one) a. <input type="checkbox"/> New collection b. <input checked="" type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number <i>For b-f, note item A2 of Supporting Statement instructions</i>	4. Type of review requested (check one) a. <input checked="" type="checkbox"/> Regular b. <input type="checkbox"/> Emergency-Approval requested by: c. <input type="checkbox"/> Delegated 5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> 6. Requested expiration date a. <input checked="" type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify

7. Title
 Application for a Social Security Card

RECEIVED
 DEC 22 1997
 OMB DOCKET LIBRARY

8. Agency form number(s) (if applicable)
 SS-5

9. Keywords
 Social Security Benefits, Identification Card

10. Abstract

The information collected on Form SS-5 is used by the Social Security Administration to assign Social Security Numbers so that individuals may obtain employment, report earnings, open bank accounts, pay taxes, apply for benefits and for other purposes. The affected public consists of individuals who apply for Social Security Numbers.

11. Affected public (Mark primary with "P" and all others that apply with "X") a. <input checked="" type="checkbox"/> Individuals or households b. <input type="checkbox"/> Business or other for-profit c. <input type="checkbox"/> Not-for-profit institutions d. <input type="checkbox"/> Farms e. <input type="checkbox"/> Federal Government f. <input type="checkbox"/> State, Local or Tribal Government	12. Obligation to respond (Mark primary with "P" and all others that apply with "X") a. <input checked="" type="checkbox"/> Voluntary b. <input checked="" type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual reporting and recordkeeping hour burden a. Number of respondents: 18,000,000 b. Total annual responses: 16,000,000 1. Percentage of these responses collected electronically: 0 % c. Total annual hours requested: 2,275,000 d. Current OMB inventory: 2,000,000 e. Difference: 275,000 f. Explanation of difference: 1. Program change: 0 2. Adjustment: +275,000	14. Annual reporting and recordkeeping cost burden (In thousands of dollars) a. Total annualized capital/startup costs: N/A b. Total annual costs (O & M) c. Total annualized cost requested d. Current OMB inventory e. Difference f. Explanation of difference: 1. Program change 2. Adjustment

15. Purpose of information (Mark primary with "P" and all others that apply with "X") a. <input checked="" type="checkbox"/> Application for benefits b. <input type="checkbox"/> Program evaluation c. <input type="checkbox"/> General purpose statistics d. <input type="checkbox"/> Audit e. <input type="checkbox"/> Program planning or management f. <input type="checkbox"/> Research g. <input type="checkbox"/> Regulatory or compliance	16. Frequency of recordkeeping or reporting (check all that apply) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input checked="" type="checkbox"/> Reporting 1. <input checked="" type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe)
--	---

17. Statistical methods Does this information collection employ statistical methods? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	18. Agency contact (person who can best answer questions regarding the content of this submission) Name: Frederick W. Brickenkamp Phone: (410) 965-4145
---	--

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9.

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8 (b)(3), appear at the end of the instructions. The certification is to be made with reference to those regulatory provisions as set forth in the instructions.

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It uses plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention periods for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8 (b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, or mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of the instructions);
- (i) It uses effective and efficient statistical survey methodology; and **
- (j) It makes appropriate use of information technology.

** This information collection does does not employ statistical survey methods.

If you are unable to certify compliance with any of these provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Program Official (SSA Reports Clearance Officer) <i>Nicholas J. Castiglione</i>	Date 12/19/97
Signature of Senior Official or Designee <i>[Signature]</i>	Date 12/19/97

were found guilty of tax evasion.

(3) Defendants Knew or Had Reason to Know of the Falsity of the Statements.

In its opposition, SAPF incorrectly argues that the government must prove defendants know their statements are false, and attempts to graft an element of willfulness into establishing violations of 6700. The gravamen of SAPF's contention is that the United States can never establish defendants know their statements are false because they blindly insist on the legality of their position. This is not the standard, and in fact defendants' insistence on the legality of their position supports enjoining them.²⁸

(5) Defendants Customers Understate Their Tax Liabilities.

SAPF argues that in order to understate a liability its customers must report actual figures. Thus, SAPF's claim is that their customers cannot understate anything by reporting nothing—because they file no tax return at all—SAPF implicitly argues that there is a difference between reporting “nothing” or a zero (amount as they suggest).

SAPF's premise is unsound and untrue. First, their customers have filed returns reporting all zeroes.²⁹ Second, SAPF's customers who do not file returns are understating their income because they have a liability which they fail to report. With respect to withholding of income and employment taxes, all employees residing in the United States are subject to withholding taxes and Social Security (FICA) contributions, which employers must collect “at

²⁸ *Bell v. United States*, 414 F.3d 474 (3rd Cir. 2003)(noting that the promoter's instance on the legality of his position warranted an injunction.)

²⁹ Second Rowe Dec. ¶28, Exh. 48.
1822458.1

6. As stated during that deposition, which is attached as Exhibit 36, I had only looked at the first page of defendants' website and some portions of their membership handbook.

7. I had attempted to contact retired Revenue Agent Gary Metcalfe to determine if he could appear for the deposition but was unable to do so prior to February 14, 2006.

8. After the deposition, I have since reviewed the administrative file associated with this case.

9. I had attached as Exhibit 34 to my previous declaration a statement sent by SAPF requesting that defendants' customers send money to an individual that has suffered a loss under their "Patriot Defense Fellowship."

10. Attached as Exhibit 37 is a copy of defendants agreement related to the Patriot Defense Fellowship.

11. Attached as Exhibit 38 is a copy of a privacy act request sent by defendants requesting information on behalf of an SAPF customer.

12. Attached as Exhibit 39 is a copy of a privacy act request sent by defendants requesting information on behalf of an SAPF customer.

13. The letters attached as Exhibits 38-39 are all signed by John B. Kotmair, Jr.

14. The letters attached as Exhibits 38-39 requested that the IRS provide the source of the income related to a "NOTICE OF DEFICIENCY" sent to an SAPF customer.

15. The letters sent from the IRS Disclosure Officers, (Exhibit 38-39), indicate that the privacy act request was mailed to the individuals and not to Mr. Kotmair.

16. Attached as Exhibit 40 is a copy of a letter sent to SAPF member Earl Werline from the IRS and a response from Mr. Kotmair. The letter sent from the IRS, (Exhibit 40) states that

the arguments raised by Mr. Werline in his correspondence from Mr. Kotmair are frivolous, in a letter dated March 13, 2006. Mr. Kotmair responded to the letter from the IRS on April 19, 2006. Mr. Kotmair's letter states that Mr. Werline revoked his Social Security number, did not file an income tax return for 2003, and is "not a member of a class of person Congress specifically made liable for the tax."

17. Earl Werline was a complainant in the cases reported as *Werline v. Public Service Gas & Electric Co.*, 7 OCAHO 955 (August 1, 1997) and 7 OCAHO 935 (May 27, 1997). Those cases state that Mr. Werline presented a Statement of Citizenship and Affidavit of Constructive Notice to his employer. The cases also state that Mr. Werline was represented by John B. Kotmair, Jr.

18. Attached as Exhibit 41 is a copy of a letter sent to the IRS by Mr. Kotmair on behalf of an SAPF customer. In the letter Mr. Kotmair requests a conference with IRS Appeals to dispute his customer's individual tax liabilities. Exhibit 41 also contains a letter sent by Mr. Kotmair in response to a notice from the IRS stating that the arguments raised in a previous correspondence he sent are frivolous.

19. Attached as Exhibit 42 is a copy of a letter sent to an SAPF member from the IRS, and a response from Mr. Kotmair. The letter, (Exhibit 42), sent from the IRS, dated April 3, 2006, states that the arguments raised by Mr. Kotmair are frivolous. Mr. Kotmair responded on April 17, 2006. Mr. Kotmair's letter states that the SAPF member did not file an income tax return for 2002 and is "not a member of a class of person Congress specifically made liable for the tax."

20. Attached as Exhibit 43 is a copy of a page from save-a-patriot.org's website. This webpage states that Social Security "can only be 100% voluntary (and is)" and that some leaders for the "patriot" movement "continue to file tax returns (not required by law of a citizen living and working with the States of the union.)"

21. Attached as Exhibit 44 is a copy of a written protest to the IRS from Mr. Kotmair on behalf of an SAPF member dated June 14, 2000, stating that the SAPF member denies having any requirement to file a tax return for 1998.

23. Attached as Exhibit 45 is a copy of a written protest from Mr. Kotmair on behalf of the same SAPF member referenced in paragraph 21, which contests a levy for 1998.

22. Attached as Exhibit 46 is a copy of a privacy act request sent by Mr. Kotmair on behalf of the same SAPF member referenced in paragraph 21.

23. Attached as Exhibit 47 is a copy of a written protest sent by Mr. Kotmair on behalf of the taxpayer referenced in paragraph 21. Mr. Kotmair requested a hearing on behalf of the SAPF member and states that he denies any requirement to file a tax return.

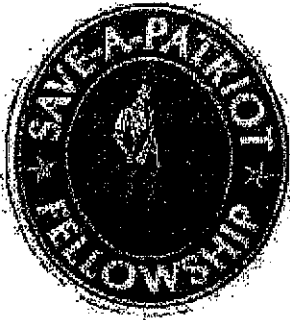
26. Attached as Exhibit 48 is a true and correct copy of the tax return of the SAPF member referenced in paragraph 21 filed for 1998. The tax return attached as Exhibit 47 contains all zeroes, including the box requiring the reporting of wage income. The SAPF member attached to his return a Form W-2 indicating that he received \$50,361 of wage income in 1998.

Under 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated this 21st day of July, 2006.



Joan Rowe
Revenue Agent
Internal Revenue Service



Protection • Education • Fellowship

Patriot Defense Fellowship

Post Office Box 91, Westminster, Maryland 21158 • 410-857-4441
Together We Stand — Or — Separately You Will Be Stood On!!

Program Agreement

The Patriot Defense Fellowship (PDF) is designed to help the SAP Fellowship member under criminal attack by IRS and state taxing agencies with the needed support to help defray the cost of his/her criminal defense.

ELIGIBILITY

Membership in the Patriot Defense Fellowship is open to members of the Save-A-Patriot Fellowship only. The member must be in good standing, up to date with all of his/her SAP Fellowship obligations, before his/her application will be accepted and validated.

MEMBER'S ID NUMBER

The PDF Identification Number is separate and distinct from the SAP Fellowship Number. The PDF Number is used on all Patriot Defense Fellowship correspondence. Whenever the member is making a PDF assessment payment to a claimant, the member uses his/her PDF I.D. Number only.

COVERAGE OFFERED

Coverage under the Patriot Defense Fellowship Program is extended to criminal defense in tax cases only: a maximum of 10,000 FRNs toward trial expenses, and 5,000 FRNs toward any appeal (if convicted). Claims are apportioned among the PDF membership by SAPF Headquarters only after SAPF Headquarters has determined that the Claimant member was actually prosecuted

according to the terms of the PDF Program Agreement, and said member, to the best of his/her ability, resisted at every step throughout the criminal investigation, and all other agency and court proceedings.

CLAIMANT

Claimant must be a member in good standing whose annual participation fee is paid up to date in both the Patriot Defense and Save-A-Patriot Fellowships, and who has physical proof of the foregoing described resistance.

CLAIMS

All claims are applied for by using a PDF Claim form from SAPF Headquarters. Proof of Claim must accompany the completed PDF Claim form. To prevent unprincipled persons from taking unfair advantage of Fellowship members, a Claimant must be a member in good standing six (6) months before the occurrence of any of the following: 1) the IRS or any state criminal investigation division reading said claimant his/her rights, and/or 2) before the notification of an ongoing criminal investigation by the IRS or state criminal investigation division, whichever comes first. All Claims will be processed by SAPF Headquarters as soon as possible after receipt of a properly completed Claim form. A Claim cannot be submitted to SAPF Headquarters until the Patriot member has actually been indicted by a state or federal grand jury, or charged

Exhibit 37

382

on an information brought by a U.S. Attorney, state or local prosecutor, and must contain verifiable evidence of the actual money spent on the Patriot member's defense.

TRIAL / APPEAL

The Trial and Appeal (if any) will be handled as separate claims, and will not be assessed at the same time.

MEMBER'S RESPONSIBILITY

Upon receipt of a Claim assessment containing the apportioned amount to be paid (unless otherwise instructed by SAFP Headquarters), members have 35 days to forward their portion of the claim (in FRNs or a totally blank Postal Money Order) directly to the Claimant or his/her assign. Members must not use their name and address on the envelope used to convey the assessment payment, only their PDF ID Number (the return address should be that of SAFP Headquarters).

CLAIMANT'S RESPONSIBILITY

Upon receipt of any claim payment the Claimant or his/her assign must carefully compile all of the claim statements and UPS them to SAFP Headquarters, 12 Carroll Street, Westminster, Maryland 21157, Tel: (410) 857-4441, within 30 days. SAFP Headquarters' telephone number must be used along with SAFP Headquarters' address for UPS purposes. Any member whose Claim statements are not returned to SAFP Headquarters by the Claimant or his/her assign, will be terminated for violation of the Patriot Defense Fellowship Agreement, and must show proof of error or give good reason to be reinstated.

VALIDITY OF CLAIM

For a Claim to be valid, all actions must be initiated by the IRS or state taxing agency, not the Patriot member.

Applicant's SAFP ID # _____

Application: _____ Renewal: _____ (Check one)

Having read the before-going conditions, I agree with the terms and conditions, and by my signature, herein set forth, I make application for membership (Please print or type and use Mr., Mrs., Ms., Miss).

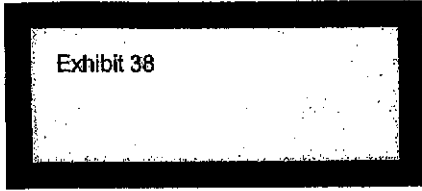
Name of applicant	Street	City	State	Zip Code	Telephone No.	E-mail Address
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I have enclosed the annual participation fee of 30 FRNs, tendered in Federal Reserve Notes (FRNs) or a totally blank Postal Money Order. I understand that my membership will lapse one year from this date, and if the annual participation fee is not tendered before the date entered below in the following year, all rights, privileges, and claims of any kind under this Patriot Defense Fellowship Agreement will be forfeited. I also understand that notification of change of address is my responsibility.

Signature of applicant _____

Date assigned: _____ Name of SAFP IR: _____

Concerning:
Steve J. Woodrow
22549 Downing St.
Moreno Valley, CA 92553
IRS Reference Number: [REDACTED]



Person making response via attached Power-of-Attorney pursuant to 26 CFR § 301.6103(c)-1, 26 CFR § 601.502(a), 26 CFR § ~~601.502(b)(5)(B)~~ and Treasury Circular No. 230, at § ~~107(c)(1)(v)~~

John B. Kotmair, Jr., Representative Number 2605-47815R
Post Office Box 91, Westminster, MD 21158

November 18, 2005

Certified Mail No. 7005 1160 0004 9957 0321

Scott B. Prentky, Director
Internal Revenue Service Center
1973 Rulon White Blvd.
Ogden, UT 84404

RECEIVED IN CORRES
IRS - OSC - 015

NOV 28 2005

Re: August 30, 2005, reply to my July 21, 2005, Privacy Act request.

OGDEN, UTAH

Dear Mr. Prentky:

On July 21, 2005, Mr. Woodrow submitted a Privacy Act request for "copies of all the authenticated documents, executed pursuant to IR Code Section 6065, identifying the source from which the income relating to the Notice(s) of Deficiency, dated April 2003 and June 2005, for the years 2002 and 2003, was derived."

In response to that request, Mr. Woodrow received the enclosed letter from the Disclosure Office which claims that Internal Revenue Code (IRC) § 6065 does not apply to documents prepared by the IRS, despite the clear statutory language to the contrary.

Further, the Disclosure Specialist contends that Mr. Woodrow should direct any questions regarding the "authentication" of the documents used to the "payers who maintain these documents." Of course, Mr. Woodrow is not interested in documents which any such payers might possess. Rather, he has requested records which the IRS has used to generate the Notice(s) of Deficiency against him. To the extent that they exist, they must be in possession of the Internal Revenue Service. Therefore, only the IRS could possibly give him access to them.

Either the IRS possesses records which have been authenticated pursuant to IRC § 6065, or they do not. Mr. Wilder, the Disclosure Specialist, states in his letter that he has "enclosed the documents that would be considered most responsive to [Mr. Woodrow's] request." Yet, he has provided no copies of any authenticated records. Therefore, unless I hear otherwise within 30 days of your receipt of this letter, it must be presumed that the IRS possesses no authenticated

NOV 29 2005

NOV 28 2005

384

That is, I am under penalty of perjury records submitted by any person which establish the source from which Mr. Woodrow's "income" was derived, with respect to the "Notice(s) of Deficiency," dated April 5, 2005 and June 21, 2005, for the years 2002 and 2003.

Further, unless I hear otherwise within 30 days of your receipt of this letter, it will be presumed that the documents provided (copies enclosed) were the *only* documents relied on to establish the "source" from which Mr. Woodrow's "income" was derived, with respect to the "Notice(s) of Deficiency," dated April 5, 2005 and June 21, 2005, for the years 2002 and 2003.

I hereby declare that:

1. I am not currently under suspension or disbarment from practice before the Internal Revenue Service or other practice of my profession by any other authority;
2. I am aware of the regulations contained in Title 31 CFR part 10 concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries and others;
3. I am authorized to represent the individual identified in the power of attorney;
4. I am an individual described in Title 26 Code of Federal Regulation Part 600, at 26 CFR § 601.502(a)(1) and (2), §601.502(b)(5)(ii) and in Circular 230 at §10.7(c)(1)(iv); and
5. the original attached Power-of-Attorney is valid under the laws of the State of Maryland.

Under penalty of perjury, I declare that the foregoing is true to the best of my knowledge and belief.


John B. Kotman, Jr.

Enclosures: Original Power-of-Attorney; copy of August 30, 2005, reply; copy of page one of Mr. Woodrow's July 21, 2005 Privacy Act request; copy of the documents disclosed on August 30, 2005.

cc: Steve J. Woodrow

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IRS - OSC -615
NOV 28 2005
OGDEN UTAH

**PRIVACY ACT RELEASE FORM
AND POWER OF ATTORNEY**

Because of the Privacy Act of 1974, written authorization is required by the individual before any information can be given to another individual or organization.

Pursuant to the authority in 26 CFR 301.6103(c)-1, 26 CFR ~~601.502(a)(4)~~ and (2) 26 CFR ~~601.502(b)(5)(ii)~~ and Treasury Department Circular No. 230, at § 10.7(c)(1)(iv), this form will give John B. Kotmair, Jr., (Representative Number: 2605-47815R), of Post Office Box 91, Westminster, Maryland 21158, permission to investigate this matter for me.

I, Steve Woodrow, of 22549 Downing Street, Moreno Valley, California, Internal Revenue Reference Number ~~XXXXXXXXXX~~ a member of the Save-A-Patriot Fellowship, do hereby give John B. Kotmair, Jr., the Fiduciary of Save-A-Patriot Fellowship, permission to represent, inquire of and procure from the Internal Revenue Service any and all of the records, pertaining to taxes of any kind that agency alleges I owe, to include income tax returns (1040, 1040A, related forms and assessments) maintained within any of the internal revenue Service Offices, regarding the years 2001 through and including 2005.

On this 7th day of November, 2005, I hereby certify that I am the individual making this Power of Attorney, to John B. Kotmair, Jr., and that I have a "material interest" in the information within the documents sought.

Steve Woodrow
Steve Woodrow

STATE OF CALIFORNIA _____)

COUNTY OF LOS ANGELES _____)

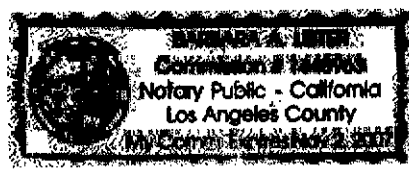
RECEIVED IN CORRES
INS - OBC - 615
NOV 28 2005

On 11/7/05 before me BARBARA A. LISTER NOTARY PUBLIC OGDEN UTAH

personally appeared STEVE WOODROW

Notary Seal

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/she/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS MY HAND AND OFFICIAL SEAL.

Barbara A. Lister
NOTARY PUBLIC



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

August 30, 2005

Steve J. Woodrow
22549 Downing Street
Moreno Valley, CA 92553

Dear Mr. Woodrow:

This is in response to your Privacy Act request dated July 21, 2005, and received in our office August 3, 2005.

In response to your request, internal Revenue Code (IRC) 6065 does not require the Internal Revenue Service to authenticate, verify, or certify documents. No documents were found responsive to your request, as IRC 6065 refers to documents required to be made by taxpayers or other parties (e.g. return preparers).

We have enclosed the documents that would be considered most responsive to your request, consisting of nine pages. If you have questions on the "authentication" of the documents used in preparing the Notice of Deficiency, you should contact the payers who maintain these documents. Subsequent inquiries in this regard will not be considered.

This completes all action on your request by this office.

If you have any questions regarding this correspondence, Case Control Number KW0504261, contact Kenneth Wilder, #7951706383, at (801) 620-7643 between the hours of 8:00 a.m. and 4:30 p.m. Mountain Time or write to Internal Revenue Service, Ogden Campus Disclosure Office, M/S 7000, PO Box 994.1 Ogden, UT 84409.

Sincerely,

Kenneth Wilder
Disclosure Specialist

Enclosure(s)

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IRS - OSC - 615

NOV 2 8 2005

OGDEN, UTAH

387

**PRIVACY ACT REQUEST
FOR NOTIFICATION AND ACCESS**

Steve J. Woodrow
22549 Downing St.
Moreno Valley, CA 92553
IRS Reference Number: 568-08-6958

July 21, 2005

Certified Mail No. 7004 2890 0004 1912 3097

JaNean Ellis, Disclosure Officer
Internal Revenue Service Center
P.O. Box 9941, MS 7000 OSC
Ogden, UT 84409

Dear Ms. Ellis:

This is a request under the Privacy Act, 5 USC 552a.

This is my firm promise to pay costs up to \$17.00 for duplicating the documents requested below, as required by 5 USC Section 552a(f)(5). If costs are expected to exceed the stated amount, please send me an estimate of costs, pursuant to 26 CFR § 601.702(e)(3). Please reply within 10 days of your receipt of this request and provide me with instructions on perfecting any errors, pursuant to IRM § 11.3.18.3(5). Otherwise, please process it in a timely manner pursuant to IRM § 11.3.18.3(4), not later than 30 days of your receipt, pursuant to IRM § 11.3.18.3(15).

If you find this request imperfect in any way please provide me with a copy of all the rules necessary for me to perfect this request. In addition please advise me of any and all procedures required to exhaust all administrative remedies before requesting judicial review.

Please be advised that I am requesting records pursuant to 5 USC 552a(d)(1). I am not requesting any amendment of records.

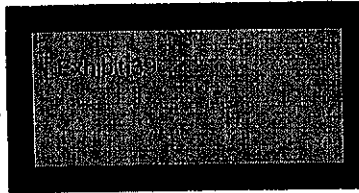
Please forward copies of all the authenticated documents, excluded pursuant to IR Code Section 6062, identifying the source from which the income relating to the NOTICE OF DEFICIENCY dated April 5, 2005 and June 21, 2005, for the years 2002 and 2003, was derived. Please search the following systems of records for the documents requested:

Treasury/IRS 22.032,
Individual Microfilm Retention Register, D:R:R;
Treasury/IRS 22.034,
Individual Returns Files, Adjustments and Miscellaneous Documents File;
Treasury/IRS 22.060,
Automated Non-Master File (ANMF);
Treasury/IRS 22.061,

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IRS - OSC -615
NOV 28 2005

OGDEN, UTAH

Concerning:
Jon A. Stratton
308 North 1st
Krum, TX 76249
IRS Reference Number: [REDACTED]



Person making response via attached Power-of-Attorney pursuant to 26 CFR § 301.6103(c)-1, 26 CFR § 601.502(a), 26 CFR § 601.502(b)(5)(ii) and Treasury Circular No. 230, at § 10.7(e)(4)(iv)

John B. Kotman, Jr., Representative Number 2605-47815R
Post Office Box 91, Westminster, MD 21158

December 18, 2005

Certified Mail No. 7005 1160 0004 9956 5396

Scott B. Prentky, Director
Internal Revenue Service Center
1973 Rulon White Blvd.
Ogden, UT 84404

RECEIVED IN CORRES
IRS - OGC-817
DEC 28 2005

Re: September 30, 2005, reply to Mr. Stratton's July 13, 2005, Privacy Act request

BOENAUT419

Dear Mr. Prentky:

In your Disclosure Specialist's September 30, 2005, reply to Mr. Stratton's July 13, 2005, Privacy Act request, she stated that the documents enclosed with her reply—"information returns master file transcripts and the examination file pertaining to the 2003 tax period"—were the only documents responsive, and that "no other documents" were responsive to his request.

Enclosed with Ms. Berrie's letter were copies of a Form 4549 and a Form 886-A, which had already been sent to Mr. Stratton as part of the Notice of Deficiency. Neither of these forms contained any mention of the "sources" of the income Mr. Stratton is alleged to have received. Also included was a copy of the letter 886-A sent to Mr. Stratton on February 11, 2004; this document also contains no indication of the "sources" of the income Mr. Stratton is alleged to have received. Two other documents were enclosed, a Form 1261 and a Form 1206, which also do not appear to contain any indication of the "sources" of the income Mr. Stratton is alleged to have received.

Finally, Ms. Berrie included three pages of computer printouts which apparently represent the "information returns master file transcripts" she mentioned in her letter. A copy of those three pages is enclosed.

Although Mr. Stratton requested all the authentic documents, executed pursuant to IR Code Section 6009, identifying the "sources" from which the income relating to the NDTCG

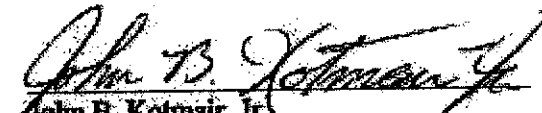
CONFIDENTIAL was derived. Disclosure should be made to Karen Berrie, apparently, is unable to produce any additional documents.

Therefore, unless I hear otherwise within 30 days of your receipt of this letter, it will be presumed that the three pages of documents mentioned above (copies enclosed) were the only documents relied on to establish the "source" from which Mr. Stratton's "income" was derived, with respect to the "Notice of Deficiency," dated April 26, 2005, for the year 2003.

I hereby declare that:

1. I am not currently under suspension or disbarment from practice before the Internal Revenue Service or other practice of my profession by any other authority;
2. I am aware of the regulations contained in Title 31 CFR part 10 concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries and others;
3. I am authorized to represent the individual identified in the power of attorney;
4. I am an individual described in Title 26 Code of Federal Regulation Part 600, at 26 CFR § 601.502(a)(1) and (2), §601.502(b)(5)(ii) and in Circular 230 at §10.7(c)(1)(iv); and
5. the original attached Power-of-Attorney is valid under the laws of the State of Maryland.

Under penalty of perjury, I declare that the foregoing is true to the best of my knowledge and belief.


John B. Kotmair, Jr.

Enclosures: Original Power-of-Attorney; copy of September 30, 2005, reply; copy of page one of Mr. Stratton's July 13, 2005 Privacy Act request; copy of Ms. Berrie's letter of September 30, 2005; copy of the three pages of the documents disclosed on September 30, 2005.

cc: Jon A. Stratton

PRIVACY ACT RELEASE FORM
AND POWER OF ATTORNEY

RECEIVED IN CORRES
TRAC - 080-017
DEC 2 8 2005
BIDEN ALTAG

Because of the Privacy Act of 1974, written authorization is required by the individual before any information can be given to another individual or organization.

Pursuant to the authority in 26 CFR § 301.6103(c)-1, 26 CFR § 601.502(a)(1) and (2), 26 CFR § 601.502(b)(5)(ii) and Treasury Department Circular No. 230, at § 10.7(c)(1)(iv), this form will give John B. Kotmair, Jr., (Representative Number: 2605-47815R), of Post Office Box 91, Westminster, Maryland 21158, permission to investigate this matter for me.

I, Jon A. Stratton, of 308 North 1st, Krum, TX 76249, Internal Revenue Reference Number [redacted] a member of the Save-A-Patriot Fellowship, do hereby give to John B. Kotmair, Jr., the Fiduciary of Save-A-Patriot Fellowship, permission to represent, inquire of and procure from the Internal Revenue Service any and all of the records, pertaining to income taxes, to include income tax returns (1040, 1040A, related forms and assessment records) maintained within any of the Internal Revenue Service Offices, regarding the following years: 1996 through and including 2005.

On this 21 day of November, 2005, I hereby certify that I am the individual making this Power of Attorney, to John B. Kotmair, Jr., and that I have a "material interest" in the information within the documents sought.

[Signature]
Jon A. Stratton

Subscribed and sworn to before me, a Notary Public, of the State of Texas, County of Denton, on this 21 day of November, 2005.

[Signature]
Notary Public



My Commission Expires On: 10/20/2006



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SEP 30 2005

Jon A Stratton
308 North 1st
Krum, TX 76249

RECEIVED IN CORRES
IRS - OSC - 817
DEC 28 2005
MIDDEN, UTAH

Disclosure Case No: 33-2005-05075

Dear Mr. Stratton:

This is in response to your Privacy Act request of July 13, 2005 received by this office August 26, 2005.

Enclosed are eighteen pages consisting of information returns master file transcripts and the examination file pertaining to 2003 tax period. There are no other documents responsive to your request.

Should you have any questions, please contact Karen Berrie (ID 33-01658), at (949) 389-4382, or write to the Internal Revenue Service, Disclosure Office, 24000 Avila Road, Mail Stop 2201, Laguna Niguel, CA 92677. Please refer to the case number shown above.

Sincerely,

K. Berrie
Karen Berrie
Disclosure Specialist

Enclosure(s)

392

**PRIVACY ACT REQUEST
FOR NOTIFICATION AND ACCESS**

Jon A. Stratton
308 North 1st
Krum, TX 76249
IRS Reference Number [REDACTED]

RECEIVED IN CORRESP
IRS - OSC - 417
DEC 28 2005
OGDEN, UTAH

July 13, 2005

Certified Mail No. 7004 2890 0004 1912 2922

JaNean Ellis, Disclosure Officer
Internal Revenue Service Center
P.O. Box 9941, MS 7000 OSC
Ogden, UT 84409

Dear Ms. Ellis:

This is a request under the Privacy Act, 5 USC 552a.

This is my firm promise to pay costs up to \$17.00 for duplicating the documents requested below, as required by 5 USC Section 552a(f)(5). If costs are expected to exceed the stated amount, please send me an estimate of costs, pursuant to 26 CFR § 601.702(c)(3). Please reply within 10 days of your receipt of this request and provide me with instructions on perfecting any errors, pursuant to IRM § 11.3.18.3(5). Otherwise, please process it in a timely manner pursuant to IRM § 11.3.18.3(4), not later than 30 days of your receipt, pursuant to IRM § 11.3.18.3(15).

If you find this request imperfect in any way please provide me with a copy of all the rules necessary for me to perfect this request. In addition please advise me of any and all procedures required to exhaust all administrative remedies before requesting judicial review.

Please be advised that I am requesting records pursuant to 5 USC 552a(d)(1). I am not requesting any amendment of records.

[REDACTED]

Treasury/IRS 22.032,
Individual Microfilm Retention Register, D:R:R;
Treasury/IRS 22.034,
Individual Returns Files, Adjustments and Miscellaneous Documents File;
Treasury/IRS 22.060,
Automated Non-Master File (ANMF);
Treasury/IRS 22.061,

IRETRN37788202202003000000

*(TY2003)

DOCUMENT TYPE: 1099-MISC
PAYEE ENTITY DATA: [REDACTED]
STRATTON JON ANDREW
6783 AMYX RD
PONDER
STATE: TX ZIP: 76259-0000

NOT DIRECT SALES
NO SECOND NOTICE

ACCOUNT NUMBER: N/A
PAYER ENTITY DATA: [REDACTED]
S D HILBURN CONTRACTORS
202 LA MESA DR
HIGHLAND VILLAGE TX 75077

RECEIVED IN CORRES
REG-OSC-817
DEC 28 2005
GLEN/UTAH

NONEHP COM.....\$26,470+

***** TAXPAYER COPY *****

TRFTRN37788202202003000000

*(TX2003)

PAGE 0002 OF 0002

DOCUMENT TYPE: 1099-MISC

PAYEE ENTITY DATA:

JON STRATTON

6783 AMYX RD

PONDER

STATE: TX ZIP: 76259-0000

MOT DIRECT SALES
NO SECOND NOTICE

ACCOUNT NUMBER: N/A

PAYER ENTITY DATA:

NEW HAVEN HOMES CUSTOM INC

5700 IMPERIAL CT

ELAND

TX 75093

NONEMP COM.....\$4,168+

***** TAXPAYER COPY *****

395

IRPTRW3778820220200300

*** (TY2003) IRMF ON LINE TRANSCRIPT SYSTEM SUMMARY ***

TIN- [REDACTED]	TIM TYPE AND VALIDITY- 0	DOCUMENT CODE- 00	2 DOCS
GROUP	AMOUNT	GROUP	AMOUNT
NONEMP COM.....	\$30,638+		

ENTER-PAYS (E), PAYE (R), (O)NLINE, (W)HITE OUT, IRPO (L), HARD (C)OPY OR (H)ELP

FORM 467
1040

8222022720231

Department of the Treasury—Internal Revenue Service
U.S. Individual Income Tax Return (P) 1998

IRS Use Only—Do not write or staple in this space.

For the year Jan. 1–Dec. 31, 1998, or other tax year beginning 1998, ending 19 OMB No. 1545-0074

Label

(See instructions on page 18.)

Use the IRS label. Otherwise, please print or type.

Presidential Election Campaign (See page 18.)

Your first name and initial <i>Wesley A.</i>	Last name <i>Sherwood</i>	Your social security number [REDACTED]
If a joint return, spouse's first name and initial [REDACTED]	Last name [REDACTED]	Spouse's social security number [REDACTED]

Apt. no. _____

Page 18.

IMPORTANT!
You must enter your SSN(s) above.

Yes	No	Note: Checking "Yes" will not change your tax or reduce your refund.
	X	

If a joint return, does your spouse want \$3 to go to this fund? Yes No

Filing Status

Check only one box.

- 1 Single
- 2 Married filing joint return (even if only one had income)
- 3 Married filing separate return. Enter spouse's social security no. above and full name here. ▶ _____
- 4 Head of household (with qualifying person). (See page 18.) If the qualifying person is a child but not your dependent, enter this child's name here. ▶ _____
- 5 Qualifying widow(er) with dependent child (year spouse died ▶ 19 _____). (See page 18.)

a Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a.

b Spouse

Dependents:		(2) Dependent's social security number	(3) Dependent's relationship to you	(4) <input checked="" type="checkbox"/> if qualifying child for child tax credit (see page 19)
(1) First name	Last name			
<i>NA.</i>				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>

No. of boxes checked on 6a and 6b

No. of your children on 6c who:

- lived with you
- did not live with you due to divorce or separation (see page 18)

Dependents on 6c not entered above

Add numbers entered on lines above

d Total number of exemptions claimed **1**

Income

Attach Copy B of your Forms W-2, W-2G, and 1099-R here.

If you did not get a W-2, see page 20.

Enclose, but do not staple, any payment. Also please use Form 1040-E.

- 7 Wages, salaries, tips, etc. Attach Form(s) W-2.
- 8a Taxable interest. Attach Schedule B if required
- 8b Tax-exempt interest. DO NOT include on line 8a.
- 9 Ordinary dividends. Attach Schedule B if required
- 10 Taxable refunds, credits, or offsets of state and local income taxes (see page 21)
- 11 Alimony received
- 12 Business income or (loss). Attach Schedule C or C-EZ
- 13 Capital gain or (loss). Attach Schedule D
- 14 Other gains or (losses). Attach Form 4797
- 15a Total IRA distributions
- 15b Taxable amount (see page 22)
- 16a Total pensions and annuities
- 16b Taxable amount (see page 22)
- 17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E
- 18 Farm income or (loss). Attach Schedule F
- 19 Unemployment compensation
- 20a Social security benefits
- 20b Taxable amount (see page 24)
- 21 Other income. List type and amount—see page 24
- 22 Add the amounts in the far right column for lines 7 through 21. This is your total income ▶

7	
8a	
8b	
9	
10	
11	
12	
13	
14	
15b	
16b	
17	
18	
19	
20b	
21	
22	0

RECEIVED
MAY 07 1999
LIMIT

Adjusted Gross Income

If line 33 is under \$30,095 (under \$10,030 if a child did not live with you), see EIC inst. on page 36.

- 23 IRA deduction (see page 25)
- 24 Student loan interest deduction (see page 27)
- 25 Medical savings account deduction. Attach Form 8853
- 26 Moving expenses. Attach Form 3903
- 27 One-half of self-employment tax. Attach Schedule SE
- 28 Self-employed health insurance deduction (see page 28)
- 29 Keogh and self-employed SEP and SIMPLE plans
- 30 Penalty on early withdrawal of savings
- 31a Alimony paid b Recipient's SSN ▶ _____
- 31b Taxable amount (see page 24)
- 32 Add lines 23 through 31a
- 33 Subtract line 32 from line 22. This is your adjusted gross income

23	0
24	
25	
26	
27	
28	
29	
30	
31a	0
31b	
32	0
33	0

ADJUSTED GROSS INCOME TAXES ASSESSED

1 of 5

* See 1397

Tax and Credits

Standard Deduction for Most People

Single: \$4,250
Head of household: \$6,250
Married filing jointly or Qualifying widow(er): \$7,100
Married filing separately: \$3,550

34 Amount from line 33 (adjusted gross income)
35a Check if: You were 65 or older, Blind; Spouse was 65 or older, Blind.
36 Enter the larger of your itemized deductions from Schedule A, line 28, OR standard deduction shown on the left.
37 Subtract line 36 from line 34.
38 If line 34 is \$93,400 or less, multiply \$2,700 by the total number of exemptions claimed on line 6d.
39 Taxable income. Subtract line 38 from line 37.
40 Tax. See page 30. Check if any tax from a Form(s) 8814 b Form 4972
41 Credit for child and dependent care expenses.
42 Credit for the elderly or the disabled.
43 Child tax credit.
44 Education credits.
45 Adoption credit.
46 Foreign tax credit.
47 Other. Check if from a Form 3800 b Form 8396 c Form 8801 d Form (specify)
48 Add lines 41 through 47. These are your total credits
49 Subtract line 48 from line 40.

Table with columns for line numbers (34-49) and values. Line 34 value is 110. Line 36 value is 0. Line 37 value is 0. Line 38 value is 0. Line 39 value is 0. Line 40 value is 0. Line 41 value is 0. Line 42 value is 0. Line 43 value is 0. Line 44 value is 0. Line 45 value is 0. Line 46 value is 0. Line 47 value is 0. Line 48 value is 0. Line 49 value is 0.

Other Taxes

50 Self-employment tax. Attach Schedule SE
51 Alternative minimum tax. Attach Form 6251
52 Social security and Medicare tax on tip income not reported to employer. Attach Form 4137
53 Tax on IRAs, other retirement plans, and MSAs. Attach Form 5329 if required
54 Advance earned income credit payments from Form(s) W-2
55 Household employment taxes. Attach Schedule H.
56 Add lines 49 through 55. This is your total tax.

Table with columns for line numbers (50-56) and values. Line 50 value is 0. Line 51 value is 0. Line 52 value is 0. Line 53 value is 0. Line 54 value is 0. Line 55 value is 0. Line 56 value is 0.

Payments

Attach Forms W-2 and W-2G on the front. Also attach Form 1099-R if tax was withheld.

57 Federal income tax withheld from Forms W-2 and 1099
58 1998 estimated tax payments and amount applied from 1997 return
59a Earned income credit. Attach Schedule EIC if you have a qualifying child b Nontaxable earned income; amount and type
60 Additional child tax credit. Attach Form 8812
61 Amount paid with Form 4868 (request for extension)
62 Excess social security and RRTA tax withheld (see page 43)
63 Other payments. Check if from a Form 2439 b Form 4136
64 Add lines 57, 58, 59a, and 60 through 63. These are your total payments

Table with columns for line numbers (57-64) and values. Line 57 value is 0. Line 58 value is 0. Line 59a value is 0. Line 60 value is 0. Line 61 value is 0. Line 62 value is 0. Line 63 value is 0. Line 64 value is 0.

Refund

Have it directly deposited! See page 44 and fill in 66b, 66c, and 66d.

65 If line 64 is more than line 56, subtract line 56 from line 64. This is the amount you OVERPAID
66a Amount of line 65 you want REFUNDED TO YOU
b Routing number
c Type: Checking Savings
d Account number
67 Amount of line 65 you want APPLIED TO YOUR 1998 ESTIMATED TAX

Table with columns for line numbers (65-67) and values. Line 65 value is 0. Line 66a value is 0. Line 67 value is 0.

Amount You Owe

68 If line 56 is more than line 64, subtract line 64 from line 56. This is the AMOUNT YOU OWE. For details on how to pay, see page 44
69 Estimated tax penalty. Also include on line 68

Table with columns for line numbers (68-69) and values. Line 68 value is 0. Line 69 value is 0.

Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Joint return? See page 18. Keep a copy for your records.

Your signature: [Signature] Date: 4-14-99 Your occupation: Doctor Daytime telephone number (optional): NA
Spouse's signature: NA Date: Spouse's occupation: NA

Paid Preparer's Use Only

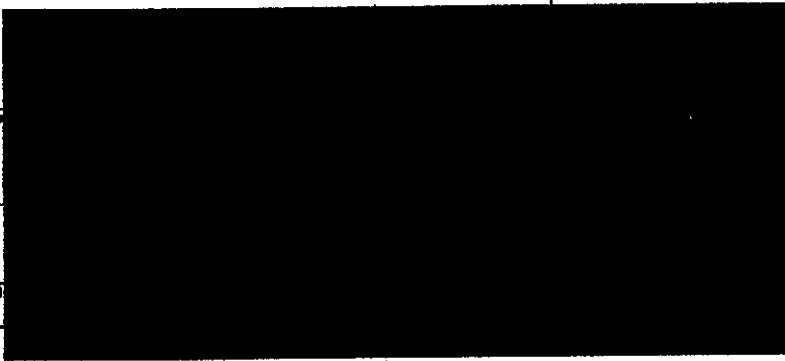
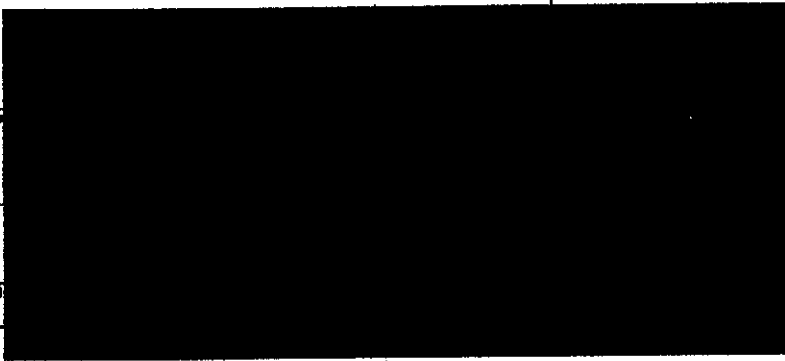
Preparer's signature: Date: Check if self-employed: Preparer's social security no.: Firm's name (or yours if self-employed) and address: EIN: ZIP code:

Form W-2 Wage and Tax Statement

1998

OMB No. 1545-0008

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.
Department of the Treasury-Internal Revenue Service

a Control number 1		b Employer Identification number		1 Wages, tips, other compensation 50361.82	2 Federal income tax withheld	
c Employer's name, address, and ZIP code		Copy D For Employer OR Copy 1 For State, City, or Local Tax Department		3 Social security wages 50361.82	4 Social security tax withheld 3122.43	
				5 Medicare wages and tips 50361.82	6 Medicare tax withheld 730.25	
				7 Allocated tips		8 Advance EIC payment
				13 See instructions for Form W-2 C .26		14 Other BX141 284.24
				<input type="checkbox"/> Pension plan <input type="checkbox"/> Legal emp. <input type="checkbox"/> Deferred compensation		
				20 Local wages, tips, etc.	21 Local income tax	

I, Wesley Sherwood, am submitting this as part of my 1998 income tax return, even though I know that no section of the Internal Revenue Code:

- (1) Establishes an income tax "liability" as, for example, Code Sections 4401, 5005, and 5703 do with respect to wagering, alcohol, and tobacco taxes;
- (2) Provides that income taxes "have to be paid on the basis of a return" - as, for example, Code Sections 4374, 4401^o, 5061(a) and 5703(b) do with respect to other taxes; I am filing anyway because I know the government has prosecuted others for failing to file income tax returns by (erroneously) invoking Code Sections 7201 and 7203. Therefore, this return is not being filed voluntarily but is being filed out of fear that if I did not file this return I could also be (illegally) prosecuted for failing to file an income tax return for the year 1998.
- (3) In addition to the above, I am filing even though the "Privacy Act Notice" as contained in a 1040 booklet clearly informs me that I am not required to file. It does so in at least two places.
 - (a) In one place, it states that I need only file a return for "any tax" I may be "liable" for. Since no Code Section makes me "liable" for income taxes, this provision notifies me that I do not have to file an income tax return.
 - (b) In another place, it directs me to Code Section 6001. This section provides, in relevant part, that "Whenever in the judgment of the Secretary it is necessary, he may require any person by notice served on such person; or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for the tax under this title." Since the Secretary of the Treasury did not "serve" me with any such "notice" and since no legislative regulation exists requiring anyone to file an income tax return, I am again informed by the "privacy Act Notice" that I am not required to file an income tax return.
- (4) With respect to the information I included in my return, I wish to point out that the courts have ruled that: "A (1040) form with "zeros" inserted in the space provided...qualified as a return." See U.S. vs. Long, 618 F 2d 74 (9th Cir. 1980), U.S. vs. Kimball, 896 F. 2d 1218 (9th Cir. 1990) U.S. vs. Moore, 627 F. 2d 830 (7th Cir. 1980), and a Las Vegas bankruptcy court held that "Zeroes entered on a Form 1040 constitutes a return." Cross vs. U.S., 91-2 USTC p. 50,318, Banker. L. Rep p. 7404..
- (5) It should also be noted that I had "zero" income according to the Supreme Court's definition of income (See Note#1), since in Merchant's Loan & Trust Co. vs. Smietanka, 255 U.S. 509, (at pages 518 & 519) that court held that "The word (income) must be given the same meaning in all of the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act of 1909." Therefore since I can only swear to having "zero" income in 1998. Obviously, since I know the legal definition of "income", if I were

to swear to having received any other amount of "income," I would be committing perjury under both 18 U.S.C. 1621 and U.S.C. 7206. Therefore, not wishing to commit perjury under either statute, I can only swear to having "zero" income for the year 1998.

- (6) I am also putting the IRS on notice that my 1998 tax return does not constitute a "frivolous" return pursuant to Code Section 6702. My return is based on 13 Supreme Court decisions, 9 Internal Revenue Code Sections, 3 Privacy Act Notice provisions, and numerous other references. As such, it can not be termed "frivolous" on any basis as the term is defined and understood. Additionally, my return is not designed to "delay or impede the administration of Federal income tax laws," since it is designed to be my final statement under those "laws." Furthermore, no IRS employee has any delegated authority to impose a "frivolous" penalty, nor is there any legislative regulation implementing Section 6702, therefore that Statute is benign.
- (7) Moreover, no assessment for 1998 income taxes (as provided for in Chapter 63) has ever been made against me.
- (8) In addition, don't notify me that the IRS is "changing" my return, since there is no statute that allows the IRS to do that. You might prepare a return (pursuant to Code Section 6020(b), where no return is filed, but as in this case, a return has been filed, no statute authorizes IRS personal to "change" that return.
- (9) Should the Service disagree with the figures and any amount shown on my tax return, then I demand an office or field audit to discuss these differences as required by the Administrative Procedure Act (APA), 5 USC 551 (1) as provided and specified for in Treasury Regulation 601.105 and as specified and provided for in IRS documents, Publication 5, Appeal Rights and Preparation of Protests for Unagreed Cases and Publication 1, Your Rights As A Taxpayer before any "changes" in my return are made and/or any penalties are proposed or imposed. In addition, if any "determination" is made that in my return are warranted, I demand to be notified as to where and when I may "inspect" the "text of any written determination and any background file documents relating to such a determination" as provided by 26 USC 6110.
- (10) In addition, I will hold IRS employees who disregard the statutes, court decisions, Privacy Act Notice provisions and other references contained in this document, accountable, pursuant to 26 USC 7214 and 18 USC 241. Section 7214 makes it a crime for IRS agents to seek to extract "other or greater sums than authorized by law" and to engage in "extortion and willful oppression under color of law." To the extent that any IRS employees capriciously, wantonly, and arbitrarily disregard the court decisions, statutes, and other references contained in the document, they will be in criminal violation of these statutes, and are accordingly being put on such notice.

***Note #1: The word "income is not defined in the Internal Revenue Code. U.S vs. Ballard, 535 F.2d 400, 404. But, as stated above, it can only be a derivative of corporate activity. The Supreme Court has held this numerous times. "Whatever difficulty there may be about a precise and scientific definition of "income" it imports, as used here...the idea of gain or increase arising from corporate activities," Doyle vs. Mitchell, 247 U.S. 179. "certainly the term "income" has no other meaning in the 1913 Act than in that of 1909 (See; Stratton's Independence vs. Howbert, 231 U.S. 406, Pages 409-413), and... we assume that there is no difference in its meaning as used in the two acts." Southern Pacific Co. vs. John Z. Lowe Jr., 247 U.S. 330,335; Bowers vs. Kerbaugh-Empire Company, 271 U.S. 170 (1926) page 174; Goodrich vs. Edwards, 255 U.S. 527; United States vs. Supplee-Biddle Hardware Co., 265 U.S. 189; United States vs. Phellis. 257 U.S. 156; Miles vs. Safe Deposit & T. Co., 259 U.S. 247; Irwin vs. Gavit, 268 U.S. 161; Edwards vs. Cuba R. Co., 268 U.S. 628; Burnett vs. Harmel, 287 U.S. 103, 108, (1932); Lucas vs. Earl, 281 U.S. 111.**

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civil No. WMN 05 CV 1297
)
 JOHN BAPTIST KOTMAIR, JR., et al.,)
)
 Defendants.)

DECLARATION OF CAMILLE NAGY

This declaration and attached exhibits are submitted under 28 U.S.C. § 1746.

1. I am resident of the state of California and was a member of the Save-a-Patriot Fellowship (SAPF) from 2001 through 2004.
2. Unless noted to the contrary, I have first hand knowledge of the facts stated in this declaration.
3. I purchased my membership from a Save-a-Patriot Fellowship Independent Representative who advertise SAPF on the taxfreedom101.com website. Attached as Exhibit 1 is a true and correct copy of the letter I received Tax Freedom 101.
4. I participated in the Patriot Defense Fellowship while I was a member of the Save-a-Patriot Fellowship.
5. Part of my participation in the Patriot Defense Fellowship included signing an agreement stating that I would reimburse other Save-a-Patriot Fellowship members who had income tax liabilities or were incarcerated for tax crimes.
6. I was regularly sent notices from Save-a-Patriot Fellowship stating that an individual

member had suffered a loss, and I sent payments to that member as required by the membership agreement.

7. Attached as Exhibit 2 is a true and correct copy of a notice sent from Save-a-Patriot Fellowship requesting that money be sent to the unidentified member described in the notice. I made the notation on the notice indicating that I sent \$20 to this Save-a-Patriot member.

8. Attached as Exhibit 3 is a copy of a notice sent from Save-a-Patriot Fellowship requesting that money be sent to the unidentified member described in the notice. I made the notation on the notice indicating that I sent \$10 to this Save-a-Patriot member.

9. Attached as Exhibit 4 is a copy of a notice sent from Save-a-Patriot Fellowship requesting that money be sent to the unidentified member described in the notice. I made the notation on the notice indicating that I sent \$10 to this Save-a-Patriot member.

10. I made these payments to individual Save-a-Patriot members because this was required in order to be a member in good standing. When I sent payments to members, I also sent verification to SAPF stating that I made payment.

11. As a participant in the Patriot Defense Fellowship, I named my husband Joseph Nagy as my beneficiary.

12. My husband, Joseph Nagy was also a participant in the Patriot Defense Fellowship. As part of his agreement, he named me as his beneficiary. According the agreement for the Patriot Defense Fellowship, if I was incarcerated for a tax crime my husband was expected to receive payments from other Save-a-Patriot members.

13. The information stated in this declaration, and the previous declaration I signed, is

made to the best of my knowledge.

I declare under penalty of perjury the foregoing is true and correct. Executed this 19 day
of July, 2006.

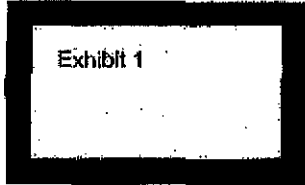
Camille Nagy
CAMILLE NAGY

Donnie
Application
Attached

Protection -- Education -- Fellowship

TAX FREEDOM 101

12 Carroll Street - Suite 149
Westminster Maryland 22157
Phone and Fax: 801-715-0950
<http://www.taxfreedom101.com>



Dear Citizen and Patriot:

Welcome! Your decision to join the growing number of citizens all across our great land has just moved us one step closer to reigning in an out-of-control government and restoring the rule of law! We thank you for your decision to join forces with us to protect and defend the rights of ALL Americans. Please find attached the two-page main program agreement to join the Save-A-Patriot Fellowship.

If you have additional members of your family joining, such as a spouse or child over the age of 18, who reside in the same household, and you wish to add them as co-members under your master membership simply make additional photocopies of the two page Save-A-Patriot Fellowship Program Agreement. You may then use those additional copies to execute the applications for the co-memberships. Please return both pages of the agreement for all memberships.

Also, you may decide to become an active member representative enrolling others into the Save-A-Patriot Fellowship earning substantial cash commissions as explained on the Tax Freedom 101 web site. If so you will want to purchase the video series: *Just The Facts*. You may include the purchase of the video series on page two of the SAPF program agreement, or you could purchase the complete educational TAX FREEDOM 101 Home Study Course and the additional home-business opportunity at www.taxfreedom101.com. *Just The Facts* is simply a must for furthering you and your family's education. It is also a brilliant defensive weapon!

If you have any questions about enrolling in or filing out the application(s) for membership in the Save-A-Patriot Fellowship feel free to call us at 801-715-0950 and we will be ready to assist you.

Once again, thank you for your decision to join the fellowship.

Liberty and justice for all -- who are willing to fight for it.
Bryan Busch
Tax Freedom 101 Manager
Exam Certified Independent Representative for the Save-A-Patriot Fellowship

406

PLEASE RETURN THIS STATEMENT TO S.A.P.
EVEN WHEN NO BALANCE IS DUE
(see the reverse side for balance due)

Instructions For Processing Assistance Requests

Please don't confuse your monthly statement (reverse side) with the requests for assistance.

The envelopes to members are pre-addressed to make it easy for you to forward the correct amounts to the correct location. Immediately to the right of the member's name you will find a number enclosed in parenthesis. Please enclose the proper number of FRNs in the envelope, put a stamp on it and mail it within 10 days. Suggestion: it is much easier and cheaper (considering the cost of postal money orders) to enclose plain old FRNs. The amounts are usually small enough that this poses no problem. If you would feel more comfortable sending a U.S. Postal Money Order and retaining the receipt, you are certainly welcome to do so. It really is a matter of choice. Most of our veteran members send cash rather than making a special trip to the post office.

Above the return address in the upper left corner of the envelope there is a dotted line. You must write your S.A.P. membership number on this line to receive credit for rendering assistance to this member. Please keep a record of these requests. Please keep a record of them in case any doubts arise whether a member has responded properly to the assistance requests. Please keep a record of what these members have been through and how much they are counting on you.

In the space provided below, please record the date(s) on which you mailed your envelopes to the member(s) requesting assistance before returning your statement to S.A.P.

If you have any questions about these instructions please call the Fellowship at (410) 857-4441.

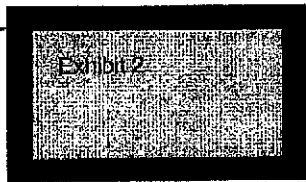
On or about 10-3-2001 I/we enclosed the amounts listed and mailed the envelopes to the members who have requested assistance.

My membership number [REDACTED] Please make a record of this payment and notify me if it is not received by the member who has requested assistance.

(SENT 20 FRN'S)

PLEASE RETURN THIS STATEMENT TO S.A.P.
EVEN WHEN NO BALANCE IS DUE

MARLE (SEPTEMBER 17, 2001)
P.O. Box 620
SELMA, OR 97538

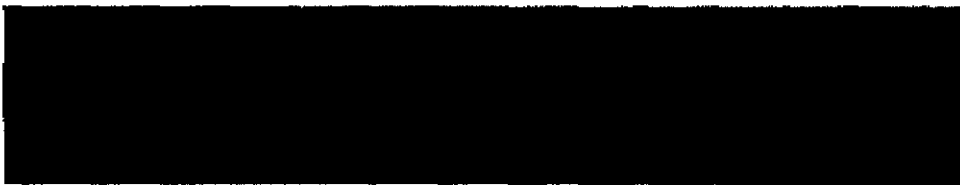


407

Save-A-Patriot Monthly Statement

2/08/02

Mail to:



Monthly Statement for



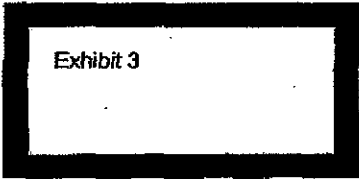
Membership Renewal: 7/31/02

Reference	Documentation	Amount	Other	Date	Less
00039111	0	0.00	48.00	10/19/01	0.00
Subtotals:		+ 0.00	+ 48.00		- 0.00
Renewal :			0.00	7/31/02	
Total Due:			48.00		

Handwritten circled "48.00" and "7/31/02" next to the renewal line.

Handwritten "2-2502" below the table.

Please Note: Additional envelopes may be enclosed for the purpose of rendering assistance to members who have lost property to the IRS. For instructions on how to fulfill your obligations under the assistance assessment part of your membership agreement, please see the reverse side of this statement. If the balance due above is 0.00 and you have been sent this statement for the purpose of helping special members or not, then the amount shown represents your share of the following expenses up to approximately \$2,500. Please remit payment within 30 days. If you have already forwarded payment for any given item then you should make an appropriate notation on this statement before returning it with the amount due. This will help to ensure that proper credit was applied.



Handwritten "408" in the bottom right corner.

Save-A-Patriot Monthly Statement

10/01/03

Mail to:



Monthly Statement for [Redacted]

Balance due as of :10/01/03
Membership Renewal: 7/31/04

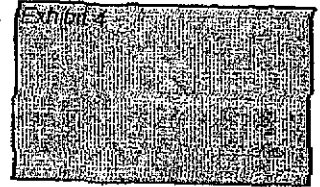
Reference	Documentation	Amount	Other	Date	Less
00037555	0	0.00	64.00	9/23/03	0.00
Subtotals:		+ 0.00 +	64.00	7/31/04	- 0.00
Renewal :			0.00	7/31/04	
Total Due:			64.00	/ /	

Please Note: Additional envelopes may be enclosed for the purpose of rendering assistance to members who have lost property to the IRS. For instructions on how to fulfill your obligations under the assistance assessment part of your membership agreement, please see the reverse side of this statement. If the balance due (above) is 0.00 FRNs then you have been sent this statement for the sole purpose of helping specific members.

~~For the amount shown, you have 30 days to pay the amount due. If you do not pay the amount due within 30 days, the amount due will be added to your account and you will be responsible for the amount due. If you have any questions, please call 1-800-455-4555. You should make an appropriate notation on this statement before returning it. If the amount due is 0.00, please indicate that the amount due is 0.00.~~

496-1
10-28-02
10.00

**PLEASE RETURN THIS STATEMENT TO S.A.P.
EVEN WHEN NO BALANCE IS DUE**
(see the reverse side for balance due)



Instructions For Processing Assistance Requests

Please don't confuse your *monthly statement* (reverse side) with the *requests for assistance*. The statement should be returned directly to S.A.P., along with any amounts due, in the appropriate envelope. The other envelopes (if there are any others enclosed) are addressed to the members who have qualified for and requested assistance.

The envelopes to members are *pre-addressed to make it easy for you to forward the correct amounts to the correct location. Immediately to the right of the member's name you will find a number enclosed in parenthesis.* This number represents the amount of your apportioned share of the member's loss. Please enclose the proper number of FRNs in the envelope, put a stamp on it and mail it within 10 days. Suggestion: it is much easier and cheaper (considering the cost of postal money orders) to enclose plain old FRNs. The amounts are usually small enough that this poses no problem. If you would feel more comfortable sending a U.S. Postal Money Order and retaining the receipt, you are certainly welcome to do so. It really is a matter of choice. Most of our veteran members send cash rather than making a special trip to the post office.

Above the return address in the upper left corner of the envelope there is a dotted line. You must write your S.A.P. membership number on this line to receive credit for rendering assistance to this member. The member who receives your assistance collects the envelopes and forwards them to S.A.P. We in turn keep track of all responses and keep a record of them in case any doubt arises whether a member has responded properly to the assessment requests. Please keep in mind what these members have been through and how much they are counting on you!

In the space provided below, please record the date(s) on which you mailed your envelopes to the member(s) requesting assistance before returning your statement to S.A.P.

If you have any questions about these instructions please call the Fellowship at (410) 857-4441.

On or about Oct-8-2001 I/we enclosed the amounts listed and mailed the envelopes to the members who have requested assistance.



Please make a record of this who has requested assistance.

**PLEASE RETURN THIS STATEMENT TO S.A.P.
EVEN WHEN NO BALANCE IS DUE**

10/08
10-8-01

410

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civil No. WMN 05 CV 1297
)
 JOHN BAPTIST KOTMAIR, JR., et al.,)
)
 Defendants.)

DECLARATION OF JOSEPH NAGY

This declaration and attached exhibits are submitted under 28 U.S.C. § 1746.

1. I am resident of the state of California and was a member of the Save-A-Patriot Fellowship (SAPF) from 2001 through 2004.
2. I signed an agreement to participate in the Patriot Defense Fellowship while I was a member of Save-a-Patriot.
3. As a participant of the Patriot Defense Fellowship, I regularly sent payments to other Save-a-Patriot Fellowship members who I was informed suffered losses as defined in the agreement.
4. I made these payments to individual Save-a-Patriot members because this was required in order to be a member in good standing. When I sent payments to members, I also sent verification to SAPF stating that I made payment.
5. As a participant in the Patriot Defense Fellowship, I named my wife, Camille Nagy, as my beneficiary.
6. My wife, Camille Nagy was also a participant in the Patriot Defense Fellowship. As

part of his agreement, she named me as her beneficiary. According the agreement for the Patriot Defense Fellowship, if I was incarcerated for a tax crime, my wife was expected to receive payments from other Save-a-Patriot members.

7. I also purchased several letters from SAPF contesting my requirement to pay state and federal taxes. Attached as Exhibit 1 is a true and correct copy of a bill from SAPF for \$64 and my money order payment. I purchased this protest letter for sending the California Franchise Tax Board which, to the best of my recollection, contested my requirement to pay taxes as a U.S. citizen.

8. Attached as Exhibit 2 is a true and correct copy of a bill from SAPF for response to a notice sent to me from the California Franchise Tax Board.

9. Attached as Exhibit 3 is a true and correct copy of a bill from SAPF for response to a notice sent to me from the California Franchise Tax Board.

10. Attached as Exhibit 4 is a true and correct copy of a bill from SAPF for response to a notice sent to me from the California Franchise Tax Board.

11. Attached as Exhibit 5 is a true and correct copy of a bill from SAPF for response to a notice sent to me from the California Franchise Tax Board, which included a request for information under FOIA. To the best of my recollection the FOIA request demanded information proving my requirement to pay taxes as a U.S. citizen.

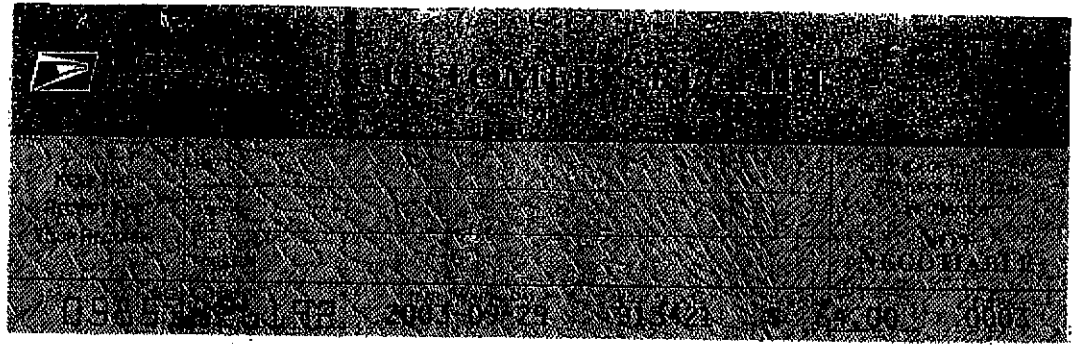
12. Attached as Exhibit 6 is a true and correct copy of a notice from SAPF that I should purchase and send a notice responding to an inquiry regarding Mr. Kotmair's power-of-attorney submitted on my behalf.

13. Attached as Exhibit 7 is a true and correct copy of a notice from SAPF that I should purchase and send a FOIA request regarding a notice of deficiency sent to me from the IRS. To the best of my recollection, the FOIA request demanded that the IRS establish that I am required to pay taxes and file returns as a U.S. citizen.

14. Attached as Exhibit 8 is a true and correct copy of a bill for a letter respond to a request for my Social Security number on a Form W-9. To the best of my recollection, this letter stated that I am not required to provide my Social Security number on a Form W-9.

I declare under penalty of perjury the foregoing is true and correct. Executes this 9 day of July, 2006.


JOSEPH NAGY



Save-A-Patriot Fellowship

Paralegal Services

Post Office Box 91
Westminster, Maryland 21158
Tel: 410-857-4441

September 23, 2003

Joseph Nagy
14544 Ryan St.
Sylmar, Ca. 91342-2817

St-CA_protest + 2CA_foil

\$64.00

Certified Mail costs

Total fee:

\$64.00

PLEASE RETURN INVOICE (OR COPY) WITH YOUR PAYMENT.

Please pay in cash or a totally blank U.S. Postal money order (leave blank both payor and payee sides).

Please keep your account current, as no further work will be done for accounts in arrears. If you find yourself unable to pay in full or unable to make timely payment, please notify accounting promptly (Carie, (410)857-4441 ext. 103).

Please Note: This is not standard casework. This is paralegal work which is not supplemented by the fellowship in any way, by facilities or materials.

Invoice No.

37555

OCT 03 2003

#9183

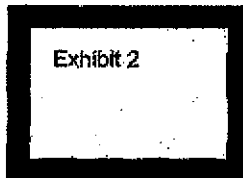
415

Save-A-Patriot Fellowship Paralegal Services

Post Office Box 91
Westminster, Maryland 21158
Tel: 410-857-4441

August 6, 2003

Joseph R. Nagy
14544 Ryan St.
Sylmar, Ca. 91342-2817



ST-CA premature notice letter

PS 81893

\$44.00

Certified Mail costs

Total fee: \$44.00

PLEASE RETURN INVOICE (OR COPY) WITH YOUR PAYMENT.

Please pay in cash or a totally blank U.S. Postal money order (leave blank both payor and payee sides).

Please keep your account current, as no further work will be done for accounts in arrears. If you find yourself unable to pay in full or unable to make timely payment, please notify accounting promptly (Carie, (410)857-4441 ext. 103).

Please Note: This is not standard casework. This is paralegal work which is not supplemented by the fellowship in any way, by facilities or materials.

Invoice No.	37521	AUG 16 2003
#9183		

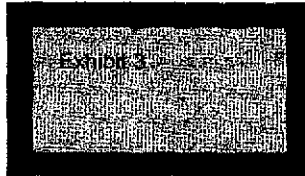
416

Save-A-Patriot Fellowship Paralegal Services

Post Office Box 91
Westminster, Maryland 21158
Tel: 410-857-4441

April 14, 2003

Joseph Nagy
14544 Ryan St.
Sylmar, Ca. 91342-2817



SENT 50⁰⁰
4-19-03

ST-Ca_protest_ethics

\$48.00

Certified Mail costs

Total fee:

\$48.00

PLEASE RETURN INVOICE (OR COPY) WITH YOUR PAYMENT.

Please pay in cash or a totally blank U.S. Postal money order (leave blank both payor and payee sides).

Please keep your account current, as no further work will be done for accounts in arrears. If you find yourself unable to pay in full or unable to make timely payment, please notify accounting promptly (Carie, (410)857-4441 ext. 103).

Please Note: This is not standard casework. This is paralegal work which is not supplemented by the fellowship in any way, by facilities or materials.

Invoice No.	37435	APR 24 2003
#9183		

417

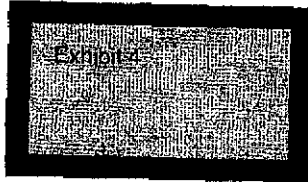
Save-A-Patriot Fellowship

Paralegal Services

Post Office Box 91
Westminster, Maryland 21158
Tel: 410-857-4441

November 6, 2003

Joseph Nagy
14544 Ryan St.
Sylmar, Ca. 91342-2817



CA_protest_b

\$44.00

*sent
4/5/03
IF 2003*

Certified Mail costs

Total fee:

\$44.00

PLEASE RETURN INVOICE (OR COPY) WITH YOUR PAYMENT.

Please pay in cash or a totally blank U.S. Postal money order (leave blank both payor and payee sides).

Please keep your account current, as no further work will be done for accounts in arrears. If you find yourself unable to pay in full or unable to make timely payment, please notify accounting promptly (Carie, (410)857-4441 ext. 103).

Please Note: This is not standard casework. This is paralegal work which is not supplemented by the fellowship in any way, by facilities or materials.

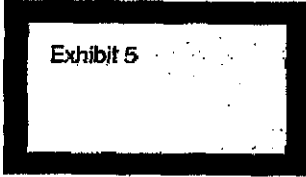
Invoice No.	37580	NOV 16 2003
#9183		

418

Save-A-Patriot Fellowship Paralegal Services

Post Office Box 91
Westminster, Maryland 21158
Tel: 410-857-4441

June 1, 2004



Joseph Nagy
14544 Ryan St.
Sylmar, Ca. 91342-2817

SENT 2nd
6.4.05

F HALL 50th PREPARED

ST-CA.9 + 01CA_foil

\$52.00

Certified mail costs:

Total fee:

\$52.00

PLEASE RETURN INVOICE (OR COPY) WITH YOUR PAYMENT.

Please pay in cash or a totally blank U.S. Postal money order (leave blank both payor and payee sides).

Please keep your account current, as no further work will be done for accounts in arrears. If you find yourself unable to pay in full or unable to make timely payment, please notify accounting promptly (Carie, (410)857-4441 ext. 103).

Please Note: This is not standard casework. This is paralegal work which is not supplemented by the fellowship in any way, by facilities or materials.

Invoice No.	JUN 10 2004
37726	
#9183	

419

Save-A-Patriot Fellowship

Paralegal Services

Post Office Box 91
Westminster, Maryland 21158
Tel: 410-857-4441

September 30, 2004

*This is for letter to Franchise Tax Board
Dated Oct. 5, 2004
Certified Mail # 7003-1010-002 5032 3423*

Camille Nagy
14544 Ryan St.
Sylmar, Ca. 91342-2817

ST-CA_protest_supp \$52.00

Certified mail costs:

Total fee: \$52.00

PLEASE RETURN INVOICE (OR COPY) WITH YOUR PAYMENT.

Please pay in cash or a totally blank U.S. Postal money order (leave blank both payor and payee sides). You should retain the receipt for your records.

Please keep your account current, as no further work will be done for accounts in arrears. If you find yourself unable to pay in full or unable to make timely payment, please notify headquarters promptly (Bonnie, (410)857-4441 ext. 100).

Please Note: This is not standard casework. This is paralegal work which is not supplemented by the fellowship in any way, by facilities or materials.

Invoice No.	37828	OCT 10 2004
#9523		

420

Save-A-Patriot Fellowship

Paralegal Services

Post Office Box 91
Westminster, Maryland 21158
Tel: 410-857-4441

August 9, 2004

Camille Nagy
14544 Ryan St.
Sylmar, Ca. 91342-2817

St-CA_protest + 01CA_foi2.doc \$52.00

Certified mail costs:

Total fee: \$52.00

SENT
CASH.
8-24-04

PLEASE RETURN INVOICE (OR COPY) WITH YOUR PAYMENT.

Please pay in cash or a **totally blank U.S. Postal money order** (leave blank both payor and payee sides). You should retain the receipt for your records.

Please keep your account current, as no further work will be done for accounts in arrears. If you find yourself unable to pay in full or unable to make timely payment, please notify headquarters promptly (Bonnie, (410)857-4441 ext. 100).

Please Note: This is not standard casework. This is paralegal work which is not supplemented by the fellowship in any way, by facilities or materials.

Invoice No.	37790
#9183	

AUG 19 2004

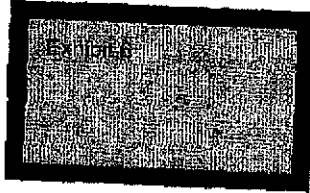
421



Save-A-Patriot Fellowship

Post Office Box 91
Westminster, Maryland 21158
Tel. (410)857-4441 FAX (410)857-5249

TO: Joseph R. Nagy
14544 Ryan Street
Sylmar, CA 91342



Date 12/15/03
Member # 9183

I received your recent request that case development work be done, and/or I recently reviewed your case file and found that the following items are needed to continue the development of your case:

[**Response to the letter from Diana Elm regarding the Power of Attorney**].

Please provide the checked items below at your earliest convenience.

➔ As you should hopefully be aware by now, the Fellowship had to revise its payment policy — all case development must now be PREPAID before the work can begin.

At this time, there are letters needed to keep your case current. Therefore, PLEASE SEND PAYMENT for that number (at 45 FRNs per letter).

Additionally, there are 1 letters which can be sent to the IRS requesting records pertaining to you. These Privacy Act Requests, at the present time, are generated for you to sign. Therefore, PLEASE SEND PAYMENT for that number (at 40 FRNs per letter.)

TOTAL: 40.00 . Please send Federal Reserve Notes (FRNs) or totally blank U.S. Postal money order (leave blank both payor and payee sides). Any excess funds will be credited towards future work only if you specifically request it. Otherwise, excess funds will be treated as a donation.

➔ At this time, I am in need of Power of Attorney forms in order to complete work.

Therefore, please forward at least 1 newly executed POA forms to me now (and new ones every time additional work is prepaid!)

Please keep in mind that an original POA form is necessary for each letter sent under Mr. Kotmair's Power of Attorney, and that the POA is only valid for 60 days (from the date you sign it to the date the IRS receives it).

➔ At this time, I need a complete copy of the IRS correspondence to include with a response.

Therefore, please forward a GOOD COPY of the IRS correspondence you received to include with the response (and each time an additional response is required!)

—Deborah

Mail 109

Please return this letter with your payment, POAs, and/or IRS correspondence copy so we can route it properly.

422

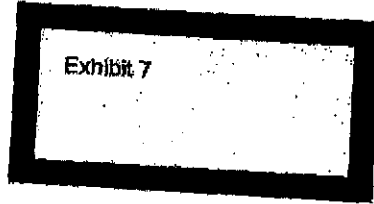


Save-A-Patriot Fellowship

Post Office Box 91
Westminster, Maryland 21158
Tel. (410)857-4441 FAX (410)857-5249

SENT
2/10/02

TO: Joseph R. Nagy
14544 Ryan Street
Sylmar, CA 91342



Date 12/17/03
Member # 9183

I received your recent request that case development work be done, and/or I recently reviewed your case file and found that the following items are needed to continue the development of your case:
[Response to Notice of Deficiency].

Please provide the checked items below at your earliest convenience.

➔ As you should hopefully be aware by now, the Fellowship had to revise its payment policy — all case development must now be PREPAID before the work can begin.

At this time, there are 1 letters needed to keep your case current. Therefore, PLEASE SEND PAYMENT for that number (at 45 FRNs per letter).

Additionally, there are 1 letters which can be sent to the IRS requesting records pertaining to you. These Privacy Act Requests, at the present time, are generated for you to sign. Therefore, PLEASE SEND PAYMENT for that number (at 40 FRNs per letter.)

TOTAL: 45.00 or 85.00. Please send Federal Reserve Notes (FRNs) or totally blank U.S. Postal money order (leave blank both payor and payee sides). Any excess funds will be credited towards future work only if you specifically request it. Otherwise, excess funds will be treated as a donation.

➔ At this time, I am in need of Power of Attorney forms in order to complete work.

Therefore, please forward at least 1 newly executed POA forms to me now (and new ones every time additional work is prepaid!)

Please keep in mind that an original POA form is necessary for each letter sent under Mr. Kotmair's Power of Attorney, and that the POA is only valid for 60 days (from the date you sign it to the date the IRS receives it).

➔ At this time, I need a complete copy of the IRS correspondence to include with a response.

Therefore, please forward a GOOD COPY of the IRS correspondence you received to include with the response (and each time an additional response is required!)

TOTAL FOR CANCELLER + Joseph. 170.00 — Deborah

Please return this letter with your payment, POAs, and/or IRS correspondence copy so we can route it properly.

423

AUG 20 2004

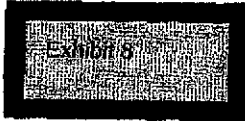
Invoice No.
37792
9183

Save-A-Patriot Fellowship

Post Office Box 91
 Westminster, Maryland 21158
 Tel: 410-857-4441

August 10, 2004

Joseph Nagy
 14544 Ryan St.
 Sylmar, Ca. 91342-2817



Fee for the NWRC W-9/1099 generic request Letter:	\$50.00
Certified Mail costs: [Cert. Mail #]	0.00

Total fee:	\$50.00
------------	---------

This is not standard casework.

SENT CASE
8-29-04

Please check one of the boxes below, if appropriate:

- I am claiming a 10. FRN per-letter discount as I am sending payment within 10 days of the red-stamped postmark date above. With this discount, my total bill will be 45.00 FRN's
- I am claiming a 5 FRN per-letter discount as I am sending payment within 30 days of the stamped postmark date above.

Please return this bill with your payment. If it is not returned, your payment cannot be credited, and will be considered a donation.

Please make your payment with cash (FRN's) or a totally blank U.S. Postal money order (leave blank both payor and payee sides).

Please keep your account current, as no further work will be done for accounts in arrears. If you find yourself unable to pay, please notify your caseworker immediately. Thank you.

424

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA,)

Plaintiff,

v.

JOHN BAPTIST KOTMAIR, et al.,

Defendants.

Case No.: WMN 05 CV 1297

DECLARATION OF GARY METCALFE

1. I was a Revenue Agent with the Internal Revenue Service (IRS) for over twenty years, until I retired in 2005.

2. Except where noted to the contrary, I have personal knowledge of the matters set forth in this Declaration, and, if called upon to testify to such matters, could do so competently.

3. As part of my duties as a Revenue Agent, I was assigned to determine if civil penalties should be assessed against John B. Kotmair, Jr. (Kotmair), a Maryland resident, and Save-a-Patriot Fellowship (SAPF), under 26 U.S.C. §§ 6700 or 6701 for promoting a scheme, and whether Kotmair and SAPF should be enjoined from promoting this tax scheme under 26 U.S.C. §§ 7402 and 7408.

4. The investigation revealed that SAPF publishes statements regarding the income tax laws and advises SAPF customers not to report income earned while working in the United States.

5. The investigation further revealed that Kotmair and SAPF promote a tax-fraud scheme that involves preparing protest letters for submission to the IRS which claim that SAPF customers are not subject to federal income taxation. SAPF customers are charged \$45-48 for each protest letter mailed to the IRS advancing these arguments.

425

6. During the course of my investigation, the IRS service center in Ogden collected over 800 protest letters sent by SAPF, and signed by Mr. Kotmair. The protest letters were sent on behalf of numerous individuals throughout the country.

7. The contents of the SAPF/Kotmair protest letters that I reviewed were virtually identical. The only difference in the letters was the name of the individual SAPF customer. To the best of my recollection, each protest letter asserted that the SAPF customer was not required to file an income tax return or pay taxes on U.S.-source income.

8. I did not research the arguments stated in the protest letters sent by Mr. Kotmair and SAPF in the Internal Revenue Code because these arguments are frivolous.

9. During my investigation, I found numerous Tax Court cases stating these arguments were frivolous, including: Wadsworth v. Commissioner, T.C. Memo. 1997-238; Moore v. Commissioner, T.C. Memo. 2001-305; Tolotti v. Commissioner, T.C. Memo. 2002-86; and Sherwood v. Commissioner, T.C. Memo. 2005-268.

10. The protest letters also stated that Mr. Kotmair was authorized to represent the SAPF customers before the IRS.

11. I investigated Kotmair's status as a representative, and to the best of my knowledge, John B. Kotmair, Jr. is not authorized to represent individuals regarding their personal income tax liabilities before the IRS.

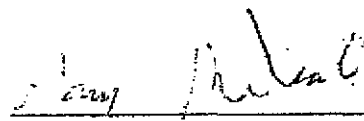
12. The investigation further revealed that SAPF and Kotmair prepare documents purporting to revoke an individual's application for their Social Security number, in order to discontinue the withholding of income and employment taxes.

13. As part of the scheme, SAPF sells to customers an "Affidavit of Revocation," and a "Statement of Citizenship," with instructions for filing these documents.

14. During my investigation, I identified these same arguments in a document published by the IRS titled "The Truth About Frivolous Arguments."

Under 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated this 7 day of July, 2006.



Gary Metcalfe

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civil No. WMN 05 CV 1297
)
 JOHN BAPTIST KOTMAJR, JR., et al.,)
)
 Defendants.)

DECLARATION OF NICHOLAS TAFLAN

This declaration and attached exhibits are submitted under 28 U.S.C. § 1746.

1. I am resident of the state of Ohio and was a member of the Save-A-Patriot Fellowship (SAPF) from 1995 through 2006.

2. Unless noted to the contrary, I have personal knowledge of the information set forth in this declaration.

3. For the tax year 1996, I requested a due process hearing with an IRS Appeals Officer after receiving a Notice of Federal Tax Lien for that year.

4. I purchased a letter requesting a due process hearing from the Save-a-Patriot Fellowship while I was a member. To the best of my recollection, the request for a due process hearing contested my requirement to pay income taxes and file a tax return for 1996.

5. After receiving my request, the IRS Appeals Officer did not allow me a face-to-face hearing. The letter I received from the Appeals Officer stated that the issues raised in the request for a due process hearing were frivolous.

6. On December 15, 2005, the Appeals Officer mailed me Notice of Determination

428

Concerning Collection Actions Under Section 6320. The Notice of Determination was signed by the IRS Appeals Officer, Ethel Simpson, and Dewayne Turk, the Team Manager.

7. The Notice of Determination also stated that I could not contest my 1996 income tax liability because I had previously been mailed a Notice of Deficiency for that year and stated the arguments raised in the due process hearing request were frivolous. The letter also directed me to appeal the Notice of Determination in Tax Court.

8. I did not petition the Tax Court because Save-a-Patriot directed me to file a complaint in District Court. On January 13, 2006, I filed a complaint in the United States District Court for the Southern District of Ohio, case number 2:06-cv-00032, which I purchased from the Save-a-Patriot Fellowship, and is attached as Exhibit 1.

9. Attached as Exhibit 2 is a copy of a bill dated January 11, 2006, from Save-a-Patriot for \$250 related to the complaint that I filed in the Southern District Court of Ohio.

10. The complaint, Exhibit 1, which I purchased from Save-a-Patriot lists the IRS Appeals Officer and the Team Manager as defendants. Exhibit 1 also states that the Tax Court "is not a Court," the liabilities that I contested for 1996 were allegedly "employment" taxes, and seeks to "restrain assessment" of my 1996 tax liabilities.

11. On January 13, 2006, I also filed a Memorandum of Law in Support of the Complaint, Exhibit 3. I purchased the memorandum in connection with the complaint. The memorandum has attached as Exhibits (A-F) letters verifying the statements in paragraphs 5-7 of this declaration.

12. The letters attached to the memorandum state that I did not file income tax returns for 1995-2001 or 2004. This statement is accurate and I did not file income tax returns for those

years because I relied on materials supplied by Save-a-Patriot which stated that income earned while working in the United States is not taxable.

13. I previously stated that the staff at SAPF assisted me in filing a bankruptcy motions in the case I filed in the United States Bankruptcy Court for the Northern District of West Virginia on June 16, 2003, in Case no. 5:03-bk-02170. I filed the bankruptcy petition after receiving the Notice of Federal Tax Lien from the IRS in May 2005, and be directed to do so by the Save-a-Patriot Fellowship in order to prevent collection.

14. As part of that case I filed a motion to reconsider on January 26, 2004, which was attached to my previous declaration (as Exhibit 9). Attached as Exhibit 4 is a true and correct copy of a bill for \$100 from Save-a-Patriot for the motion to reconsider I filed in that case.

15. In my previous declaration I also stated that I purchased an opposition to dismiss my bankruptcy case for improper venue from Save-a-Patriot, which was attached to that declaration as Exhibit 7. The opposition was filed on January 13, 2004 as noted on that exhibit.

16. Attached as Exhibit 5 is a true and correct copy of a bill dated January 15, 2004, from Save-a-Patriot for the opposition to dismiss I purchased for \$80.

17. During the period I was a member, SAPF also provided me with an "Affidavit of Revocation" and "Statement of Citizenship." I do not recall whether I paid for these documents but they were provided to me from SAPF.

18. Attached as Exhibit 6 is a true and correct copy of the "Statement of Citizenship" that was provided to me from the Save-a-Patriot Fellowship. Exhibit 6 states that "I incurred no liability for income tax under subtitle A for the preceding taxable year," "I anticipate I will incur no liability for income tax imposed under subtitle A for the current taxable year," and states that

it establishes "my 'exempt' status with respect to federal income taxes." I signed this Affidavit believing these statement to be true because I relied on Save-a-Patriot's materials, which state that wages earned within the United States is not taxable.

19. I received the "Statement of Citizenship" from Save-a-Patriot with instructions for providing the document to my employer in order to requested that they stop withholding taxes from my wages.

20. The materials provided with the "Statement of Citizenship," Exhibit 6, included a letter for forwarding to the IRS Philadelphia Service Center by my employer, Rite-Aid. in order to request that my employer stop withholding taxes from my wages.

21. Save-a-Patriot also provided me with an "Affidavit of Revocation and Rescission," a true and correct copy of which is attached as Exhibit 7. The materials supplied by Save-a-Patriot with the "Affidavit of Revocation and Rescission" states that it would allow me to revoke my Social Security number so that I was no longer obligated to pay, and my employer was not required to withhold, employment taxes.

22. The "Affidavit of Revocation and Rescission" supplied to me from Save-a-Patriot states, among other things, that:

a. "obtaining of the Social Security could defacto, by the general mindset within the workplace, subject an individual to the provisions of subtitle C of the Internal Revenue Code;"

b. "documents signed under penalties of perjury can become prima facie evidence sufficient to sustain a defacto legal conclusion by a judge that the signer has voluntarily become a taxpayer;"

c. "I was misled into believing I had a legal duty and obligation to file Internal Revenue

Service tax returns and other documents;”

d. “I, or any other free individual citizen within the States of the union, am actually and legally not subject to or liable for any income tax and have no legal duty or obligation whatsoever to complete and file an income tax return;”

e. “the 16th Amendment does not authorize a tax on individual citizens working within the States united;”

f. “there is no provision in the Code that imposes the tax on employees. . . or to pay the tax;”

g. “I do hereby exercise my rights as a free sovereign citizen of the State of Ohio, upheld by various court decisions to revoke, rescind, cancel and to render null and void, both currently and retroactively . . . all Internal Revenue Service forms, schedules, and documents ever signed and/or submitted by me, and all my signatures of the aforementioned items, to include the ‘SOCIAL SECURITY NUMBER’ application (Form SS-5);” and

h. “I do hereby declare that I am not subject personally to an Income Tax.”

23. I received instructions for filing the “Affidavit of Revocation and Rescission” with that document from the Save-a-Patriot Fellowship, a true and correct copy of which is attached as Exhibit 8.

24. The “Affidavit of Revocation and Rescission” instructions, Exhibit 8, paragraph 2, provides instructions for filing the document before sending it to the Secretary of Treasury. The Save-a-Patriot Fellowship provided a letter to use to forward the “Affidavit of Revocation and Rescission” to the Secretary of Treasury, a true and correct copy of which is attached as Exhibit

9.

25. The letter provided by the Save-a-Patriot Fellowship which I was to forward to the Secretary of Treasury states that "if I do not here from you, or any of your delegates, within ninety days (90), I will presume that my statements are correct and that you do not have any rebuttal."

26. The instructions for using the "Affidavit of Revocation and Rescission" supplied by Save-a-Patriot Fellowship, Exhibit 8, states that all "future correspondence from either state or IRS plunderers should be answered with S.A.P. Vehicles."

27. The instructions for using the "Affidavit of Revocation and Rescission" supplied by Save-a-Patriot Fellowship, Exhibit 8, also instructs that "You cannot file an IRS Form W-4 with an employer, or any other IRS or state income tax forms, once you execute and forward the affidavit to whomever."

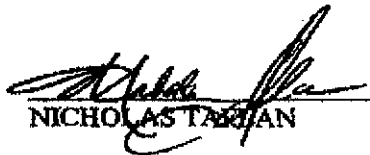
28. The instructions for using the "Affidavit of Revocation and Rescission" supplied by Save-a-Patriot Fellowship, Exhibit 8, all requested that I call if I have any questions regarding this document.

29. I relied on the materials attached to this declaration related to the "Statement of Citizenship" in believing that my employer should not withhold income taxes from my wages.

30. I relied on the materials attached to this declaration related to the Affidavit of Revocation and Rescission" in believing that my employer should not withhold employment taxes from my wages.

31. I was not promised anything in exchange for providing this declaration.

I declare under penalty of perjury the foregoing is true and correct. Executed this 12th day
of July, 2006.


NICHOLAS TASSIAN

JH
FILED
JAMES BONINI
CLERK

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

2006 JAN 13 10 33

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST DR. COLUMBUS

NICHOLAS TAFLAN,
Plaintiff,
v.

CASE NO: **C2 06**

JUDGE HOLSCHUH

DENIAL OF DUE PROCESS

MAGISTRATE JUDGE ~~TRINE~~

DEWAYNE TURK, AND ETHYL SIMPSON
Defendants.

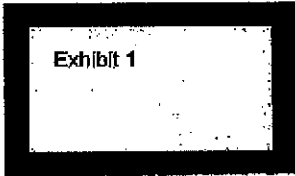
COMPLAINT FOR VIOLATION OF FEDERAL LAW

COMES NOW, Nicholas Taflan, plaintiff, pro se and files this Complaint for Denial of Due Process and for that provides the following:

JURISDICTION

1. That jurisdiction and venue of this Court is invoked pursuant to Public Law 105-206, section 1203, this being a complaint for denial of due process by the Internal Revenue Service Appeals Officers, violating plaintiff's Constitutional Right, under Amendment V, to a hearing, and pursuant to Title 26 U.S.C. 6330(b) &(c), this being a complaint for denial of a hearing by the Internal Revenue Service Office of Appeals, and is invoked pursuant to Title 28 United States Code § 1331, this action being a federal question. The venue is proper under Title 28 U.S.C. § 1391. Title 28 U.S.C. § 1331 reads as:

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.



2. Defendants may be sued in their individual capacity because the United States may not claim sovereign immunity under the provisions of the Federal Tort Claims Act. Because

Plaintiff's Complaint alleges a violation of his Constitutional rights and a violation of his rights to Due Process, §2679(b)(2) provides for an exemption to the Defendant's immunity under the Federal Tort Claims Act. Section 2679(b)(2), (A) and (B) states:

(2)

Paragraph (1) does not extend or apply to a civil action against an employee of the Government -

(A)

which is brought for a violation of the Constitution of the United States, or

(B)

which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized. (Emp added)

3. Jurisdiction is also proper pursuant to 28 U.S.C. § 1361 which states:

The district courts shall have original jurisdiction of an action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

4. The United States Tax Court does not have jurisdiction because it is an administrative court. The Tax Court does not have the authority and jurisdiction to decide the issue at hand. The supreme Court in Freytag v. Commissioner, 501 U.S. 868, 890-891 (1991) at 2656 stated that *The Tax Court... reviews determinations by Executive Branch officials (the Internal Revenue Service) that this much or that much tax is owed—a classic executive function. This complaint is not for a review of an Internal Revenue Service determination, for taxes owed, but for denial of Plaintiff's right to a hearing.*

Administrative law is discussed in 2 Am Jur 2d § 29. It states:

Administrative agencies are not courts. They are not part of the judicial system, nor are they judicial bodies or tribunals. However, administrative bodies may be called courts, and this does not change their nature. Thus,

bodies which have been designated courts of industrial relations, workers compensation courts, and county courts, are nonetheless, administrative agencies. Similarly, the Tax Court of the United States is not a court, but an independent agency of the executive branch of government.

This is verified by the Court in Commissioner of Internal Revenue v. Gooch Milling & Elevator Co., 320 U.S. 418, 88 L.Ed 139, 64 S.Ct. 184, 43-2 USTC ¶ 9673, 31 AFTR 764., which stated *The Board[Tax Court] is but "an independent agency in the Executive Branch of the Government," and the legislative pattern of its jurisdiction is clear and unambiguous. The Board is confined to a determination of the amount of deficiency or overpayment for the particular tax year as to which the commissioner determines a deficiency and as to which the taxpayer seeks a review of the deficiency assessment.* (Emp added)

5. **The controversy involves the right to a hearing** for alleged employment taxes for tax year 1996. **The Denial of Due Process of Law, by the Defendant's, is the issue of this complaint.**

6. The Plaintiff is within the 30 day limitation imposed by Title 26 U.S.C. § 6330, which states in relevant part, *(d) Proceeding after hearing.-- (1) Judicial review of determination.--The person may, within 30 days of a determination under this section, appeal such determination (B) * * * to a district court of the United States.* The adverse determination notice was dated December 16, 2005.

7. This action is not to contest unpaid liability, but to contest a wrongful verification that "All legal and procedural requirements were met prior to the issuance of the Lt 3172 and the filing of the NFTL, and the Settlement Officer concluded that the action was appropriate, namely his RIGHT to a hearing." 26 U.S.C. § 6330(c)(1) states:

(1) Requirements of investigation. The appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met.

8. This action is filed to afford Plaintiff his due process rights pursuant to Amendment Five of the United States Constitution and Public Law 105-206, section 1203, and 26 U.S.C. § 6330(b) &(c), which have been denied by Defendant's here to date. Public Law 105-206, section 1203, Termination of Employment For Misconduct, states in pertinent part:

(a) IN GENERAL. Subject to subsection (c), the Commissioner of Internal Revenue shall terminate the employment of any employee of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed any act or omission described under subsection (b) in the performance of the employee's official duties. Such termination shall be a removal for cause on charges of misconduct.

(b) ACTS OR OMISSIONS. The acts or omissions referred to under subsection (a) are-

(3) with respect to a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, the violation of -

(A) any right under the Constitution of the United States;

26 U.S.C. § 6330 states in pertinent part:

(b) Right to fair hearing

(1) In general

If the person requests a hearing under subsection (a)(3)(B), such hearing

shall be held by the Internal Revenue Service Office of Appeals.

26 U.S.C. § 6330 (c) (1) The appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable laws or administrative procedure have been met.

PLAINTIFF

9. That Nicholas Taflan is a citizen of Belmont County, State of Ohio, so this case is properly venued in the State of Ohio United States District Court for the Southern District of Ohio. His address is 55951 Key Bellaire Road, Bellaire, Ohio 43906-9530.

DEFENDANTS

10. That Ethyl Simpson is an Internal Revenue Service Appeals Settlement Officer, Employee ID Number 31-07196, Internal Revenue Service, Cincinnati Appeals Office, 312 Elm Street, Suite 2330, Cincinnati, Ohio 45202-2763.

11. That Dewayne Turk, is Appeals Team Manager, Internal Revenue Service, Cincinnati Appeals Office, 312 Elm Street, Suite 2330, Cincinnati, Ohio 45202-2763.

STATEMENT OF CLAIM

12. This suit is not for the purpose of restraining the assessment or collection of any tax as prohibited by Title 26 U.S.C § 7421. This action is filed to afford plaintiff his due process rights pursuant to Amendment Five of the United States Constitution, and 26 U.S.C. § 6330(b) &(c), which have been denied by defendants here to date.

13. On or about March 31, 2004, the Internal Revenue Service, sent Plaintiff a letter that stated: "WE RECEIVED YOUR REQUEST FOR A COLLECTION DUE

PROCESS HEARING AND WE NEED TO ADVISE YOU ON PROCEDURES," for year 1996. The letter stated that: *Appeals does not provide a face-to-face conference if the only items you wish to discuss are those mentioned above.* (Plaintiff's Exhibit A)

14. On October 20, 2005, Plaintiff's rebutted Defendant Simpson's letter and stated that: *I notice that you claim that "Appeals does not provide a face-to-face conference if the only items you wish to discuss are those mentioned above." However, you have failed to provide any authority to support your claim. On the other hand, in the regulations governing Collection Due Process hearings (26 CFR § 301.6330-1(d)(2)), I found the following information:*

Q-D7: If a taxpayer wants a face-to-face CDP hearing, where will it be held?

A-D7: The taxpayer must be offered an opportunity for a hearing at the Appeals office closest to taxpayer's residence or, in the case of a business taxpayer, the taxpayer's principal place of business. (Emp added)

Plaintiff also stated that: *As you can see, this provision shows that if I want a face-to-face hearing, then I must be offered the opportunity for one.* (Plaintiff's Exhibit B).

15. On or about October 25, 2005 defendant Ethyl Simpson, Settlement Appeals Officer, Internal Revenue Service, issued a letter that denied Plaintiff a face-to-face hearing. In her letter she stated that: *You were advised in my appointment letter to you that unless you provide Appeals with documents describing legitimate issues or collection alternatives, your hearing will be via telephone.* (Plaintiff's Exhibit C)

16. On or about October 26, 2005 defendant Ethyl Simpson, Settlement Appeals Officer, Internal Revenue Service, issued a letter that again denied Plaintiff a face-to-face hearing. In her letter she stated that: *Once again, if you are interested in receiving a face-to-face conference, you must be prepared to discuss issues relevant to paying your tax*

liability.... The Internal Revenue Manual determines whether Appeals can accept your proposal. (Plaintiff's Exhibit D)

17. On November 7, 2005 Plaintiff rebutted defendant's October 25th and 26th, 2005 letters and stated that: *Finally, you continue to deny me a face-to-face conference by alleging that I have "failed to provide Appeals with the legitimate issues [I] would like to discuss." However, you still have failed to provide any statutory or regulatory authority that supports your contention that I may be denied a face-to-face conference. Ms. Simpson, if you continue to deny me a face-to-face hearing, such action must be considered a willful violation of my right to due process.* (Plaintiff's Exhibit E)

18. On December 16, 2005 defendant Dewayne Turk, Appeals Team Manager, Internal Revenue Service Appeals, issued a fraudulent Notice of Determination that stated: *Based on the facts presented in the administrative file, the Settlement Officer has verified that all the requirements of various applicable law and administrative procedures have been met.* (see Discussion and Analysis) (Emp added) (Plaintiff's Exhibit F)

19. It should be clear that IRS Appeals officers Ethyl Simpson and Dewayne Turk clearly denied appellant a face-to-face hearing that he was entitled to. Clearly they denied plaintiff his Due Process of Law.

20 26 CFR § 301.6330-1(d)(2), states;

Q-D7: If a taxpayer wants a face-to-face CDP hearing, where will it be held?

A-D7: The taxpayer must be offered an opportunity for a hearing at the Appeals office closest to taxpayer's residence or, in the case of a business taxpayer, the taxpayer's principal place of business. (Emp added)

21. The IRS officers have clearly not followed the prescribed statutes as set forth in 26 U.S.C. §6330(b)(1) and (c)(1) and 26 CFR § 301.6330-1(d)(2). Plaintiff timely requested a hearing, but was denied his hearing by the Defendant's.

22. That actions of Ethyl Simpson and Dewayne Turk stated in paragraphs 13 through 21 to wit, deprived the Plaintiff of a portion of his right to due process as guaranteed by Article V of the United States Constitution and 26 U.S.C. § 6330(b)(1), (b)(4) and (c) and 26 CFR § 301.6330-1(d)(2).

23. A memorandum of law is incorporated in this complaint by reference thereto.

24. Plaintiff filed a timely request for a hearing. Pursuant to 26 U.S.C. § 6330(e) (1) ...if a hearing is requested under subsection (a)(3)(B), the levy actions which are the subject of the requested hearing... shall be suspended for the period during which such hearing, and appeals therein, are pending ...

Relief Sought:

WHEREFORE, Plaintiff demands judgment against, Ethyl Simpson and Dewayne Turk as follows:

1) a judgment that Ethyl Simpson and Dewayne Turk violated the law depriving Plaintiff of his right to due process as guaranteed by Article V of the United States Constitution.

2) a judgment that Ethyl Simpson and Dewayne Turk violated the law and committed any act or omission described under subsection (b) of Public Law 105-206,

section 1203. Namely his Constitutional right to Due Process of Law pursuant to Amendment V of the United States Constitution.

3) an ORDER that Ethyl Simpson and Dewayne Turk provide a fair hearing pursuant to Title 26 U.S.C. 6330(b) &(c).


4) an ORDER that the defendants comply with the laws as stated in 21 and 22 above in all future matters relating to the plaintiff.

5) an Order that the defendants pay costs and reasonable attorney fees to the plaintiff for prosecuting this action; and

6) other such relief that this Court should deem just and equitable.

THE PLAINTIFF DEMANDS A TRIAL BY JURY.

Dated this 12th day of January, 2006, at Bellaire, Ohio.


Nicholas Taflan
55951 Key Bellaire Road
Bellaire, Ohio 43906-9530

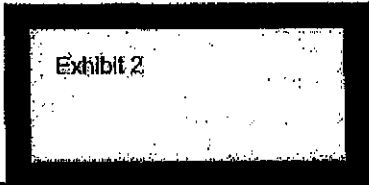
I, Nicholas Taflan of 55951 Key Bellaire Road, Bellaire, Ohio 43906-9530 hereby declare, under penalty of perjury, that the above is true, correct, and complete to the best of my knowledge.

Further Affiant saith not.


Nicholas Taflan

Save-A-Patriot Fellowship Para-legal Services

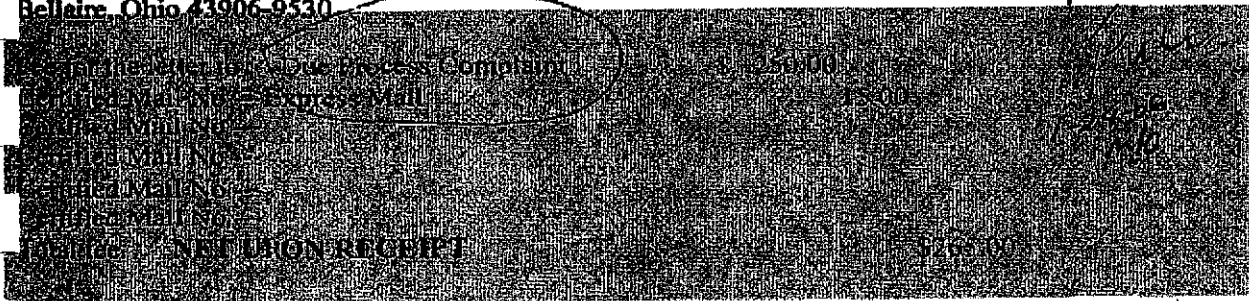
Post Office Box 91
Westminster, Maryland 21158
Tel: 410-857-4441



PAID
IN

January 11, 2006

Nicholas M. Tallan
55951 Key Bellaire Rd.
Bellaire, Ohio 43906-9530



Please promptly return this bill with your payment 'in full' in cash or a totally blank U.S. Postal money order (leave blank both payor and payee sides). A copy of your money order or FRN's can be used to verify your payment if the question arises.

Fees are Net Upon Receipt of the date of the invoice. Please keep your account current, as no further work will be done for accounts in arrears and payment in advance will be required..

If you find yourself unable to pay 'in full' or unable to make prompt payment, please notify the Para-legal immediately. Thank you.

Please Note: This is not standard casework. This is Para-legal work which is not supplemented by the fellowship in any way, but facilities and materials. The para-legal who prepared this document for you, is solely dependent upon your prompt and 'in full' handling of this matter so that he can continue to provide his knowledge and experience to the Membership.

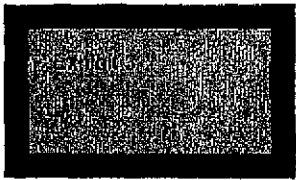
Invoice No. NL-2005-710
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FILED
JAMES BONINI
CLERK

2006 JAN 13 A 10:33

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS



UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

NICHOLAS TAFLAN,
Plaintiff,
v.

DEWAYNE TURK, AND ETHYL SIMPSON,
Defendants.

CASE NO: **C2 06 32**

JUDGE HOLSCHUH
DENIAL OF DUE PROCESS

MAGISTRATE JUDGE

**MEMORANDUM IN SUPPORT OF COMPLAINT FOR
VIOLATION OF FEDERAL LAW**

COMES NOW, Nicholas Taflan, plaintiff, pro se, and he submits this memorandum of law in support of his Complaint For Violation of Federal Law.

A. Defendant's denied Plaintiff his due process rights by denying him a fair hearing.

The law clearly states that Plaintiff has a Right to a fair hearing. 26 U.S.C. § 6330 provides for a hearing and states in pertinent part:

(b) (1) If the person requests a hearing under subsection (a)(3)(B), such hearing shall be held by the Internal Revenue Service Office of Appeals.

and § 6330 states in pertinent part:

(c) (1) The appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable laws or administrative procedure have been met.

Defendant's did not provide Plaintiff a fair hearing, they therefore could not verify that all applicable law or administrative procedure have been met, contrary to Mr. Turk's Determination.

445

Appeals Office
312 Elm Street
Suite 2330
Cincinnati, OH 45202-2763

PLAINTIFF A
EMBIT

Person to Contact:
Ethel Simpson
Employee ID Number: 31-07196
Tel: 513-263-4829
Fax: 513-263-4800

Date: October 6, 2005

Refer Reply to:
AP:FE:OH:CLEMS

NICHOLAS TAFLAN
55951 KEY BELLAIRE ROAD
BELLAIRE OH 43906

In Re:
Collection Due Process - Levy
Social Security or Employer
Identification Number:
~~XXXXXXXXXX~~
Tax Period(s) Ended:
12/1996

**WE RECEIVED YOUR REQUEST FOR A COLLECTION DUE PROCESS
HEARING AND WE
NEED TO ADVISE YOU ON PROCEDURES**

I've received your request for a Collection Due Process (CDP) Hearing. The items that you mention in your CDP hearing request are items that:

- Courts have determined are frivolous or groundless, or
- Appeals does not consider. These are moral, religious, political, constitutional, conscientious, or similar grounds.

Examples of arguments that are considered frivolous or groundless are provided in "The Truth About Frivolous Tax Arguments" on the IRS Internet website at http://www.irs.gov/pub/irs-utl/fri_tax.pdf. It is not a complete list of frivolous and groundless arguments.

Appeals does not provide a face-to-face conference if the only items you wish to discuss are those mentioned above. You may, however, have a telephone conference or discuss with us by correspondence any relevant challenges to the proposed levy. I have scheduled a telephone conference for you on October 26, 2005 at 9:00a m. Please call me at the number indicated above on that date and at that time. This will be considered your Collection Due Process Hearing.

As of May 2, 2002 Appeals no longer allows audio or stenographic recordings of Appeals conferences and hearings.

If you are interested in receiving a face to face conference, you must be prepared to discuss issues relevant to paying your tax liability. These include, for example, offering other ways to pay the taxes you owe, such as an installment agreement or offer in

EXHIBIT B

Nicholas M. Taflan
55951 Key-Bellaire Road
Bellaire, OH 43906

October 20, 2005

Certified Mail No. 7003-2260-0002-7232-2497

Ethel Simpson, Appeals Settlement Officer
Internal Revenue Service Appeals Office
312 Elm Street, Suite 2330
Cincinnati, OH 45202-2763

Re: Your letter dated October 6, 2005.

Dear Ms. Simpson:

I am in receipt of your letter, dated October 6, 2005, which purports to schedule a telephone conference in lieu of a Collection Due Process hearing for the year 1996. I must say this letter came as a surprise, since I last requested such a hearing back on February 27, 2002. An "Equivalent Hearing" was held—at which time the Appeals Officer refused to address any of the issues I raised—and a Decision Letter, dated September 12, 2002, was issued.

The decision to give me only an equivalent hearing at that time was based on the IRS' erroneous determination that my request for the CDP hearing was not timely. It was erroneous because said determination ignored my original request for a hearing, dated September 4, 1999, in response to the first Letter 1058, dated August 8, 1999. I was never contacted about that CDP request. Instead the IRS claimed that I never requested a hearing until after the second Letter 1058 was issued on February 9, 2002. I again requested a CDP hearing—this one dated February 27, 2002—and that is when the equivalent hearing was held.

From the facts outlined above, I was clearly entitled to a CDP hearing, either back in 1999 or in 2002, rather than merely an equivalent hearing. The IRS has failed to provide any reason why the second offer of a hearing was given, since according to their assertions, I failed to request one for two and a half years after the first offer was given. And now, adding to this confusion, I have been notified that you have scheduled another hearing, even though I have no record of a third offer being made, nor any third request submitted. Therefore, please provide me with copies of the IRS' notice to me and my request for hearing, which are the basis of the hearing you scheduled for October 26, 2005. Obviously, the lack of prior notice about this hearing puts me at a disadvantage. Therefore, once you provide the information requested herein, I will need at least an additional 30 days to prepare for any such hearing.

In addition to the above, I notice that you claim that "Appeals does not provide a face-to-face conference if the only items you wish to discuss are those mentioned above." However, you have failed to provide any authority to support your claim. On the other hand, in the regulations governing Collection Due Process hearings (26 CFR § 301.6330-1(d)(2)), I found the following information:

Q-D7. If a taxpayer wants a face-to-face CDP hearing, where will it be held?

Page 1 of 3

447

Internal Revenue Service
Appeals Office
312 Elm Street
Suite 2330
Cincinnati, OH 45202-2763

*PLANNING
ET ALIBET*

Department of the Treasury

Person to Contact:

Ethel Simpson
Employee ID Number: 31-07196

Tel: 513-263-4829

Fax: 513-263-4800

Refer Reply to:

AP:FE:OH:CI:EMS

In Re:

~~Collection Due Process - Lien~~

Tax Period(s) Ended:

12/1996

Date: October 25, 2005

NICHOLAS TAFLAN
55951 KEY BELLAIRE RD.
BELLAIRE OH 43906-9530

Dear Taxpayer:

I am in receipt of your letter dated October 20, 2005 in response to the hearing appointment letter sent to you scheduling your telephone Collection Due Process Hearing for October 26, 2005 at 9:00am.

The hearing appointment letter was sent to you in response to your Form 12153; Request for a Collection Due Process Hearing dated May 20, 2003. The reason your hearing was not scheduled in 2003 was because you filed bankruptcy on June 6, 2003 and your case was not discharged from bankruptcy until September 2005. A hearing could not be scheduled until after the bankruptcy case was closed. I have provided a copy of your request as well as a copy of the Lt 3172 Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320.

We have determined that all the proper administrative steps have been taken by the Service and have provided you with a transcript demonstrating the fact of assessment. This transcript shows the same essential information found on a Form 4340, Certificate of Assessments and Payments. The Tax Court has found that a Form 4340 satisfies the requirement under I.R.C. § 6330(c) (1) to verify "that the requirements of any applicable law or administrative procedure have been met." Davis v. Commissioner, 115 T.C. No. 4 (July 31, 2000).

You were advised in my appointment letter to you that unless you provide

Internal Revenue Service
Appeals Office
312 Elm Street
Suite 2330
Cincinnati, OH 45202-2763

Department of the Treasury

Person to Contact:
Ethel Simpson
Employee ID Number: 31-07196

Tel: 513-263-4829

Fax: 513-263-4800

Refer Reply to:
AP:FE:OH:CI:EMS

In Re:
Collection Due Process - Lien
Tax Period(s) Ended:
12/1996

Date: October 26, 2005

NICHOLAS TAFLAN
55951 KEY BELLAIRE RD.
BELLAIRE OH 43906-9530

Dear Taxpayer:

I sent you a letter dated October 6, 2005 offering you a telephonic Collection Due Process conference. The conference was scheduled for October 26, 2005 at 9:00am. You failed to call in for the scheduled hearing at the time indicated.

On October 25, 2005 I received a letter from you requesting an additional 30 days to have your hearing because you did not recall requesting this hearing. I responded to your letter on October 25, 2005. The original hearing appointment letter was sent to you on October 6, 2005 and it was requested that if you had a problem with the date and time indicated for the hearing you contact us with 7 days from the hearing date.

The conference letter also asked that prepare or verify that you have filed a tax return for 2004. I have not received that verification.

As a final attempt to resolve your relevant issues in a Collection Due Process Hearing, I have scheduled another hearing for November 9, 2005 at 9:00am via telephone. Please call me at (513) 263-4829 at the time indicated.

Once again, if you are interested in receiving a face-to-face conference, you must be prepared to discuss issues relevant to paying your tax liability. These include for example, offering other ways to pay the taxes

EXHIBIT E

Nicholas M. Taflan
55951 Key-Bellaire Road
Bellaire, OH 43906

November 7, 2005

Certified Mail No. 7003 2260 0002 7232 5016

Ethel Simpson, Appeals Settlement Officer
Internal Revenue Service Appeals Office
312 Elm Street, Suite 2330
Cincinnati, OH 45202-2763

Re: Your October 25, 2005 and October 26, 2005 response to my request for a Collection Due Process hearing.

Dear Ms. Simpson:

I am in receipt of your letters, dated October 25th and 26th, concerning the Collection Due Process hearing which I apparently requested regarding a lien filed for 1996. A copy of your letters is enclosed for your convenience.

In the letter dated October 25th, it appears you are addressing the issues raise in my letter of October 20, 2005, concerning the required verification of compliance with all laws and procedures. The first issue dealt with the actual making of the assessment. You make reference to a Tax Court case, Davis v. Commissioner, which held that a reliance on Forms 4340 is sufficient for such verification with respect to the assessment. That case also recognizes that there may be irregularities in the assessments that negate that general view. However, all of the documentation which would serve to show such irregularities are in the possession of the IRS, which refuses to provide copies of them to me. Obviously, this "catch-22" situation puts me at quite a disadvantage, and hence, your reliance on secondary evidence (that is, a transcript) exemplifies the inherent unfairness of the whole process.

This concept of secondary evidence—as distinguished from the best evidence—is pointed out in the Internal Revenue Manual in connection with examinations.

4.10.7.3.11 (05-14-1999)
Best Evidence

1. The best evidence rule requires that, when possible, original evidence be used. Therefore, examiners should always ask to see original documents when there is reason to believe such documents are available.

4.10.7.3.12 (05-14-1999)
Secondary Evidence

1. Secondary evidence is used when original evidence is unavailable. Examples of acceptable secondary evidence are copies of original documents made by an examiner. In the absence of original documents, copies made by the examiner become the best evidence available.

Internal Revenue Service
Appeals Office
312 Elm Street
Suite 2330
Cincinnati OH 45202-2763

EXHIBIT F

Department of the Treasury

Person to Contact:
Ethel Simpson
Employee ID Number: 31-07196
Tel: 513-263-4829
Fax: 513-263-4800
Contact Hours: 7:00am -3:00pm
Refer Reply to:
AP:FE:OH:CLEMS
SSN/EIN Number:
Tax Type/Form Number:
1040
In Re:
Collection Due Process Hearing
(Tax Court)
Tax Period(s) Ended:
12/1996

Date: DEC 16 2005

NICHOLAS TAFLAN
55951 KEY BELLAIRE ROAD
BALLAIRE OH 43906-9530

Certified Mail

**NOTICE OF DETERMINATION
CONCERNING COLLECTION ACTIONS UNDER SECTION 6320**

Dear Taxpayer:

We have reviewed the taken or proposed collection action for the periods shown above. This letter is your Notice of Determination, as required by law. A summary of our determination is stated below. The attached statement shows, in detail, the matters we considered at your Appeals hearing and our conclusions about them.

If you want to dispute this determination in court, you must file a petition with the United States Tax Court for a redetermination within 30 days from the date of this letter.

Before you decide to petition this Notice of Determination, you should be advised that the U.S. Tax Court is empowered to impose monetary sanctions up to \$25,000.00 for instituting or maintaining an action before it primarily for delay or for taking a position that is frivolous or groundless. Pierson v. Commissioner, 115 T.C.No.39 (2000). It is our conclusion that the position you have taken has no merit and is groundless.

To get a petition form and the rules for filing a petition, write to: Clerk, United States Tax Court, 400 Second Street, NW, Washington, D.C. 20217, or access the Tax Court website at www.ustaxcourt.gov.

The Tax Court has a simplified procedure for an appeal under section 6330(d) (1) (A) of a determination in which the unpaid tax does not exceed \$50,000. You also can get information about this procedure by writing to the Tax Court, or accessing the Tax Court website at www.ustaxcourt.gov.

451

The time limit for filing your petition is fixed by law. The courts cannot consider your case if you file late. If the court determines that you filed your petition with the wrong court, you will have 30 days after such determination to file with the correct court.

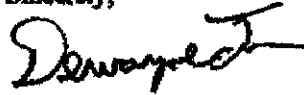
If you do not petition the court within the time frame provided by law, your case will be returned to the originating IRS office for action consistent with the determination summarized below and described on the attached pages.

If you have any questions, please contact the person whose name and telephone number are shown above.

Summary of Determination

It is the Determination of Appeals that the filing of the Federal Tax Lien was appropriate and should not be withdrawn. Please find further details contained in the attachment to this letter.

Sincerely,



Dewayne Turk
Team Manager

**ATTACHMENT TO LETTER 3193, NOTICE OF DETERMINATION
COLLECTION DUE PROCESS HEARING – IRC 6320**

Taxpayer: Nicholas Taflan
Address: 65951 Key Bellaire Road
Bellaire, OH 43906-9530

Type of Tax	Tax Periods	Lt 3172 Notice Date	F-12153 Received Date
1040	12/1996	05/12/2003	05/27/2003

SUMMARY AND DETERMINATION

You requested a Collection Due Process (CDP) hearing under the provisions of Internal Revenue Code (IRC) Sec. 6320 as to the appropriateness of the filing of a Notice of Federal Tax Lien (NFTL) for the period listed above.

Appeals' determination is that filing of the NFTL by the Internal Revenue Service was necessary and appropriate in order to protect the government's interest and to establish its priority in relation to other creditors.

You failed to appear for the Collection Due Process Hearing, you failed to raise any relevant challenges to the underlying tax liability. You did not raise collection alternatives and would not have qualified for them because you are not in compliance with filing requirements.

BRIEF BACKGROUND

You failed to voluntarily file a tax return for income tax period ending December 31, 1996. The Internal Revenue Service (IRS) issued Letter 3219, Statutory Notice of Deficiency concerning this year and sent it to you by certified mail. The letter notified you of the proposed tax, penalties and interest and gave you the opportunity to contest the proposed assessments by petitioning the United States Tax Court. There is no record that you filed such a petition.

The Statutory Notice of Deficiency is your one time opportunity to contest or dispute the liability. The Collection Due Process (CDP) hearing is not a second opportunity to dispute the underlying tax liability. IRC § 6330 (c) (2)(B) states that you "...may also raise at the hearing challenges to the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability."

The liability remained unpaid and your account was then assigned to collection. Collection requested the filing of the NFTL on May 7, 2003 and sent you a notice of this filing on May 12, 2003. This notice also informed you of your right to request a hearing concerning the NFTL.

Nicholas Taflan
IRC 6320-Lien
30-12/1996

The letter explained that your request needed to be made by June 13, 2003 in order to be considered timely. As explained above, your request was made prior to this date and you have the right to request judicial review of this Notice of Determination.

In reviewing your account in Appeals the Settlement Officer determined that you have not filed a tax return for the 1995, 1997, 1998, 1999, 2000, 2001 or 2004 tax periods.

DISCUSSION AND ANALYSIS

Legal and Procedural Requirements

Based on the facts presented in the administrative file, the Settlement Officer has verified that all the requirements of various applicable law and administrative procedures have been met.

- Assessment was made on the applicable GDP period per IRC Sec. 6201.
- IRC 6321 provides a statutory lien when a taxpayer neglects or refuses to pay a tax notice and demand. To be valid against 3rd parties, a notice of lien must be filed in the proper place, per IRC 6322 (a) and (b). The transcripts show that the notice and demand as required by the code was issued to the taxpayer for the tax period involved in this Appeal.
- IRC 6320 requires that the IRS give notice in writing within 5 days after the filing of a Notice of Federal Tax Lien, of the taxpayer's right to request a hearing before the Office of Appeals if the request is made within 30 days following the end of the 5-day notification period.
- I verify that Letter 3172 was sent via certified mail to your last known address for the requested lien. This letter was sent no later than 5 business days after the NFTL was mailed for recordation per IRC 6320 (a).
- The proper computer codes were input to suspend the collection statute while the case is being considered under IRC Sec. 6320.
- This Appeals Settlement Officer has had no prior involvement in Appeals or collection activity with respect to the liabilities covered by this hearing.

As noted above, the Letter 3172 was issued on May 12, 2003 and your hearing request was received on May 27, 2003.

Relevant Issues Raised by the Taxpayer

Nicholas Taffan
IRC 6320-Lien
30-12/1996

You included a number of disputed issues in your request for a hearing. All of the issues mentioned were items that the courts have determined are frivolous. There was no mention of collection alternatives.

Appeals Analysis:

You failed to appear for your hearing that was scheduled via telephone.

You did not raise any relevant challenges to the underlying tax liability or the appropriateness of the filing of the Notice of Federal Tax Lien. You did not establish grounds for withdrawal of the lien. You failed to submit documents to support collection alternatives.

IRC 6323(j) provides a filed NFTL may be withdrawn:

- If the filing of such notice was premature or otherwise not in accordance with administrative procedures of the Secretary;
- If the taxpayer has entered into an installment agreement under § 6159 to satisfy the liability for which the lien was imposed by means of installment payments, unless such agreement otherwise provides;
- If the withdrawal of such notice will facilitate the collection of the tax liability, or
- With the consent of the taxpayer or the National Taxpayer Advocate, if the withdrawal of such notice would be in the best interests of the taxpayer (as determined by the National Taxpayer Advocate) and the United States.

A review of the history does not reveal that the lien was filed prematurely nor is this a Taxpayer Advocate case with a hardship issue. You have not indicated that a withdrawal would facilitate collection of the taxes. At this time, grounds for withdrawal have not been established.

No other valid issues were raised.

Before you decide to petition this Notice of Determination, you should be advised that the U.S. Tax Court is empowered to impose monetary sanctions up to \$25,000.00 for instituting or maintaining an action before it primarily for delay or for taking a position that is frivolous or groundless. Pierson v. Commissioner, 115 T.C.No.39 (2000). It is our conclusion that the position you have taken has no merit and is groundless.

Due to your failure to comply with the income tax filing requirements, no collection alternatives could be considered.

Balancing Efficient Collection and Intrusiveness

IRC § 6330 requires that the Appeals Office consider whether a proposed collection action balances the need for efficient collection of the taxes with the legitimate concern that any collection action be no more intrusive than necessary.

Nicholas Taffan
IRC 6320-Lien
30-12/1996

IRC 6330 requires that the Appeals Office consider whether a proposed collection action balances the need for efficient collection of taxes with the legitimate concern that any collection action be no more intrusive than necessary. Due to your failure to establish grounds for withdrawal of the Notice of Federal Tax Lien and failure to pay the liability, the action taken by the IRS was appropriate. The most efficient means of protecting the public interest regarding this delinquent liability is through the filing of the Notice of Federal Tax Lien. In that the liability was appropriately assessed and is due and owing and you have made no arrangements to repay, the filing of the NFTL balances the need for efficient collection with your concern over the intrusiveness of the action

DETERMINATION

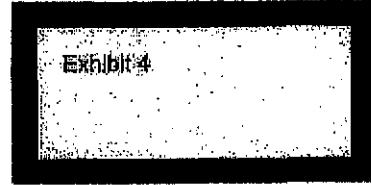
All legal and procedural requirements were met prior to the issuance of the Lt 3172 and the filing of the NFTL, and the Settlement Officer concluded that the action was appropriate. The filing of the NFTL was necessary in order to protect the government's interest and to establish its priority in relation to other creditors. Additionally, the filing of the NFTL is in balance with whatever concerns you may have over intrusiveness of the action.

**Nicholas Taffan
IRC 6320-Lien
30-12/1996**

Save-A-Patriot Fellowship Para-legal Services

Post Office Box 91
Westminster, Maryland 21158
Tel: 410-857-4441

January 27, 2004



Nicholas Taffan
55951 Key-Bellaire Rd.

PAID - 4/21/04 [initials]

Balance Forward	39069.36
Fees for the month of January	1100.00
Balance Forward	
Total Due - NET UPON RECEIPT	40169.36

Please promptly return this bill with your payment 'in full' in cash or a totally blank U.S. Postal money order (leave blank both payor and payee sides). A copy of your money order or FRN's can be used to verify your payment if the question arises.

Fees are Net Upon Receipt of the date of the invoice. Please keep your account current, as no further work will be done for accounts in arrears and payment in advance will be required. If you find yourself unable to pay 'in full' or unable to make prompt payment, please notify the Para-legal immediately you.

Please Note: This is not standard casework. This is Para-legal work which is not supplemented by the fellowship in any way, but facilities and materials. The para-legal who prepared this document for you, is solely dependent upon your prompt and 'in full' handling of this matter so that he can continue to provide his knowledge and experience to the Membership.

Invoice No. 2004-NL-555
#???

Save-A-Patriot Fellowship Para-legal Services

Post Office Box 91
Westminster, Maryland 21158
Tel: 410-837-4441

PAID
1-21-04
M/O

January 15, 2004

Nicholas Taflan
55951 Key Bellaire Rd.
Bellaire, Ohio 43906-9530

Fee for the letter to : **Opposition to Dismiss-Venus**
Certified Mail No self file

\$ 80.00

Total fee: **NET UPON RECEIPT**

\$ 80.00

Please promptly return this bill with your payment 'in full' in cash or a totally blank U.S. Postal money order (leave blank both payor and payee sides). A copy of your money order or FRN's can be used to verify your payment if the question arises.

Fees are Net Upon Receipt of the date of the invoice. Please keep your account current, as no further work will be done for accounts in arrears and payment in advance will be required.

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Please Note: This is not standard casework. This is Para-legal work which is not supplemented by the fellowship in any way, but facilities and materials. The para-legal who prepared this document for you, is solely dependent upon your prompt and 'in full' handling of this matter so that he can continue to provide his knowledge and experience to the Membership.

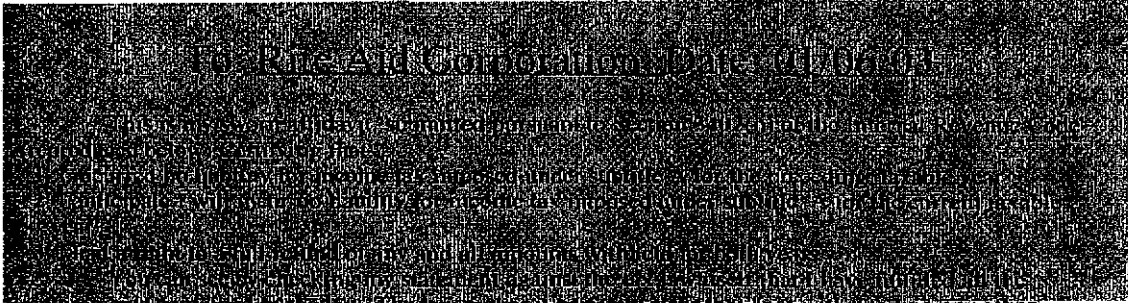
Invoice No. NL-2002-550

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458

AFFIDAVIT

(Establishing my "exempt" status with respect to federal income taxes pursuant to 26 USC 3402(n))



requirements contained in the law. The law makes it perfectly clear that "notwithstanding any other provision of this section..."(i.e. Section 3402(n) that you "...shall not be required to deduct and withhold any tax..." from my wages if I provide you with the certified statement contained in this affidavit. Let me further point out that under law (Section 3402(n)) I am not required to provide you or the IRS with any other document or statement because this affidavit fulfills all the requirements contained in the law.

Let me further remind you that no mimeographed letter or alleged regulation can abrogate or supersede my sworn statement and the clear language and intent of the law as shown below.

INTERNAL REVENUE CODE SECTION 3402(n)

"(n)Employees incurring no income tax liability.

Notwithstanding any other provision of this section, an employer shall not be required to deduct and withhold any tax under this chapter upon a payment of wages if there is in effect with respect to such payment a withholding exemption certificate (in such form and containing such other information as the Secretary may prescribe) furnished the employer by the employee certifying that the employee:

- (1) incurred no liability for income tax imposed under subtitle A for his preceding taxable year.
- and
- (2) anticipates that he will incur no liability for income tax imposed under subtitle A for his current taxable year.

The Secretary shall by regulations provide for the coordination of the provisions of this subsection with the provisions of subsection (f).

NAME Nicholas M. Taffes
SIGNATURE [Signature]

NOTARY [Signature]
MY COMMISSION EXPIRES SEPTEMBER 15, 2003



This
STATEMENT OF CITIZENSHIP
for

Nicholas Matthew Taffan
55951 Key-Bellaire Rd
Bellaire, Ohio 43906

01/23/04
Rite Aid Corp.
Harrisburg, Pa.

This statement is provided in duplicate to conform to the provisions of internal revenue regulations which will relieve a withholding agent of the duty to withhold money from payments to a United States citizen and/or resident. The withholding agent is also relieved of any liability, pursuant to the regulations, because money is not withheld. The Code of Federal Regulations (26 CFR) says in pertinent part:

"Section 1.1441-5 Claiming to be a person not subject to withholding.

"(a) Individuals. For purpose of Chapter 3 of the code, an individual's written statement that he or she is a citizen or resident of the United States may be relied upon by the payor of the income as proof that such individual is a citizen or resident of the United States. This statement shall be furnished to the withholding agent in duplicate."

The duplicate copy of this Statement of Citizenship, along with a letter of transmittal, must be sent only to Internal Revenue Service Center, Philadelphia, PA 19255, by the withholding agent, pursuant to 26 Code of Federal Regulations section 1.1441-5.

Thank you,

(Signature)

Subscribed and sworn to before me, a Notary Public, for the State of _____, County of _____,
this _____ day of _____, 20_____.

Notary Public

My Commission Expires On: _____

460

Suggested "letter of transmittal" per 26 CFR section 1.1441-5:

Your company letterhead

Date Mailed

Certified Mail No. _____

**Internal Revenue Service Center
Philadelphia, PA 19255**

Dear Sir/Madam:

I am enclosing herein the duplicate copy of the "Statement of Citizenship" received from Name of person submitting the statement, as directed by Code of Federal regulation 26 CFR 1.1441-5.

If I do not receive a written detailed determination from your office within thirty(30) days of your receipt of this letter, I will continue to obey the above-referenced law as it is written.

Sincerely,

(responsible corporate officer)

Enclosure: Copy of duplicate "statement of citizenship"
cc: (person who submitted the "statement of citizenship")

461

AFFIDAVIT OF REQUEST AND TRANSMITTAL

I, _____ of _____ do hereby declare that on the _____ day of _____, _____ was requested to disclose a Social Security account number and he declined to disclose one. This action on our part meets all known requirements specifically those described in § 301.6109-1:

...When the person filing the return, statement, or other document does not know the number of the other person, and has complied with the request provision of this paragraph he shall sign an affidavit on the transmittal document forwarding such returns, statements, or other documents to the Internal Revenue Service, so stating...

Therefore, please also accept this affidavit as a letter of transmittal to accompany the forms/schedules regarding Mr. Taflan. Any further requests in this regard, as well as any potential penalties for the non-disclosure of the social security number should be directed to Mr. Taflan pursuant to § 301.6676-1.

(employer/paymaster)

Subscribed and sworn to before me, a Notary Public, of the State of _____,
County of _____, this _____ day of _____, 1999, that
the above named person did appear before me and was identified to be the person executing this document.

Notary Public

My Commission Expires On: _____



AFFIDAVIT OF REVOCATION AND RESCISSION

I, Nicholas M. Tafan, of 55951 Key-Bellaire Road, Bellaire, Ohio 43906, by my signature affixed to this document, do hereby make the following statement of fact, and affirm:

1. That I was unaware that completed, signed, and submitted Internal Revenue Service "tax forms" could be used as prima facie evidence against me in criminal trials. That I had in the past executed and submitted Internal Revenue Service tax forms voluntarily not realizing the ramifications that every material fact was being subscribed to. That by doing so I had voluntarily waived my constitutionally secured rights ". . . to be a witness against . . ." myself and my right ". . . to be secure in my person, house, papers, and effects, against unreasonable searches and seizures. . .";

2. That I was unaware that the signing and filing of an income tax form is an act imposed by law, (Title 26 United States Code § 1), for a individual citizen and/or resident of the United States living and working within a foreign country having a tax treaty with the United States;

3. That I was also unaware that "Income Taxes," imposed by Title 26 United States Code within subtitle A, "Income Tax," § 1, "Tax Imposed," as verified by the Paperwork Reduction Act's OMB Control Number assigned to Internal Revenue Service regulation § 1.1-1, (the underlying regulation for § 1), are computed on Internal Revenue Service information request form, Form 2555, "Foreign Earned Income,";

4. That I was also unaware that an application for a Social Security Number (Form SS-5) is also a voluntary act, that a Social Security Number is not needed to be employed, and that the obtaining of the Social Security number could defacto, by the general practice and mindset within the workplace, subject an individual to the provisions of subtitle C of the Internal Revenue Code, "Employment Taxes." That I was a minor when making this application, and as a matter of law I am not bound by any act that I committed when of a minor age.

5. That I was unaware that in a court of law completed Internal Revenue Service documents signed under penalties of perjury can become prima facie evidence sufficient to sustain a defacto legal conclusion by a judge that the signer has voluntarily become a "taxpayer" (any individual, trust, estate, partnership, association, company or corporation subject to a federal excise tax), a "person" who is subject to a federal taxation and is therefore subject to the authority, jurisdiction and control of the federal government under Title 26 of the United States Code, the statutes governing federal taxation and to the regulations of the Internal Revenue Service, thereby imposing the tax on himself and waiving his God-given Constitutionally secured rights in respect to the federal taxation statutes and their administration by the Internal Revenue Service and establishing himself as one who has no

Constitutionally secured rights in dealings with the Internal Revenue Service as exemplified in paragraph 3 above.

6. That I am a natural born free sovereign United States citizen, a citizen of the State of Ohio, a freeman endowed by my Creator with numerous unalienable rights including my rights to "life, liberty, and the pursuit of happiness," which rights are specifically identified in the Declaration of Independence and secured by the United States Constitution; That my birthright to "the pursuit of happiness" has been interpreted by both the framers of the Constitution and the U.S. Supreme Court as including my unalienable right to contract, to acquire, to deal in, to sell, rent, and exchange properties of various kinds, real and personal, without requesting or exercising any privilege or franchise from government; That I have learned that these unalienable property rights also include my right to contract for the exchange of my labor for other properties such as wages, salaries, and other earnings; And that I have never knowingly or intentionally waived any of these unalienable rights.

7. That I understand that if the exercise of rights were subjected to taxation, the rights could be destroyed by increasing the tax rates to unaffordable levels; therefore courts have repeatedly ruled that government has no power to tax the exercise of any rights of citizens, as shown by the U.S. Supreme Court in the case of *Murdock v. Penna.*, 319 U.S. 103 (1943) which stated: "A state may not impose a charge for the enjoyment of a right granted [secured] by the Federal Constitution."

8. That for years past I was influenced by numerous and repeated public warnings made by the Internal Revenue Service via radio, television, the printed press and other public communication media warning of the "deadline" for filing a "Form 1040 Income Tax Return and/or other Internal Revenue Service forms and documents.

9. That in addition to the aforesaid warnings, I was also influenced by misleading and deceptive wording of Internal Revenue Service publications, Internal Revenue Service generated news articles, the pressure of widespread rumors and misinformed public opinion, and the general practice of lawyers, C.P.A.'s and income tax preparers misled me to incorrectly believe that the 16th Amendment to the United States Constitution authorized Congress to impose a direct tax on me, my property, my exchanges of property and/or property received as a result of exercising my constitutionally secured right to contract; That I was further misled into believing I had a legal duty and obligation to file Internal Revenue Service tax returns and other documents.

10. That I have also been further influenced, misled and alarmed by rumors, misinformed public opinion and the electronic and print news and entertainment media to the effect that "the IRS will get you," and that it would be a crime punishable by fine and/or imprisonment if I did not fill out, sign and file with the Internal Revenue Service forms and

documents; That in actuality the only person named within the Internal Revenue Code required to collect, file a return, and pay an income tax is a "Withholding Agent" acting in behalf of "nonresident aliens, foreign corporations, and foreign tax exempt organizations.";

11. That in addition to all of the reasons stated in paragraphs 8, 9, and 10 above, I was influenced by the common and widespread practice of employers who either knowingly or unknowingly mislead their employees to believe that they are all subject to withholding of "income taxes" from their earnings, either with or without their permission, based upon the employers' possible mistaken assumption that they, as employers, are required by law to withhold "income taxes" from the paychecks of their employees, which is contrary to Internal Revenue Code Section 7701(a)(16), absent a voluntary execution of Form W4, "Employee's Withholding Allowance Certificate," used in association with the Social Security Number discussed in paragraph 4 above.

12. That I have also been influenced and impressed by the Internal Revenue Service's annual public display and indiscriminate offering of large quantities of the tax forms in banks, post offices, and through the United States mail.

13. That said tax forms contained no reference to any law or laws which would explain just exactly who is or is not subject to or liable for the income tax, nor do they contain any notice or warning to anyone that merely sending said completed forms to the IRS would be a waiver of my right to privacy secured by the 4th Amendment and the right to not having to be a witness against oneself secured by the 5th Amendment to the United States Constitution, and that the forms would in themselves constitute presumptive legal evidence admissible in a court of law, that the filer is subject to and liable for the income/excise tax even though and regardless of the fact that I, or any other free individual citizen within the States of the Union, am actually and legally not subject to or liable for any income tax and have no legal duty or obligation whatsoever to complete and file an income tax form.

14. That at no time was I ever notified or informed by the Internal Revenue Service, by any of its agents or employees, nor by any lawyer, C.P.A., or tax preparer of the fact that the 16th Amendment to the United States Constitution, as correctly interpreted by the U.S. Supreme Court in such cases as *Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1 (1916) and *Stanton v. Baltic Mining Co.*, 240 U.S. 103 (1916), identified the income tax as an indirect excise tax in accordance with Article I, Section 8, Clause 1 of the United States Constitution, and that the 16th Amendment does not authorize a tax on individual citizens living and working within the States united, but is applicable to nonresident aliens as stated by the Commissioner of the Bureau of Internal Revenue in T.D. (Treasury Decision) 2313, March 21, 1916.

15. That my attention has been called to Report No. 79-131 A, titled "Some Constitutional Questions Regarding the Federal Income Tax Laws" published by the American Law Division of the Congressional Research Service of the Library of Congress, May 25, 1979; That this publication described the tax on "income" identified in the 16th Amendment of the United States Constitution as an indirect excise tax; That this report stated: "The Supreme Court, in a decision written by Chief Justice White, first noted that the 16th Amendment did not authorize any new type of tax, nor did it repeal or revoke the tax clauses of Article I of the United States Constitution..." and further stated: "Therefore, it can clearly be determined from the decisions of the United States Supreme Court that the income tax is an indirect tax, generally in the nature of an excise tax." thus proving in my mind that the "income tax" is not a tax on me as an individual citizen.

16. That I was unaware of the truth of the Internal Revenue Service's rarely publicized statement that the "income" tax system is based upon "voluntary compliance with the law and self-assessment of tax"; That it has never been my intention or desire to voluntarily self-assess an excise tax upon myself; That I always thought that compliance was required by law.

17. That I have examined sections 6001, 6011, 6012(a), 1441, 1442, 1443, 7203, and 7205 of the Internal Revenue Code (Title 26 U.S.C.) and I am convinced and satisfied that I am not now and never was any such "person" or individual referred to by these sections.

18. That after careful study of the Internal Revenue Code and consultations with others on the provisions of the Code, I have never found or been shown any section of the Internal Revenue Code that imposed any requirement on me, as an individual citizen, living within a State of the Union, to file a personal "Income Tax Return," or that imposed a personal liability upon me to pay a tax on "income," or that would classify me personally as a "person liable."

19. That after study and consultations mentioned in paragraph 17 and 18, the only mention of any possible liability and/or requirement upon me, as an individual citizen, to complete and file a tax form and pay a tax on "income" that I could find or was shown in Title 26 United States Code was subtitle A, Chapter I, Subchapter A Section 1, "Tax on Individuals" and Subtitle F, Chapter 61A, Part II, Subpart B, Section 6012(a); That a careful study and examination of these parts of the Code revealed that the "Individuals" referred to were taxed according to a tax treaty, because of living and working within a foreign country.

20. That after study and consultations mentioned in paragraph 17 and 18, my attention was called to Internal Revenue Code Subtitle C, "Employment Taxes," Chapter 21 titled "Federal Insurance Contributions Act" (social security), to Subchapter A of Chapter 21 titled "Tax on Employees," which includes Section 3101 wherein the (social security) tax is identified as a tax on "income," not as an "Insurance Contribution," and not as a "Tax on

466

Employees," or on wages or earnings;

21. That my attention was further called to these facts: there is no provision in the Code that imposes the tax on employees or requires them to make an application for a Social Security Number, (needed to participate in the Social Security Welfare Program), or to pay the tax; that a voluntarily signed completed Form W-4, "Employee's Withholding Allowance Certificate," containing the Social Security Number, allows an employer to withhold money from a worker's pay for (social security) "income" tax, only if the "employee" has voluntarily made an application on Form SS-5 for a Social Security Number for the purpose of "obtaining or retaining a benefit" within the Social Security Welfare Program.

22. That after the study and consultations described in paragraph 17 and 18, my attention was called to § 61(a) of the Internal Revenue Code which lists items that are sources of "income" and to these facts: that Internal Revenue Service Collection Summons Form 6638 confirms that these items are sources, not "income," by stating that the following items are "sources": "wages, salaries, tips, fees, commissions, interest, rents, royalties, alimony, state or local tax refunds, pensions, business income, gains from dealings in property, and any other compensation for services (including receipt of property other than money)," that sources are not income, but sources become "income," defacto, if they are entered as "income" on a signed "Form 1040" because the signer affirms under penalty of perjury that the items entered in the "income" section of the "Form 1040" are "income" to the signer; That § 61(b) clearly indicates which Sections of the Code identify and list items that are included in "income" by stating: "For items specifically included in gross income, see Part II (sec. 71 and following)."

23. That my attention was then called to Part II, titled: "Items Specifically Included in Gross Income," that I studied §§ 71 through 87 and noticed that wages, salaries, commissions, tips, interest, dividends, pensions, rents, royalties, etc., are not listed as being included in "income" in those sections of the code; that, in fact, those items are not mentioned anywhere in any of these sections of the Internal Revenue Code.

24. That Shirley D. Peterson, former Commissioner of the Internal Revenue Service, and former head of the Criminal Tax Division of the United States Attorney General's Office, expressed her concerns about the Internal Revenue Code on April 4, 1993, at Southern Methodist University thusly: "Eight decades of amendments and accretions to the [Internal Revenue] Code have produced a virtually impenetrable maze. The rules are unintelligible to most citizens — including those holding advanced degrees and including many who specialize in tax law." She complained: "We have seen many attempts at tax reform and simplification but none of these efforts has confronted the basic problem: that is, the [Internal Revenue] Code itself. The key question is: can we define 'income' in a fair and reasonably straightforward manner. Unfortunately, we have not yet succeeded in doing so."

467

25. That after further study it appears clear to me that the only way that property received by me, as an individual citizen, living and working within the States of the Union, in the form of wages, salaries, commissions, tips, interest, dividends, rents, royalties, and/or pensions could be, or could have been legally considered to be "income" is if I voluntarily completed and signed an income tax return, thereby affirming under penalty of perjury that information on the tax form was true and correct as to every material matter, and that any amounts listed on the tax form in the "income" block are "income," thereby acknowledging under oath that I am, or was subject to the tax and have, or had a duty to file an income tax return and/or other Internal Revenue Service forms, documents, and schedules, none of which instruments I have ever signed with the understanding that they were voluntarily signed.

26. That with reliance upon the aforementioned U.S. Supreme Court rulings and upon my constitutionally protected rights described within the 5th and 9th Amendments of the United States Constitution to lawfully contract, to work, and to lawfully acquire and possess property, I am convinced and satisfied that I am not now, nor was I ever subject to, personally liable for, or personally required to pay any income/excise tax, that I am not now and never was a "taxpayer" personally liable, and that I have never been notified by the Internal Revenue Service, according to Delegation Order 24, of any legal duty or obligation whatsoever to file or make any "income tax return," or sign any other Internal Revenue forms, submit documents or schedules, pay any income tax, keep any records, or supply any information to the Internal Revenue Service.

27. That both the United States Congress and the Internal Revenue Service, by deceptive and misleading words and statements in the Internal Revenue Code, as well as Internal Revenue Service publications and Internal Revenue Service generated news articles committed constructive fraud by misleading and deceiving me, as well as the general public, into believing that I was required to file Internal Revenue Service forms, and also to keep records, supply information, and to pay income taxes.

28. That by reason of the aforesaid facts, I do hereby exercise my rights as a free sovereign citizen of the State of Ohio, upheld by various court decisions to revoke, rescind, cancel and to render null and void, both currently and retroactively to the time of signing, based upon the constructive fraud perpetrated upon me by the United States Congress and the Internal Revenue Service, all Internal Revenue Service forms, schedules, and documents ever signed and/or submitted by me, and all my signatures on any of the aforementioned items, to include the "SOCIAL SECURITY NUMBER" application (Form SS-5), made by my parents when I was of minor age, which caused a file bearing the identifying number [REDACTED] to be established for myself; that this revocation and rescission is based upon my rights in respect to constructive fraud as established in, but not limited to the cases of Tyler v. Secretary of State, 184 A.2d 101 (1962), and also El Paso Natural Gas Co. v. Kysar Insurance Co., 605 Pacific 2d. 240 (1979) which stated: "Constructive fraud as well as actual fraud may be the basis of cancellation of an instrument."

29. That further, I do hereby declare that I am not subject personally to an Income Tax, and never was a "taxpayer" in that sense of the word, as that term is defined in the Internal Revenue Code, regarding personal liability, a "person liable" for any Internal Revenue tax, or a "person" subject to the provisions of that Code, and declare that I am, and have always been, a "nontaxpayer"; that courts have recognized and acknowledged that individuals can be nontaxpayers, "... for with them Congress does not assume to deal and they are neither of the subject nor of the object of revenue laws..." as stated by the Court in Long v. Rasmussen, 281 F. 236 (1922), and also Dalma v. Bidwell, 182 U.S. 176, 179 and Gerth v. United States, 132 F. Supp. 894 (1955).

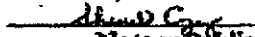
30. Because of the before mentioned misrepresentations and omissions of the Law, and in order to protect my Right to Life, Liberty and the Pursuit of Happiness secured by the United States Constitution and the Constitution of the State of Ohio, it may from time to time become necessary to amend this affidavit. Wherefore, I do hereby declare that right herein.

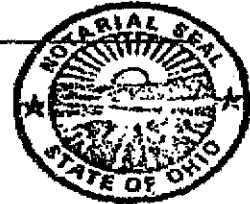
I now affix my signature to these affirmations:


Nicholas M. Tafian (Seal)

The foregoing was subscribed and sworn to before me, a Notary Public, of the State of

Ohio County of Belmont, this 22nd day of March, 1996.


Notary Public



My Commission Expires On: SHERRILL E. HAYES, NOTARY PUBLIC
My Commission Expires On: March 2, 1999
Residence in Belmont County

Affidavit of Revocation and Rescission Instructions

Exhibit B

Read the following very carefully before using this affidavit:

1. Be aware that once you file this *affidavit* you will no longer be eligible for Social InSecurity Benefits. As we all know, if you are 40 years of age or younger it is very questionable whether you will receive any "benefits" anyway.

2. **THE FOLLOWING IS OPTIONAL:** Before sending this *affidavit* to the Secretary of the Treasury, IF you want to make it part of the public record, take it to your county courthouse and have it recorded among the books that contain miscellaneous documents, (note: some states do not have such books), and ask the clerk for a "true test copy" of it. When you receive the true test copy, take a lead pencil and lightly blacken the raised seal of the court, then make copies of this to send with the enclosed *cover letter* and the *affidavit*. (Use the *cover letter* supplied with the *affidavit* only.) You may send copies of the *affidavit* and *cover letter* to others as the case may require, but simply state that it is for their information only. Never quote law, court cases, or anything else. The less you say the better, let the *affidavit* talk for you.

3. Any future correspondence from either the state or IRS plunderers should be answered with S.A.P. Vehicles. All initial correspondence from the Internal Revenue Service has to contain a Privacy Act notice (Notice 609) and/or the applicable state requirement stating the authority the state agency has to access you. Any absence of such a statement of authority should be, before doing anything else, challenged.

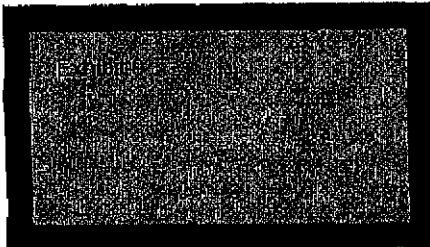
4. You cannot file an IRS Form W-2 with an employer, or any other IRS or state income tax forms, once you execute and forward the *affidavit*, or when you in fact file the affidavit, any IRS or state income tax form(s) will not be sent, and the *affidavit* is an irrevocable statement of citizenship pursuant to 26 CFR 1.1415-2.

5. This *affidavit* must be sent U.S. Postal Service Certified Mail Receipt Requested (to the Secretary only). If not you will not be able to use Vehicles #1(a) and #1(b).

If you have any questions about the above, or any other situation or condition that might come to mind or arise out of the use of this *affidavit*, please telephone S.A.P. headquarters (410) 857-4441. Do not write as our time to answer mail is becoming more limited as time goes on.

NOTICE: Along the line of this *affidavit*, we also issue an affidavit to establish the date you purchased our video presentation "Evidence That Demands Action." If you rely on the facts contained within this video presentation, and if the Internal Revenue Service charges you criminally for the year the purchase was made in, or any year thereafter, the video presentation becomes a material fact relating to your intent and cannot be kept from the jury.

Nicholas M. Taflan
55951 Key-Bellaire Road
Bellaire, Ohio 43906



Mr. Robert E. Rubin, Secretary
Department of the Treasury
1500 Pennsylvania Ave. N.W.
Washington, D.C. 20220

Dear Mr. Secretary:

Would you please be so kind as to forward the enclosed asseveration to the appropriate governmental office(s) so that proper notice can be taken thereof its content, and suitable action to comply with its mandate therewith.

If I do not hear from you, or any of your delegates, within ninety days (90), I will presume that my statements are correct and that you do not have any rebuttal.

Thank you.

Sincerely,


Nicholas M. Taflan

cc:

copy retained.

accommodate some new allegation, until, arriving at the present juncture, Plaintiff makes new allegations in a motion for which Defendant has no normal course of rebuttal.

Indeed, with the continual shifting of its claims, it appears Plaintiff is inviting this court to take any loose collection of offerings and develop its own theory of how these may be construed as a "tax-fraud" scheme or a violation of § 6700 or 6701, or even "obstruction" or "hindrance" of the IRS.

While Defendant is confident that this Court is well aware that the introduction of such new matter is beyond the scope of a reply, Defendant cannot now be certain which, if any, of the untimely "facts" set forth by Plaintiff may be considered relevant by this Court. To that extent, and to the extent that Defendant is also aware of inconsistencies in Plaintiff's reply, Defendant is requesting leave of this Court to set the record straight.

If some of the new matter is deemed material, it is Defendant's position that there *are* genuinely disputed issues. Contrary to Plaintiff's contentions or implications: (1) Defendant *never* assists anyone in preparing or filing returns; (2) Defendant *never* advises anyone not to file an income tax return or any other type of return, nor in fact advises anyone on tax matters; (3) Defendant Kotmair's representative status has never been revoked; (4) Defendant does not "promote a tax-fraud scheme that involves preparing protest letters"; and (5) Defendant does not prepare documents purporting to revoke "an individual's application for their Social Security number, *in order to discontinue the withholding of income and employment taxes*" [emphasis added], nor does Defendant claim that any document which rescinds a signature from such application *ipso facto* discontinues such withholding.⁴⁴

⁴⁴ Of course, such documents do not fall under the internal revenue laws at all, and thus cannot be in violation of § 6700 or § 6701, nor any other section of Title 26.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA :
 :
V. : Civil No. WMN-05-1297
 :
JOHN BAPTIST KOTMAIR et al. :

PERMANENT INJUNCTION ORDER

This Court has found that Defendants John Baptist Kotmair and Save-A-Patriot Fellowship have engaged in conduct subject to penalty under IRC §§ 6700 and 6701 in connection with their fraudulent promotion of the "U.S.-Sources" or "Section 861" argument. This argument has no basis in law and has been consistently rejected by the courts. This Court has further found that Defendants have engaged in conduct that interfered with the enforcement of the internal revenue laws and, absent an order restraining their activity, Defendants will continue said interference and conduct in violation of the Internal Revenue Code. Accordingly and pursuant to IRC § 7402 and 7408, IT IS this 29th day of November, 2006, by the United States District Court for the District of Maryland, ORDERED:

1) That Defendants and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them are hereby permanently enjoined from directly or indirectly:

a) Engaging in activity subject to penalty under IRC § 6700,

including organizing or participating in the sale of a plan or arrangement and making a statement regarding the securing of any tax benefit that they know or have reason to know is false and fraudulent as to any material matter;

b) Engaging in activity subject to penalty under § 6701, including preparing or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position that they know will, if used, result in an understatement of tax liability;

c) Promoting, marketing, organizing, selling, or receiving payment for any plan or arrangement regarding the securing of any tax benefit that they know or have reason to know is false or fraudulent as to any material matter;

d) Engaging in any other activity subject to penalty under IRC §§ 6700 or 6701 or other penalty provision of the Internal Revenue Code;

e) Representing or assisting any other person before the IRS in connection with any matter, including preparing or assisting in the preparation of correspondence to the IRS on behalf of any person;

f) Preparing or assisting in the preparation of court filings related to the assessment or collection of income taxes on behalf of any other person;

g) Obstructing or advising or assisting anyone to obstruct

IRS examinations, collections, or other IRS proceedings;

h) Advising anyone that they are not required to file federal tax returns or pay federal taxes;

i) Instructing, advising, or assisting anyone to stop the withholding of federal employment taxes from wages;

j) Providing aid or assistance, financial or otherwise, either directly or through the Member Assistance Program, the Victory Express, the Patriot Defense Fund, or any other plan or arrangement, for others to violate the internal revenue laws;

k) Selling or distributing any newsletter, book, manual, videotape, audiotape, or other material containing false commercial speech regarding the internal revenue laws or speech likely to aid or abet others in violating the internal revenue code;

l) Organizing or selling any document purporting to enable the customer to discontinue payment of federal tax;

m) Engaging in other similar conduct that substantially interferes with the administration and enforcement of the internal revenue laws;

2) That Defendants, at their own expense, shall notify all SAPF members (both associate and full members) and all individuals who have purchased defendants' tax plans, arrangements, materials and services of the entry of this permanent injunction against Defendants and shall provide them

with a copy of this permanent injunction;

3) That Defendants shall produce to counsel for the United States a list identifying by name, address, e-mail address, telephone number, and Social Security number, all SAPF members (both associate and full members) and all persons and entities who have purchased Defendants' tax-fraud plans, arrangements, services, products or materials;

4) That Defendants shall remove from their website, www.save-a-patriot.org, and any other website over which they have control all tax-fraud scheme promotional materials, false commercial speech regarding the internal revenue laws, and speech likely to aid or abet others in violating the internal revenue laws;

5) That Defendants shall display prominently on the first page of their website, www.save-a-patriot.org, and any other website over which they have control a complete copy of this permanent injunction, and will maintain those websites for one year with a complete copy of this permanent injunction so displayed throughout that time;

6) That Defendants shall complete the requirements of paragraphs 2 through 5, supra, within 21 days of the date of this Order and shall file a certification of compliance with those requirements, under penalty of perjury, within 22 days of the date of this Order;

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA :
 :
V. : Civil No. WMN-05-1297
 :
JOHN BAPTIST KOTMAIR et al. :

MEMORANDUM

Before the Court are cross motions for summary judgment filed by Defendant Kotmair, Paper No. 36; by Defendant Save-a-Patriot Fellowship (SAPF), Paper No. 38; and by the government. Paper No. 42.¹ Upon review of the pleadings and the applicable case law, the Court determines that no hearing is necessary and that Defendants' motions for summary judgment will be denied, and the government's motion for summary judgment will be granted.

I. BACKGROUND

Defendant John B. Kotmair is a seasoned tax protester who has long espoused what has come to be known as the "Section 861" or "U.S. Sources" argument. By adopting a twisted reading of selected portions of Internal Revenue Code (IRC), proponents of this argument assert, in simplest terms, that U.S. citizens need not pay any taxes on income earned within the 50 states.² In 1984, 31 days after being released from a two-year term of

¹ In addition, there are several discovery-related or procedural motions pending. Paper Nos. 34, 35, 39, 64.

² See United States v. Bell, 238 F. Supp. 2d 696, 699 (M.D. Pa. 2003), for a more detailed explanation of the Section 861 argument.

imprisonment for failure to file income tax returns,³ Kotmair founded Defendant Save-a-Patriot Fellowship (SAPF). Kotmair describes himself as the "Fiduciary of [SAPF's] day-to-day functions." Kotmair Aff. ¶ 3.

Kotmair represents that SAPF operates on the basis of membership fees and "donations." See id. ¶ 8. In addition, through its website, www.save-a-patriot.org, and other publications, SAPF informs its members of various products and services that it offers for sale. SAPF represents that these products and services, if used as SAPF instructs, will enable members to legally stop paying income tax on their "U.S.-source income." For example, SAPF sells to its members a document called an "Affidavit of Revocation and Rescission" which Defendants claim can be used to revoke the members' original applications for Social Security numbers. Id. ¶ 7. As a result of this "revocation," according to Defendants, the individual is no longer obligated to file income tax returns or to have taxes or Social Security contributions withheld from his or her earnings. SAPF also provides upon payment of an established fee a "Statement of Citizenship" which members are instructed to give their employers to persuade those employers to stop withholding taxes from the SAPF member's wages.

SAPF members' assertion of these arguments and positions is met with a predictable response from the Internal Revenue Service

³ See Kotmair v. Commissioner of Internal Revenue, 86 T.C. 1253 (1986).

(IRS). When the IRS sends notices to SAPF members exposing the frivolousness of the "U.S.-Sources" argument and requesting that they file properly completed income tax returns, SAPF (upon payment by its members of additional fees) submits to the IRS on behalf of its members a number of different formletter responses. See id. ¶¶ 24-28, 30, 32 (in responding to Revenue Agent Rowe's descriptions of the various letters SAPF has submitted to the IRS, Kotmair, without denying SAPF sends the letters, simply affirms that "[t]he documents in question contain true statements from the law"). These letters are generally signed by Kotmair as the "power-of-attorney" for the SAPF member. See Pl.'s Ex. 9 (redacted protest letter with attached power-of-attorney); Kotmair Aff. ¶ 33 (acknowledging that power-of-attorney documents are executed when members request that SAPF staff respond to the IRS on their behalf). In addition to these numerous formletters, SAPF offers to prepare and file customized pleadings for its members advancing the U.S.-Sources argument, again, in exchange for the payment of additional fees. See Pl.'s Ex. 1A/1B, Save-A-Patriot Fellowship Member Handbook 17 (hereinafter "Handbook") (explaining that SAPF's "[p]aralegal work (court complaints/briefs, motions etc.) is considerably more cost intensive than power-of attorney work (case development including correspondence to the IRS)" and can be as much as ten times more expensive).

In its Complaint, the government also alleges that SAPF offers an "insurance-like" program that furnishes a financial

incentive for its members to violate federal tax law. See Compl. ¶¶ 11-15. SAPF's "Member Handbook" explains that "[t]he Fellowship operates much like an insurance company in that members pledge under our Member Assistance Program (MAP) to reimburse other members should they suffer a loss of cash or property as a result of illegal IRS collection practices and confiscation." Handbook 4. Elsewhere, the Handbook outlines the losses covered under this program, either from criminal prosecutions or civil actions initiated by the IRS, and emphasizes that, to obtain these benefits, the "Member must prove they used every Court proceeding and delay tactic possible." Id. at 28.⁴

The government asserts that Defendants' activities are violative of IRC §§ 6700 and 6701 and filed this action pursuant to IRC § 7408 to obtain a permanent injunction prohibiting Defendants from continuing these activities. In addition, the government is asking that the Court order Defendants pursuant to IRC § 7402: to furnish it with the identities of its members and those who have purchased its products and services and to notify those customers of the Court's ruling in this matter; to remove the false and fraudulent information from its website; and to

⁴ In its motion for summary judgment, SAPF argues strenuously that "[i]t is beyond reason and logic that [these insurance-like programs] could be construed to encourage anyone to commit a crime." Defs.' Mot. for Summ. J. 33. In its Handbook, however, SAPF compares the program to winning the lottery, except, "unlike the lottery, [the convicted SAPF member] won't have to wait 20 years." Handbook 6. SAPF opines that because of this financial windfall, "[s]ome members may even wish for multiple sentences." Id.

post a copy of this Court's injunction on that website.

The government has filed a motion for summary judgment arguing that the undisputed evidence establishes that Defendants are violating the IRC and will not stop that illegal activity unless enjoined by this Court. Defendant SAPF has filed an opposition and cross motion, challenging the evidence offered by the government, both as to its adequacy and its admissibility. Defendant SAPF also argues that its activities are protected by the First Amendment. Defendant Kotmair filed a separate motion arguing that he is not a proper party in this action.

II. SUMMARY JUDGMENT MOTIONS

A. Legal Standard for Summary Judgment

A moving party is entitled to summary judgment only upon showing that there exists no genuine issue as to any material fact, and it is entitled to judgment as a matter of law. See FED. R. CIV. P. 56(c); Blue Ridge Ins. Co. v. Puig, 64 F. Supp. 2d 514 (D. Md. 1999) (citing, *inter alia*, Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)).

"Where . . . both parties have moved for summary judgment, it does not establish that there is no issue of fact and require that summary judgment be granted to one side or another." World-Wide Rights Ltd. P'ship v. Combe, Inc., 955 F.2d 242, 244 (4th Cir. 1992) (citation and internal quotation marks omitted). When both parties file motions for summary judgment, the court applies the same standards of review. Taft Broadcasting Co. v. United

States, 929 F.2d 240, 248 (6th Cir. 1991); ITCO Corp. v. Michelin Tire Corp., 722 F.2d 42, 45 n.3 (4th Cir. 1983) ("The court is not permitted to resolve genuine issues of material facts on a motion for summary judgment--even where . . . both parties have filed cross motions for summary judgment.") (emphasis omitted). The role of the court is to "rule on each party's motion on an individual and separate basis, determining, in each case, whether a judgment may be entered in accordance with the Rule 56 standard." Towne Mgmt. Corp. v. Hartford Acc. & Indem. Co., 627 F. Supp. 170, 172 (D. Md. 1985) (quoting Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2720).

B. Entitlement to Injunction

As a preliminary matter, the Court must briefly address two arguments made by Defendants related to the adequacy of the allegations in the Complaint. On the one hand, Defendants assert that the Complaint is overbroad and that some of the allegations in the Complaint relate to activities over which Defendants have no control or which have no relevance to the government's claims. For example, the Complaint references representation made on two websites which are not owned or operated by Defendants. See Compl. ¶¶ 8, 23, 24 (referencing websites "www.taxfreedom101.com" and "www.taxtruth4u.com" and representations made on those websites). The government now concedes that Defendants do not control these websites. Obviously, therefore, any injunction issued by this Court cannot require any action by Defendants

relative to those websites. The Complaint also contains allegations concerning "frivolous" Freedom of Information Act (FOIA) requests and bankruptcy petitions that SAPF has filed on behalf of its members. Id. ¶ 23, 24. It is questionable whether any injunction issued under §§ 7402 or 7408 would reach that conduct.

On the other hand, Defendants protest that allegations necessary to support the government's claims were omitted from the Complaint, but evidence supporting those omitted allegations was submitted with the government's motion. For example, Defendants note that the "Statement of Citizenship" was never mentioned in the Complaint. SAPF's Opp. to P.'s Mot. for Summ. J. 19. They acknowledge elsewhere, however, that the Complaint does state that "defendants prepare documents for members that they claim will prevent the member's employer from withholding federal taxes from the member's wages," and that this allegation, "[c]onstrued as liberally as possible, . . . may be an allusion to the 'Statement of Citizenship.'" Id. 20-21. With these quibbling criticisms of the Complaint, Defendants are placing a pleading burden on the government far beyond the liberal pleading standards of Rule 8 of the Federal Rules of Civil Procedure, or even the more stringent standards of Rule 9.

Turning to the merits of the government's claims, it is abundantly clear from the record that Defendants' conduct is in violation of both §§ 6700 and 6701 of the IRC, and that injunctive relief is appropriate and necessary under both § 7408

and § 7402.

Section 7408(a) of the IRC provides that the United States may commence an action in a district court to enjoin any person from engaging in conduct subject to penalty under §§ 6700 and 6701. A district court has authority to grant such relief, if it finds:

(1) that the person has engaged in any conduct subject to penalty under section 6700 (relating to penalty for promoting abusive tax shelters, etc.) or section 6701 (relating to penalties for aiding and abetting understatement of tax liability), and

(2) that injunctive relief is appropriate to prevent recurrence of such conduct[.]

IRC § 7408(b). Since § 7408 expressly provides for an injunction, the traditional guidelines for equitable relief do not have to be established for an injunction to issue. United States v. Buttorff, 761 F.2d 1056, 1059 (5th Cir. 1985) ("When an injunction is explicitly authorized by statute, proper discretion usually requires its issuance if the prerequisites for the remedy have been demonstrated and the injunction would fulfill the legislative purpose."). The government bears the burden, however, of proving each element necessary for the issuance of an injunction by a preponderance of the evidence. United States v. Estate Preservation Servs., 202 F.3d 1093, 1098 (9th Cir. 2000). To prove a violation of § 6700 that would then warrant the issuance of an injunction under § 7408, the government must show that:

(1) the defendants organized or sold, or participated in the organization or sale of,

an entity, plan, or arrangement;

(2) they made or caused to be made, false or fraudulent statements concerning the tax benefits to be derived from the entity, plan, or arrangement;

(3) they knew or had reason to know that the statements were false or fraudulent;

(4) the false or fraudulent statements pertained to a material matter; and

(5) an injunction is necessary to prevent recurrence of this conduct.

Estate Preservation, 202 F.3d at 1098.⁵

Defendants' primary argument that they are not in violation

⁵ Section 6700 makes subject to its penalties:

[a]ny person who--

(1) (A) organizes (or assists in the organization of)--

(i) a partnership or other entity,

(ii) any investment plan or arrangement, or

(iii) any other plan or arrangement, or

(B) participates (directly or indirectly) in the sale of any interest in an entity or plan or arrangement referred to in subparagraph (A), and

(2) makes or furnishes or causes another person to make or furnish (in connection with such organization or sale)--

(A) a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter, or

(B) a gross valuation overstatement as to any material matter.

of § 6700 is that its provisions were "never intended to apply to false statements generally, nor even to all false statements with respect to the allowability of any deduction or credit, or the excludability of any income." Defs' Mot. for Summ. J. 18.

Instead, Defendants contend, "[i]t only applies to false statements with respect to the availability of any of these tax benefits by reason of participation in the shelter." Id. (emphasis in original). Because, under Defendants' interpretation of the tax laws, no income tax can be properly assessed against anyone for U.S.-source income, no exclusive tax benefit is promised to SAPF members by virtue of their membership or participation in SAPF. See id. 19.

Courts have universally rejected Defendants' narrow reading of § 6700 and have found tax schemes very similar to Defendants' to fall within the reach of that statute. For example, in United States v. Raymond, 228 F.3d 804 (7th Cir. 2000), the defendants promoted the view that the federal income tax is unconstitutional and that persons who are not federal employees or residents of the District of Columbia are not legally required to pay federal income tax. Like Defendants in the case at bar, the Raymond defendants made available for sale forms and instructions to guide individuals through the process of "withdrawing" from the jurisdiction of the federal government's taxing authorities and the social security system so that the individual would, under the defendants' view of the Tax Code, no longer be required to pay federal taxes. 228 F.3d at 806. In concluding that the

defendants' activities were in violation of § 6700, the Seventh Circuit held that "the definition of a tax shelter in § 6700 is 'clearly broad enough to include a tax protester group.'" Id. at 811 (quoting United States v. Kaun, 827 F.2d 1144, 1148 (7th Cir. 1987)). See also United States v. Cohen, Civ. No. 04-332, 2005 WL 1491978, *4 (W.D. Wash. 2005) (stating that "a defendant need not be operating a traditional investment tax shelter to run afoul of § 6700, but that the organization or participation in a tax protester scheme or group, which is based on false or fraudulent conceptions of the U.S. Tax Code, will suffice"); Abdo v. United States, 234 F. Supp. 2d 553, 562 (M.D.N.C. 2002) (noting that "the Senate Finance Committee's Report concerning the statute confirms that Congress designed Section 6700 as a 'penalty provision specifically directed towards promoters of abusive tax shelters and other abusive tax avoidance schemes'") (quoting S. Rep. No. 97-494, 97th Cong., 2d Sess. 266, reprinted in 1982 U.S.C.C.A.N. 781, 1014) (emphasis added in Abdo).

Defendants provide no authority to the contrary and, in fact, readily concede that "courts have included all sorts of abusive tax reduction schemes within [§ 6700's] broad sweep." SAPF's Opp. to Pl.'s Mot. for Summ. J. 28. In Defendants' view, however, "just because courts have followed that course of conduct does not make it valid." Id. 28 n. 67. While Defendants stubbornly choose to ignore the reasoning of numerous courts, this Court finds that reasoning compelling. Section 6700

mandates penalties on any person who "organizes . . . (ii) any investment plan or arrangement, or (iii) any other plan or arrangement," and furnishes a statement known to be false with respect to the excludability of income by reason of participating in the plan or arrangement. IRC § 6700((a)(1)(A) (emphasis added). While Defendants may argue that the tax benefits it promotes are potentially available to any American citizen, implicit in SAPF's sale of its forms, letters, and "paralegal" services is the representation that only those that follow SAPF's plan will be able to reap those benefits. SAPF certainly touts the advantages to its members of employing SAPF's services. See, e.g., Handbook 21 ("But of course, whether or not [the legal restrictions by which SAPF asserts the IRS is bound] prevent the IRS from hurting someone depends entirely upon whether or not the individual in question makes the proper response, protests and/or requests that are necessary to obtain relief. . . . When we represent you, that is exactly what we do."); see also id. 16 (emphasizing that "all response letters to the IRS or affidavits (revocation and rescission, constructive notice, indemnity, etc.) are exclusive to the membership").

As to the next three elements of a § 7600 violation, it is equally clear that Defendants' statements about the legality of their efforts on members' behalf were false, pertained to material matters, and that Defendants knew, or had reason to know, they were false. To encourage individuals to join its "Fellowship," and make use of its products and services, SAPF

represented, inter alia: that taxable income is limited to "income that has been 'earned' while living and working in certain 'foreign' countries or in the U.S. possessions and territories;" that there is no requirement for most Americans to file tax returns or have taxes withheld from their wages; and that one can "quit" the Social Security program. Handbook 10-11. As noted above, Defendants readily acknowledge that courts have consistently rejected the truth of each of these propositions. As a self-professed tax expert and one who has studied "the relevant court cases and the law," Handbook 16, Defendant Kotmair has long been well aware of those holdings. Again, Defendants do not deny that courts have interpreted the Internal Revenue Code in a manner that is diametrically opposed to their own, they simply choose to reject and ignore those holdings. See SAPF Opp. to P.'s Mot. for Summ. J. 33 ("The problem with [the government's] legal theory is that it attempts to equate knowing that a statement is false with knowing that courts have said that it is false.").⁶

⁶ In addition to these falsehoods about the tax laws, Defendants also misrepresent Kotmair's authority to represent others before the IRS. Although Kotmair continues to obtain "power-of-attorney" documents from SAPF customers and files papers with the IRS on others' behalf, he admits that has received notice from the IRS on several occasions, as early as 1993, that his representation number has been revoked and that he is no longer eligible to practice before the Internal Revenue Service. Kotmair Aff. ¶¶ 34-37. While he acknowledges that he has been told that he cannot continue to represent others, he denies the effect of the revocation on "due process" grounds. Id. ¶ 35-37. This is yet another example of Defendants simply insisting that the law is what they say it is, regardless of compelling authority to the contrary.

The legislative history of § 7600 indicates that the "knows or has reason to know" standard "includes what a reasonable person in the [defendant's] . . . subjective position would have discovered." Estate Preservation Services, 202 F.3d at 1103. This standard "allow[s] imputation of knowledge so long as it is commensurate with the level of comprehension required by the speaker's role in the transaction." Id. (citations and internal quotations omitted). Here, Defendants unquestionably meet that standard.

The final element to be considered before an injunction can issue under §§ 6700 and 7800 is whether an injunction is necessary to prevent recurrence of the offending conduct. In making that determination, courts consider such factors as: "the gravity of harm caused by the offense; the extent of the defendant's participation and his degree of scienter; the isolated or recurrent nature of the infraction and the likelihood that the defendant's customary business activities might again involve him in such transactions; the defendant's recognition of his own culpability; and the sincerity of his assurances against future violations." Kaun, 827 F.2d at 1149-1150. Each of these factors favor the issuance of an injunction.

Defendants boast that their operation "has grown into a complex containing a print shop, copy room, paralegal room, casework area, advanced 30 gigabyte video production studio, book shop, 150 person meeting room with stage, sound and video cameras and a complete law library, both on disk, hard copy and computer

access to West Law," and speak of SAPF's enrollment as "exploding" with a goal of 100,000 members. Handbook 16, 6. Although Defendants challenge the government's estimate as to exactly how much it costs the IRS to respond to Defendants' frivolous filings, they do not dispute the governments' representation that Defendants have mailed over 800 protest letters to the IRS just during the course of this litigation. Decl. of Joan Rowe ¶ 41. Apart from the costs of dealing with these protest letters is the matter of unpaid or underpaid income taxes by SAPF adherents. Finally, Defendants have shown no inclination, whatsoever, to cease their activities despite their position being repeatedly rebuffed by the courts.

To establish a violation of § 6701 warranting an injunction under § 7408, the government must prove: (1) the defendant prepares, assists in, procures, or advises the preparation of any portion of a return, affidavit, claim, or other document; (2) the defendant knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws; (3) the defendant knows that such portion (if so used) would result in an understatement of the liability for tax of another person; and (4) an injunction is necessary to prevent a recurrence of this conduct. IRC §§ 6701, 7408.

Defendants readily concede that SAPF prepares correspondence for its members that it knows will be used (and in fact, has been used) in connection with matters material to the internal revenue laws. SAPF's Mot. for Summ. J. 22. In what is perhaps

Defendants' second most preposterous argument in their pleadings, SAPF argues that its filings on its members' behalf do not result in understatements of liability. Defendants "reason" that to result in an understatement of liability, "a presentation containing actual numbers must be made with respect to statements of liability." Id. at 24. Because SAPF's correspondence on behalf of its members "contains no amounts, but employs mere words - citations of the law, citations of court cases, and declarations of beliefs," SAPF contends that "it is absurd" to consider that its services run afoul of § 6701. Id. 24-25.

It is, of course, Defendants' argument that is absurd. The whole thrust of Defendants' U.S.-sources scheme is that individuals whose income would otherwise be taxable can escape their tax liability completely. Whether Defendants' customers achieve this result by filing a return indicating zero income and zero liability, or simply refuse to file a return, the result is the same - their tax liability is understated. To argue otherwise is mere sophistry.

Defendants' most preposterous argument, however, is that, because "the evidence is overwhelming that the IRS never relies upon letters written by Defendant," those letters cannot result in an understatement of liability for tax. SAPF's Mot. for Summ. J. 25.⁷ Requiring the IRS to adopt or embrace a defendant's

⁷ SAPF elaborates, "[i]t is the sad experience of Defendant that, in its 22 years of existence, letters Defendant sends to the IRS are not responded to substantively, much less considered in determining members' correct tax situation." Id. 25-26.

fraudulent position before that defendant could be found in violation of § 6701, however, turns the statute on its head. The statute penalizes the understatement of liability and SAPF assists its customers making those understatements. There is no additional requirement under the statute that an individual ultimately prevail in avoiding his or her rightful liability. Were that a requirement, no one could ever be penalized under the statute.

The Court concludes that the government is entitled to an injunction under § 7408 as it is necessary to prevent ongoing violations of both § 6700 and 6701.

The Court also concludes that the government is entitled to an injunction under § 7402. Section 7402 of the IRC can provide an additional or alternative basis for a district court to issue "writs and orders of injunction . . . and such other orders and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws." IRC § 7402(a). Injunctive relief under § 7402 is "in addition to and not exclusive of any and all other remedies." Id. This section has been employed "to enjoin interference with tax enforcement even when such interference does not violate any particular tax statute." United States v. Ernst & Whinney, 735 F.2d 1296, 1300 (11th Cir. 1984). Courts have held that "the language of § 7402(a) encompasses a broad range of powers necessary to compel compliance with the tax laws," and "the statute has been relied upon to enjoin activities of third parties that encourage taxpayers to make fraudulent

claims." Id. The specific relief that the government seeks under § 7402 is an order requiring Defendants: (1) to furnish the government with the identities of those persons who have purchased Defendants' tax materials and to notify those customers of the Court's ruling in this matter; (2) to remove false and fraudulent tax promotional materials from their websites; and (3) to post a copy of this Court's injunction on SAPF's website.

Unlike an injunction under § 7408, before an injunction can issue under § 7402, the government must establish the presence of the traditional equitable factors for the issuance of an injunction. Id. at 301. "Those factors are: (1) the likelihood of continuing irreparable injury to the United States, (2) the harm to the defendant, (3) success on the merits of the case, and (4) the public interest." United States v. Hansen, Civ. No. 05-0921, 2006 WL 2354820 (S.D. Cal. June 1, 2006). Here, those factors are easily met.

As noted above, the government is sustaining irreparable harm in the form of the expenditures of time and money to respond to Defendants' frivolous filings as well as the lost revenue from SAPF customers who either fail to file returns or file returns understating their tax liability. In contrast, Defendants will not sustain any irreparable harm by being required to obey the law. Hansen, 2006 WL 2354820 at *9; United States v. Lloyd, Civ. No. 04-274, 2005 WL 3307281 at *8 (M.D.N.C. Dec. 6, 2005). As to the merits of the government's case, it is without question that Defendants are violating the tax laws and interfering with

the administration of those laws. Finally, the public has a compelling interest in prohibiting the promotion and sale of products that aid some in avoiding lawful income taxes.

C. Scope of Injunction

In considering the scope of the injunctive relief to be granted, the Court must consider various constitutional challenges raised by Defendants. As with Defendants' other arguments and defenses, each of these challenges have been rejected by courts that have issued or affirmed injunctions against other tax protesters similar to that requested here.

1. Enjoined Commercial Speech

Defendants contend that the statements on SAPF's website and in its other publications constitute speech protected by the First Amendment and, therefore, cannot be enjoined. Because much of the speech, however, relates to the sale of SAPF products and services, it is commercial speech and it is well established that commercial speech, if fraudulent, can be enjoined. Schiff, 379 F.3d at 630; Estate Preservation, 202 F.3d at 1106. Because Defendants' representations about the tax laws and the efficacy of their products is clearly fraudulent, that speech can be enjoined without running afoul of the First Amendment. See Estate Preservation, 202 F.3d at 1106 (collecting cases enjoining similar conduct).

Just last year, the Third Circuit affirmed the issuance of an injunction against one of Kotmair's former employees, Thurston Bell, who owned and operated a rival website promoting the U.S.-

Sources argument. United States v. Bell, 414 F.3d 474 (3rd Cir. 2005). Because, like Defendants in the instant action, Bell used his website to entice the reader to pay to join his organization and to purchase advice and other products, the district court found that Bell was engaging in commercial speech. United States v. Bell, 238 F. Supp. 2d 696, 703 (M.D. Pa. 2005). The district court concluded that this commercial speech could be lawfully enjoined. To the extent that there was non-commercial content on the website, the district court held that this content could be banned "where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." Id. at 704 (emphasis in original) (quoting Brandenburg v. Ohio, 395 U.S. 444, 447 (1969)).

While affirming the issuance of the injunction, the Third Circuit slightly modified its language. Noting that Brandenburg might be "the wrong tool for tailoring the injunction," Bell, 414 F.3d at 483,⁸ the court concluded that the injunction would avoid raising constitutional questions "if it were written to ban false commercial speech and aiding and abetting violations of the tax laws rather than Brandenburg's incitement." Id. at 484 (emphasis added). The court then held that the language of the injunction would be construed so that "Bell may only be found in contempt for violating the order where the evidence demonstrates that he

⁸ The Third Circuit acknowledged that there was a disagreement among the courts as to the forms of expression that can be protected under Brandenburg, and also noted that it was questionable whether Bell's website met Brandenburg's "imminence" requirement. 414 F.3d at 482 n.8, 483 n.9.

advertised, marketed or sold false tax advice, or aided and abetted others, directly or indirectly, to violate tax laws." Id. This Court will adopt similar language.⁹

2. Provision of Customer Lists

The government has requested that the Court order Defendants to produce to the government the name, social security number, and contact information for all SAPF members and those that have purchased Defendants' products and services. Although the government knows the identity of many of these individuals, it argues that this information is needed because of the possibility that many do not file tax returns. The Court concludes that the production of the customer lists is an appropriate means to alleviate some of the harm caused by Defendants' conduct and to mitigate further harm. See Hansen, 2006 WL 2354820 at *10 (ordering the plaintiff to disclose the "identities of any individuals who have purchased [d]efendant's abusive tax programs, and to notify those customers of [the c]ourt's ruling"); United States v. Hill, Civ. No. 05-877, 2005 WL 3536118

⁹ The Court is cognizant that there may be portions of the website and other materials that neither constitute false commercial speech nor aid and abet others to violate the tax laws. Under the injunction, Defendants can express their opinions about the tax laws as long as those opinions are not used to sell products or services or instruct others as to how to impede the collection of taxes. See Schiff, 379 F.3d at 629 (noting that under the injunction issued, "Schiff can relate his long history with the IRS and explain his unorthodox tax theories without simultaneously urging his readers to buy his products"); United States v. Bell, 414 F.3d at 480 (observing that "an appropriately drafted injunction in this case would curtail Bell's promotion of tax evasion but would not prevent him from advocating against the tax laws generally").

(D. Ariz. Dec. 22, 2005) (ordering the defendants to disclose names of all those for whom defendants filed returns).

3. Posting Injunction on Website and Customer Notification

Finally, the government requests the Court to order Defendants to post a copy of the permanent injunction on the first page of its website, and to maintain that website, with the posted injunction, for one year. The government would also have Defendants notify, at their expense, all SAPF members and all individuals who have purchased Defendants' products and services of the issuance of the permanent injunction and to provide them with a copy of the injunction. Although this would constitute "forced speech," courts have held that "mandated disclosure of factual commercial information does not offend the First Amendment. Schiff, 379 F.3d at 631. In equating the sale of fraudulent tax scheme with the sale of a defective product, the Ninth Circuit observed, "[b]ecause the defendants are selling a product that, if used, could expose their customers to criminal liability for tax evasion, the government does not offend the First Amendment when it requires the defendants to post a preliminary injunction on the websites where the product is sold, warning potential customers of the hazards of the product." Id.

B. Estoppel of Claims against Kotmair

Defendant Kotmair has filed a separate motion arguing that Plaintiff is estopped from seeking an injunction against him based upon a finding of this Court in a prior action against these same parties, Save-A-Patriot Fellowship v. United States,

962 F. Supp. 695 (D. Md. 1996). In the instant complaint, Kotmair is identified in the introduction and in paragraph 4 as "doing business as Save-A-Patriot Fellowship and National Workers Rights Committee." Kotmair contends that this identification is inconsistent with this Court's conclusion in that previous decision that SAPF "is an unincorporated association (not just an alter ego or sole proprietorship of Kotmair), has members, and does things through persons in addition to Kotmair." Save-A-Patriot Fellowship, 962 F. Supp. at 699. Because of that inconsistency, Kotmair contends in his motion for summary judgment that he is not a proper party in this suit.

The Court agrees that identifying Kotmair as "doing business as SAPF" was perhaps unartful. It does not, however, mandate dismissal of Kotmair. In fact, Kotmair's reference to the previous decision of this Court highlights the need to enjoin his activities in addition to those of SAPF. The Court will enjoin Kotmairs' actions as well as those of SAPF.

III. OTHER PENDING MOTIONS

Also pending are a variety of discovery related motions. While these motions are largely mooted by the Court's resolution of the summary judgment motions, they warrant a brief discussion.

On May 16, 2006, Magistrate Judge James Bredar issued a ruling on a motion to compel filed by the government. In that ruling, Judge Bredar ordered Defendants, inter alia, to turn over to the government SAPF's customer lists. Defendants filed an objection to this ruling, Paper No. 34, raising some of the same

arguments raised in their briefing of the summary judgment motions. Defendants also filed a motion to stay enforcement of Judge Bredar's order pending resolution of their objection. Paper No. 35. In response to Defendants' specific failure to comply with Judge Bredar's order and more general failure to cooperate in discovery, the Government filed a motion for sanctions requesting that certain facts be deemed admitted by Defendants. Paper No. 39. Finally, Defendants filed a motion to strike certain evidence submitted by the government with its summary judgment reply memorandum on the ground that the government should have submitted this evidence with its summary judgment motion. Paper No. 64. This motion is related to other discovery motions in that the government, in opposing the motion to strike, asserts that Defendants' failure to cooperate in discovery and produce these documents is part of the reason the evidence was not submitted previously.

The Court will overrule Defendants' objections to Judge Bredar's May 16, 2006, order and will deny the remaining motions as moot. The undersigned finds no error in Judge Bredar's ruling. Regardless, most if not all of the discovery he ordered Defendants to produce must now be produced pursuant to the permanent injunction issued with this memorandum. As to the government's motion for sanctions, the Court has now found as fact those elements that the government sought to be deemed admitted. Finally, the Court agrees that had Defendants cooperated in the discovery process, the government would have

been able to submit with its motion for summary judgment much of the material is submitted with its reply. In addition, because the evidence against Defendants is so overwhelming, with much of it coming from Defendants' own documents and testimony, the additional evidence submitted with the reply does little more than gild the lily.

IV. CONCLUSION

For these reasons, the Court finds that the government is entitled to summary judgment. Two separate orders will issue with this memorandum, one summarizing the resolution of the pending motions, and the other, an Order of Permanent Injunction, setting forth the actions to be taken by Defendants and the conduct to be restricted.

_____/s/_____
William M. Nickerson
Senior United States District Judge

DATED: November 29, 2006

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA :
 :
V. : Civil No. WMN-05-1297
 :
JOHN BAPTIST KOTMAIR et al. :

ORDER

On November 29, 2006, this Court entered an order granting Plaintiff summary judgment. On that same date, the Court also entered a permanent injunction order requiring Defendants to refrain from certain activities that interfere with the enforcement of the internal revenue laws. Now pending before this Court are Defendants' motion for a new trial, Paper No. 71, and motion for modification of the permanent injunction order, Paper No. 72. On December 14, 2006, this Court stayed the application and enforcement of the permanent injunction order pending the resolution of these two motions.

As to the motion for a new trial, the Court finds that it essentially raises and reargues the same meritless arguments presented in the cross motions for summary judgment. Therefore, it will be denied.

As to the motion for modification, the Court notes that the injunction issued by this Court is similar to that of injunctions issued and upheld by other courts against others touting similar fanciful views of the federal tax laws. See United States v.

Bell, 414 F.3d 474 (3rd Cir. 2005); United States v. Schiff, 379 f.3d 621 (9th Cir. 2004); United States v. Estate Preservation Services, 202 F.3d 1093 (9th Cir. 2000). To the extent that Defendants claim that they are unable to comply with the requirement that they turn over the records of those that have purchased their products because they have no such records, that is an issue for post-judgment discovery related to Defendants' compliance with the injunction, not for modification of the injunction itself. The motion will be denied.¹

Accordingly, it is this 7th day of February, 2007, by the United States District Court for the District of Maryland,

¹ The Court had considered the possibility of holding a hearing on the motion for modification based on Defendants' professed difficulty in understanding the scope of the conduct that was to be enjoined. See Order of Dec. 14, 2006, granting stay at 2. Upon further reflection, however, the Court determines that such a hearing would be pointless as Defendants' confusion is self-induced. Sprinkled throughout their pending motions is Defendants' assertion that their representations about the federal tax laws are not fraudulent because Defendants "sincerely believe" that his view is the correct one, despite the consistent rejection of that view by the courts. See Mot. for New Trial 3 ("the positions espoused by Defendants represent their sincerely held beliefs with respect to the meaning, applicability and operation of the tax laws"); Mot. for Modification 3 ("Defendants sincerely believe that the activities they engage in and the statements they make accurately reflect upon the meaning, applicability and operation of the tax laws"); 4 ("Defendants sincerely believe their activities are not violative of § 6700 and § 6701"). Defendants have previously offered as justification for their continued fraudulent conduct that "just because courts have followed that course of conduct does not make it valid." Save-A-Patriot Fellowship's Opp. to Pl.'s Mot. for Summ. J. 28 n.67. It is doubtful that being told, yet again, that their view of the tax laws is spurious would have any meaningful impact.

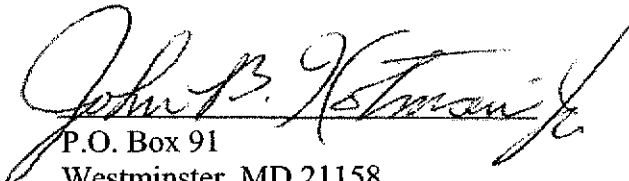
IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Civil No. WMN05CV1297
)
JOHN BAPTIST KOTMAIR, JR.,)
et al.,)
)
Defendants.)

NOTICE OF APPEAL

Notice is hereby given that JOHN B. KOTMAIR, JR., *pro se*, and SAVE-A-PATRIOT FELLOWSHIP, through undersigned counsel, both Defendants in the above-captioned action, appeal to the United States Court of Appeals for the Fourth Circuit from the Judgments of this Court entered on November 29, 2006 ("Memorandum," "Order," and "Permanent Injunction Order"), and February 7, 2007 ("Order").

Dated the 16th of February, 2007.


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506

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962 F.Supp. 695, 97-1 USTC P 50,229, 79 A.F.T.R.2d 97-569

United States District Court, D. Maryland.
SAVE-A-PATRIOT FELLOWSHIP, Plaintiff,

v.

UNITED STATES of America, Defendant.
Civil Action No. MJG-95-935.

Dec. 18, 1996.

Organization brought wrongful levy action. After bench trial, the District Court, Garbis, J., held that: (1) organization was unincorporated association that existed independently of tax protester; (2) organization could own property; and (3) organization funds removed by tax protester, mingled with his own assets, and available for his personal use were no longer organization's property immune from levy for protester's tax liabilities.

Judgment accordingly.

[1] Internal Revenue 220 ↪ 4937

220 Internal Revenue

220XXVII Remedies for Wrongful Enforcement

220XXVII(D) Proceedings

220k4937 k. Parties, Process, and Appearance. Most Cited Cases

Organization was unincorporated association that existed independently of tax protester, and could separately maintain wrongful levy action, though it had no written instrument of governance and did not keep records, where it had other members, leased office space in its name, and held assets. 26 U.S.C.A. § 7426.

[2] Associations 41 ↪ 15(3)

41 Associations

41k15 Property and Funds of Association

41k15(3) k. Rights of Association. Most Cited Cases

Under Maryland law, unincorporated association can own property.

[3] Internal Revenue 220 ↪ 4857

220 Internal Revenue

220XXV Collection

220XXV(B) Levy or Distraint

220k4857 k. Property Subject to Distraint. Most Cited Cases

Those organization funds removed by tax protester, mingled with his own assets, and available for his personal use were no longer organization's property immune from levy for protester's tax liabilities. 26 U.S.C.A. § 7426.

507

*695 Beverly A. Moses, Trial Attorney, Tax Division, U.S. Dept. of Justice, Washington, DC, for Plaintiff.

George E. Harp, Shreveport, LA, for Defendant.

MEMORANDUM OF DECISION

GARBIS, District Judge.

This case was tried before the Court without a jury. The Court has heard the evidence, reviewed the exhibits, considered the materials submitted by the parties and had the benefit of the arguments of counsel. The Court now issues this Memorandum of Decision*696 as its findings of fact and conclusions of law in compliance with Rule 52(a) of the Federal Rules of Civil Procedure.

I. BACKGROUND

At all times relevant to this case, the Save-A-Patriot Fellowship ("the SAP Fellowship") has been based in a rented facility at 12 Carroll Street ("the Office") in Westminster, Maryland. Mr. John B. Kotmair, Jr. ("Kotmair"), was the founder and is the leader (called the "Fiduciary"), of the SAP Fellowship, Kotmair resides at 2911 Groves Mill Road ("the Residence") in Westminster, Maryland.

On December 10, 1993, the Internal Revenue Service ("I.R.S.") executed search warrants at the Office and the Residence in connection with an investigation of Kotmair. The execution of the search warrants resulted in litigation by Kotmair seeking the return of a vial of Holy Qettorett ^{FN1} allegedly seized by the I.R.S. in the raid. *Kotmair v. United States*, MJG-94-447. The Court decided, in the *Kotmair* case, that the Plaintiff had not established that the substance had been taken by the I.R.S. ^{FN2}

FN1. The sacred substance used in the Temple prior to its destruction and, some believe, necessary to sanctify the Temple upon its reconstruction so that the Messiah can perform prophesied miracles upon his/her return.

FN2. In the *Kotmair* case, the Plaintiff presented the testimony of Professor Vandyl Jones who claimed to be the original for "Indiana Jones." Professor Jones, was, in fact, searching for the Ark of the Covenant and actually found the ancient "factory" at which the Israelites manufactured and stored Holy Qettorett for Temple use. He found stored there a large quantity of "Holy Qettorett mix" needing only the addition of Sodom Salt and other ingredients. Dr. Jones entrusted a small vial of the substance to a "follower" of Kotmair, Scott Hucklebee, who brought it to America. However, the Court did not find that the vial was in the Residence at the time of the raid. Also, there was a sufficient supply left in Israel for use if, and when, needed so that the loss of the Hucklebee vial would not cause irreparable harm.

The instant case, which involves subject matter more mundane than Holy Qettorett, is brought by the SAP Fellowship. In the December 10, 1993 raid, the I.R.S. seized at the Office various documents, computer disks, files, papers, and other materials relating to the operations of the SAP Fellowship. There was also seized at the Office \$384 of currency, 40 Susan B. Anthony dollars, and 5 money orders valued at \$210.^{FN3}

FN3. In the search warrant return this is described as "APPLICATION & 4 MO-\$175." The \$210 value is found because it is used in the parties' Joint Statement of Facts.

At the Residence the I.R.S. seized various papers and the following items:

1. The sum of \$44,115 of U.S. currency found in one location in the safe.
2. The sum of \$377 of U.S. currency found in another location in the safe.
3. Various numismatic coins and items found in the safe and elsewhere in the Residence.

The items seized in the raid were taken by the Criminal Investigation Division of the I.R.S. for use in a criminal investigation. On December 22, 1993, the I.R.S. Collection Division served a Notice Of Levy on the Criminal Investigation Division so as to take the \$44,115 in currency for application to the outstanding tax liabilities of Kotmair. On September 2, 1994, the Collection Division levied upon the remainder of the above-mentioned seized property for application to the tax liabilities of Kotmair.

The SAP Fellowship filed this law suit on March 29, 1995, a date beyond the nine month limitation period^{FN4} following the December 22, 1993, levy but within nine months of the September 2, 1994, levy. By Memorandum and Order of May 10, 1996, this Court dismissed the Plaintiff's claim as to the \$44,115 in currency due to the expiration of limitations. There remained for trial the SAP Fellowship's claim to the assets levied upon on September 2, 1994.

FN4. 26 U.S.C. 5 6532(c)(1).

II. NATURE OF THE CASE

As stated in Saltzman, "IRS Practice and Procedure," ¶ 15.07 [2][a] (2nd ed.1991):

"In general, if a levy has been made on property ... any person other than the *697 taxpayer [against whose tax liability the levy was made] who claims (1) an interest in or lien on the property and (2) that the property was wrongfully levied upon by the Service may bring a civil action directly against the United States in federal district court."

The statutory authority for a wrongful levy action is provided by Section 7426 of the Internal Revenue Code. See 26 U.S.C. § 7426. In a wrongful levy action the underlying assessment against the taxpayer (here Kotmair) is "conclusively presumed to be valid." § 7426(c) Hence, the only issue in the case is whether or not the subject property is the property of the wrongful levy claimant (here the SAP Fellowship).

III. DISCUSSION

A. The SAP Fellowship Activities

The SAP Fellowship has been proven to exist, have members, and to function. The organization has assets, leases property, has a defined membership, publishes a newsletter, and has produced at least one video tape program, twelve hours of "Just The Facts." ^{FN5}

FN5. That is the "facts" according to the Fellowship as led by Kotmair.

There is no doubt that Kotmair is the major figure in the SAP Fellowship. As far as the Fellowship is concerned, he is, as Theodore Roosevelt aspired to be ^{FN6}, "the corpse at every funeral, the bride at every wedding and the baby at every christening."

FN6. As stated by Alice Roosevelt Longworth, Theodore Roosevelt's daughter.

The SAP Fellowship operates without any written governance structure or financial records. Operating assets, such as files, equipment etc. are located at the Office. Money, money orders, and other valuables are received at the Office, but not kept there. Kotmair is free to, and does, take funds from the SAP Fellowship for personal use. However, the evidence does not disclose that Kotmair maintained a high standard of living or that such funds as were accumulated were necessarily his personal hoard. ^{FN7}

FN7. The SAP Fellowship claims that the \$44,115 "hoard" was set aside for Fellowship use, noting that it has engaged in expensive activities, such as the production of the "Just The Facts" video tape. The Court makes no finding as to this contention in view of the denial of the claim for these funds on limitations grounds.

The SAP Fellowship describes itself ^{FN8} in the following terms:

FN8. See the SAP Fellowship Program Agreement.

The SAP Fellowship is a national organization of American patriots who have joined together to resist the illegal actions of the IRS and other government agencies who would attempt to deceive the public.

The evidence, including testimony and a recent (Fall of 1996) membership newsletter, "Reasonable Action," establishes that the SAP Fellowship has organizational activities, including the providing of "information" regarding tax procedures ^{FN9}, views on the U.S. Constitution, and similar matters. The Fellowship offers for sale, or in its lingo "exchange for FRNs" ^{FN10}, various publications as well as video tape programs and audio recordings. The material includes

its own publications, an 1828 dictionary ^{FN11}, a deposition of an F.B.I. Agent and a tape of the motion picture "Harry's War" ^{FN12} in which a citizen victimized by unscrupulous I.R.S. employees obtains an armored vehicle and takes on, and wins over to his viewpoint, the U.S. Army.

FN9. For example, a "press release" stating that a Washington State attorney had concluded that the I.R.S. has no authority to seize property in that state for income tax liabilities of "most citizens." This conclusion, it is said, was presented to, and not refuted by, the Washington State Bar Association and Attorney General.

FN10. Presumably Federal Reserve Notes since the Fellowship has an unorthodox view of "dollars."

FN11. Useful, presumably, in supporting arguments as to the original meaning of words in the Constitution and related documents.

FN12. The Court notes that the actor Edward Herrman played the role of a grass roots tax protestor in "Harry's War" and, more recently, the role of the President of the United States in "Pandora's Clock."

The Fellowship also offers the written works of Irwin A. Schiff who calls himself *698 "America's leading untax expert." ^{FN13} Schiff can be viewed as a "prophet" of the tax protester movement and a "guru" for Kotmair. Although convicted of tax felonies ^{FN14} and out of step with legal reality (as seen by federal judges), Schiff presents a most entertaining view of the tax law. He has been described by Judge Guerfein of the Second Circuit ^{FN15} in the following terms:

FN13. See the dust jacket to Irwin A. Schiff *How Anyone Can Stop Paying Income Taxes* (Freedom Books 1982).

FN14. *United States v. Schiff*, 801 F.2d 108 (2nd Cir.1986), *cert denied*. 480 U.S. 945, 107 S.Ct. 1603, 94 L.Ed.2d 789 (1987)

FN15. Schiff in *United States v. Schiff*, 612 F.2d 73, 75 (2nd Cir.1979) (reversing conviction of tax crimes and remanding for new trial).

[Schiff] was in the insurance business. He also fancied himself a "constitutionalist", an extremist who reserved the right to interpret the decisions of the supreme court as he read them from his layman's point of view regardless of and oblivious to interpretations of the judiciary. One can describe his attitude either as contumacious of governmental authority for the purpose of advancing the common weal, or as that of a clever faker who used his own distortions of the Constitution as a flimsy excuse for failing to pay his income taxes.

In addition to affording its membership access to the philosophy of Irwin Schiff and his disciples, the Fellowship offers a program by which, supposedly ^{FN16} :

FN16. The Court is *not* finding that the program operates as asserted, but only that such a program is presented to members.

Fellowship members pledge to reimburse other members for losses of cash or property incurred from illegal confiscation by the IRS and/or their nasty little brothers in state governments. This is done by spreading the reimbursement costs to all members.

Essentially, when a member suffers a "qualified" loss of property or freedom, he/she submits a claim to the SAP Fellowship which, after validation, supposedly results in reimbursement for civil losses (to a \$150,000 maximum) and a stipend of \$25,000 per year of incarceration. The payments are to be made by the membership directly to the validated claimant or the claimant's family.

A civil claim is validated:

... only after S.A.P. has determined that a judgment does exist and that the claimant, to the best of his ability, dragged the plunderers through every agency and court proceedings feasibly possible, using delaying tactics in each and everyone.

A criminal claim is validated:

... only after S.A.P. has determined that the claimant member is actually incarcerated and is given physical proof that said member, to the best of his/her ability, resisted and delayed the tyrants at every step through the criminal investigation and all other agency and court proceedings feasibly possible.

The Fellowship also conducts activities for its "Independent Representatives." FN17 For example, in October of 1996, the Fellowship offered a series of seminars for members, a Saturday night meeting open to the public, a Sunday social and, as a highlight of the function, the wedding of two of the Independent Representatives. FN18

FN17. Presumably, its membership or a class of members.

FN18. Kotmair's role in the nuptials is not specified.

B. The SAP Fellowship Is An Unincorporated Association

[1] The Government contends, at the threshold, that the SAP Fellowship is not an organization at all, but is solely a name used by Kotmair for his own "sole proprietorship" operation. The Court does not agree, even though it is readily apparent that Kotmair is the major figure in the Fellowship.

As noted above, the evidence established that there is an organization and not simply an operation by Kotmair personally. The SAP Fellowship, and not Kotmair personally, leased the Office. There are members, other than Kotmair, who engage in Fellowship activities.*699

This Court observes, also, that the I.R.S. itself, quite appropriately, returned to the Office the operating assets seized from the Office (other than cash and numismatic items). These assets, at least some of which had more than nominal value, were simply (and correctly) assumed to be Fellowship property, as distinct from Kotmair's personal property.

The Government's arguments regarding the absence of a written instrument of governance is noted but, in the context of this case, is not determinative. Moreover, the absence of records and record keeping, while significant in terms of the ability of the SAP Fellowship to carry its burden of proof does not overcome the evidence establishing that there is an actual unincorporated association distinct from its members.

In sum, the Court finds as a fact: that the SAP Fellowship is an unincorporated association (not just an alter ego or sole proprietorship of Kotmair), has members, and does things through persons in addition to Kotmair.

C. An Unincorporated Association In Maryland Can Own Property

[2] The Government's second line of defense is that even if the evidence established that the SAP Fellowship is recognized as an unincorporated association, such an entity *cannot* own property as a matter of law.

There is little precedent in Maryland law or elsewhere regarding property ownership by unincorporated associations. Presumably, those organizations that have significant assets find it beneficial to formalize their status, as a corporation, trust or other entity. However, the Court can take judicial notice of the fact that there are a multitude of unincorporated associations that function in spite of their informality. For example, there are many PTA's and other affiliations of persons with common interests that have not formalized their existence. Who would, sensibly, argue that a PTA treasury cannot be the property of the PTA?

While the situation may be different in some other jurisdictions ^{FN19} in Maryland the legislature has recognized that an unincorporated association can own property in its own right. ^{FN20}

FN19. For decisions holding that an unincorporated association cannot own property, see *Krumbine v. Lebanon County Tax Claim Bureau*, 541 Pa. 384, 663 A.2d 158, 160 (1995) (real property); *Rock Creek Gardens Tenants Assoc. v. A.M. & L.A. Ferguson*, 404 A.2d 972 (D.C.App.1979) (per curium) (real property); *United States v. Thevis*, 474 F.Supp. 134, 138 (N.D.Ga.1979); *Libby v. Perry*, 311 A.2d 527, 531-32 (Me.1973). *But See Loving Saviour Church v. United States*, 556 F.Supp. 688, 690 (D.S.D.1983) (holding that an unincorporated association is a legal entity and therefore can own property).

FN20. Compare, *Motta v. Samuel Weiser, Inc.*, 768 F.2d 481, 485-86 (1st Cir.1985) (stating that "[c]ourts may determine that ownership vests in the individuals who comprise the organizations.")

The Maryland Code, Md. Cts. & Jud. Proc.Code Ann. § 6-406 provides:

An unincorporated association ... or other group which has a group name may sue or be sued in the group name on any cause of action affecting the common property, rights and liabilities of the group.

Moreover, Md. Cts. & Jud. Proc. Code Ann. § 11-105 provides: In any cause of action affecting the common property, rights and liabilities of an unincorporated association, or other group which has a recognized group name, a money judgment against the group is enforceable *against the assets of the group as an entity*, but not against the assets of any member.

This Court concludes that, as a matter of law, an unincorporated association in Maryland can own property.

The Government's reliance upon *Bourexis v. Carroll County*, 96 Md.App. 459, 625 A.2d 391 (1993), is misplaced. The Maryland Court of Appeals did not hold that an unincorporated association *cannot* own property. Rather, it held that in *Bourexis*, in which there was no evidence offered as to the "governance, powers, financing, or property" of the organization, there was "nothing to show it [was] an entity that may be sued." *Id.* 625 A.2d at 395.

*700 For reasons stated herein, this Court concludes that the SAP Fellowship is an unincorporated association and, as such, is legally capable of owning property. It is, therefore, necessary to determine the extent to which the SAP Fellowship has carried its burden of proving that it owned the property at issue.

D. What Did The Fellowship Prove It Owned?

[3] The SAP Fellowship chose not to maintain any bank accounts or even maintain records of its finances. That decision may well be consistent with the group's philosophy.^{FN21} The absence of bank accounts or records may also, whether as a deliberately sought "benefit" or not, make it more difficult for law enforcement to investigate its activities. Whatever the reasons for an absence of records—be they philosophical or otherwise—the decision has a price which goes beyond the inability to earn interest on bank deposited funds. That price certainly includes the inconvenience that results when the Fellowship finds itself involved in a legal proceeding in which it has the burden of proof.

FN21. The Fellowship appears to have a distrust of banks.

In this case, had the SAP Fellowship had its own bank account in which it maintained its funds it might have little problem in prevailing as to those funds.^{FN22} Similarly, although perhaps less conclusively, had the SAP Fellowship maintained records of its funds and had Kotmair as Fiduciary keep the association funds completely separate from his own, the Fellowship would have at least a possibility of carrying its burden of proof. However, the Fellowship presents no records whatsoever. Nor does the evidence establish that its funds were maintained separately from those of Kotmair. And, most significantly, there is no evidence from which the Court can determine at what point after Fellowship funds leave the Office in the possession of Kotmair that

they cease to be held exclusively as the property of the SAP Fellowship.

FN22. Compare *Arth v. United States*, 735 F.2d 1190, 1193 (9th Cir.1984), in which the claimant's funds were deposited into the taxpayer's account and were held to have properly been levied upon.

The record establishes that Kotmair was entitled to, felt free to, and did, take funds from the Fellowship and use them for his personal sustenance. Kotmair espouses a doctrine that would have funds that he takes to spend for personal use remain the property of the SAP Fellowship. Indeed, in the world according to Kotmair, if he uses Foundation funds for his food, the Foundation ownership extends to the food even as it proceeds through his digestive system. For example:

THE COURT: [W]e are trying to get an understanding of when something belongs to you and when it doesn't. When it belongs to [the SAP Fellowship], so I just want you to try and help me understand that. If you go to the grocery store and you buy Wheaties [with fellowship funds], when is it yours, after you eat it or.

Kotmair: That is a hard question to answer.

THE COURT: That is why we ask it.

Kotmair: If the energy from it goes to the Fellowship, and it does, I would say it is to the benefit of the fellowship.

The Court declines to follow the "logic" of Kotmair's position or to dwell upon the point in the digestive process at which Kotmair would agree that the I.R.S. could effect collection. Rather, the Court must conclude that once Kotmair takes Fellowship funds for personal use, those funds can no longer be found to be Fellowship property immune from levy for Kotmair's tax liabilities.

The Court finds from the evidence that the SAP Fellowship obtained, and had ownership of, the cash and money orders it received for memberships and the sales of goods, and, possibly services. If the Fellowship had established that Kotmair's possession of particular assets was *solely* as Fiduciary for the SAP Fellowship the ownership could remain in the Fellowship. However, at such point as Kotmair took the assets and did not place *701 them in a location ^{FN23} that was *exclusively* used for the maintenance of Fellowship assets, the ability of the SAP Fellowship to establish ownership in this case was lost. In the context of this case, once the cash and money orders were taken from the Office and placed in something other than a Fellowship depository, the funds were available for the immediate personal use of Kotmair, mingled with his own assets, and no longer had the character of Fellowship assets sufficient to avoid levy.

FN23. Be it an office, a safe, a designated part of a safe, or other container plainly labeled to show Fellowship ownership and rigorously kept as Fellowship property.

In this case, the cash and money orders that had been removed from the Office prior to the raid were found in the Residence in various locations, none of which have been established to be exclusive association depositories. However, the Court finds that the \$384 of cash, the \$210 of money orders and \$40 of Susan B. Anthony Dollars found at the Office were, when found,

property of the SAP Fellowship which had not yet been mingled with Kotmair's personal assets. Accordingly, the Court concludes that the SAP Fellowship has carried its burden of proof and proven ownership with regard to these assets found in the Office, but not as to the cash and money orders found in the Residence.

The evidence regarding the numismatic items is not sufficient to permit any finding for the SAP Fellowship. There are references in the evidence to some association receipts of numismatic items. But, there is an absence of specific evidence relating to any particular item sufficient to carry the burden of proof. Moreover, the evidence is not adequate to establish that any of the numismatic items were maintained in a location that can be found to be a Fellowship depository. There was no record of which items belonged to the association. And, there was nothing, not even a sign, a label, a wrapping, or anything else that would indicate that the ownership of the items was other than that of Kotmair in whose home the items were found. Accordingly, the Court cannot find for the Plaintiff with regard to the numismatic coins and items.

IV. COSTS AND LEGAL FEES

The history of this case, and the related litigation, leads the Court to address the matter of costs and legal fees at this point to avoid further proceedings. The Court has found for the Plaintiff in part and the Defendant in part. Therefore, the parties shall bear their own respective costs.

To the extent that the Plaintiff has prevailed, the Government had a reasonably justified position. Accordingly, there shall be no award of legal fees.

V. CONCLUSION

For the foregoing reasons:

1. The Court determines that the Plaintiff, the SAP Fellowship, is entitled to recover the \$384 in currency, \$40 in Susan B. Anthony Dollars, and \$210 in money orders seized from the Office and levied upon to satisfy the tax liabilities of Kotmair on September 2, 1994.
2. Judgment shall be entered by separate Order awarding the Plaintiff a recovery of \$634, plus interest thereon as provided by law, the parties to bear their own respective costs.

1 being wrong, and that all the members thought that he
2 was being wrong, what is the nature of what would
3 happen as you understand it?

4 THE WITNESS: The people would probably
5 disassociate themselves from us, and I certainly would
6 too.

7 THE COURT: Well, and what is your
8 understanding of what should happen to the computers
9 or other assets if that occurred? What should happen
10 to this coin collection if the fellowship splintered?

11 THE WITNESS: It would probably kind of be in
12 Limbo unless someone, we don't really have a
13 replacement for Mr. Kotmair. Maybe one would emerge
14 but as of now we don't have anyone, so I really don't
15 know what would happen.

16 THE COURT: Mr. Harp, I don't want to be
17 treading on first amendment rights, so I expect you
18 are going to object if I ask this question the wrong
19 way.

20 Is there a membership list? I am certainly
21 not entitled to ask, and I don't want to ask who the
22 members are. Is there some way of telling who is a
23 member.

24 MR. HARP: Your Honor, with all due respect
25 to the Court, I would object to that.

1 THE COURT: I would rather sustain the
2 objection. Is there some question Mr. Harp that we
3 can ask so I can get an idea of whether there is a
4 membership as compared to some kind of feeling that
5 anybody who agrees with us is a member and they know
6 in there hearts there is a member. Could you ask the
7 question that is proper please.

8 MR. HARP: Your Honor, I suppose that there
9 could be a question asked about the membership
10 agreement.

11 THE COURT: Why don't you ask the question.
12 I don't want to ask the question and be accused of
13 trying to tread on the first amendment --

14 BY MR. HARP:

15 Q Mr. Erchak, was there a membership agreement with
16 the fellowship that you signed when you joined?

17 A They have membership agreements, that is the
18 purpose of it.

19 THE COURT: Are they available or in
20 evidence? Did we have them described at least.

21 MR. HARP: Your Honor, I don't have one here
22 with me. It may be -- I don't recall whether there is
23 one in evidence in this lawsuit or not.

24 THE COURT: I don't think there is.

25 MR. HARP: It seems like maybe in some other

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CERTIFICATE

I, Barbara J. Shaulis, Official Reporter for the United States District Court for the District of Maryland, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and accurate transcript of the proceedings made in the aforementioned and numbered case on the date hereinbefore set forth, and I do further certify that the foregoing transcript has been prepared by me or under my supervision.

Barbara J. Shaulis

Barbara J. Shaulis
Court Reporter 11-9-96