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.	)	

DEFENDANT SAVE-A-PATRIOT FELLOWSHIP'S MOTION FOR SUMMARY JUDGMENT

NOW INTO COURT, through undersigned counsel comes SAVE-A-PATRIOT FELLOWSHIP, and for the reasons more fully set forth in the attached memorandum in support, together with its attached affidavits and other exhibits, moves the Court to enter summary judgment for mover, and against the UNITED STATES OF AMERICA, dismissing with prejudice all of plaintiff's claims in accordance with Federal Rules of Civil Procedure 56 on the basis that there are no genuine issues of material fact in dispute and mover is entitled to judgment as a matter of law.

Dated this 31st day of May, 2006.

/s/ George Harp
GEORGE HARP Bar number 22429
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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing Motion for Summary Judgment has been made upon the following by depositing a copy in the United States mail, postage prepaid, this 1st day of June, 2006, to the following:

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MEMORANDUM IN SUPPORT OF DEFENDANT SAVE-A-PATRIOT FELLOWSHIP'S MOTION FOR SUMMARY JUDGMENT

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BACKGROUND

Defendant, SAVE-A-PATRIOT FELLOWSHIP (SAPF or the Fellowship), is an unincorporated association domiciled in the State of Maryland, engaged in protected 1st Amendment activities.[1] On May 13, 2005, Plaintiff filed this suit in an attempt to enjoin Defendant SAPF from engaging in conduct alleged generally to be violations of federal tax laws. The Complaint alleges that Defendants:

> Sell "tax-fraud schemes designed to assist customers in evading their federal tax liabilities";
>
> Provide "financial incentives for members to violate the internal revenue laws";
>
> Write to the IRS with "letters making frivolous arguments about the internal revenue laws";
>
> File "frivolous Freedom of Information Act requests";
>
> Prepare bankruptcy and other court filings "for members to use to obstruct IRS collections";
>
> Sell "videotapes, audiotapes, and books that contain false commercial speech";
>
> Make "false and fraudulent statements about the federal income tax laws";
>
> "Falsely claim [that joining SAPF will] allow their customers legally to stop paying federal taxes and filing federal tax returns"; and
>
> Substantially interfere with, impede, and obstruct the administration of the internal revenue laws.

Defendants Kotmair and SAPF filed their initial answers to the Complaint, substantially denying all allegations, on July 5, 2005 and July 14, 2005, respectively, and subsequently filed amended answers to the Complaint on August 4, 2005 and August 8, 2005, respectively.

Summary Judgment Standard

A motion for summary judgment must be granted when the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to any material fact, and that the moving party is entitled to summary judgment as a matter of law. Fed.R.Civ.P. 56; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *Lang v. Retirement Living Pub. Co.*, 949 F.2d 576, 580 (App. 2d Cir. 1991). The moving party carries the initial burden of demonstrating an absence of a genuine issue of material fact. Fed.R.Civ.P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Motor Club of America Ins. Co. v. Hanifi*, 145 F.3d 170 (App. 4th Cir. 1998). Facts, inferences therefrom, and ambiguities must be viewed in a light most favorable to the nonmovant. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986); *Bouchat v. Baltimore Ravens Football Club, Inc.*, 346 F.3d 514, 521 (App. 4th Cir. 2003).

When the moving party has met the burden, the nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., supra*, at p. 586. At that point, the nonmoving party "must set forth specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56; *Liberty Lobby, Inc., supra,* at p. 250; *Matsushita Elec. Indus. Co., supra*, at p. 587. To withstand a summary judgment motion, sufficient evidence must exist upon which a reasonable jury could return a verdict for the nonmovant. *Liberty Lobby, Inc., supra* at p. 248-49; *Matsushita Elec. Indus. Co., supra* at p. 587.

ARGUMENT

Web sites and newsletters

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[1] See Save-A-Patriot Fellowship v. United States of America, MJG-95-935, United States District Court for the District of Maryland (962 F.Supp. 695). See also transcript from that case, pages 17-18, 70-71, and 73 (Exhibit 18).

Paragraph 8 of the Complaint states:

> "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."

While it is true the official website of SAPF is www.save-a-patriot.org, the other two cited websites, www.taxfreedom101.com and www.taxtruth4u.com, are neither owned, operated, nor otherwise controlled by Defendants. At least as early as March 9, 2005, Plaintiff searched internet domain name registration records, and the results of those searches showed: Bryan Rusch was the registered owner of www.taxfreedom101.com; Debbie Jones was the registered owner of www.taxtruth4u.com; and Save-A-Patriot Fellowship was the registered owner of www.save-a-patriot.org. (Exhibit 1, documents numbered 395–400, obtained from Plaintiff in discovery). See also the affidavits of Bryan Rusch, Debbie Rae Jones, and Defendant Kotmair, ¶ 4 (Exhibits 2, 3, and 19, respectively).

Further, in his deposition, Internal Revenue Agent Gary Metcalfe testified that his initial determination that the web sites were owned or controlled by SAPF was based solely on his observations that articles originally published by SAPF could be found there. (Exhibit 5, Metcalfe deposition, 19:6–14). Metcalfe continues his testimony by stating that he was not aware of anything saying that Save-A-Patriot was the owner. (Metcalfe deposition, 19:15–20:23)

Accordingly, there is no substantially contested issue of material fact here. All the evidence in this case that speaks to this matter shows that SAPF had no control of either www.taxtruth4u.com or www.taxfreedom101.com. Defendant SAPF cannot be held responsible for the actions or speech of others, therefore summary judgment should be granted in favor of Defendants on all counts related to material attributable to either www.taxtruth4u.com or www.taxfreedom101.com.

The Tax Freedom 101 Report

Further, while it is admitted that SAPF publishes a newsletter called *Reasonable Action*, it neither owns nor distributes *The Tax Freedom 101 Report.* Rather, the latter newsletter, as its name suggests, is published and distributed through the web site www.taxfreedom101.com (Exhibit 6). As such, Defendant SAPF does not own, control, publish, or distribute *The Tax Freedom 101 Report.* (Exhibit 19, Kotmair affidavit, ¶ 4). This fact is uncontested, and Plaintiff has not alleged any facts which show otherwise. Accordingly, Defendants are entitled to summary judgment with respect to all allegations relating to the publication called *The Tax Freedom 101 Report.*

Allegations relating to www.taxfreedom101.com

The Complaint states:

> "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."

The "Home-Study Program" and "Home-Business Opportunity" were offered only on the www.taxfreedom101.com website, which Defendants neither owned nor controlled, as shown *supra* (See Exhibit 4). Although the "Home-Study Program" consisted of items that Defendants also offer for sale, the allegedly false statement complained of in ¶23 was never made by Defendants.[2] Notice that the

[2] In fact, it doesn't even appear to have been made by www.taxfreedom101.com either. The actual quote, found at www.taxfreedom101.com/products/productlist.htm, says: "Find out thousands of Americans have stopped filing returns 100% lawfully with no fear of reprisal from the IRS." This quote doesn't advertise that it will teach how anyone stopped filing returns, only that they did stop filing. This

advertisement for these two programs also clearly states: "However you do not have to purchase either of the Tax Freedom 101 programs to join the Save-A-Patriot Fellowship." Thus, not only was the allegedly false statement referred to in ¶23 not made by Defendants, but it was also not made "in connection with … the sale of any interest in" SAPF. False statements being made in connection with the sale of an interest in the tax shelter is one of the necessary elements of § 6700 (See § 6700(a)(2)).

There is no substantially contested issue of fact here—neither the Home-Study Program nor the Home-Business Opportunity are attributable to Defendant SAPF. Further, Plaintiff never even alleges in the Complaint that offering the Home-Business Opportunity violates any law. Therefore, it does not support any claim for injunctive relief in the first instance. For these reasons, summary judgment should be granted to Defendants on all counts relating to them.

False advertising

Paragraph 23 of the Complaint, quoted above, is one of only three specific allegations concerning advertising, and the only one to mention *false* advertising. The other two occurrences are at ¶¶10 and 21.

In ¶10, Plaintiff alleges that Defendants "advertise [that SAPF staff] will answer the members' tax questions." However, no allegation is made that such "advertisement" is false in any way. Further, the Complaint cites no statute which would be violated by such an advertisement as is alleged in ¶10. Thus, even if Defendant SAPF did actually advertise that its staff would answer members' questions—regardless of the subject matter—Plaintiff would not be entitled to the injunctive relief it seeks.

The remaining reference to advertising, at ¶21, alleges only that Defendant SAPF advertises that National Workers Rights Committee (NWRC) is a division of SAPF. Once again, no claim is made that

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point is moot in the instant case, however, since the evidence shows that Defendants have no control

such advertising is false. Defendant has established that NWRC is indeed a division of SAPF (Kotmair affidavit, ¶ 11), and Plaintiff has not alleged any facts to show otherwise. Accordingly, there is no contested issue of fact here.

In sum, the only allegation in the Complaint which specifically claims that Defendant was engaged in any kind of false advertising is ¶23, already shown, *supra*, not to be attributable to SAPF. However, Plaintiff also makes several allegations as to "false commercial speech," which necessitates an examination of "commercial speech" as it has been developed by the courts.

Commercial speech

The Supreme Court essentially equates "commercial speech" with "commercial advertising." This is important, since Plaintiff alleges at ¶22 of the Complaint:

> "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." [Emphasis added]

In other words, Plaintiff attempts to equate videotapes, audiotapes and books—which have not been shown to contain any advertising (let alone false advertising)—with "commercial speech." This appears to be based on an erroneous construction of the term "commercial speech," as if that term applies to any kind of speech that is ultimately offered for sale. However, this completely subverts the meaning given to the term by the Supreme Court. Indeed, the Supreme Court recognized in *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 761 (1976) that:

> "Speech likewise is protected even though it is carried in a form that is 'sold' for profit, (citations omitted) and even though it may involve a solicitation to purchase or otherwise pay or contribute money. *New York Times Co. v. Sullivan, supra; NAACP v. Button,* 371 U.S. 415, 429, 83 S.Ct. 328, 335-336, 9 L.Ed.2d 405, 415-416 (1963)."

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over this website.

Moreover, commercial speech is expression that does no more than propose a commercial transaction. See *Cincinnati v. Discovery Network*, 507 U.S. 410, 423 (1998); *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 66 (1983); *S.O.C., Inc. v. County of Clark*, 152 F.3d 1136, 1143 (App. 9th Cir. 1998); see also *Pittsburg Press Co. v. Pittsburg Com. On Human Relations*, 413 U.S. 376, 385 (1973); *Virginia State Board Of Pharmacy v. Virginia Citizens Consumer Council*, *supra*, at p. 772.

The speech found in the books, videotapes and audiotapes that Defendant offers for sale is purely political speech which, as shown below, is fully protected by the 1st Amendment. Political speech is not magically transformed into commercial speech merely because it is sold. Rather, commercial speech remains the same as originally distinguished by the Supreme Court in *Valentine v. Chrestensen*, 316 U.S. 52, 54 (1942)—that is, *advertising*.

Common sense may also be relied upon to understand this principle. Membership organizations of all types—National Rifle Association, National Association for the Advancement of Colored People, Parent-Teacher Associations, among others, for example—raise operating funds by selling things, yet this does not make them businesses. In fact, it is hard to imagine how any advocacy group could fund their operations except by way of donations or sales of some sort.

Defendant SAPF's political speech, in the form of books, videotapes, audiotapes and newsletters, cannot be restricted under the false pretense that it is commercial speech. Furthermore, Plaintiff has provided no evidence that any of the material referred to in ¶22 contains commercial speech, let alone *false* commercial speech. Therefore, Plaintiff is not entitled to the injunctive relief it seeks with respect to SAPF's sale of such materials, as such injunction would amount to a prior restraint on SAPF's protected political speech. Indeed, the Supreme Court has stated, in *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976):

> "[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on rights under this amendment."

See also, *Heller v. New York*, 413 U.S. 483, 491 (1973). ("Any system of prior restraints of expression comes to Supreme Court bearing heavy presumption against its constitutional validity."); *Capital Cities Media, Inc. v. Toole*, 463 U.S. 1303 (1983); *New York Times Co. v. U.S.*, 403 U.S. 713 (1971); *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963).

However, the fact that political speech is sought to be enjoined—prior restraint of expression—compounds the unlawfulness of the Plaintiff's attempt to enjoin SAPF.

Political Speech enjoys the full protection of the First Amendment

It cannot be reasonably disputed that Save-A-Patriot Fellowship is a political advocacy organization. All the publications of SAPF demonstrate this. Moreover, it does not exist for the purpose of turning a profit. SAPF must rely on both sales and donations to fund its advocacy and educational activities. Thus, like the membership organizations mentioned above, SAPF is not a business, but a *bona fide* political organization.

The fact that SAPF sells books, publications and services does not make it a "business" and is therefore insufficient to render its activities "commercial speech." See *Helfron v. International Society for Krishna Consciousness,* 452 U.S. 640, 647 (1981); *Gaudiya Vaishnava Society of City of San Francisco*, 952 F.2d 1059, 1063 (App. 9th Cir. 1990). Indeed, *Black's Law Dictionary* (6th ed.) defines "commercial speech doctrine" thusly:

> "Commercial speech doctrine. Speech that was categorized as "commercial" in nature (i.e. speech that advertised a product or service for profit or for business purposes) was formerly not afforded First Amendment freedom of speech protection, and as such, could be freely regulated by statutes and ordinances. *Valentine v. Chrestensen,* 316 U.S. 52, 62. This doctrine, however, has been essentially abrogated. *Pittsburg*

> *Press Co. v. Pittsburg Comm. On Human Rights,* 413 U.S. 376; *Bigelow v. Virginia,* 421 UY.S. 809; *Virginia State Brd. of Pharmacy v. Virginia Citizen Council,* 425 U.S. 748."

Indeed, in *Valentine v. Chrestensen, supra,* the court recognized "commercial speech" as being nothing more than false advertising:

> "We are equally clear that the Constitution imposes no such restraint on government as respects purely commercial advertising."

Black's 7th edition adds this:

> "Commercial Speech. Communication (such as advertising and marketing) that involves only the commercial interests of the speaker and the audience, and is therefore afforded lesser First Amendment protection than social, political, or religious speech."

Looking into *Black's Law Dictionary* (4th ed.), we see "political" defined (in part) thusly:

> "Pertaining or related to the policy or the administration of government, state or national. *People v. Morgan,* 90 Ill. 558. Pertaining to, or incidental to, the exercise of the functions of government; relating to the management of affairs of state; as political theories; of or pertaining to the exercise of rights and privileges or the influence to which individuals of a state seek to determine or control its public policy."

Moreover, the constitutional protection does not turn upon "the truth, popularity or social utility of the ideas and beliefs which are offered." *NAACP v. Button,* 371 U.S. 415, 445 (1963). SAPF's speech enjoys the full protection of the First Amendment, just like that of any single citizen would—or a collection of citizens, such as the members of SAPF.

False and fraudulent statements

Paragraph 25 of the Complaint states:

> "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:

e.[3] SAPF members can 'lawfully stop the withholding of income and employment taxes in the work place.'
f.[4] 'tens of thousands of your fellow Americans already QUIT social security - 100% legally. . . .'"

Here again, the quotes in subparagraphs *e* and *f* have never appeared anywhere on SAPF's website nor any of its literature. However, the sources of these quotes were found to be www.taxfreedom101.com/pages/reward.htm and www.taxfreedom101.com/pages/questions.htm, respectively. (Exhibit 7; page 3 of Exhibit 8, respectively). As already established above, that website is neither owned nor controlled by Defendants. Plaintiff has failed to provide any evidence to establish that these two statements (at ¶25(e) and (f)) were ever made by Defendant SAPF. Accordingly, there is no substantially contested issue of material fact here—SAPF did not make the statements quoted at ¶25(e) and (f) of the Complaint. Wherefore, summary judgment should be granted in favor of Defendant SAPF with respect to all counts relating to said statements.

Promotion of abusive tax shelters

These same two statements also come into play with respect to Plaintiff's allegations of violations of IRC § 6700, which penalizes promoting abusive tax shelters by making false statements with respect to the securing of any tax benefit by reason of participation in the shelter. To try to cover this necessary element of IRC § 6700 (see Elements of promotion of abusive tax shelters, *infra*),

[3] The Complaint used bullets to itemize the subparagraphs. However, we used letters to designate them, for the sake of convenience.
[4] Once again, Plaintiff mischaracterizes the actual quote: "How have tens of thousands of your fellow Americans already QUIT social security - 100% legally - and started saving for their own retirement (not yours and everyone else's)?" This question appeared under the heading "You will discover the answer to all of these question [referring to questions appearing above this heading] and many more when you enroll in Tax Freedom 101. Here are some more intriguing questions..." Thus, this quote merely asks the question, but it doesn't advertise that the answer to it will be learned by buying the Program. Nevertheless, this issue is moot also, since the evidence shows that Defendants have no control over this website.

Plaintiff lists eight statements in ¶25 which are alleged to be "false and fraudulent statements about the federal income tax laws and the tax advantages of their schemes."

Unfortunately for Plaintiff's case, § 6700 does not prohibit statements about the tax laws—not even false ones. And yet, of the eight statements cited in ¶25 of the complaint, six clearly fall within that unprohibited category. These statements merely report SAPF's understanding of the tax laws with respect to citizens of the United States generally. They are fully protected political speech, pure and simple. The statements at ¶25(a), (b), (c), (d), (g) and (h) contain nothing which can be construed as relating to any tax advantages accruing as a consequence of membership in SAPF. Certainly, Plaintiff has not specifically alleged that any of those six statements fall within the category of prohibited "false or fraudulent statements about the tax advantages of [Defendant's] schemes."[5]

In fact, if Plaintiff had not *created* the category of "statements about the federal income tax laws," it would have been left with only two statements, at ¶25(e) and (f), neither of which are attributable to SAPF. These two statements are catapulted into other allegations too, but in a general way. Paragraph 31 of the Complaint, for example, makes the unsupported allegation that "Defendants ... sell plans that they falsely claim allow their customers legally to stop paying federal taxes and filing federal tax returns." Yet Plaintiff has not quoted any statements to that effect anywhere in the Complaint, nor has it provided any evidence to support this allegation. This allegation, then, cannot support the injunctive relief Plaintiff seeks.

Elements of promotion of abusive tax shelters

Paragraph 29 of the Complaint exposes an underlying acknowledgment by Plaintiff that § 6700, as written, in no way prohibits the activities of Defendants. It is part of Plaintiff's attempt to blur the

scope of § 6700 beyond the specific intent of the legislators who enacted the penalty statute. The paragraph reads:

> "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."

Compare ¶29 with the actual written law, which reads, in pertinent part:

> § 6700. Promoting abusive tax shelters, etc.
> (a) Imposition of penalty.
> Any 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) .... [Emphases added]

There is a significant difference between ¶29 and § 6700(a)(2)(A). Plaintiff purposely left out the *qualifying phrase "by reason of holding an interest in the entity or participating in the plan or* arrangement." In doing so, Plaintiff tries to sweep away a fundamental element of abusive tax shelters: they are abusive when promoters defraud people into investing by means of false statements concerning the tax benefits *derived by participation in the shelter*. Some background from the legislative reports will clarify the pivotal role this element plays in § 6700.

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[5] They inconveniently failed to specify which statements fit within which category, but the context is relatively easy to see.

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]

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[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

penalized by IRC § 6701. Taken together, they allege Defendant prepares or assists in the preparation of members' correspondence, that Defendant has reason to believe that the correspondence—alleged to contain "frivolous arguments"—will be sent to the IRS, and that if the IRS relied on that correspondence, it would result in understatements of members' tax liabilities. Comparing those allegations with the actual wording of § 6701, it is apparent that Plaintiff has, at the outset, failed even to allege all of the elements necessary to establish a claim upon which relief can be granted.

> "Sec. 6701. Penalties for aiding and abetting understatement of tax liability
> (a) Imposition of penalty
> Any person -
> (1) who aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other document,
> (2) who knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws, and
> (3) who knows that such portion (if so used) would result in an understatement of the liability for tax of another person,
> shall pay a penalty with respect to each such document in the amount determined under subsection (b)."

To violate § 6701, three conditions must be present: a person must (1) aid or assist in the preparation of any portion of a document, (2) which said person knows (or has reason to believe) will be used in connection with any material matter arising under the internal revenue laws, and (3) which said person knows would result in an understatement of liability of tax with respect to another person.

When IRC § 6701 was enacted along with § 6700 in 1982, see *supra*, the Joint Committee on Taxation prepared a "General Explanation of the Revenue Provisions" of TEFRA on December 31, 1982. The elements concerning knowledge were explained by the Committee as follows (Exhibit 13, p. 220):

> "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." [emphasis added]

Comparing this report's clarification—that the conduct prohibited includes only actual, certain knowledge regarding both the use and the ultimate result of the "portion" prepared—with the allegations in Plaintiff's Complaint shows the latter is void of the elements of knowledge of the use in a material matter and knowledge that an understatement will result from that use. Instead, Plaintiff alleges Defendant has reason to believe correspondence will be sent, and that if the IRS relied on the correspondence sent, such reliance would result in understatements of members' tax liabilities. Since this is the only allegation which even approaches the elements required, summary judgement should be granted in favor of Defendant.

Defendant's correspondence never results in understatements of liability

It is undisputed that Defendant SAPF prepares correspondence for its members at their request. The discovery record shows that these letters are always responses to IRS notices. In responding, Defendant SAPF presents members' understanding of the law as best it can, using citations of law, regulations, and court cases; requesting appeals conferences and petitioning for abatements; and challenging, where appropriate, the lawfulness of IRS employees' actions. (Kotmair deposition, 142:7–144:17 and Plaintiff's exhibits 11, 12, and 13). In so doing, Defendant is exercising its members' rights to free speech and to petition for redress pursuant to the First Amendment. Finally, it is invoking remedies which are found in the statutes, regulations, or IRS publications, e.g., the abatement of a notice of deficiency (IRC §§ 6213(b)(2) and 6404(a)(3)). (Exhibit 19, Kotmair affidavit, ¶ 6). In short, Defendant SAPF's letters are solely in response to an assertion of liability or statement of actual amount of liability already determined by the IRS.

The many pages produced by Plaintiff in discovery is clear evidence that letters written by

Defendant are indeed sent to the IRS, thus "reason to believe" they will be sent is undisputed. Further, it is certainly the *intent* of members, who give a power of attorney to the Fellowship's fiduciary (Kotmair deposition, Plaintiff's exhibit 11), that the letters be used in connection with a material matter, and so Defendant knows, in that sense only, that the letters are "so used" *by the members*.

While the phrase "(if so used)" in § 6701(a)(3), clearly relates back to the "use" in § 6701(a)(2) by the party for whom the portion (or document) was prepared—in this case, the SAPF member—Plaintiff equivocally exploits that phrase to imply that it means "if so used" or "relied upon" by the IRS.

The result is that the Department of Justice does not allege Defendant knows an understatement of the liability would result from the letter sent; it only alleges that Defendant has reason to believe such result would come about in the hypothetical event that the "IRS relied on" the correspondence. The allegation, instead of comprising a real element of an offense under § 6701, is reduced to a vague inference that Defendant somehow intends to effect an understatement of liability (which intent is discussed, *infra*).

Nevertheless, the wooden Pinocchio of hypothetical reliance might have become a real boy had Plaintiff even alleged just one *prima facie* case in which the IRS actually relied upon a letter sent by Defendant, causing the IRS itself to understate a taxpayer's liability.

Likewise, Plaintiff alleges that Defendant prepares "bankruptcy and other court filings" it has reason to believe will be used in connection with members' tax liabilities and again, that "if a court, the IRS, or the United States relied" on those filings, the result would be an understatement of tax liability, ¶¶ 35 and 37. Not only does this allegation suffer the same hypothetical malady as manifested *supra*, but also no documents which could be described as court filings or bankruptcy petitions have been produced by Plaintiff in discovery. Further, Plaintiff does not allege any manner in which bankruptcy or court

filings could be used by courts to determine understatements of tax liabilities. The allegation, then, appears to be no more than a shot in the dark. Further, with regard to alleged "bankruptcy filings," Defendant testified that no assistance has been provided in bankruptcy matters for many years (Kotmair deposition, 39:7-14). Since no documents are on record, the further assertion by Plaintiff that these alleged filings present "frivolous arguments about the internal revenue laws" is itself without merit.

Since IRC § 6703 lays the burden of proof on the Secretary in determining whether or not any person is liable for a penalty under §§ 6700 or 6701, the matter of establishing a *prima facie* case in seeking to enjoin Defendant's conduct becomes even more critical. IRC § 7402(a) gives power to the Court to enjoin any person from "further engaging in conduct subject to penalty" if the court finds "that the person has engaged in any conduct subject to penalty" under § 6701. Thus the production of a threshold of facts constituting such conduct in the first instance, which burden would be upon the Secretary, must be established. And in order to be in actual violation of the statute, such a case would need to encompass all the elements—aiding another person, knowing that person's usage of the prepared document, knowing what the actual result would be when they use it, and naturally, the existence of both an actual portion or document prepared, and an actual resulting "understatement." This last element, the "understatement of a liability," is foundational to show violation under § 6701, and its statutory meaning is essential to this case. This is particularly true in light of the allegation Plaintiff makes in ¶ 38, that Defendant "assists in preparing documents understating their customers' [members'] tax liabilities."

Definition of "understatement of a liability"

Section 6701 does not define the term "understatement of a liability." In the entire Internal Revenue Code, there is one definition of the phrase, and it is found within § 6694, dealing with the "understatement of a liability" by a return preparer:

> "6694(e). Understatement of liability defined
> For purposes of this section, the term "understatement of liability" means any understatement of the net amount payable with respect to any tax imposed by subtitle A or any overstatement of the net amount creditable or refundable with respect to any such tax." [Emphasis added]

In the context of a return preparer, it is clear that an "understatement of a liability" must contain an actual figure of net amount payable (or creditable or refundable). It is not a statement containing words, prose, poetry, or even "frivolous" arguments that is contemplated; all it contains are numbers.

Similarly, the term "understatement" is defined only once in the Internal Revenue Code, within § 6662, in connection with the imposition of a penalty for substantial understatement with respect to the income tax:

> "6662(d)(2)(A). the term "understatement" means the excess of -
> (i) the amount of the tax required to be shown on the return for the taxable year, over
> (ii) the amount of the tax imposed which is shown on the return, reduced by any rebate (within the meaning of section 6211(b)(2))." [Emphasis added]

Once again, in the context of a prepared return, it is clear that an understatement must be the actual figure of an amount. It is a "statement" which contains only numbers.

In light of the manner in which Congress employs and defines the terms "understatement" and "understatement of a liability" elsewhere, it is unreasonable to infer that, in providing a penalty for "aiding and abetting understatement of tax," Congress meant something other than a statement of actual figures. Rather, it is clear that in order for the actions and knowledge penalized by § 6701 to result in an understatement of a liability, a presentation containing actual numbers must be made with respect to statements of liability. Since the 9,000 or so pages Plaintiff has produced do not contain any numbers concerning a "statement" of liability, Plaintiff has failed to provide any evidence to support its claim in ¶¶ 34, 36, or 38.

Further, it is absurd to even consider that the § 6701 penalty could be extended to

correspondence written on behalf of another person which contains no amounts, but employs mere words—citations of the law, citations of court cases, and declarations of beliefs—in order to challenge the lawful authority of IRS employees. If the Department of Justice wants to stop people from writing or petitioning government agencies in response to claims those agencies have made, it must ask Congress to rewrite the laws, not only for IRC § 6701, but for many other sections which explicitly provide for people to interact with government agencies.

No proof of knowledge or intent to effect understatement

As mentioned *supra*, Plaintiff vaguely alleges some intent on the part of Defendant SAPF to effect an understatement of a liability. In fact, the discovery record reveals that in every letter, Defendant intends that the IRS operate within the authority granted to it by the Internal Revenue Code to ensure that the IRS effect a correct determination of liability. That is, these letters lay out the relevant law and administrative procedures, to the best of Defendant's knowledge and belief, for obtaining due process, and for correcting errors made by the IRS in a member's tax accounts. To claim that a man might be penalized for disagreeing in writing with an erroneous bureaucratic determination against him, and trying to avail himself of the remedies provided by Congress, is nothing short of an attempt to leave citizens without recourse against overreaching IRS employees.

Finally, Plaintiff's hypothetical suppositions aside, the evidence is overwhelming that the IRS never relies upon letters written by Defendant. Moreover, the evidence shows that Defendants "know" that when letters are "used" by members, those letters never "result in an understatement of the liability for tax," because the IRS never uses the letters to determine liability at all. In fact, the IRS never considers the issues raised nor does it respond, other than to continue its assessment and collection process undeterred. It 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 (Kotmair affidavit, ¶ 7, Kotmair deposition, 142:7–144:17). The letters are "disregarded," IRS Agent Metcalfe confirmed in his deposition (Metcalfe deposition, 75:21–76:12). Metcalfe also said that he never personally read the letters himself (Metcalfe deposition, 59:12).

As with so much of Plaintiff's Complaint, the allegations concerning violations of IRC § 6701 fail to encompass all elements necessary to state a claim as well as to apprise Defendant of the particulars of any actual understatement of any person's tax liability. With no allegation of any specific understatement in the Complaint, and no evidence provided to support such an allegation in any case, Plaintiff is not entitled to the relief it seeks. Therefore, Defendant is entitled to summary judgment in its favor with respect to alleged violations of IRC § 6701 in Count I of the Complaint.

Allegations of "tax-fraud schemes"

The Plaintiff raises numerous allegations of "tax fraud schemes."[7] However, other than bald allegations, there are no specific *facts* appearing in the Complaint that could hypothetically be deemed "tax-fraud." Of course, in this stage of these proceedings, it is a bit late for the Plaintiff to amend its complaint, so as to allege "tax fraud" substantially, pursuant to Rule 9(b) or Rule 15 of the Federal Rules of Civil Procedure—that is, if that defect could even be "fixed."

Nonetheless, it is worthwhile to examine what "tax-fraud" is—something Plaintiff has failed to do. *Black's Law Dictionary* (7th edition) refers one to "tax evasion."[8] The phrase is defined, in relevant part, as:

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[7] For instance, in the complaint, at paragraph 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."

[8] Tax fraud. See tax evasion. *Black's Law Dictionary*, 7th ed.

> "Tax evasion. The willful attempt to defeat or circumvent the tax law in order to illegally reduce one's tax liability."

There are at least three elements necessary for "tax evasion" to occur: (1) there must be a tax liability; (2) a person must attempt to defeat or circumvent the tax; and, (3) the element of willfulness must be present. The Plaintiff has failed to allege any of these three elements with particularity. There exists in the record no testimony or documents—absolutely nothing at all—that even suggests "tax fraud" as that term is defined.

This is consistent with what the federal courts have to say on the matter. In *Grossman v. C.I.R.*, 182 F.3d 275 (App. 4th Cir. 1999), the court stated:

> "A finding of civil tax fraud requires that the Commissioner of Internal Revenue prove affirmatively by clear and convincing evidence actual and intentional wrongdoing on the part of the taxpayer with a specific intent to evade the tax."

Of course, tax fraud is a slightly different species of fraud, due to the complexity of tax laws. For indeed:

> "Thus, the Court almost 60 years ago interpreted the statutory term 'willfully' as used in the federal criminal tax statutes as carving out an exception to the traditional rule. This special treatment of criminal tax offenses is largely due to the complexity of the tax laws. In *United States v. Murdock*, 290 U.S. 389, 54 S.Ct. 223, 78 L.Ed. 381 (1933), the Court recognized that: 'Congress did not intend that a person, by reason of a bona fide misunderstanding as to his liability for the tax, as to his duty to make a return, or as to the adequacy of the records he maintained, should become a criminal by his mere failure to measure up to the prescribed standard of conduct.' Id., at 396. * * * Taken together, *Bishop* and *Pomponio* conclusively establish that the standard for the statutory willfulness requirement is the "voluntary, intentional violation of a known legal duty.'" *Cheek v. United States,* 498 U.S. 192, 200–201 (1991).

In *Alexander Shokai, Inc. v. C.I.R.,* 34 F.3d 1480, 1487 (App. 9th 1994), the 9th Circuit also stated the matter succinctly:

> Because tax fraud is rarely established by direct evidence, fraudulent intent can be inferred from circumstantial evidence; badges of fraud include understatements of

income, failure to maintain adequate records, implausible or inconsistent explanations of behavior, concealment of assets, and failure to cooperate with tax authorities.

Scrutinizing the Complaint reveals none of these elements, even if one were to "infer" tax fraud in a most extravagant fashion: there are no allegations that even one person filed a tax return *and* intentionally understated income, concealed assets, gave implausible or inconsistent explanations of behavior, or failed to cooperate with tax authorities (insofar our written laws may require) so as to give rise, substantially, to any tax fraud or tax evasion. There are no substantial allegations of this sort to be found anywhere within the four corners of the complaint.

The rules of evidence contain no provisions for Plaintiff's prevailing in court on vague allegations of hypothetical crimes. Even if Plaintiff had determined that some member was involved in any tax fraud, it does not follow that SAPF had any part in it. In fact, it is the position of SAPF that all Americans should pay all taxes due and owing as a matter of written law. SAPF has been saying that for over twenty years. (Exhibit 17; also Exhibit 19, Kotmair affidavit, ¶ 9).

Certainly, if Plaintiff believes that SAPF itself has committed tax fraud or has some "scheme" to commit tax fraud, it is obligated to state with particularity the facts upon which its allegations are based. However, nowhere in the Complaint has Plaintiff alleged any specific facts that could support a finding of fraud against Defendant. As a matter of law, this court should grant summary judgement in favor of Defendant SAPF with respect to all general allegations of fraud in Plaintiff's Complaint.

Frivolous correspondence and court filings

Plaintiff uses the word "frivolous" liberally in its Complaint. In fact, it seems Plaintiff's repeated use of terms such as "fraudulent" or "frivolous" are merely attempts to taint Defendants' character by casting them in a light of criminality, without actually offering any evidence to support its claims against them. However, merely calling something frivolous, even repeatedly, does not make it so.

> "Frivolous. Of little weight or importance. A pleading is "frivolous" when it is clearly insufficient on its face, and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the opponent. A claim or defense or frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim or defense. ..." *Black's Law Dictionary*, 6th Edition.

According to this definition, a claim is frivolous if its proponent can offer no rational argument based upon law to support it. Conversely then, if a rational argument, based upon the law, *is* given, then it is not frivolous. Plaintiff claims, at ¶¶17, 18, 34, and 42 of Complaint, that Defendant's correspondence to the IRS makes "frivolous arguments about the internal revenue laws," that they "file frivolous Freedom of Information Act (FOIA) requests," and prepare "frivolous and abusive court filings." Notably however, Plaintiff never actually alleges that any *particular* argument is frivolous; instead, it merely makes conclusory accusations in such a vague way as to make it impossible to determine the basis for its claims. Ironically, this seems to put (at least those paragraphs of) Plaintiff's Complaint squarely within the definition of frivolous—i.e., a claim for which no rational basis in law is given. After all, Plaintiff has failed to cite any statute that forbids, or otherwise penalizes, frivolous arguments, *per se*.

Plaintiff provided some 9,000 pages of documents as part of discovery, and of those, most were copies of correspondence received by the IRS from Defendant Kotmair. In looking at those letters, one thing is extremely clear—they are chock-full of citations to statutes, regulations and other legal authorities. For Plaintiff to claim, without giving even one specific example, that these legal citations are not a proper basis for a rational argument is ridiculous. The fact is, Revenue Agent Metcalfe, who issued the referral to the Justice Department which instigated the present suit, testified that he never actually investigated the legal positions advocated in any of the correspondence sent to the IRS by Defendants

(Metcalfe deposition, 57:7–59:16). Obviously then, Metcalfe cannot know whether or not the legal positions are frivolous.

In contrast to Defendants' correspondence to the IRS, which has many citations of authority, the correspondence Fellowship members receive from the IRS rarely have any legal citations at all. In fact, they rarely address any of the issues raised on behalf of the members. Thus again, such IRS correspondence could much more properly be deemed frivolous, according to the definition above.

Nevertheless, even if any arguments offered in Defendants' correspondence to the IRS could be deemed to be frivolous, Plaintiff fails in its Complaint to cite any statute that Defendants are claimed to have violated by sending such correspondence. With no law to establish the necessary elements of the crime, Plaintiff cannot possibly allege sufficient facts in the Complaint to establish those elements, and therefore, Defendants cannot possibly prepare a defense against them. Since Plaintiff failed to cite the violated law, and failed to allege the necessary elements, Plaintiff is not entitled to the injunctive relief it seeks, and Defendants are entitled to summary judgment in their favor with respect to every general allegation of frivolous documents of any kind.

Of course, the most egregious of these claims is ¶18, Plaintiff's allegation that Defendants file *frivolous FOIA requests*. Not surprisingly, Plaintiff gives no example of such a frivolous FOIA request, and has provided none in its discovery documents. This claim, more than anything else, merely shows the lengths to which Plaintiff will go to harass Defendants. The Freedom of Information Act was enacted by Congress to allow citizens to obtain copies of government documents, subject to certain restrictions. FOIA does not require that a citizen have any reason for obtaining such documents; it is enough if they just follow the procedures to request them. Likewise, other than the explicit exceptions written into the act, citizens may request any document they please. Under those conditions, Defendant

is unable to fathom any possible way in which a FOIA request could be frivolous.[9] Apparently, since none was alleged, Plaintiff was unable to come up with any way either.

Likewise, Plaintiff has failed to provide any evidence to support its claim of "frivolous court filings." Not one court filing—frivolous or otherwise—was found in the almost 9,000 pages of documents provided by Plaintiff in discovery.

Incitement to violate internal revenue laws

Plaintiff alleges throughout its Complaint that Defendants "provide financial incentives for members to violate the internal revenue laws. See ¶11, 13, 15, and 42 of Complaint. These allegations mainly relate to SAPF's Membership Assistance Program, although ¶22 also tries to characterize SAPF's political speech (the books, videos, audios and newsletters discussed above) as "false commercial speech ... directing and inciting customers to violate the internal revenue laws." To dispense with the latter, it should only be necessary to remind this court that "constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). Of course, Defendant does not advocate lawless behavior, and in fact, advocates compliance with the written law by everyone, including government employees. But even if it did, the government's authority is limited to the proscription of *imminent* lawlessness. Certainly, Plaintiff has not specifically alleged any actual person has been incited to commit any actual crime in its Complaint—most especially, any imminent commission of crime. Rather, Plaintiff attempts to restrain Defendant's right to free speech solely on general accusations.

[9] If all governmental agencies adopted the attitude that a request for any document they didn't want to

Membership Assistance Program

Persons joining Save-A-Patriot Fellowship agree that they will contribute to other members in the case of a valid claim that said members have lost property, or been incarcerated, as the result of unlawful actions of federal or state taxing agencies. Members who also join the Patriot Defense Fellowship, explained *infra*, also agree to contribute to each other. In the event of a claim, no payments are sent to or through SAPF; members themselves make these payments directly to the claimant. The program is described as being "insurance-like."

As to the Membership Assistance Program (MAP), Plaintiff's allegation that it provides "financial incentives ... to violate the internal revenue laws" appear to be based on the rather ridiculous theory that some person will rush right out and fail to file a tax return, in the hopes that he will be convicted and sent to jail—all so that he can have the chance to receive a "reward" of up to $25,000. Considering it this way, however, reveals the inanity of the theory. First, the conditions for filing a MAP claim set a six-month waiting period between the time a person becomes a member of the Fellowship, and the time in which any indictment is issued (page 3 of the program agreement, Exhibit 15). Thus, the MAP would tend to discourage, rather than encourage, imminent action. Second, if the claim is for incarceration, it is something over which that person would have no control, since not only must he be indicted, as a MAP claimant he must show that he defended himself legally, *against* conviction, to the best of his ability.

Similarly, civil claims under MAP are assessed to recoup the value of property already taken by taxing agencies through levy or seizure. Again, a person would have virtually no control over whether or not his property is taken in this manner, especially since money held by banks, saving and loan

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disclose was 'frivolous,' FOIA would become a dead-letter.

associations, stock brokers, etc. are not even covered under MAP. And, just as with criminal claims, a claimant must show that they have diligently "taken advantage of every agency appeal procedure and court proceeding lawfully possible."

Of course, this court can take notice that incarceration or confiscation of one's property can cause substantial hardship for one's family, and assisting those in such circumstances is essentially an extension of Christian charity.

SAPF members who have also joined the Patriot Defense Fellowship[10] are eligible to make a claim to recoup up to $10,000 of their actual legal costs to defend themselves against criminal allegations, and if convicted, up to $5,000 of the costs of their appeal. It is beyond reason and logic that this could be construed to encourage anyone to commit a crime.

This court can also take notice of the fact that *actual* insurance policies (not to be confused with "insurance-like protection"), termed "professional liability insurance," are offered to government employees, which pay for their legal defense against tort claims and judgments awarded against them (Exhibit 16). Revenue Agent Metcalfe testified about such insurance policies being available to Internal Revenue Service employees. (Metcalfe deposition, 45:6–46:24.) Surely, Plaintiff would not claim that IRS employees are encouraged to commit torts by the offer of such insurance.

In sum, Plaintiff's allegations are so general and vague—in that they fail to allege any specific person who has been incited to violate any specific law—that they fail to apprise Defendants of the nature of the claim being made against them. More importantly, Plaintiff has failed to cite any statute that prohibits offering "insurance-like protection" such as that offered by SAPF. Without a statute establishing the elements necessary to commit a prohibited act, Plaintiff cannot possibly allege any such

[10] Plaintiff repeatedly and incorrectly refers to this as the Patriot Defense Fund.

elements in its complaint, and indeed, has not. Thus, all allegations that SAPF incites or encourages the violation of criminal laws are insufficient as a matter of law. Plaintiff having failed to state a claim for which relief can be granted, Defendant is therefore entitled to summary judgment as a matter of law on all counts relating to the incitement, encouragement, or offering financial incentives to violate internal revenue laws.

Impeding or obstructing the administration of the tax laws

Plaintiff alleges throughout its Complaint that Defendant impedes, obstructs, and interferes with the administration of the internal revenue laws. See ¶4, 5, 41, 42, 43, 44 and 48 of Complaint. However, just like so much of the Complaint, Plaintiff fails to specify the particular law(s) it claims SAPF interferes with or impedes. Once again, Plaintiff's claim is nothing but vague and general allegations of misconduct, for which no specifics are alleged, and for which no evidence has been offered to support. In addition, Plaintiff fails to even cite the law upon which it bases this allegation—that is, what statute prohibits the activities that Plaintiff is trying to enjoin.

Of the seven paragraphs cited above, only ¶41, 42 and 44 give any clue as to the underlying activity alleged to constitute interference. Paragraph 41 says the interference arises 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." However, Plaintiff has not separately alleged that Defendant has ever claimed that *becoming a member of SAPF* will permit them to stop paying any taxes. The closest thing to such a statement is that appearing at ¶25(g): "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.'" Clearly, this statement concerns citizens and permanent resident aliens *generally*, and has absolutely no relation to membership in SAPF.

Paragraph 42 alleges interference by way of frivolous letters and FOIA requests, preparing court pleadings, and financial incentives. All of these have already been discussed, *supra*, and have been shown to be utterly lacking in merit. However, it is important to stress here that all of the correspondence sent on behalf of members invoke remedies established by statutes and regulations. If the IRS deems a citizen's recourse to the legal and administrative remedies established by Congress and the Treasury Department an impedance or interference with the administration of the tax laws, then either the IRS is overreaching, or it should encourage Congress to diminish or eliminate those remedies. After all, a citizen who believes that the IRS has made substantive errors in its dealings with him must have some recourse to effect a correction. It is a sad day for our Republic when the government claims that *letters* which seek to bring about such corrections impede the administration of the tax laws. It will be an even sadder one if they are allowed to prevail on such a claim.

Paragraph 43 is based on Plaintiff's unsubstantiated allegation in ¶41, that SAPF advises members not to file tax returns or pay taxes. But Plaintiff adds, again without providing a shred of evidence to support it, that SAPF advises members to obstruct IRS examination and collection actions. Plaintiff fails to particularize how such obstruction is accomplished, so this claim, too, is left swinging in the wind. Further, Defendant Kotmair repeatedly stated in his deposition that SAPF doesn't give advice. (Kotmair deposition, 83:8–14).

Plaintiff's claim of obstruction, then, appears to be premised upon an idea that anything done which does not make IRS' examination and collection activities *easier*, by default, makes them *harder*—that is, impedes them. However, Congress has provided the IRS with all the procedures and authority it deems to be necessary for the IRS to accomplish its responsibilities. If a person fails to cooperate with the preparation of a tax return, for example, Congress provided the IRS with the

authority to proceed without their cooperation. See IRC § 6020(a) and (b). Likewise for collections: if a person fails to pay when given the statutory notice and demand, Congress provided the IRS with authority to collect by distraint. See IRC § 6331. That the IRS must resort to such authorities and procedures does not interfere, impede, or obstruct the administration of the laws. Rather, the administration of the laws proceeds exactly as laid out by Congress for those situations.

Paragraph 44 relies on the same mistaken premise—that requesting an IRS agent to verify the legal authority under which they are proceeding, or requesting that actions taken by the IRS be reviewed, impedes his administration of the laws—and fails for the same reason. Such actions do not obstruct the administration of the laws. Even if an IRS employee is compelled to follow a procedure that is harder than they would prefer, such actions still do not rise to the level of interference.

In his deposition, Agent Metcalfe confirmed that this is the underlying premise for Plaintiff's claim. He testified that he considers a letter an impediment to the administration of the tax laws if it causes "an extra administrative step or two." (Metcalfe deposition, 76:14–19). However, Metcalfe also testified that the letters sent by Defendant do not actually impede anything, "because they're disregarded." (Metcalfe deposition, pg. 76:7-8). In other words, even though Plaintiff considers it an impediment to make the IRS take an extra administrative step or two, the IRS itself admits that the letters sent by Defendant do not even cause such an "impediment." Since the only evidence in this case shows that Defendant's letters do not impede the IRS' administration of the tax laws, Defendant is entitled to summary judgment in its favor with respect to all the allegations of impeding, obstructing, or interfering with the administration of the tax laws.

Claims to irreparable harm

At ¶¶ 43-47, Plaintiff makes several claims of irreparable harm which have not been

substantiated through specific allegations, nor through any evidence produced in discovery. Most of these claims have been addressed, *supra*. The remainder of Plaintiff's claim to harm, stated simply, is that it suffers from Defendant's "interference" with IRS examinations and collection activities, which in turn prevents discovery and recovery of unreported and unpaid taxes.

It is painfully obvious by now that the only "interference" meant are the letters written to the IRS. Consequently, the lack of any harm whatsoever can best be illustrated by United States counsel Newman, who, in the course of deposing Defendant Kotmair, told him that the IRS service centers receive about *one* letter per day (Kotmair deposition, 131:6–12). Assuming this means a business day, that adds up to about 260 letters per year, letters which, as Agent Metcalfe clarified, are totally ignored (Metcalfe deposition, 76:7-8).

It has also been abundantly established herein that letters are written to the IRS only *after* the IRS "discovered" unreported taxes. Moreover, since SAPF letters are "disregarded," and since under the Membership Assistance Program, members contribute to other members only *after* the IRS has collected amounts it determined are owed, it is impossible to fathom how SAPF impedes IRS' recovery of taxes—and again, no method in which this is accomplished has even been alleged.

If Plaintiff wants to state a claim of "irreparable harm" upon which the injunction it seeks can be granted, it must do more than mouth the phrase. It is obligated to declare the facts upon which its allegation is based. Since Plaintiff has failed to do this, and the discovered facts, and the logic applied to those facts, reveals a claim without substance. This court should grant summary judgment in favor of Defendant SAPF with respect to all allegations of irreparable harm.

CONCLUSION

In many respects, the general nature of much of Plaintiff's Complaint renders it insufficient to warrant the injunctive relief Plaintiff seeks. Overall, Plaintiff wants a permanent injunction against SAPF to restrain it from engaging in protected political speech, based solely on unsupported broad characterizations of SAPF's activities, rather than on specific allegations of actual wrong-doing. However, such broad characterizations do not apprise Defendant of the necessary elements of any alleged violation of law, and so prevents it from preparing a defense against such baseless charges. Where the allegations are more specific, they relate to statements not made by Defendant, but by persons over whom Defendant has no control.

This injunction suit is nothing more than a blatant attempt by the government to eliminate the advocacy of dissenting political views, first by restraining SAPF's free speech directly, and second, by using this suit as a pretext to obtain private personal information concerning those with whom SAPF associates—its members—for the ultimate purpose of preventing those members, through harassment and intimidation, from exercising their corresponding rights to free speech and association.

WHEREFORE, for the reasons above, Defendant Save-A-Patriot Fellowship moves this court grant summary judgment in favor of Save-A-Patriot Fellowship against all counts in Plaintiff's Complaint.

Respectfully submitted on this 31st day of May, 2006.

/s/ George Harp
GEORGE HARP Bar number 22429
Attorney for Save-A-Patriot Fellowship
610 Marshall St., Ste., 619
Shreveport, LA 71101
(318) 424-2003

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing Memorandum in Support for Defendant's Motion for Summary Judgment, with attached affidavits and other exhibits, has been made upon the following by depositing a copy in the United States mail, postage prepaid, this 1st day of June, 2006, to *the following:*

JOHN B. KOTMAIR, JR
Defendant
Pro se
P. O. Box 91
Westminster, MD 21158

THOMAS M. NEWMAN
Attorney for United States of America
Trial Attorney, Tax Division
U.S. Department of Justice
P. O. Box 7238
Washington, D.C. 20044

/s/ George Harp
GEORGE HARP Bar number 22429
Attorney for Save-A-Patriot Fellowship
610 Marshall St., Ste. 619
Shreveport, LA 71101
(318) 424 2003

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.	)	

DEFENDANT SAVE-A-PATRIOT FELLOWSHIP'S MOTION FOR SUMMARY JUDGMENT

APPENDIX

Exhibit	**Description**
1.	March 9, 2005 WHOIS Search Results
2.	Affidavit of Bryan Rusch
3.	Affidavit of Debbie Rae Jones
4.	www.taxfreedom101.com/pages/signup.htm
5.	Metcalfe Deposition (selected pages)
6.	www.taxfreedom101.com/ezines/tf101_listings.htm
7.	www.taxfreedom101.com/pages/reward.htm
8.	www.taxfreedom101.com/pages/questions.htm
9.	May 12, 1982 Joint Committee on Taxation TEFRA report (excerpts)
10.	May 18, 1982, House Ways and Means Committee hearing (excerpts)
11.	July 12, 1982, Senate Finance Committee report (excerpts)
12.	August 17, 1982, Conference report, H.R. 4961 (excerpts)
13.	December 31, 1982, Joint Committee on Taxation TEFRA report (excerpts)
14.	Kotmair Deposition (selected pages and Plaintiff's exhibits)
15.	SAPF Program Agreement
16.	Wright & Co. Benefits web page
17.	SAPF Membership Handbook, page 7
18.	Hearing transcript, MJG-95-935, U.S. District Court for the District of Maryland (excerpts)
19.	Affidavit of John B. Kotmair

WHOIS SEARCH RESULTS

WHOIS RECORD FOR

save-a-patriot.org

IMAGE NOT AVAILABLE

Certified Offer Service - Make an offer on this domain
Backorder - Try to get this name when it becomes available
Similar Names - See suggested alternatives for this domain

NOTICE: Access to .ORG WHOIS information is provided to assist persons in determining the contents of a domain name registration record in the PIR registry database. The data in this record is provided by Public Interest Registry for informational purposes only, and PIR does not guarantee its accuracy. This service is intended only for query-based access. You agree that you will use this data only for lawful purposes and that, under no circumstances will you use this data to: (a) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than the data recipient's own existing customers; or (b) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-Accredited Registrar, except as reasonably necessary to register domain names or modify existing registrations. All rights reserved. PIR reserves the right to modify these terms at any time. By submitting this query, you agree to abide by this policy.

Domain ID:D5319231-LROR
Domain Name:SAVE-A-PATRIOT.ORG
Created On:18-Feb-1997 05:00:00 UTC
Last Updated On:20-Feb-2005 01:37:47 UTC
Expiration Date:19-Feb-2006 05:00:00 UTC
Sponsoring Registrar:Register.com Inc. (R71-LROR)
Status:OK
Registrant ID:C30551479-RCOM
Registrant Name:SAP Fellowship
Registrant Organization:SAP Fellowship
Registrant Street1:12 Carroll St
Registrant Street2:
Registrant Street3:
Registrant City:Westminster
Registrant State/Province:MD
Registrant Postal Code:21157
Registrant Country:US
Registrant Phone:+1.4108574441
Registrant Phone Ext.:
Registrant FAX:
Registrant FAX Ext.:
Registrant Email:save-a-patriot@SAVE-A-PATRIOT.ORG
Admin ID:C30551573-RCOM
Admin Name:SAP Fellowship
Admin Organization:SAP Fellowship
Admin Street1:12 Carroll St
Admin Street2:
Admin Street3:
Admin City:Westminster
Admin State/Province:MD
Admin Postal Code:21157
Admin Country:US
Admin Phone:+1.4108574441
Admin Phone Ext.:

Admin FAX:
Admin FAX Ext.:
Admin Email:save-a-patriot@SAVE-A-PATRIOT.ORG
Tech ID:C30551574-RCOM
Tech Name:Domain Registrar
Tech Organization:Register.Com
Tech Street1:575 8th Avenue
Tech Street2:
Tech Street3:
Tech City:New York
Tech State/Province:NY
Tech Postal Code:10018
Tech Country:US
Tech Phone:+1.9027492701
Tech Phone Ext.:
Tech FAX:+1.9027495429
Tech FAX Ext.:
Tech Email:domain-registrar@register.com
Name Server:NS.SITEPROTECT.COM
Name Server:NS2.SITEPROTECT.COM
Name Server:
Name Server:
Name Server:
Name Server:
Name Server:
Name Server:
Name Server:
Name Server:
Name Server:
Name Server:

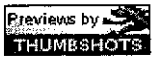
The previous information has been obtained either directly from the registrant or a registrar of the domain name other than Network Solutions. Network Solutions, therefore, does not guarantee its accuracy or completeness.

Show underlying registry data for this record

IP Address:	216.36.199.86 (ARIN & RIPE IP search)
IP Location:	US(UNITED STATES)-ILLINOIS-CHICAGO
Record Type:	Domain Name
Server Type:	Apache 1
Web Site Status:	Active
DMOZ	no listings
Y! Directory:	see listings
Secure:	No
E-commerce:	Yes
Traffic Ranking:	3
Data as of:	08-Jun-2004

When you register a domain name, current policies require that the contact information for your domain name registration be included in a public database known as WHOIS. To learn about actions you can take to protect your WHOIS information visit www.internetprivacyadvocate.org.

NOTICE AND TERMS OF USE: You are not authorized to access or query our WHOIS database through the use of high-volume, automated, electronic processes or for the purpose or purposes of using the data in any manner that violates these terms of use. The Data in Network Solutions' WHOIS database is provided by Network Solutions for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. Network Solutions does not guarantee its accuracy. By submitting a WHOIS query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via direct mail, e-mail, telephone, or facsimile; or (2) enable high volume, automated, electronic processes that apply to Network Solutions (or its computer systems). The compilation, repackaging, dissemination or other use of this Data is expressly prohibited without the prior written consent of Network Solutions. You agree not to use high-volume, automated, electronic processes to access or query the WHOIS database. Network Solutions reserves all rights and remedies it now has or may have in the future, including, but not limited to, the right to terminate your access to the WHOIS database in its sole discretion, for any violations by you of these terms of use, including without limitation, for excessive querying of the WHOIS database or for failure to otherwise abide by these terms of use. Network Solutions reserves the right to modify these terms at any time.



WHOIS SEARCH RESULTS

WHOIS RECORD FOR

taxfreedom101.com

IMAGE NOT AVAILABLE

Certified Offer Service - Make an offer on this domain
Backorder - Try to get this name when it becomes available
Similar Names - See suggested alternatives for this domain

Registration Service Provided By: Domain Registry Group Inc
Contact: support@droa.com
Visit:

Domain name: TAXFREEDOM101.COM

Registrant Contact:
NA
Liberty Alliance (taxfree@taxfreedom101.com)
NA
Fax:
12 Carroll Street # 149
Westminster, MD 21157
US

Administrative Contact:
NA
Bryan Rush (taxfree@taxfreedom101.com)
+1.8017150950
Fax: +1.8017150950
Liberty Alliance
12 Carroll Street # 149
Westminster, MD 21157
US

Technical Contact:
NA
Liberty Alliance (taxfree@taxfreedom101.com)
NA
Fax:
12 Carroll Street # 149
Westminster, MD 21157
US

Billing Contact:
NA
Liberty Alliance (taxfree@taxfreedom101.com)
NA
Fax:
12 Carroll Street # 149
Westminster, MD 21157
US

Status: Locked

Name Servers:
NS1.OOSTERMAN.COM
NS2.OOSTERMAN.COM

Creation date: 05 Oct 1997 00:00:00

Expiration date: 04 Oct 2005 00:00:00

The data in this whois database is provided to you for information purposes only, that is, to assist you in obtaining information about or related to a domain name registration record. We make this information available "as is," and do not guarantee its accuracy. By submitting a whois query, you agree that you will use this data only for lawful purposes and that, under no circumstances will you use this data to: (1) enable high volume, automated, electronic processes that stress or load this whois database system providing you this information; or (2) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via direct mail, electronic mail, or by telephone. The compilation, repackaging, dissemination or other use of this data is expressly prohibited without prior written consent from us. The registrar of record is NameJuice. We reserve the right to modify these terms at any time. By submitting this query, you agree to abide by these terms.
Version 6.3 4/3/2002

The previous information has been obtained either directly from the registrant or a registrar of the domain name other than Network Solutions. Network Solutions, therefore, does not guarantee its accuracy or completeness.

Show underlying registry data for this record

Current Registrar:	BRANDON GRAY INTERNET SERVICES, INC. DBA NAMEJUICE.COM
IP Address:	69.48.91.118 (ARIN & RIPE IP search)
IP Location:	US(UNITED STATES)
Record Type:	Domain Name
Server Type:	Apache 2
Lock Status:	REGISTRAR-LOCK
Web Site Status:	Active
DMOZ	no listings
Y! Directory:	see listings
Secure:	No
E-commerce:	Yes
Traffic Ranking:	2
Data as of:	08-Jun-2004

When you register a domain name, current policies require that the contact information for your domain name registration be included in a public database known as WHOIS. To learn about actions you can take to protect your WHOIS information visit www.internetprivacyadvocate.org.

NOTICE AND TERMS OF USE: You are not authorized to access or query our WHOIS database through the use of high-volume, automated, electronic processes or for the purpose or purposes of using the data in any manner that violates these terms of use. The Data in Network Solutions' WHOIS database is provided by Network Solutions for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. Network Solutions does not guarantee its accuracy. By submitting a WHOIS query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via direct mail, e-mail, telephone, or facsimile; or (2) enable high volume, automated, electronic processes that apply to Network Solutions (or its computer systems). The compilation, repackaging, dissemination or other use of this Data is expressly prohibited without the prior written consent of Network Solutions. You agree not to use high-volume, automated, electronic processes to access or query the WHOIS database. Network Solutions reserves all rights and remedies it now has or may have in the future, including, but not limited to, the right to terminate your access to the WHOIS database in its sole discretion, for any violations by you of these terms of use, including without limitation, for excessive querying of the WHOIS database or for failure to otherwise abide by these terms of use. Network Solutions reserves the right to modify these terms at any time.

WHOIS SEARCH RESULTS

WHOIS RECORD FOR

taxtruth4u.com

IMAGE NOT AVAILABLE

Certified Offer Service - Make an offer on this domain
Backorder - Try to get this name when it becomes available
Similar Names - See suggested alternatives for this domain

Registration Service Provided By: ICDSoft.com
Contact: hosting@icdsoft.com
Visit:

Domain name: TAXTRUTH4U.COM

Registrant Contact:
NA
LLC Avagon (NA)
NA
Fax:
701 Prospect Mill Road
Bel Air, MD 21015
US

Administrative Contact:
Avagon, LLC
Debbie Jones (deb@avagon-llc.com)
877 286 4101
Fax:
791 Prospect Mill Rd
Bel Air, MD 21015
US

Technical Contact:
VeriSign, Inc.
Inc. VeriSign (namehost@WORLDNIC.NET)
NA
Fax:
21355 Ridgetop Circle
Dulles, VA 20166
US

Billing Contact:
NA
LLC Avagon (NA)
NA
Fax:
701 Prospect Mill Road
Bel Air, MD 21015
US

Status: Locked

Name Servers:
NS1.STATION186.COM
NS2.STATION186.COM

Creation date: 02 Mar 1999 00:00:00
Expiration date: 02 Mar 2006 00:00:00

When you register a domain name, current policies require that the contact information for your domain name registration be included in a public database known as WHOIS. To learn about actions you can take to protect your WHOIS information visit www.internetprivacyadvocate.org.

NOTICE AND TERMS OF USE: You are not authorized to access or query our WHOIS database through the use of high-volume, automated, electronic processes or for the purpose or purposes of using the data in any manner that violates these terms of use. The Data in Network Solutions' WHOIS database is provided by Network Solutions for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. Network Solutions does not guarantee its accuracy. By submitting a WHOIS query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via direct mail, e-mail, telephone, or facsimile; or (2) enable high volume, automated, electronic processes that apply to Network Solutions (or its computer systems). The compilation, repackaging, dissemination or other use of this Data is expressly prohibited without the prior written consent of Network Solutions. You agree not to use high-volume, automated, electronic processes to access or query the WHOIS database. Network Solutions reserves all rights and remedies it now has or may have in the future, including, but not limited to, the right to terminate your access to the WHOIS database in its sole discretion, for any violations by you of these terms of use, including without limitation, for excessive querying of the WHOIS database or for failure to otherwise abide by these terms of use. Network Solutions reserves the right to modify these terms at any time.

AFFIDAVIT OF BRYAN RUSCH

I, Bryan Rusch, do hereby depose and state as follows:

1. I am a citizen of the Commonwealth of Massachusetts.

2. I am the sole owner of the website www.taxfreedom101.com, and of its contents.

3. Neither John Baptist Kotmair, Jr., Save A Patriot Fellowship, nor any of the defendants of the above captioned action, or their agents, have any ownership or control, directly or indirectly, over the contents of www.taxfreedom101.com.

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

Dated this 13th day of June, 2005

Bryan Rusch

Subscribed and sworn to before me, a Notary Public, of the Commonwealth of Massachusetts, County of Worcester, this 13th day of June, 2005, 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: 3-29-06

Exhibit 2

AFFIDAVIT OF Debbie Rae Jones

I, Debbie Rae Jones, do hereby depose and state as follows:

1. I am a citizen of the State of Maryland.

2. I am the sole owner of the website www.taxtruth4u.com, and of its contents.

3. Neither John Baptist Kotmair, Jr., Save A Patriot Fellowship have any ownership or control, directly or indirectly, over the contents of www.taxtruth4u.com.

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

Dated this 27 day of June, 2005

Debbie Rae Jones

Subscribed and sworn to before me, a Notary Public, of the State of California, County of Harford, this 27 day of June, 2005, that the above named person did appear before me and was identified to be the person executing this document.

Notary Public

PAUL R. DePASQUALE SR.
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires May 15, 2007

My Commission Expires On:

Exhibit 3

Enrollment Information and Options

Course Education Options for Tax Freedom 101	Enrollment and Membership for The Save-A-Patriot Fellowship
Option #1 * **Educational materials only.** Option #2 * **Educational materials *plus* your home-based business opportunity with our satisfaction/money-back guarantee.** * Neither of options #1 & #2 for the TAX FREEDOM 101 Home Study Program includes membership in the Save-A-Patriot Fellowship. We know that some people may be wary of joining an organization until they have fully evaluated their structure, organization, and material. Evaluation of any organization first is always the prudent thing to do before making a commitment to join with people as its focus. We wish our fellow citizens to become well educated before they join us, however this is not a prerequisite. This is why we have created the Tax Freedom 101 Home Study Programs. This home study course allows citizens to become familiarized and educated about the fellowship and the tax laws of the United States. The citizen can then make an educated decision to support their fellow Americans to regain control of their government by the rule-of-law. This is the recommended course of action, education first, membership second. However you do not have to purchase either of the Tax Freedom 101 programs to join the Save-A-Patriot Fellowship.	If you would like to associate with like minded citizens, who wish to support each other in the restoration of liberty, as well as take part in an educational odyssey of liberty, and/or if you are in need of immediate legal assistance in dealing with the IRS or your state taxing agency consider joining Save-A-Patriot now before it is too late. When you join our fellowship you will 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. You will also be part of our growing members assistance program known as the Victory Express, and if you choose have 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 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 related issue requiring legal assistance and defense. If you are ready to enroll in the Save-A-Patriot Fellowship at either the Associate or Full Member level please visit the membership enrollment page. Thank you.

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!

Are you next?

Welcome Page - Contact Us - Audio/Visual Center - The Questions - Plunder Protection
10,000 Reward - Help Save-A-Patriot - The Duty Free Store - Student Testimonials
Enrollment Info - Program FAQ's - Members Support Center - The e-Newsletter
Topical Library - Radio Free America - Helpful Links - New Visitor Center

Please Note:

not using frames. This site is best used with frames.

Subscribe to The-Tax-Freedom-101-Report

enter email address

YAHOO! Groups Join Now!

Powered by groups.yahoo.com

Exhibit 4

IN THE UNITED STATES DISTRICT COURT FOR
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, *
Plaintiff *
vs. * Civil No.:
JOHN BAPTIST KOTMAIR, JR., * WMN 05 CV 1297
et al. *
Defendant *
* * * * *

DEPOSITION OF:

Gary Metcalfe

The deposition of Gary Metcalfe was taken on behalf of the Defendants on Thursday, March 16, 2006, commencing at 10:05 a.m. at the U.S. Attorney's Office, 32 South Charles Street, Baltimore, Maryland before Lynne Livingston, a Notary Public.

Exhibit 5

APPEARANCES:

George Harp, Esq.
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

INDEX

PROCEEDINGS

WHEREUPON,

Gary Metcalfe,

the witness called for examination, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. HARP:

Q Mr. Metcalfe, my name is George Harp and I represent Save-A-Patriot Fellowship and John Kotmair, Jr., here, pro se.

And we have Mr. Tom Newman here that's representing the government in this matter.

For the record, could you state your name and address, please?

A It's Gary Metcalfe, and I prefer to use the address of the IRS office down here and let them send me any correspondence.

Q That's fine.

A Okay. In which case it would be in care of Joan Rowe, IRS, care of Joan Rowe, 31 Hopkins Plaza, Room 1040, Baltimore, Maryland 21203.

Q The www.Taxfreedom101.com.
A I believe that was a website that was affiliated with Save-A-Patriot, was being used for kind of educational purposes, which is why I think the 101 was on the back of it.
Q Okay. And that gets into my next question. What was it on that website that led you to believe that Mr. Kotmair may have been connected with it or that Save-A-Patriot would have been connected with it?
A I would say I think there was probably some articles on there that he had, was attributed as being the author on, but I'm again, relying on memory and --
Q Okay. That's fine. Okay. But you don't recall, there was nothing on the website itself indicating that Mr. Kotmair might have been an owner or in control of it or anything?
A As I recall, on the website, no I don't believe there was. I -- he was, you know, just maybe had some articles that he had put on there.
Q Okay. And was there anything on the

website indicating that Save-A-Patriot Fellowship might either own or control that website?

A Not that I recall.

Q Okay. What about the www.Taxtruthfor you.com?

A As far as I know there was nothing saying that Save-A-Patriot was the owner of that.

Q Okay.

A I think there was some articles in there that were kind of you know, were related to Save-A-Patriot.

Q What about relative to Mr. Kotmair either being the owner or --

A Of the websites?

Q Right.

A I don't believe there is and I -- as I recall during the interview he made, he specified that he was not owner of the websites or Save-A-Patriot because Save-A-Patriot was a fellowship therefore it had no quote, unquote, owner.

MR. KOTMAIR: Just itself, right?

assistance program?
A Yes. And the NWRC, which is I think the National Worker's Rights Committee. I think that's what that stands for as I recall.
MR. KOTMAIR: Did you or anybody you know have insurance being an IRS agent for if you wrongfully violated someone's rights that you were covered with this insurance?
THE DEPONENT: I know there was -- yes, yes, there is insurance out there for that.
MR. KOTMAIR: Did you have a policy?
MR. NEWMAN: I don't see how that's relevant.
MR. KOTMAIR: Well, it's relevant if -- to this.
MR. NEWMAN: That he has insurance?
MR. KOTMAIR: No, that for the same purpose that if he violates the law he's covered as an IRS agent.
MR. NEWMAN: It's not relevant whether or not he had the insurance or even knows about it.

MR. KOTMAIR: Well, he knows about it. He already said that.

THE DEPONENT: I know -- I know there was professionally liability insurance available, yeah.

MR. KOTMAIR: For government agents who violate people's rights.

THE DEPONENT: I know there's professional liability insurance that's available for government employees.

MR. KOTMAIR: For if they violate people's rights --

THE DEPONENT: For insurance purposes.

MR. KOTMAIR: Doesn't it say if you violate their rights, you're covered?

THE DEPONENT: It was insurance to, you know, it's insurance to protect your rights in a liability situation.

MR. KOTMAIR: Didn't it say if you're violating someone's rights you're covered if you got sued? Didn't it say that?

THE DEPONENT: I don't really know specifically what it said. I don't recall.

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

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

THE DEPONENT: Yes.

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

THE DEPONENT: It's against the --

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

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

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

THE DEPONENT: In that internal revenue --

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

MR. NEWMAN: Let's take a break.

(Off the record)

MR. KOTMAIR: I'm not asking you to make any legal determination, just answer my question. Did you ever investigate the contents of this letter to see if it was incorrect?

THE DEPONENT: Did I ever actually go in and read all those sections --

MR. KOTMAIR: Did you ever go and study them to see what we were saying is wrong or right?

THE DEPONENT: Personally, no.

MR. KOTMAIR: Okay. That's all I wanted to know.

BY MR. HARP: Okay.

Q I've got --

MR. KOTMAIR: One more question. So actually if you didn't, you don't know if it's right or wrong, do you?

THE DEPONENT: I know it's contrary to what is the --

MR. KOTMAIR: No, no, I didn't ask --

THE DEPONENT: The acceptable interpretation.

MR. KOTMAIR: Just answer yes or no.

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

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

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

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

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

BY MR. HARP:

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

FOIA request itself but the fact that Mr. Kotmair wasn't authorized to send it for someone?

A Well, when you're talking about FOIA requests, that goes through disclosure. I'm not really, was never really involved in FOIA requests.

Q Okay.

A So I can't really talk about FOIA requests.

MR. KOTMAIR: Privacy being the same thing with FOIA; is that right? Privacy act request, FOIA requests being the same category of things?

THE DEPONENT: Privacy --

MR. KOTMAIR: Through a disclosure officer.

THE DEPONENT: Yeah. Well, yeah, kind of.

MR. KOTMAIR: Okay.

THE DEPONENT: Now these letters that you've been showing me were ones that were sent to, you know, either revenue agents, or the service center or whomever to impede or

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

MR. KOTMAIR: And those letters actually --

THE DEPONENT: Whatever.

MR. KOTMAIR: Actually impede that.

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

MR. KOTMAIR: There's no --

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

MR. KOTMAIR: That's fine.

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

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

THE DEPONENT: No, I don't know.

The Tax Freedom 101 Report

The Constitutional Revival Movement's News Source

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Archives for
Calendar Year 2004

January	February	March	April
January 6th	February 24th	March 19th	April 16th
January 20th			April 24th
January 23rd			

Exhibit 6

founded to disarm the IRS of its only actual weapon: FEAR. By standing together we can force bureaucrats back within the confines of the law ... and arrest the wild rush toward PERPETUAL DEBT and a TOTALITARIAN SOCIALISTIC GOVERNMENT IN AMERICA.

The truth is indeed stranger than popular misconception. You will learn for yourself that knowledge based upon indisputable facts and law is stronger than **"F.E.A.R." (False Evidence Appearing Real)**.

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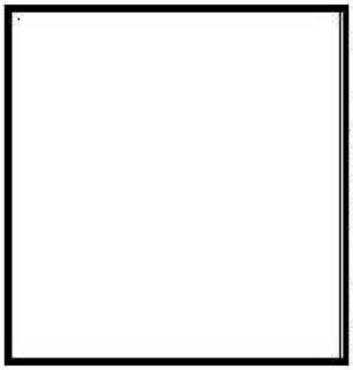
Exhibit 7

The Questions

Questions that are fun to ask, and tough to answer!



Tell us your IRS horror story and we will ask you these questions. Questions which will make your brain melt.

The purpose of this questions page is to ask you some thought provoking questions that you, and perhaps your accounting, tax and/or legal professional have never been asked before. Unlike our Ministry of Propaganda quiz, answering all of these questions correctly is very difficult, that is unless you have the detailed background information that our home-study educational packages provide.

Have a r
actually answer correctly with a straight face, knowing that after giving your answer it is absolutely correct. Later, have your accounting, legal or tax "pro" try to answer them for you. If you get the brush-off, or are unhappy with their responses on any of the questions, then later challenge them to prove our thesis on our $10,000 Reward page incorrect. Many have tried, all have failed. Who will be next?

Hey it is your money, so the next time you fork over your hard-earned dough to your accounting, legal or tax "professional" for services rendered, make sure they know what it is they are actually doing - or not doing! 99.9% don't have a clue!

Now, here are the questions... enjoy.

How have *tens* of *thousands* of U.S. Citizens *quit* Social Security and *stopped* paying all social security [i.e. wage and employment] taxes?

Does the law *require* a new business owner to get an Employer Identification Number (EIN)?

Does the law actually *require* a worker to sign a Form W-4 *"Employee Withholding Allowance Certificate"?*

Why do "nontaxpayers" *never* hear from the IRS their entire lives?

How does the IRS *trick*

Are IRS agents' "bad" people or simply undereducated civil servants following "administrative procedures"?

If the IRS *does* violate the law, is there any recourse under the law to *defend* oneself?

Why, according to the Constitution, is the IRS *forbidden* to *directly* tax a U.S. Citizen?

Why do most attorneys and tax preparers *still* not understand the Internal Revenue Code?

Are income and employment taxes *voluntary* or *mandatory*?

What does your "voluntary compliance" *really* mean?

Is the income tax constitutional or *un*constitutional, and why?

Exhibit 8

According to a private report commissioned by President Reagan, where do "your tax dollars" *really* go?

Who did Congress *really* make liable by law to withhold the income tax?

Who is *required* by law to file tax returns? Is IRS Form 1040 a *required* return?

Who owes the *income* tax? Who owes the *employment* tax? Which have you been paying and why?

Does the law *require* a U.S. Citizen to get a Social Security Number (SSN)?

Does the law *require*

What is the penalty imposed upon a parent for *failure* to list their child's SSN on IRS Form 1040?

Is it possible to vote, open a bank account, drive a car, buy and sell property, etc. *without* a SSN?

What is the Federal Reserve Note a "dollar" *of*?

According to the courts, is the Federal Reserve a government agency or a *private corporation*?

What did a former Federal Reserve official state is the *real* reason for the income tax, (and it's *not* for revenue)?

Why, over America's first 125 years, was there *zero* inflation and *no* income tax?

What happened in 1913 to *guarantee* inflation and how is the income tax connected?

Why can the federal debt *never* mathematically be repaid?

You will discover the answer to all of these question and many more when you enroll in Tax Freedom 101.

Here are some more intriguing questions...

? ***If the government can print all the paper money it needs to pay its bills, then why does it need to tax anyone? ... including you? Now, that's a good question, isn't it! Why are you being taxed?***

? ***If the government owes the $6 trillion debt to itself, why doesn't it just forgive itself its own debt, wipe the slate clean and start over? Could it be because the government doesn't owe the debt to itself?***

? ***What is the difference between a citizen and a "taxpayer"? There's a BIG difference! Which are you?***

? ***Who, according to the law, actually owes income and employment taxes? Do you? Are you sure?***

? ***Which is the only one of these two taxes most Americans have ever paid and why have their contributions been 100% voluntary? What does the IRS really mean by "voluntary compliance"?***

? *What is the proper paperwork to submit to the IRS to stop all withholding of income and employment taxes in the workplace? Say, are you taking home 100% of your paycheck?*

? *Is everyone required by law to file returns? No? So are you?*

? *Has your "tax pro" ever actually read the Internal Revenue Code and the taxing regulations that are on the books right now? Would you pay money to a doctor who never read "Gray's Anatomy"?*

? *When is the precise moment in your life that you became a legally defined taxpayer"? Article 1, Section 2, Clause 3 of the Constitution forbids the direct taxation of a Citizen. So how does the IRS get away with directly taxing you? Why doesn't Congress stop them? Didn't they read the Constitution?*

? *Does the Law actually require a citizen to obtain and use a Social Security Number simply to live and work in the United States? How have tens of thousands of your fellow Americans already QUIT social security - 100% legally - and started saving for their own retirement (not yours and everyone else's)?*

? *Does the law actually require that a citizen who wishes to hire others must obtain an Employer Identification Number? And be forced to pay 50% co-FICA!!!! How do many legally avoid this?*

? *According to the law, a lien can only be placed, a bank account or wages can only be levied on, and private property can only be seized with a COURT ORDER! Yet the IRS never bothers! How do they get away with this? Why didn't Congress mention this during the recently televised "reform" hearings?*

? *Why does the IRS have to trick its master computer in Martinsburg, W. Virginia into sending out all*

a citizen? Could it be because the computer knows the TRUTH? Does your CPA? Do you? Or ... **Will You Be Disturbed to Learn The Documented TRUTH?**

And lastly... ***Would you know how to correctly respond to an unlawful notice of lien, levy, or seizure received from the IRS?***

No you say?

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[JOINT COMMITTEE PRINT]

COMPARATIVE DESCRIPTION

OF

H.R. 6300

(THE TAX COMPLIANCE ACT OF 1982)

AND

H.R. 5829

(THE TAXPAYER COMPLIANCE IMPROVEMENT 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
[illegible] O WASHINGTON: 1982 JCS—[illegible]

J862-13
H782-12

Exhibit 9

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 not 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 premised 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, counseling 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

97-442 O WASHINGTON: 1982

H 781-39

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.

Calendar No. 706

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

U.S. GOVERNMENT PRINTING OFFICE
96-028 O WASHINGTON: 1982

S 363-4

Exhibit 11

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. 97-760

TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

CONFERENCE REPORT

TO ACCOMPANY

H.R. 4961

AUGUST 17, 1982.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
97-688 O WASHINGTON : 1982

H 783 - 10

Exhibit 12

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 requird 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

11-321 O WASHINGTON : 1983 JCS-38-82

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Washington, D.C. 20402

J862-1

Exhibit 13

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.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.) Civil No.

JOHN BAPTIST KOTMAIR, JR.,) WMN 05 CV 1297

et al.,)

Defendants.)

\- - - - -

VOLUME 1

\- - - - -

The deposition of JOHN BAPTIST KOTMAIR, JR. was taken on Monday, February 13, 2006, commencing at 4:00 p.m., at the Office of the United States Attorney, District of Maryland, 36 South Charles Street, Baltimore, Maryland, before Josett F. Whalen, Registered Merit Reporter and Notary Public.

\- - - - -

Exhibit 14

Page 2

A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

THOMAS M. NEWMAN, ESQ.
United States Department of Justice
Tax Division
P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044
(202) 616-9926

ON BEHALF OF THE DEFENDANTS:

GEORGE HARP, ESQ.
610 Marshall Street
Suite 619
Shreveport, Louisiana 71101
(318) 424-2003

ALSO PRESENT:

DANIEL GREENSTEIN

P R O C E E D I N G S

- - - - -

Whereupon --

JOHN BAPTIST KOTMAIR, JR.

a witness, called for examination, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. NEWMAN:

Q. Mr. Kotmair, I know that you've done this before, and I just want to remind you that the answers that you give need to be verbal because the court reporter can't take down nods and things like that.

A. I know that.

Q. If you don't understand any of my questions, ask me to rephrase it, and I will do that, so that we're both clear on the question that I'm asking and that you're answering that question.

A. Sure.

Q. Do you want to review the transcript or

tax court?

A. I guess they have, but they do that. We don't do anything with that.

Q. But you don't assist them with any kind of petition to the tax court?

A. No. No tax court at all.

Q. In your materials you say that the paralegals assist in drafting bankruptcy petitions, but you're saying --

A. No. We did bankruptcy -- we had a member who was a paralegal there up until maybe around '93 or '94 and he was an expert at bankruptcy. He did bankruptcy. When he left, we haven't done bankruptcy since then.

Q. Okay. So you just don't do that anymore?

A. No. If members call in and ask us about bankruptcy, we tell them that this person does it or that person does it, but we don't do it.

Q. And the other kind of work is the power of attorney work that you already

have them sitting around.

Q. And what is listed here in number 5, which is what I was referring to earlier, is that associate members have the privilege of faxing questions, but you're saying that the fellowship may not necessarily answer the questions.

A. Well, that's right. Because we tell them straight off, we don't give advice. We never give advice. If they have questions about other things, yeah, fine.

Q. Okay.

A. But we tell everybody that we don't give any advice. We announce it everywhere.

Q. And what is referred to in number 6 on Exhibit 9 is the opportunity to become an independent representative?

A. Right.

Q. And what's stated in number 6 is that the independent representatives receive commissions and full --

A. Yeah. They keep a part of the fee for

members to send these types of responses because these are --

A. Well, they don't all come to us, but the ones that do come to us and we get a request from them to do this.

Q. But these are received in the service centers at the rate of about a letter a day.

Does that surprise you --

A. No.

Q. -- that there may be about a letter a day in the different IRS service centers that --

A. That wouldn't surprise me. You know, if you have a couple thousand members or whatever -- I don't know how many members there are, but you know, if the IRS is sending these things out, would that surprise you it would be one or two a day?

Q. It surprised me.

A. Well, it doesn't surprise me because I know how active the IRS is. They're very active.

Wouldn't you say so, Mr. Greenstein?

MR. GREENSTEIN: "Greenstein."

THE WITNESS: I'm sorry.

Mr. Greenstein.

BY MR. NEWMAN:

Q. So these letters, there's about a thousand letters sent to the IRS responsive to these types of inquiries a year?

A. I don't know if it's a thousand. I don't know. I don't know how many it would be, but I doubt if it's a thousand. I very seriously doubt if it's a thousand. I'd have writer's cramps.

Q. From signing your name?

A. Yeah.

And I don't have writer's cramps.

Q. Can I ask you to look at page 2 of what's marked as Exhibit 12.

A. All right.

Q. The paragraph that you have listed under the indented quotation for 26 CFR 1.861-8.

A. Right.

seems to be consistently disregarded by the IRS?

A. They never settled a dispute yet. I think, you know, I said under the circular I'm the officer of this association, and they just won't give me a hearing.

Q. No. What I'm referring to is the information that you sent in -- and these would be the arguments that are presented in the letters that are marked as Plaintiff's Exhibits 11, 12 and 13.

A. Yes.

Q. And those would be with respect to a substitute for return for an individual that didn't file --

A. Right.

Q. -- a notice of deficiency that an individual received and that you have power of attorney for, or a proposed levy.

But those letters, although you're sending a lot in to the IRS to dispute on behalf of the member, the IRS itself or the

appeals officers, they aren't meeting with you and they're really just disregarding the letters.

A. They're stonewalling.

Q. And they're also not responding to the arguments.

A. They're not responding. They're not giving me any response to anything. They won't -- like I told you, the mission says that they're supposed to answer questions. They're supposed to show you where you're wrong on the law. They don't do any of that. They don't do anything.

Why don't they come back and show me where it's wrong. See? That's it.

Q. In some circumstances -- and I've seen this, but I don't have any of the papers -- they are responding to the individual.

A. But not showing me where we're wrong.

Q. No.

A. They're responding to the individual, yeah.

Q. They're responding to the individual, regardless of whether or not I --

A. But they don't address anything.

Q. -- the correctness of the arguments that you are presenting in the letters, they just respond to the individual. I don't know what the letters say.

But they are -- they may or may not be responding, only to the individual --

A. But they don't respond to --

Q. -- to you?

A. -- what I'm saying to them. They don't respond to it.

Q. To the arguments that you're presenting?

A. Right. They don't show us where the arguments are wrong.

Q. Right. That's what I was asking.

A. Right. If they'd come back and just show us where we're wrong, show us what we're overlooking --

Q. Yeah. I understand.

Input to FRP Master

029

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 27, 2005

Certified Mail No. 7005 1160 004 9957 1380

RECEIVED

AUG 12 2005

EXAM RECON

Re: Letter 2566, dated June 27, 2005.

Jan Sinclair, ASFR Operations Manager
Internal Revenue Service
P.O. Box 9013
Holtsville, NY 11742-9013

Dear Ms. Sinclair:

This letter is a written protest to the Letter 2566, dated June 27, 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 years you have proposed an adjustment: 2001 and 2002. 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.

RECEIVED
AUG 2 9 2005
AUDIT RECON

First, [redacted] had no requirement to file any tax returns pursuant to Subtitle A of the Internal Revenue Code (IRC) for the years 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]

RECEIVED DO 20
Ogden Service Center

AUG 23 2005

Internal Revenue Service
Ogden, Utah

PLAINTIFF'S EXHIBIT 11

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 years 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.

Ms. Sinclair, 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.

Finally, your letter is not verified in accordance with § 6065.

Ms. Sinclair, 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 June 27, 2005; Schedule of Disputed Issues.

cc: [redacted]

Lynne Walsh, Director
Internal Revenue Service Center
P.O. Box 400, 1040 Waverly Ave.
Holtsville, NY 11742

Schedule of Disputed Issues

(1) [redacted] has no requirement to file any tax return for the years 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) The notice received by [redacted] was not authenticated pursuant to 26 USC § 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.

[redacted], 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: 1999 through and including 2005.

On this 14th day of July, 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]

Subscribed and affirmed to before me, a Notary Public, of the State of Connecticut, County of Fairfield, on this 14th day of July, 2005.

Notary Public

My Commission Expires On: 3-31-08

Rev. 12/30/96

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 8, 2005 Certified Mail No. 7005 1160 0004 9957 1700

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

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. As you must be aware, §§ 6012, 6211, and 6212 specifically exclude taxes imposed by Subtitle C.

Your citing of Internal Revenue Code §§ 6651(a)(1), 6651(a)(2), 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 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," "Wages" is 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 "Wages" are derived from the taxable "sources" listed in 26 CFR § 1.861-8(f)(1) and are 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 6, 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 6, 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 yea. 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.

cc: [redacted]

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 Richard Roberts 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 Richard Roberts 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.

_____

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.

[redacted] 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: 1995 through and including 2004.

On this 16th day of July, 2004, 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]

Subscribed and sworn to before me, a Notary Public, of the State of Texas, County of Dallas, on this 26th day of July, ~~2004.~~ 2005

BENJAMIN VANZANT
MY COMMISSION EXPIRES
October 22, 2006

B-V-3

Notary Public

My Commission Expires On: 10/22/06

Rev. 12/30/96

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

April 29, 2005 Certified Mail No. 7004 1160 0002 9223 7088

Re: CP 504, Notice of Intent to Levy, dated April 18, 2005, concerning 2002.

David Alito, Director
Internal Revenue Service Center
Stop 8, 5333 Getwell Road
Memphis, TN 38118

Dear Mr. Alito:

[redacted] has forwarded to me for response the enclosed Notice of Intent to Levy dated April 18, 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.--
>
> (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

PLAINTIFF'S EXHIBIT 13

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.

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 issueing 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. Alito, 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 April 18, 2005.

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: 2605-47815R), of Post Office Box 91, Westminster, Maryland 21158, permission to investigate this matter for me.

[redacted] 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: 1992 through and including 2005.

On this 19th 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.

[redacted]

Subscribed and sworn to before me, a Notary Public, of the State of Texas, County of Dallas, on this 19 day of April, 2005.

Barbara Harasimo
Notary Public

My Commission Expires On: 02/06/2006

Rev. 12/30/96

BARBARA HARASIMO
NOTARY PUBLIC
State of Texas
Comm. Exp. 02-06-2006

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 (***F***alse ***E***vidence ***A***ppearing ***R***eal) .

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

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 then 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)**

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PROFESSIONAL LIABILITY BENEFIT PLAN (click on Professional Liability to find out more)

Why Consider This Protection?

In today's workplace of the Federal Employee, the need to have the "peace of mind" provided by the Federal Employee Professional Liability Benefit is becoming more necessary. When you consider the following factors, the evidence becomes obvious for the need to protect yourself:

- When IG, OIA, OPR and EEOC procedures occur, you need someone on your side
- Pay for Performance (NSPS) is here or just around the corner
- Filing a complaint, though baseless, against a fellow employee can be easy, have no cost and no penalties, even if unsuccessful (sexual harassment, discrimination etc.)
- The "No Fear" Act can create a serious financial exposure
- The Federal Tort Claims Act states the government can choose whether or NOT to defend you
- Managers, Supervisors and Law Enforcement Officers receive up to 50% reimbursement of cost by law – there must be a good reason

The protection afforded to you through the Defense Shield Association* provides you advice and counsel when an allegation is made against you while performing the duties of your job within its' scope. You are also provided an Accidental Death and Dismemberment benefit and Identity Theft Protection all for the same membership pricing.

**The Defense Shield Association Benefit membership is available through Wright & Co. / CSEBA the originators of the Federal Professional Liability Plan.*

We protect your best interest at all times.

Even if you do gain representation, the U.S. Attorney's duty is to uphold the best interest of the U.S. Government. The Federal Tort Claims Act states that the government can choose whether or not to defend

Exhibit 16

you and can cover any monetary damages levied against you personally.

Fortunately, a solution now exists...

ENROLL NOW

FORMER FEDERAL INVESTIGATORS LIABILITY

Wright & Co./Civil Service Employee Benefit Association (CSEBA) and SATI (Special Agent Trust for Insurance) offers an exclusive Investigators Professional Liability Insurance plan which was designed specifically to protect former federal and civil servant investigators. You are protected against losses from lawsuits stemming from the performance of your duties as an investigator. Our plan picks up the full cost of your legal defense and pays covered damages awarded against you (up to the selected policy limit).

REQUEST FOR RECEIPT FOR REIMBURSEMENT

Although every attempt has been made to verify the accuracy of the information contained on this website, errors and omissions may occur. Once your enrollment application has been received, you will be notified if any rates or coverage specifications have been changed. All enrollment applications are subject to the rates and coverage specifications currently in use on the day they are received.

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!!!

Exhibit 17

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.

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 of 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.

> ***But the subpoena is in form an official command, and even though improvidently issued it has some coercive tendency, either because of ignorance of their rights on the part of those whom it purports to command or their natural respect for what appears to be an official command, or because of their reluctance to test the subpoena's validity by litigation.***
>
> U.S. Supreme Court, U.S. v. Minker, 350 US 179, at 187.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

SAVE-A-PATRIOT FELLOWSHIP	*	
Plaintiff	*	
	*	
vs.	*	MJG 95-935
USA	*	
Defendants	*	

+ + + + + + + + +

Hearing was held in the above referenced case on September 20, 1996 before the Honorable Marvin J. Garbis.

A P P E A R A N C E S

For the Plaintiffs:

George Harp, Esquire

For the Government:

Gregory Hrebiniak, Esquire

Reported by:

Barbara J. Shaulis,

Official Court Reporter

Exhibit 18

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

THE WITNESS: Right.

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

CROSS-EXAMINATION BY MR. HREBINIAK:

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

A Well, it is a first amendment unincorporated organization.

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

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

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

A No.

Q As a charitable organization?

A No.

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

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

THE WITNESS: That is correct.

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

THE WITNESS: That is correct.

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

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

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

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

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

BY MR. HREBINIAK:

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

A Myself.

Q Just yourself?

A That is correct.

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

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

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

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

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

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

sincerity.

MR. HARP: I mean --

THE COURT: Or at least his consistency.

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

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

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

and why it was returned.

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

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

MR. HREBINIAK: No, you cannot.

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

MR. HREBINIAK: Or maybe Your Honor hit the distinction there. That certainly any assets devoted 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*.

Exhibit 19

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

DOROTHY M. STEIN NOTARY PUBLIC CARROLL CO., MD.

My Commission Expires On: October 1st, 2009